

Gender Recognition Act 2004 (GRA)

This Act became law on 4 April 2005. It allows transsexual people to apply to a Gender Recognition Panel for legal recognition of their chosen gender. Where a Gender Recognition Certificate is granted, Scheme records can be changed accordingly on application.

The Gender Recognition Certificate (GRC)

To be granted a GRC an individual must not be married at the time of their application. Once a GRC has been granted the individual is legally recognised in their chosen gender. The issuing of a GRC allows the individual to apply for a new birth certificate in their chosen gender.

While transsexual people born outside the UK will be able to apply for, and be granted legal recognition in their chosen gender and therefore issued with a GRC, they will not be entitled to a UK birth certificate.

The granting of a GRC means an individual would be free to marry a person of the opposite gender.

Members should send the original GRC, and where appropriate the original birth certificate, to the NHS Pensions Agency for their membership records to be amended.

Implications for members of the NHS Pension Scheme

Recognition of the chosen gender will take effect from the day an application is granted by the Gender Recognition Panel. Future benefits will be determined in accordance with the gender at the time of claim. The Gender Recognition Act stipulates that historic pension events cannot be changed.

As the NHS Pension Scheme regulations are in the main equalised there will be minimal implications to Scheme members, the exceptions being:

1. Members of the 'Special Classes'
2. Members who have Scheme membership before 25 March 1972
3. Possibly some transfer value calculations

Special Classes

For members of the Special Classes considering applying for gender recognition their benefits will be affected dependant on which way the gender is changed.

- A change in gender from male to female – female members of the special classes are entitled to retire with benefits from age 55, provided their last 5 years membership is in one of the special class jobs.
- A change in gender from female to male - male members of the special classes are entitled to retire with benefits from age 55, provided their last 5 years membership is in one of the special class jobs, but their benefits will only be based on their membership from 17 May 1990. Benefits for membership before that date will not be paid until age 60 unless they choose actuarially reduced voluntary early retirement.

Male to female members will be subject to an actuarial reduction on any Added Years contract credit bought if the original contract to purchase additional membership is to age 60/65 and they subsequently retire early due to a change in gender.

Members who hold Mental Health Officer (MHO) status are not affected as all MHO members can retire at age 55 with full benefits as long as they have achieved 20 years MHO membership.

Membership before 25 March 1972

For members considering applying for gender recognition their benefits will be affected dependant on which way the gender is changed, if they have membership before 25 March 1972.

- A change in gender from female to male - membership before 25 March 1972 will be subject to the split lump sum scenario. These members will have the option to purchase the unreduced lump sum retiring allowance for any membership before 25 March 1972.
- A change in gender from male to female, where there is membership before 25 March 1972 will be entitled to full lump sum. Male to female members who have previously bought the ULSRA will not be entitled to a refund of the contract.

Transfers

For members over age 40 the factors used in the calculation of a transfer value are gender based. The chosen gender at the time of the transfer value calculation will determine which factor tables are used. It is up the member to make past providers aware of any change in gender. Previously completed transfer values will not be revisited.

Data Protection

It is an offence for any person to disclose information acquired in an official capacity about a person's application for a GRC or about the gender history of a successful applicant. This information is termed 'protected information' under the Act. Personal information will not be divulged without the member's express permission.

There are specific exceptions in the Act to the general prohibition on disclosure. For example, disclosure will not constitute an offence where the person to be identified has consented to the disclosure or where the disclosure is for the purposes of proceedings before a court or tribunal.

A GRC will be handled securely in the same way as a birth, death and marriage certificate. Records and data will not be changed without sight of an original GRC.

Frequently Asked Questions

Q. When did the Gender Recognition Act come into force?

A. The Gender Recognition Act came into force on 4 April 2005. From that date applications start to be considered by Gender Recognition panels and Gender Recognition Certificates issued.

Q. What does the Gender Recognition Act do?

A. The Gender Recognition Act allows transsexuals fitting the criteria laid down in the Act to apply for legal recognition of their chosen gender. Once gender has been agreed a Gender Recognition Certificate is issued.

Q. What is the process for achieving Gender Recognition?

A. An application for Gender Recognition has to go before the Gender Recognition panel. When they are satisfied that the criteria has been met they will issue a Gender Recognition certificate.

Q. What is the effect on a NHS Pension Scheme member who receives Gender Recognition in an acquired gender?

A. There are few implications for the Scheme as the Regulations are equalised in most cases, the exceptions are:

- Special Classes
- AVC
- Possibly some transfer value calculations

Q. What pension calculation do we use for a female nurse who has become a male nurse with a GRC?

A. When the GRC is granted the member becomes the chosen gender. In this case if the GRC is granted before retirement, the calculation will be for a male nurse with membership split at 17 May 1990. Also remember that members with membership before 24 March 1972, the lump sum amount will be calculated differently.

Q. What about a nurse who has changed from male to female?

A. The member will be entitled to full benefits at age 55.

Q. What happens where there is a contract to purchase the unreduced lump sum and the member becomes a female?

A. Nothing, the contract will simply cease from the date of recognised gender change. The member will not be entitled to a refund of the additional contributions paid.

Q. What happens if a full pension is paid to a special class female at age 55, with pre 17 May 1990 membership, who after receipt of their pension, receive gender recognition as a male?

A. The Act states that historic events cannot be changed. This means that if the GRC is issued after Scheme benefits are put into payment the calculation basis will not be changed retrospectively.

Q. What happens if a pension calculation, such as a transfer value, is undertaken in one gender and subsequently a GRC is issued in the other gender?

A. As stated above, events in the past cannot be changed.

Q. What happens if the member is married and subsequently receives recognition in the opposite gender?

A. In order to qualify for a gender recognition certificate the member must be unmarried.