

## **NHS Pensions - Gender recognition**

### **Application procedure for a Gender Recognition Certificate (GRC)**

A person's legal gender is tied to their UK birth certificate unless they apply for a Gender Recognition Certificate (GRC) to change it legally. On 4 April 2005 the [Gender Recognition Act 2004](#) created a process to enable a transsexual person to get their UK birth certificates and legal gender changed.

The transsexual person can apply to the Government's Gender Recognition Panel for a GRC. If they are successful in their application, the law will recognise them as having all the rights and responsibilities appropriate to a person of their acquired gender.

To apply for a GRC the person needs to demonstrate that they:

- are 18 or over;
- are diagnosed with gender dysphoria;
- have lived as their new gender for two years;
- intend to live in their changed gender for the rest of their life.

In addition, to apply under an overseas application process the person must also demonstrate that they:

- are already legally recognised as their acquired gender in a country or territory that is on the Gender Recognition Panel's approved list.

### **Marriage and civil partnerships**

Following the introduction of the Marriage (Same Sex Couples) Act 2013 (Commencement No.4) Order 2014 on 10 December 2014, it is now possible for a person who is married or in a civil partnership to apply for gender recognition without having to divorce first.

A married transsexual person can obtain a GRC while remaining in that marriage if they have their spouse's written consent to their gender recognition. In Scotland consent is not required under the Marriage and Civil Partnership (Scotland) Act 2014.

A transsexual person in a civil partnership needs to convert that civil partnership to a marriage before they can apply for gender recognition. However, if both civil partners apply for gender recognition at the same time, they do not need to convert their civil partnership to a marriage as they will remain a same sex partnership.

## The Gender Recognition Certificate (GRC)

It is only on receiving a full GRC that the person's change in gender can be legally recognised. Once in receipt of a GRC the person is eligible to apply for a birth certificate in their acquired gender. The original birth certificate will remain in existence but will not be available to the public.

A person with a GRC who was born outside the UK will not be eligible for a UK birth certificate.

## How will a having a GRC affect pension entitlement in the NHS Pension Scheme?

A small number of gender specific regulations remain in the NHS Pension Scheme. Therefore there are implications for members:

- with Special Class Status in the 1995 Section; or
- who have membership before 25 March 1972 in the 1995 Section; or
- who transfer pension rights to and from either the 1995/2008 NHS Pension Scheme or the 2015 NHS Pension Scheme.

## Special Class status in the 1995 Section

**A change in gender from male to female** – a female member with special class status has a Normal Pension Age of 55, subject to certain conditions.

There will be a reduction on any Added Years being purchased if the added years contract is to age 60 or 65 and they subsequently retire early due to a change in gender.

**A change in gender from female to male** – a male member with special class status has a Normal Pension Age of 55, subject to certain conditions. NHS pension benefits will be based on their membership from 17 May 1990 onwards.

Benefits calculated on service before 17 May 1990 will not be paid until a Normal Pension Age of 60, unless they choose to retire early with an actuarial reduction or due to ill health.

**Mental Health Officers (MHO)** - members with MHO status are not affected as these members have a Normal Pension Age of 55 with full benefits as long as they have achieved 20 years MHO membership.

More information about special class status and the conditions for a Normal Pension Age of 55 is available on our website at: [www.nhsbsa.nhs.uk/nhs-pensions](http://www.nhsbsa.nhs.uk/nhs-pensions)

## Membership before 25 March 1972 in the 1995 Section

**A change in gender from male to female** - female members are entitled to a full retirement lump sum for any membership in the 1995 Section before 25 March 1972. Members changing from male to female who have previously bought the unreduced lump sum retiring allowance (ULSRA) will not be entitled to a return of their contributions.

**A change in gender from female to male** – single male members are not entitled to a full retirement lump sum for any membership before 25 March 1972. Members changing from female to male are eligible to purchase the ULSRA for any membership before 25 March 1972 on request.

## Transfers

The actuarial factors used in the calculation of a transfer value are gender based. The acquired gender at the time of the transfer will be used to calculate the transfer value.

Previous completed transfers will not be revisited under the Gender Recognition Act.

## Changing a pension record to show an acquired gender

A person should inform us of their change in legal gender in writing and request to have their pension record amended to the acquired gender. They should enclose either an original or certified copy of the gender recognition certificate and, where appropriate, the new birth certificate.

A gender recognition certificate 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 gender recognition certificate.

Legal recognition of an acquired gender will take effect from the date the gender recognition certificate is granted ensuring that any future NHS pension benefits will be calculated and paid in accordance with the legal gender at the time of payment.

Historic pension events cannot be changed retrospectively.

## State scheme

A person with a gender recognition certificate is eligible to receive their state pension at the State Pension Age appropriate to their acquired gender.

## Transgender exceptions

From 10 December 2014 if a person in an opposite sex couple marriage changes gender and their marriage continues as a same sex couple marriage, entitlement to a continuing surviving adult pension will be based on the member's original gender, not their acquired gender if this would be more beneficial to their surviving spouse.

This will affect a Scheme member who:

- was originally of male gender with an acquired female gender on or after 10 December 2014; who
- in their new acquired female gender is married with a female spouse, the marriage taking place before the granting of a GRC; and who
- has membership in the 1995 Section before 6 April 1988.

In addition in the event of the member's death, that they:

- remained married to their female spouse until their death.

In this case, the surviving female spouse will be entitled to a continuing surviving adult pension equal to 50% of the member's pension, based on membership both before and after 6 April 1988.

Those 1995 Section members affected will be requested to confirm their original gender at retirement or when a transfer out is requested. In addition, this information will also be required before the payment of a survivor pension.

## Data Protection

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

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.

Care is taken on receiving a gender recognition certificate and it will be looked after in the same way as other certificates. A copy of the gender recognition certificate will not be retained on a pension record without the permission of the member; however a note will be placed on the pension record to verify the reason for the gender change.

The request for sight of a gender recognition certificate before NHS Pensions can amend the gender on your pension record is necessary and importantly, in keeping with NHS Business Service Authority's Public Sector Equality Duty under section 149 of the Equality Act 2010 given that gender qualifies as a 'protected characteristic' for the purpose of the Act.