

SUPPORTING

Trans Workers

a guide for trade unionists

STUC LGBT Workers' Committee

May 2015



A Guide for Trade Unionists on Trans Equality

Contents

Introduction.....	3
Section 1: What do we mean by Trans?.....	4
Transsexual People	4
Non-binary Trans people	6
Cross-dressing people.....	6
Intersex people	7
Gender identity and sexual orientation.....	7
Section 2: What the Law Says	7
Discrimination on the grounds of Gender Reassignment	9
Example: Limitations of the Act	9
Example: Discrimination by Perception	10
Example: Discrimination by Association	10
Example: Indirect Discrimination	11
Example: Harassment.....	11
Occupational Requirement (OR).....	12
Example: Victimisation	12
Positive Action	13
Public Sector Equality Duty (PSED).....	13
Gender Recognition Act 2004 (GRA).....	14
Human Rights Act 1998 (HRA)	15
Data Protection Act 1988 (DPA)	15
Section 3: Issues at Work	16
Timescale and Key Stages	16
Telling colleagues	17
Medical leave.....	18
Changing records	19

Harassment	19
Disclosure	20
Redeployment.....	20
Dress code	21
Use of facilities.....	21
Example: Supporting Transition	21
Pensions and retirement age	22
Recruitment and selection	23
Monitoring.....	23
Section 4: Useful Sources of Information	25

Introduction

This guide is designed to help trade unions, and by extension trade unionists, to better understand the issues around trans equality. It forms part of a range of guidance produced by the STUC LGBT Workers' Committee to help promote LGBT equality in trade unions. For further information on the guides available please see the STUC LGBT Workers' Committee webpage on the STUC website.

<http://www.stuc.org.uk/about/equalities/lgbt-committee>

This guide will look at the issue of trans equality. It will provide:

- an introduction to the issues around trans equality;
- information on the legal framework that is currently in place in Scotland; and
- guidance on common workplace issues that are faced by trans members

The guide should therefore be useful to a range of trade unionists from trade union officials, to shop stewards, equality reps and union members more generally. This guide can also be used as a basis to produce further union specific guidance or to help in the preparation of policies at a workplace level.

In addition to producing this guide, the STUC LGBT Workers' Committee would welcome any invites to come and speak with branches, equality committees and others to help advance all our understanding of trans equality and the issues trans members face.

It is important for trade unions and employers to have a clear focus on trans issues. Due to the nature of trans discrimination in our society unless an organisation is *explicitly* transgender inclusive, many trans people considering transitioning may fear the reaction of their colleagues and managers and will either never make the move to transition, with impacts on their mental health and productivity in the workplace or they may choose to leave the organisation rather than 'come out' as trans.

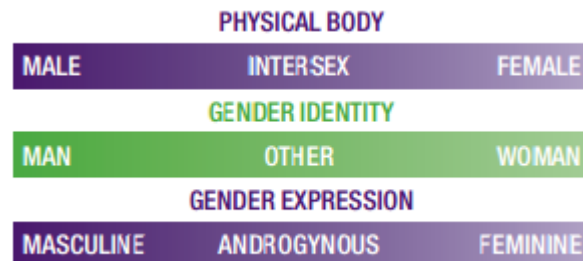
Making an organisation trans inclusive, is therefore an active rather than a passive process. This guide should help trade unions undertake the work necessary to make trans equality a reality in workplaces across Scotland.

Section 1: What do we mean by Trans?

In the UK, the terms transgender people or trans people are commonly used as umbrella terms to cover the diverse ways that people find their gender identity and / or gender expression differs from the gender they were assigned at birth. Within this there can be a number of ways in which gender identity can be broken down and it is useful to think of gender using the diagram below.

Physical body

A person's physical body has characteristics that are gendered, including genes, hormones, internal organs and external features.



Gender identity

A person's gender identity is their internal sense of where they exist in relation to being a woman or a man.

Gender expression

A person's gender expression is their external gender-related clothing and behaviour, including interests and mannerisms

In this way there are different elements that can affect how a trans person experiences being trans. Some of the more common ways that trans people may describe themselves, as explained by the Scottish Transgender Alliance, are set out below.

Transsexual People

Transsexual people strongly and consistently self-identify as a different gender from the gender they were assigned at birth and therefore experience an intense need to transition from male to female (trans women) or from female to male (trans men). This may or may not involve hormone treatment or undergoing various surgical procedures.

A **trans woman** is someone who was assigned male at birth but has a clear and constant gender identity as a woman. She therefore experiences an intense need to undergo male to female (MTF) gender reassignment to live completely and permanently as a women.

Following gender reassignment, she may prefer to describe herself as woman with a trans history.

A **trans man** is someone who was assigned female at birth but has a clear and constant gender identity as a man. He therefore experiences an intense need to undergo female to male (FTM) gender reassignment to live completely and permanently as a man. Following gender reassignment, he may prefer to describe himself as a man with a trans history.

The process of gender reassignment that transsexual people go through in order to live in accordance with their gender identity is often informally called 'transitioning'. It is an individualised process which varies in length, stages and complexity from person to person. In addition to social changes such as starting to use a new name and pronouns, it may involve physical changes through hormone treatment and sometimes surgical procedures. Whether or not someone accesses hormone treatment or various surgeries is a private and personal decision and is not relevant to their right to have their gender identity respected. The Equality Act does not require any medical supervision, diagnosis or particular treatment in order to count as undergoing gender reassignment.

While some people will be proud of their trans status and see it as an important part of their identity there are others who when they complete their transition, may no longer regard themselves as being under the trans umbrella. They might consider having been transsexual as an aspect of their medical history that has now been resolved. In such cases, they simply describe themselves as men or as women and it is disrespectful, and potentially unlawful, to insist on calling them trans, transgender or transsexual against their wishes.

Trans people are protected by the Data Protection Act 1998 and the Equality Act 2010 regardless of whether they have a Gender Recognition Certificate. Additionally, once a Gender Recognition Certificate has been issued, the Gender Recognition Act gives trans people a specific enhanced right to privacy. Anyone who acquires information in an official capacity about someone's trans status is liable to criminal proceedings if they pass that information to a third party without the permission of the individual. So, if an employer, line manager, colleague, union rep or official finds out about someone's trans status and tells anyone else on purpose or by accident and without the trans person's permission, the perpetrator risks being prosecuted and fined. There are a small number of exceptions, including that it is lawful to provide the information to the police or to a lawyer.

Non-binary Trans people

Some people do not feel comfortable thinking of themselves as simply either men or women. Instead they feel that their gender identity is more complicated to describe. It is important to remember that being a non-binary trans person is not the same thing as being an intersex person. Some non-binary trans people may identify their gender as a mixture of being a man and a woman or as fluctuating between man and woman. Alternatively, they may feel they have no gender and prefer simply to be seen as just a human being. Non-binary trans people have created various new words to describe themselves, the most common currently being: genderqueer; gender-fluid; gender-variant and agender, although other terms are occasionally used. Some people will prefer not to define themselves using anything more specific than just transgender or trans.

Respecting non-binary gender identities is equally important to respecting all other aspects of people's identities. Therefore, it is important to use the name, title and pronouns that a non-binary person requests. The gender neutral pronoun **they** is most often requested by non-binary people, as the new gender neutral title Mx.

Non-binary trans people span a wide range of desires to transition. Some have no interest at all in undergoing any form of gender reassignment. Others may wish to partially transition. Some may undergo the same gender reassignment process as transsexual people but reject identifying simply as a man or a woman after transition. Occasionally, the desire to transition might fluctuate over time. It is important to note that many non-binary people are protected under the Equality Act 2010 because someone proposing to undergo **any part** of a process of gender reassignment counts as having the protected characteristic. There is no requirement to complete any particular process of gender reassignment in order to be protected under the Equality Act.

Cross-dressing people

Some people dress occasionally or more regularly in clothes which are not traditionally associated with the gender they were assigned at birth. They often feel a strong recurring need to cross-dress in order to best express their full personality but are generally happy with their birth gender and usually have no wish to undergo any part of a process of gender reassignment.

Intersex people

Sometimes a person is born with aspects of their external genitals, their internal reproductive system or their chromosomes that are in-between what is considered clearly male or female. People born with these kinds of variations are often referred to as intersex people. There are many different intersex variations. Some intersex variations may be noticed prenatally or at birth, some become apparent at puberty, or when trying to conceive, or through random chance during unrelated medical examinations or interventions. Most intersex people identify with the gender they were assigned at birth.

Some of the issues faced by intersex people can be similar to those faced by trans people. For example, some intersex people and trans people are labelled by others as a gender that doesn't match their gender identity.

However, there are many significant differences between the experiences of trans people and intersex people. For example, intersex people are often identified as such by doctors while they are very young children and their genitals may be operated upon before they are old enough to give or withhold informed consent. They may face a long struggle with doctors to get honest information about their intersex variation and any surgery that was carried out on them when they were young.

Therefore it is very important to remember that being trans (including having a non-binary gender identity) is not the same as being intersex.

Gender identity and sexual orientation

Put simply, gender refers to who you are, while sexual orientation refers to who you are attracted to.

Transgender people can be straight, gay/lesbian or bisexual just the same as everyone else.

Section 2: What the Law Says

Please note the following information is legally correct at the time of publishing – May 2015.

The Equality Act 2010

Section 7 of the Equality Act sets out 9 protected characteristics, where discriminatory treatment because of this characteristic becomes unlawful:

- age;
- disability;
- gender reassignment;
- marriage and civil partnership;
- pregnancy and maternity;
- race;
- religion or belief;
- sex or gender;
- sexual orientation.

Section 7 of the Equality Act defines the protected characteristic of gender reassignment as a person who “is proposing to undergo, is undergoing or has undergone a process (or part of a process) for the purpose of reassigning the person’s sex by changing physiological or other attributes of sex.”

Legal protection applies from the moment when the person decides to begin gender reassignment and informs someone of that intention, even if they change their mind later on.

This underlines the fact that gender reassignment is a personal process rather than a medical one, in moving from one’s birth sex to the role and presentation that matches their gender identity. An individual does not need to be undergoing medical supervision to be protected. So, for example, a trans person who decides to permanently live in a new gender role simply by changing their name and gender pronouns without undergoing any medical procedures would be covered.

The Act does however require that a person should have at least proposed to undergo gender reassignment but it does not require such a proposal to be irrevocable. People who start any part of a gender reassignment process but then decide to stop still have the protected characteristic of gender reassignment.

Someone who is non-binary is protected if they decide to undergo any part of a process of gender reassignment away from their birth assigned gender but don't end up living fully in the other binary gender. Protection is also provided where, as part of the process of reassigning their sex, someone is driven by their gender identity to cross-dress, but not where someone chooses to cross-dress for some other reason.

Example: Limitations of the Act

Before a formal dinner organised by his employer, a worker tells his colleagues that he intends to come to the event dressed as a woman 'for a laugh'. His manager tells him not to do this, as it would create a bad image of the company. Because the worker has no intention of undergoing gender reassignment, he would not have a claim for discrimination.

On the other hand, if the employer had said the same thing to a worker driven by their gender identity to cross-dress as a woman as part of the process of reassigning their sex, this could amount to direct discrimination because of gender reassignment

In order to be protected under the Act, there is no requirement for a transsexual person to inform their employer of their gender reassignment status. However, if a worker is proposing to undergo gender reassignment or is still in the process of transitioning, they may want to discuss their needs with their employer so the employer can support them during the process.

Discrimination on the grounds of Gender Reassignment

The Equality Act 2010 makes it unlawful to treat people less favourably in employment, training, recruitment and selection, and also in the provision of goods, services and facilities on the grounds of gender reassignment. When considering whether discrimination has taken place gender reassignment must be one significant part of the reason for the less favourable treatment but it does not have to be the only reason.

There are two main types of discrimination under the Equality Act: direct discrimination and indirect discrimination.

Direct Discrimination: this occurs when someone is treated less favourably than others because of gender reassignment, *whether actual or perceived*, or because they associate with someone who intends to undergo, is undergoing or has undergone gender reassignment.

Less favourable treatment is some sort of disadvantage suffered by the individual, for example, failure to gain promotion. However, the EHRC Code of Conduct makes it clear that the “the worker does not have to experience actual disadvantage (economic or otherwise) for the treatment to be less favourable. It is enough that the worker would have preferred not to be treated differently from the way the employer treated another person.”

It is direct discrimination to treat a person less favourably because you think they possess a particular protected characteristic, even if the person does not actually possess that protected characteristic – this is **discrimination by perception**.

Example: Discrimination by perception

A member of staff applies for promotion within his department. He is not shortlisted as his manager thinks he is a trans person and therefore would not have the respect of his team if he is promoted. The man is not trans but can claim discrimination by perception under the Equality Act.

Discrimination by association happens when a person is treated less favourably in a situation because they associate with another person who possesses a protected characteristic.

Example: Discrimination by association

A staff member has an offer of promotion withdrawn when she tells her manager that her daughter is undergoing medical transitioning. The manager believes the employee may need time off and will not be able to focus on the new role sufficiently in these circumstances. The woman could claim discrimination by association under the Equality Act.

Indirect Discrimination: this can occur where there is a provision, criteria or, practice that applies to a range of workers, but particularly disadvantages people who intend to undergo, are undergoing or have undergone gender reassignment.

It is important to note that while direct discrimination on the grounds of gender reassignment, once established, would be considered unlawful, there is a defence for indirect discrimination. In this regard a practice that treats a trans person less favourably than other workers would be lawful if the employer can show that it is a “proportionate means of achieving a legitimate aim.” There is no definition of a legitimate aim but a tribunal will expect an employer to produce ‘good persuasive evidence’ that the aim was both legitimate and proportionate. It is also important to note that ‘good industrial relations’ cannot be used to justify a case of indirect discrimination.

In the case of indirect discrimination it is necessary to prove genuine disadvantage as a result of the policy, criteria or practice. It is also important to show disadvantage to a group of workers, in comparison to another group of workers.

Example: Indirect Discrimination

An employer has a policy that they will not amend their records of an employee once the employee has left the organisation, to ease administrative burden on staff but also to reduce errors and the likelihood of data becoming corrupted. A former employee contacts the employer and asks that their records be updated to include their new name, as they have now transitioned to a new gender. The employee is keen that they should be able to seek a reference from the company which does not expose her trans status to her new employer. The employer’s policy could amount to indirect discrimination.

Harassment: This is when unwanted conduct related to gender reassignment has the purpose or effect of violating a person’s dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment. This may be a single incident or more than one.

Example: Harassment

A worker was referred to by her former colleagues as “he, she, it, whatever” and told to use a male changing room. The employment tribunal found that her employer had failed to protect her from “an atmosphere of intimidation and hostility caused by the fact that she was undergoing gender reassignment.”

Victimisation: this occurs when an employee who has made, or who supported, a complaint about gender reassignment discrimination is treated unfairly.

Example: Victimisation

A worker makes a complaint to his employer that a client routinely comes on site and makes jokes about a co-worker who is trans. The worker complains to his manager that the client is creating a hostile environment for their colleague and encouraging anti-trans comments to be made by other workers. In response the manager moves the worker to another department and makes it clear that the client is able to express whatever view they want. Despite the fact that the trans employee has never heard the comments, and the complainant is not trans themselves, this could still be victimisation on the grounds of gender reassignment.

Occupational Requirement (OR)

In limited circumstances a post may have a genuine occupational requirement for the worker to be a particular gender and this can sometimes have a negative impact on people with the protected characteristic of gender reassignment. Where a person has received a gender recognition certificate, they **must** be regarded as their acquired gender for the purpose of occupational requirements and no other exemptions can apply.

If a person is undergoing gender reassignment and has not received a gender recognition certificate then it may be lawful to apply certain additional restrictions. However an employer must assess each and every situation carefully and to act reasonably in all circumstances, for example by proposing alternative solutions, including through the reallocation of duties. Such limited circumstances could be where:

- The job involved the job holder carrying out intimate searches;
- The job involves the job holder working in a private home and “reasonable objection” to them having the post can be shown;
- On a temporary basis, exceptions may be applied during the transition process where accommodation has to be shared or the provision of personal care services to vulnerable individuals is given.

However the law in this area is complex and it is advisable to seek legal advice on the specifics of individual cases and circumstances.

Positive Action

The Equality Act 2010 allows positive action but positive discrimination is illegal.

Since 2011, where an employer can show that there is an under-representation of people with a particular protected characteristic in their workforce, and where they have two equally qualified candidates for a vacancy, where one is from the under-represented group and the other is not, they are permitted to select a candidate from the under-represented group.

Since there is very little monitoring of gender identity in UK workplaces, and no firm evidence of the size of the transgender population, it would be very difficult for an employer to demonstrate under-representation. The best available evidence indicates that 1% of the population experiences some degree of gender variance; however, many choose not to disclose their situation, or change their gender role. The employer would also have to be able to say with confidence the two candidates are 'equally qualified'.

Employers can engage in other forms of positive action, under the Equality Act, for example, placing job adverts where they are most likely to be seen by under-represented groups or offering extra training to people of under-represented groups, where a need has been identified positive action must always be proportionate to need.

Public Sector Equality Duty (PSED)

The Equality Act's PSED covers gender reassignment and states that organisations must have "due regard" to the need to eliminate discrimination, harassment, victimisation and any other prohibited conduct.

It is too soon to know whether the PSED has been employed with good effect for transgender people. However, the inclusion of "gender reassignment" as a protected characteristic in the Equality Act creates a big potential for trade unions to promote equality for trans workers and communities, and to extend this to employers who are working on public contracts.

The law requires public sector bodies to have “due regard” to the need to eliminate discrimination and harassment, to advance equality of opportunity, and to “foster good relations” between those sharing a particular characteristic and those who do not.

In order to carry out these duties in respect of ‘gender reassignment’, a public sector employer needs to have put in place policies that are sufficient to meet the requirements of the duty.

Where the employer only has a generic equal opportunities statement, for example, it should be possible to have them expand this to include specific commitments to each protected group. Then, in order to make the policy effective, it will be necessary to ensure that there is a training programme for those with management responsibilities.

Union reps working in and with public sector bodies and employers working on public contracts should negotiate to ensure the PSED is being implemented effectively.

Full guidance is available on the Equality and Human Rights Commission’s website: www.equalityhumanrights.com/advice-and-guidance/public-sector-equality-duty/

Gender Recognition Act 2004 (GRA)

Under the Gender Recognition Act, trans people who have been living permanently in their acquired gender for over two years can apply for a Gender Recognition Certificate (GRC) to confirm full legal recognition of their acquired gender and gain enhanced privacy protection. Applying for a GRC is optional and trans people do not require a GRC to change their name, title and gender on all UK identity documents and records, other than their birth certificates.

Anyone who gets a Gender Recognition Certificate (GRC) automatically qualifies for a new Birth Certificate upon application, as long as the birth was registered in the UK. Further information about the rules on applying for a GRC can be read at www.grp.gov.uk

Crucially, the GRC gives trans people special protection of their privacy under the Gender Recognition Act. Anyone who acquires information in an official capacity about someone’s trans status is liable to criminal proceedings if they pass that information to a third party without permission of the individual.

So if an employer, line manager, colleague of union rep or official finds out about someone's trans status and tells anyone else on purpose or by accident and without the trans person's permission the perpetrator risks being prosecuted and fined. There are a small number of exceptions, including that it is lawful to provide the information to the police or to a lawyer.

Human Rights Act 1998 (HRA)

The HRA (Article 8) provides protection to trans people, mainly under the right to a private life. Courts have interpreted the concept of 'private life' broadly to cover, among other things, a person's right to express a gender identity, to live a particular lifestyle and to choose the way they look and dress.

Personal information (such as official records, photographs and letters) should be kept securely and not shared without the permission of the individual concerned.

In addition, the right to privacy states that there should be no interference by a public authority with a person's exercise of their right to a private life, unless a public authority is acting in accordance with the law.

Article 3 prohibits degrading treatment and Article 10 protects freedom of expression; both of these Articles may be applicable to trans people in certain circumstances.

Data Protection Act 1988 (DPA)

Under the DPA, for the purposes of the legislation trans identity and gender reassignment constitute 'sensitive data'. Information relating to a person's trans status cannot be recorded or passed to another person unless conditions under Schedule 3 of the Data Protection Act for processing sensitive personal data are met.

Remember disclosing someone's trans status without their permission can be a criminal offence, whether you are an employer, employee, union member or union rep. You may also be 'outing' them which is unacceptable and can be seen as a form of harassment.

Section 3: Issues at Work

Trade Unions play a crucial role in ensuring discrimination against our trans members is prevented and a trans friendly environment is created in all workplaces.

If your union has dedicated Lesbian, Gay, Bisexual and Transgender regional and national structures, or other equality structures, union reps should make sure that information relating to these are available to members in their workplaces including displaying posters and offering leaflets that members can discreetly take home. If only general equality structures exist, it is essential that information on these make specific reference to trans equality. The nature of discrimination against trans members is such, that if it is not explicitly mentioned trans members may not feel that the structure is there to support them.

All reps have a responsibility to act in an approachable, non-judgemental and confidential way when dealing with trans members' issues, listening to the member and finding out what support they may need, and considering their options with regard to telling the employer and colleagues, remembering that each case is different and people's experiences of being trans can be different.

As the situation may not have arisen before, the rep should feel able to seek advice from their union equality officer, in accordance with their specific union structures. If union officers or officials feel that they need support dealing with trans issues, they can contact the STUC LGBT Workers' Committee on hmartin@stuc.org.uk for specific advice.

Timescale and Key Stages

In order to be protected under the Act, there is no requirement for a trans person to inform their employer of their gender reassignment status. However, if a worker is proposing to undergo gender reassignment or is still in the process of transitioning, they may want to discuss their needs with their employer so the employer can support them during the process.

If this is the case, it is advisable for a trans member to discuss their plans with their employer and union rep in strict confidence at an early stage as possible, and agree a plan of action for the workplace covering, for example:

- When and how colleagues (and clients, if relevant) should be told;

- When records, names and pronouns should be changed;
- When and how much medical or other leave they will need to take;
- When a trans person commences to live in their acquired gender role on a full time basis they should be afforded the right to use the toilet facilities appropriate to the acquired gender role;
- Issues around dress code;
- Temporary redeployment.

All parties should be aware that waiting lists for medical treatment may delay anticipated timescales and that this is out of the control of the member.

Telling colleagues

The member may be happy to tell colleagues themselves but it is important that the employer offers and is prepared to do this. The union can support the employer in this by providing support and information sessions to workers more widely. However, whatever actions are taken, the wishes of the member should be paramount, and they should feel comfortable with, and informed about, any actions taken.

A face-to-face meeting with colleagues may be difficult but may break the ice, alternatively the employer could issue a written statement. Ideally, any announcement should include the name and pronoun the person now wishes to be known by, and an understanding of the timescale involved. It is also important to understand who needs to know what and when. A companywide circular on day one may not be appropriate or necessary, while specific training and support may be necessary for those working with or managing the trans member on a daily basis. It is therefore necessary to consider the members wishes and to consider specific actions and timescales for different groups of workers and areas of work.

Appropriate trans equality awareness training is helpful so staff and colleagues are not left with questions that weigh on their minds or make them uncomfortable when interacting with their trans colleague. Also, managers have to be aware that it should not be left to the trans member to answer everyone's questions. Again the union can play a key role in this area, by supporting not only the trans member but other members with any questions they may have.

It is the employer's responsibility to ensure that the trans employee is protected from harassment and they may need to remind staff of their equality policy and their dignity at work policy. Union reps should also ensure that policies explicitly cover trans equality issues. While it is important to encourage a positive environment in the workplace and to encourage a supportive atmosphere for the trans worker and their colleagues, it is also important to be clear that bullying and harassment will not be tolerated.

Medical leave

There are currently only two NHS Gender Identity Clinics (GIC) in Scotland (the Sandyford GIC in Glasgow and the Chalmers GIC in Edinburgh) so the trans member may need a full day absence in order to travel a long distance to attend GIC appointments. A trans worker may need various periods of brief or longer medical leave depending upon what medical procedures they are undergoing (such as speech therapy, hair removal, hormone treatment and different surgeries). NHS waiting times can be extremely lengthy so it is not appropriate for an employer to insist that all desired medical procedures be completed within a certain timescale from the start of gender reassignment. Additionally, it is quite common for trans people to take a number of years to decide whether to undergo particularly complex or invasive surgeries.

The employer should not treat trans people less favourably for being absent from work for gender reassignment, even if it exceeds the normal allowance of sick leave. In terms of best practice, branches should seek to negotiate adequate paid time off, distinct from other sick leave. Gender reassignment treatment should not be regarded as optional or cosmetic. Time off should ideally be recorded separately from sickness absence and not used for absence management or monitoring purposes by the employer.

The trans member undergoing transition may also wish to take a short period of leave before coming back to work in their new gender.

Changing records

The employer should update all records and references in agreement with the employee. They will need to identify the point at which the individual's new gender status is formally established in terms of the employer's personnel records, and any consequent alterations (for example, security passes, the individual's choice of name for directories, email addresses etc). The right of the individual to maintain the confidentiality of their previous identity needs to be secured as part of this stage.

Many employers keep individual records for long periods and it needs to be organised such that access to past records that reveal the individual's previous gender identity is strictly controlled and limited on a 'need to know' basis.

Long-standing employment records and any other paper records that indicate a previous name and gender status should be kept separately from other personnel files, under lock and key. They should be kept in double sealed envelopes with the name of one or two particular individuals who may have access when strictly necessary. IT records must be password protected again with only one or two individuals holding the password. The named individuals should then still seek permission from the trans member, if possible, before these records are accessed, and in each instance they should explain why they need access.

Currently pension and insurance schemes may need to be informed by the employer, this should be done in consultation with the member. Any records that shows the details associated with the member's transition should only be available on a strictly 'need to know basis'.

Harassment

Harassment of trans workers and service users is unlawful under the Equality Act 2010. Employers must make sure that there is zero tolerance towards harassment of trans workers. This is especially important, as trans members can be particularly vulnerable to abuse, harassment and bullying in the workplace. Trade union reps will need to negotiate a harassment policy that specifically includes gender identity.

Disclosure

The trans member's wishes should be fully respected and it should be their decision as to what they wish to be disclosed about their present or previous identities. Union reps need to ensure, through negotiations, that disclosure is not made without the express permission of the member. This becomes particularly important when providing a reference if the member decides to leave their job. Disclosing any such information without the consent of the trans member can be a criminal offence.

The Gender Recognition Act (GRA) gives trans people certain privacy rights. Under GRA, anyone who passes information about someone's trans status without their permission is liable to criminal proceedings. This includes a trade union representative who might pass information to, for example, an employer or other union officials.

If the trans member requires a Disclosure Scotland check they, or their union rep, should read this guide produced by Disclosure Scotland <http://www.disclosurescotland.co.uk/publications/documents/ARTICLE-TRANSGENDER.pdf>

If they require any further assistance they should contact Disclosure Scotland's helpline on 0870 609 6006 and ask to speak to the Operations Manager.

Redeployment

During the process of transition, the member may wish to be redeployed on a temporary or permanent basis. If redeployment does take place it should be at the request of the member and a member should also be able to transition in their current role if they so desire. Union reps need to support the member to discuss this process with the appropriate manager.

If there are issues of physical strength (male to female trans people may experience a decrease in muscular strength) then the employer could provide equipment which would make the work easier for all employees.

Dress code

The employer should be flexible regarding dress code, including the wearing of make up and jewellery, etc and should understand that, for the employee changing their appearance gradually is an important part of the real life test. It is also important that the trans member decides when it is comfortable for them to change into the uniform appropriate for their gender.

The employer should pay for any new uniforms, and should not treat the employee any less favourably than other groups.

Use of facilities

This is often one of the most contentious issues. Whilst a trans person is likely to want to use the facilities of their chosen gender such as toilets, showers or changing rooms, their colleagues may find this difficult to accept. It is important to remember that the employer has a duty to dispel prejudice amongst employees.

Whilst an employee may be willing to use separate, unisex or accessible facilities, they should not be compelled to do so, and if forced to do so this may constitute discrimination regardless of whether they decide to undergo any medical interventions as part of their process of gender reassignment. Good practice is that once the trans member is living full-time in their acquired gender they are treated as that gender and should have the right to use the appropriate facilities.

Example: Supporting Transition

A trans member was working in the chemicals industry, and the trade union rep spoke to their colleagues about their concerns, giving them an opportunity to ask questions they might not have felt comfortable discussing with the member. This was particularly useful in alleviating concerns about the member using female toilet facilities, which was then agreed by all parties.

Management were supportive of the member's situation and bought a piece of loading equipment to help her carry on her job following a loss of upper body strength (a side effect of treatment) - the equipment benefited everyone in the workplace.

Where the member undergoing part of a gender reassignment process has a non-binary gender identity they may request to use gender neutral facilities. This should be permitted and allowed to continue long-term if required by the non-binary trans member. They may use individual accessible facilities already in existence or the employer may decide to re-designate previously single sex facilities to gender neutral facilities, providing sufficient privacy features exist and sufficient single sex facilities continue to remain. Good practice is for any gender neutral facilities created (beyond existing accessible facilities) should be available for all employees to choose to use and not designated solely for trans employees.

Pensions and retirement age

There are still some differences in pension entitlements and retirement ages by gender. The main difference is that men reach pensionable age at 65, while some women reach pensionable age at 60. These inequalities have started to disappear since April 2010, but the equalisation process will not be complete until 2020.

Everyone born since April 1955 receives their state pension at 65. But women born before 1950 can still claim state pension at 60. Trans people without a Gender Recognition Certificate are paid their state pension according to the gender recorded at birth.

If a trans member retires earlier or later than others of their gender because of their legal sex, trade union reps should ensure the employer keeps the reason for this confidential.

When a Gender Recognition Certificate has been issued, trans members can claim the State Pension when they reach the State Pension age appropriate to their acquired gender.

In the case of company pensions, trade union reps need to negotiate the best option for the trans member who has changed their gender. The member should, at a minimum, be treated as the member of their acquired gender from the date when they transitioned. Employers registering workers for corporate insurance and benefits policies need to check with their underwriters if they need to provide information about any trans workers status. Some insurers may automatically invalidate a policy if the trans status of a person without a Gender Recognition Certificate is not disclosed.

Trade union reps should ensure that the employer gets written consent from the member before disclosing information; and that the information is provided in confidence. If the employer doesn't know about the workers trans status, the obligation to disclose this to the insurer passes to the worker.

Recruitment and selection

Trade union reps should work with employers to ensure they have fair recruitment and selection processes. Particular areas that will need to be looked at are advertising, interview and selection.

Adverts should be placed in LGBT media and should include equal opportunities commitments / statements e.g. applications from trans people are welcome.

A trans job applicant is under no obligation to disclose their situation at interview, nor should this question ever be asked. However, if they do choose to talk about it, it would be unlawful to use this as a reason for not offering them the job. Similarly, it is unlawful to dismiss someone for not disclosing their gender history, or for disclosing this at a later date.

Monitoring

Trans monitoring is an issue that needs to be given clear consideration by the employer and the union and staff should be consulted beforehand.

It is important that the reason for monitoring is clearly outlined by the employer and again in consultation with the union. Trade union reps need to find out the purpose of collecting this data, how it will be interpreted, what it will be used for, and what action will be taken as a result. Also, how the data is going to be collected, who will be responsible for processing it, how and where it will be stored and reported.

Confidentiality is paramount in safeguarding this data and this should be made clear to all concerned. As stated before under the Gender Recognition Act 2004, it is a criminal offence to pass on information acquired 'in the course of official duties' about someone's gender recognition without their consent.

Caution is needed in the reporting of this data so as not to 'out' any members and this is especially important in smaller workplaces. However, in larger organisations if reports on the data break people down to departments or sections then it can still 'out' people.

The Employment Statutory Code of Practice emphasises confidentiality and recommends that for example, diversity statistics should not be linked to IT-based personnel records that indicate grade or job title.

One suggestion for the phrasing of the question in the form is 'Have you ever identified as a trans person' which has to be a question on its own. Simple tick boxes can be provided for the answers 'Yes' 'No' and 'Prefer not to say'. To decide on the best form of questioning trade union reps need to consult with all members or only trans members, if possible.

Section 4: Useful Sources of Information

Scottish Transgender Alliance

<http://www.scottishtrans.org/>

Equality and Human Rights Commission

<http://www.equalityhumanrights.com/>

and in particular the EHRC's Statutory Code of Practice on Employment

<http://www.equalityhumanrights.com/sites/default/files/documents/EqualityAct/employercode.pdf>

The GMB's Trans Equality Toolkit

<http://www.gmbfifepublicservices.org.uk/wp-content/uploads/GMB-Transgender-Equality-Toolkit-Version-81.pdf>

UNISON's Transgender Discrimination Guidance

<http://www.unison.org.uk/get-help/discrimination/transgender-discrimination/overview/>

Unite's Trans Equality at Work Guide

<http://www.unitetheunion.org/uploaded/documents/Job%206190%20Unit%20Trans%20guide%20201411-16305.pdf>

Other Unions have also produced specific guidance and you should check your union's website or contact your union equality officer or full-time official for support.