Government
**Equalities** Office

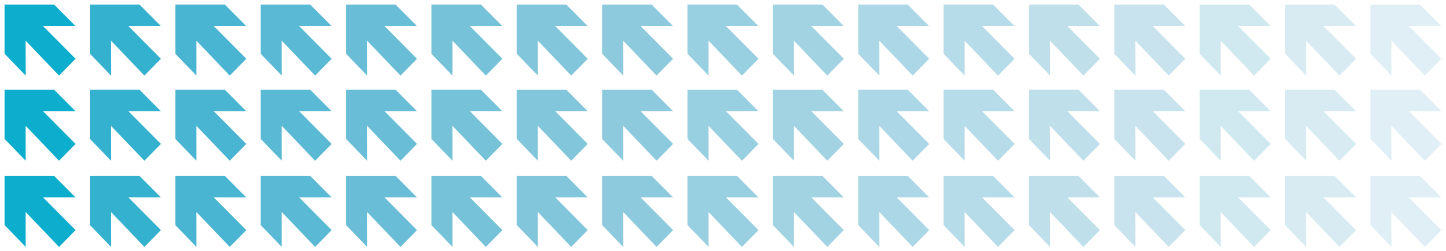
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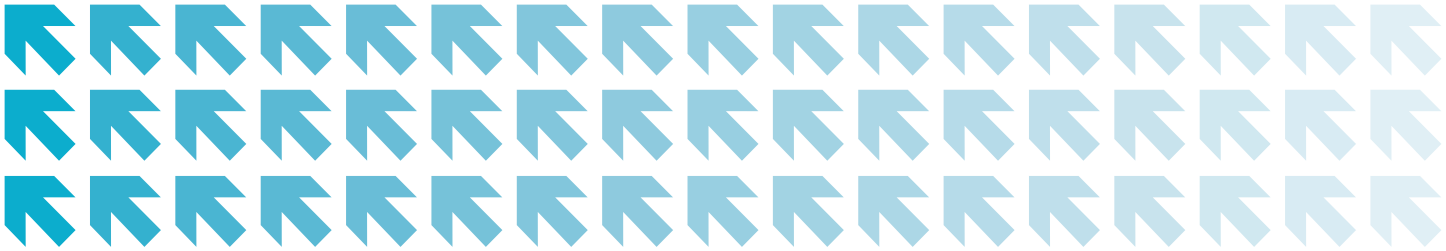
Equality and Diversity Forum

# EQUALITY ACT 2010: WHAT DO I NEED TO KNOW? A QUICK START GUIDE TO GENDER REASSIGNMENT FOR VOLUNTARY AND COMMUNITY ORGANISATIONS



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## Foreword

The Equality Act 2010 replaces the existing anti-discrimination laws with a single Act. It simplifies the law, removing inconsistencies and making it easier for people to understand and comply with. It also strengthens the law in important ways to help tackle discrimination and inequality.

This quick start guide tells you how the Equality Act 2010 changes what you have to do in order to prevent and address discrimination against and harassment of transsexual people when you provide goods, facilities or services to the public. These parts of the Act will come into effect on 1 October 2010.

## Introduction

The Equality Act 2010 brings together, harmonises and in some respects extends existing equality law. It aims to make the law more consistent, clearer and easier to follow in order to make society fairer. As a provider of goods, facilities or services in the voluntary and community sector, your responsibilities remain largely the same, but there are some differences that you need to be aware of.

There are other guides that give useful information about the changes to the law. A summary guide for the voluntary and community sector gives an overview of the changes that affect you as a service provider. Other guides are available for employers, business and individuals. The guide for employers helps the voluntary and community sector with employment issues.

This series of guides covers key changes that are coming into effect on 1 October 2010. The Equality Act also includes other provisions, including the new concept of dual discrimination, an extended public sector Equality Duty and a prohibition on age discrimination in services and public functions. The Government is looking at how the rest of the Act can be implemented in the best way for business, and will make an announcement in due course.

This quick start guide tells you how the Equality Act 2010 changes what you have to do to prevent and address discrimination against and harassment of transsexual people when you provide goods, facilities or services to the public, for example as a residential care home, community shop or after-school club. These parts of the Act come into effect on 1 October 2010.

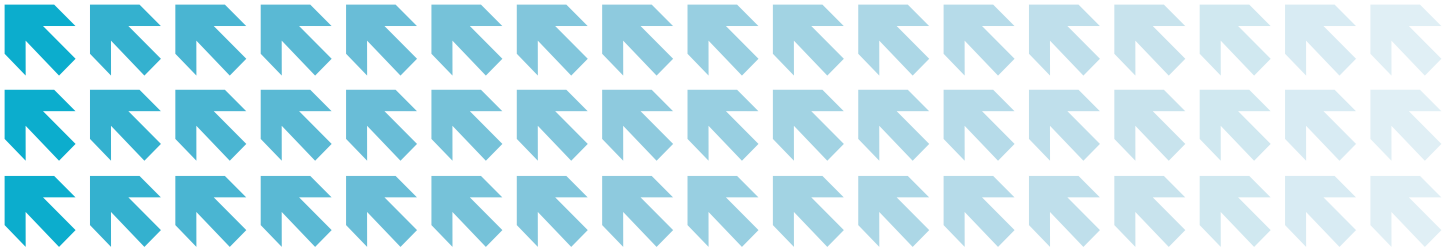
## Who is protected?

Transsexual people are protected from discrimination and harassment. Transsexual people have a profound feeling that they have been born in the 'wrong' body and they wish to change their sex to conform to their 'true' gender. Under the legal definition, a transsexual person has the protected characteristic of gender reassignment if they are undergoing, have undergone or are proposing to undergo gender reassignment. Gender reassignment is a process to change your sex by changing physiological and/or other attributes of sex including, for example, your first name, title, clothing, etc. It does not necessarily involve medical or surgical treatment, although it can do. People who are not transsexual but who are wrongly thought by someone else to be transsexual are also protected from gender reassignment discrimination, as are people who are linked or associated with a transsexual person.

A wide range of people are included in the terms 'trans' or 'transgender', such as cross-dressers and other people whose gender identity may be anywhere on the spectrum between entirely male and entirely female. Only transsexual people are explicitly protected under equality legislation, but if a cross-dresser, for example, were discriminated against because they were wrongly thought to be transsexual, they would also be protected.

### What has changed?

The range of transsexual people who are protected has been extended slightly. To qualify for protection, a transsexual person will no longer have to show that they are under medical supervision. This means that someone who changes their gender without seeing a doctor will also be protected.



## Who has responsibilities?

The Act applies to all organisations that provide a service to the public or a section of the public. It also applies to anyone who sells goods or provides facilities. For example, it covers voluntary and community organisations that provide information and advice, internet services or daycare, and those running residential care homes and leisure centre facilities. It applies to all services, whether or not a charge is made for them. It also applies to clubs and other associations with 25 or more members whose membership is controlled by rules and involves a process of selection.

## Discrimination and harassment

The Act prohibits discrimination and harassment of transsexual people. The different types of treatment it deals with are explained below.

## Direct discrimination

Direct discrimination occurs when a person is treated less favourably than another person because of gender reassignment.

### Example

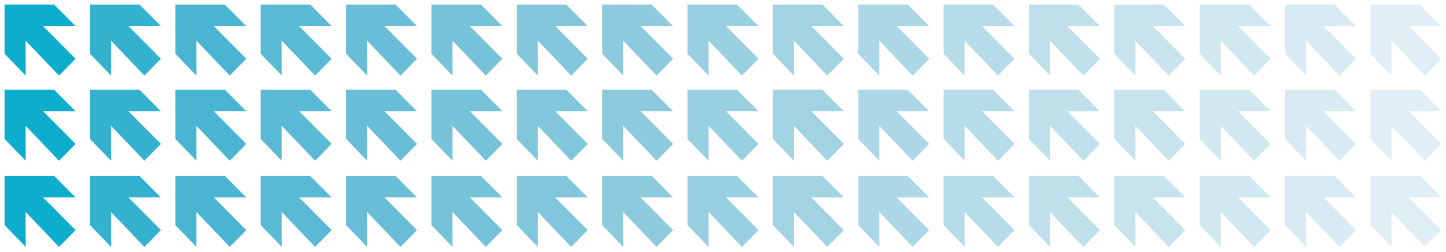
Chris is a transsexual man in the process of undergoing gender reassignment from female to male. Chris would like to go to his local lunch club. He is told that the other people who use the lunch club would feel uncomfortable if he attended because he is a transsexual person, so he is turned away. This is direct discrimination because of gender reassignment.

### Association and perception

Direct discrimination can also occur when a person who is not transsexual is treated unfairly because they are linked or associated with a transsexual person. This is called discrimination by association.

### Example

Sarah's mother is about to undergo gender reassignment from female to male. The manager at her local youth centre tells Sarah that she can no longer attend because other young people at the centre are getting confused now that Sarah has started calling her mother 'Robert' and treating him as a man. This is direct discrimination because of Sarah's association with her mother.



Direct discrimination also occurs when a person is discriminated against because they are thought to be a transsexual person even though they are not. This is known as discrimination by perception. It is also unlawful to discriminate against a person by treating them as if they were transsexual, even when you know they are not.

### Example

Harshbir, who is male and has long hair, tries to buy a dress for his wife. The shop assistant assumes Harshbir wants to buy the dress for himself and is transsexual, refuses to serve him and asks him to leave the shop. This is direct discrimination because of perception of gender reassignment.

### What has changed?

The definition of direct discrimination has been extended so that a person could be a victim of gender reassignment discrimination even if they are not themselves transsexual.

## Indirect discrimination

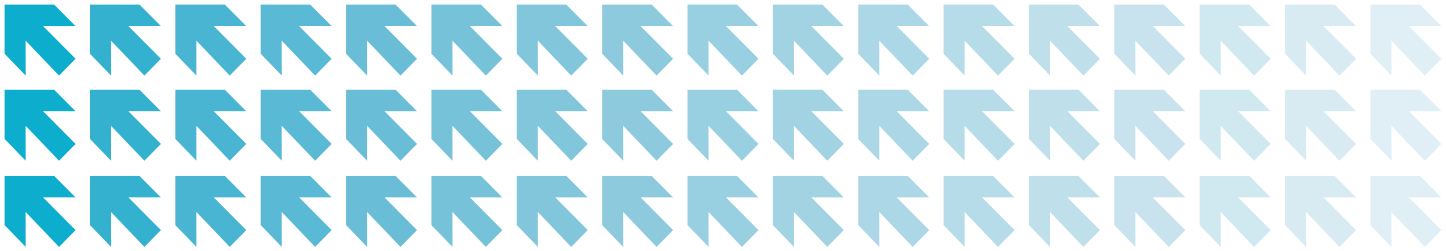
Indirect discrimination happens when a rule, a policy or a practice applies to everyone but particularly disadvantages transsexual people. Indirect discrimination can be justified if you can show that the rule, policy or practice is intended to meet a legitimate objective in a fair, balanced and reasonable way. If you can show this, the discrimination will be lawful. When introducing a new rule or policy, you should consider whether there is any other way to meet your objectives which is less likely to disadvantage transsexual people. Remember that wanting to save money alone is unlikely to be sufficient justification.

### Example

A university has a blanket ban on amending its record of academic awards and refuses to consider a request from a transsexual person to amend her academic record and award a new degree certificate in her new name. While the aim of the university to preserve the integrity of its records may be legitimate, it is unfairly placing the transsexual graduate at a disadvantage by forcing her to provide documentation, for instance to prospective employers, in her previous gender, revealing her transsexual status. This is likely to be unlawful unless the policy can be objectively justified.

## Harassment

Harassment means unwanted behaviour related to someone's gender reassignment which has the purpose or effect of violating a person's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for them.



**Example**

Scarlett Green lives in a residential care home. When one of the members of staff finds out that she has undergone gender reassignment, he starts to give Scarlett verbal abuse about being a 'pervert' and a 'weirdo' and insists on calling her 'Mr Green'. This is harassment related to gender reassignment.

## Victimisation

Victimisation occurs when a service provider treats someone badly because they have made or supported a complaint related to the Act, or the service provider thinks they are in the process of making or supporting a complaint or may do so in future. It is not necessary for the victim to be a transsexual person to be protected – it will still be victimisation if a service provider treats someone badly because they have supported a person who is claiming gender reassignment discrimination. A person is not protected from victimisation if they have maliciously made or supported an untrue complaint.

**Example**

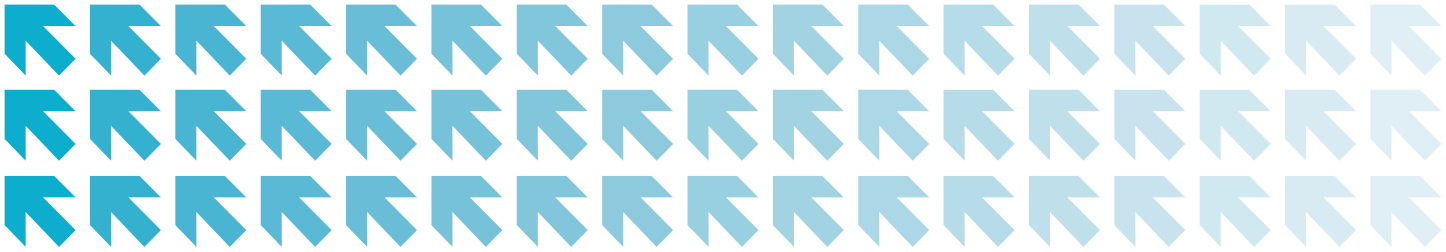
When Scarlett, a resident in a local residential home, complains to the management that one of the members of staff has revealed to other residents that she is a transsexual person and that she is being bullied and harassed by him, she is told she must find another residential care home because she has caused a lot of disruption. This is victimisation because she complained about her rights under the Equality Act 2010.

## When are you allowed to treat a transsexual person differently?

### Single-sex services

In general, if you are an organisation that provides single-sex services or separate services for women and men, or you provide your services differently to women and men, you should treat transsexual women and men according to their acquired sex.[1] However, in limited circumstances, treating transsexual people differently may be lawful. You will only be able to do this where you are fulfilling a legitimate objective in a fair and reasonable way. You will need to show that a less discriminatory way to achieve your objective was not available. You should therefore consider the type of service being provided, the facilities available, the views of the transsexual person, the stage of their transition and the effect on other service users.

[1] For information regarding the care of transsexual adults and children in hospital go to: http://webarchive.nationalarchives.gov.uk/+/www.dh.gov.uk/en/Healthcare/Samesexaccommodation/SSAinpractice/DH_099088



**Example**

A women's sexual abuse crisis centre receives a request for support from Alice, a transsexual woman. The centre usually provides group support sessions, but Alice is still in the early stages of gender reassignment and the centre is concerned that other female service users might feel that her presence affects the safety of the group sessions for them. The centre decides to offer one-to-one support to Alice at home. This different treatment is likely to be lawful because it enables the crisis centre to fulfil its legitimate objective of providing all service users with a safe and supportive counselling environment in a fair and reasonable way.

### Sport

You may be exempt from the general rule of treating transsexual women and men according to their acquired sex if your organisation provides sports, games or similar competitive activities where the physical strength, stamina or physique of average people of one sex would put them at a disadvantage compared with average people of the other sex as competitors in events. Discrimination will only be allowed, however, if it is necessary to secure fair competition or the safety of competitors.

**Example**

Jenny is a talented athlete who has undergone gender reassignment from male to female. She trains with her local women's athletics club and she wants to compete in an upcoming national athletics event. With Jenny's permission, her coach approaches the national governing body for the competition to clarify the gender reassignment-related rules for entry as a female competitor and supports her in presenting evidence that she is no longer at a physical advantage relative to an average woman.

## Positive action

Service providers are allowed to encourage transsexual people to use their facilities or services if they think transsexual people have been disadvantaged in the past because of discrimination or if they have a low rate of participation. In these circumstances, service providers can take steps to help transsexual people overcome these disadvantages, as long as the steps taken are fair and reasonable in the circumstances.

### Example

A local community sports centre provides separate swimming sessions for transsexual people after a survey reveals the majority of them are avoiding using swimming facilities due to fear of harassment by other service users. This is permissible positive action.

For further information see the positive action for voluntary and community organisations quick start guide.

## Clubs and other associations

If you are an association (such as a tennis club) with 25 or more members, you cannot discriminate against, harass or victimise members, potential members, associates, guests or potential guests because of gender reassignment. Special rules apply to clubs and other associations with 25 or more members whose membership is controlled by rules and involves a process of selection; for instance, you can restrict your membership and the provision of your services to transsexual people only.

For further information see the voluntary and community sector associations quick start guide.

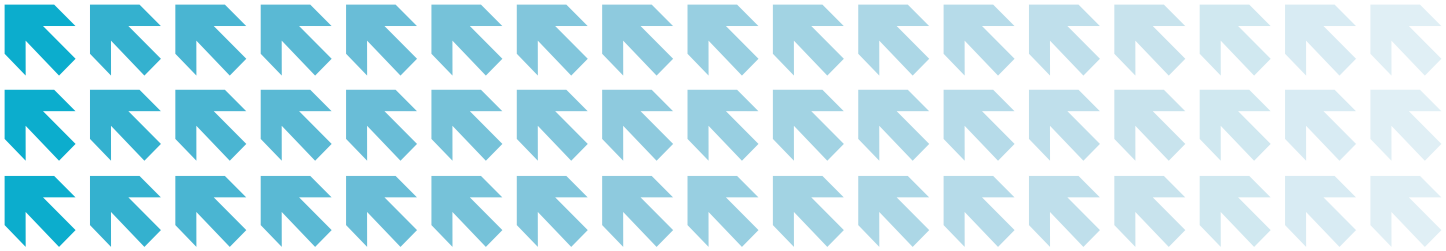
## Charities

A charity may provide benefits only to transsexual people if the charity acts on the basis of its charitable instrument (the document that set it up) and this is either:

- a fair and reasonable way of achieving a legitimate objective, or
- for the purpose of preventing or compensating for a disadvantage linked to that protected characteristic.

### Example

A charity's constitution states that its objective is to provide temporary accommodation for transsexual people. The charity's aim is to help transsexual people who are forced to leave rented accommodation because of harassment by neighbours. This is a legitimate objective and the temporary nature of the facilities suggests this is a fair and reasonable way of meeting the objective.



## What do you need to do now?

Voluntary and community organisations that already have good equality procedures in place do not need to take much further action. However, it is wise to:

- inform your staff and management committee of the new provisions
- review your equality policies and make sure they do not inadvertently discriminate against transsexual people, and
- consider whether your staff need any further training.

You may also wish to consider whether transsexual people are as well-represented among your service users as they should be and, if not, whether there are any steps you could take to encourage them to use your organisation more.

## Further information

The Equality and Human Rights Commission is the statutory body established to help eliminate discrimination and to promote equality. It will issue a Statutory Code of Practice explaining in more detail how the Equality Act applies. It also produces a range of materials providing practical guidance on how to comply with the law.
www.equalityhumanrights.com

Advice UK
www.adviceuk.org.uk

Citizens Advice
www.citizensadvice.org.uk

Government Equalities Office
www.equalities.gov.uk

Law Centres Federation
www.lawcentres.org.uk

Office of the Scottish Charity Regulator
www.oscr.org.uk

### UK councils for voluntary organisations

National Council for Voluntary Organisations
www.ncvo-vol.org.uk

Scottish Council for Voluntary Organisations
www.scvo.org.uk

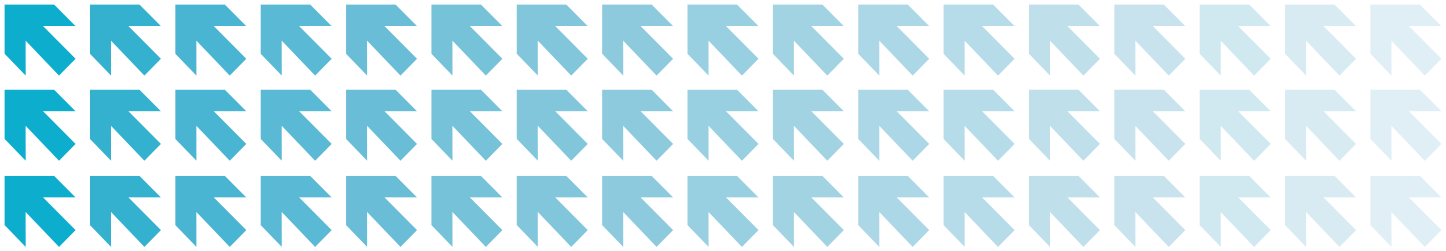
Wales Council for Voluntary Action
www.wcva.org.uk

### Organisations for transsexual people

Gender Identity Research and Education Society (GIRES)
www.gires.org.uk

Press for Change
www.pfc.org.uk

Scottish Transgender Alliance
www.scottishtrans.org



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