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Government Policy concerning Transsexual People

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Introduction

There are a small number of people in the United Kingdom – perhaps just a few thousand – who are not comfortable with their gender identity. Some may feel they have been born into the wrong body, whilst others come to feel that their gender identity has become incompatible with the gender registered at birth. Estimates vary, but perhaps one man in every 12,000 feels he is a woman. The proportion of women who feel they are men is smaller, but they too are convinced that their birth gender does not match their gender identity. They are transsexual people.

2. The deep conviction that gender identity (believing oneself to be a man or a woman) does not match one's appearance and/or anatomy is called gender dysphoria or gender identity disorder. The incongruity between identity and body can be so strong that individuals are driven to presenting themselves in the opposite gender. Some people experience this incompatibility of identity and body in childhood; others later in life. Once experienced, the feelings are unlikely to disappear but it may take many years to cross over – or "transition" - completely from the original into the acquired gender. Some individual profiles of transsexual people may be found at the [Press for Change website](#).

<i>Terminology</i>

Transsexual people feel the deep conviction to present themselves in the appearance of the opposite sex.

They may change their name and identity to live in the acquired gender. Some take hormones and cosmetic treatments to alter their appearance and physical characteristics. Some undergo surgery to change their bodies to conform more to their acquired gender. These people are all transsexual. (Sometimes they refer to themselves as *transgender* – a broader term that includes people temporarily changing their gender and appearance as well as transsexual people.)

Government policy is to use the terms *transsexual people* or *transsexual person*, *transsexualism* and *gender reassignment* – and not the respective expressions "transsexuals", "transsexuality" and "sex change", which some transsexual people find unacceptable.

3. Transsexualism or 'gender dysphoria' is a widely recognised medical condition that the Government's Chief Medical Officer has confirmed may properly be treated under the National Health Service as well as privately. There are five specialist centres catering for gender identity disorders in England, at Charing Cross in London and in Leeds, Newcastle, Nottingham and Sheffield. GPs and psychiatrists tend to refer patients to these clinics for expert diagnosis and, as appropriate, courses of counselling, hormone treatment and possibly surgery. The recognised stages of gender re-assignment are:

- *Social changes* – assume new name and gender, inform family and friends, live and work in the chosen gender role (the so-called "real-life experience");
- *Hormonal and other treatments* – following psychiatric assessment, provision of cross-gender hormone prescriptions (where medically suitable) and possibly cosmetic means to aid appearance in the acquired gender;
- *Surgical gender re-assignment* – primary surgery may be performed to remove the sexual and reproductive characteristics of the original gender, and/or to create characteristics appropriate to the new gender. Surgery is not usually performed until the transsexual person has spent at least two years living successfully in the "real-life experience".

4. At all these stages, psychological and psychiatric services are usually deployed in support. Although most transsexual people take hormones to modify their sexual characteristics, not all are able to have surgery, for medical and other reasons. Gender reassignment surgery is a major procedure with limited numbers of consultants trained to undertake some aspects of the surgery. The decision on whether the procedure is funded by the NHS is taken by Primary Care Trusts. Many transsexual people are able to live successfully in the new gender without undergoing invasive surgery.

5. Once they are living permanently in their acquired gender, most transsexual people want their official documentation to reflect their new gender identity. They may obtain some official documents (including passports, National Insurance cards and driving licences) in their new name and gender, and the Department for Work and Pensions will make special arrangements for handling their records sensitively. Many private companies too have special arrangements for transsexual people. They are not currently entitled, however, to have their birth certificates revised, nor to enjoy any rights legally confined to persons of the gender to which they feel they belong. They cannot marry in their acquired gender, nor draw the State pension at the age appropriate to that gender.

6. Many transsexual people want to keep their past life in their birth gender private, and object

to having to produce a birth certificate in their former name and gender. They want to be recognised legally in their new gender – for example, for State pension purposes; to enjoy, so far as possible, privacy and protection from identification in their original gender; and some wish to marry in the acquired gender. It is these rights, currently unavailable to transsexual people in the United Kingdom, which the Government's proposals will address.

What transsexualism is not

Transsexualism is *not* transvestism or cross-dressing for sexual thrill, psychological comfort or compulsion.

It is *not* an orientation towards people of the same sex.

It is *not* related to paedophilia.

It has nothing to do with drag queens.

Transsexual people do not *choose* their gender identity. Transsexualism is an overpowering sense of different gender identity rather than any sexual orientation: transsexual people may be heterosexual, gay/lesbian or celibate.

It is *not* a mental illness. It is a condition considered *in itself* to be free of other pathology (though transsexual people can suffer depression or illnesses like anyone else).

7. There is no single common approach in other countries to the transsexual condition and the complex issues that it raises. However, all other EU Member States except Ireland already give legal recognition to gender change, as do many other countries in Europe and the Commonwealth and many American States.

The Government's approach to transsexualism

8. The Government is sympathetic to the plight of transsexual people. Clearly, theirs is an overwhelming and difficult situation. Gender underpins most of our societal arrangements and statutes. It is an essential quality, concerning our sense of who we are and what sort of people we identify with. The process of transition – of recognising and acting on the desire to "come out" in the opposite gender – is a very significant step to take and one which may have profound effects on relationships – with families, employers and workmates, friends and acquaintances.

9. The Interdepartmental Working Group on Transsexual People was set up in April 1999 to consider, with particular reference to birth certificates, the need for appropriate legal measures to address the problems experienced by transsexual people. The Working Group's [report](#) was presented to Parliament in July 2000.

Combating discrimination at work

This Government also introduced the [Sex Discrimination \(Gender Reassignment\) Regulations 1999](#), which amended the Sex Discrimination Act 1975 to protect transsexual people against discrimination in employment and vocational training.

This protection begins from the time when a transsexual person makes it

known that he or she intends to undergo gender reassignment, and remains in being when the gender reassignment is complete. Limited exceptions apply in relation to certain types of employment (for example, posts involving physical searching, or living in dormitory accommodation).

The Government is now considering whether, once legal recognition is given to a transsexual person's acquired gender, these exceptions should be modified.

10. The Interdepartmental Working Group on Transsexual People was reconvened in 2002, chaired by officials at the Lord Chancellor's Department, and met for the first time on 9th July. Its new terms of reference were:

"In the light of the report of the Interdepartmental Working Group on Transsexual People and more recent relevant developments, to re-examine the implications of granting full legal status to transsexual people in their acquired gender; and to make recommendations".

Concern for human rights and diversity

"The Government has explicitly made a commitment to providing opportunity for all. This commitment underpins the many initiatives being taken forward to tackle poverty and social exclusion.

"It remains a sad fact that there continue to be identifiable groups who are at a disadvantage and are discriminated against simply by virtue of their disability, gender, race, sexual orientation or some other characteristic. We believe that this is wrong. We are taking steps to remove unfair discrimination and to promote equality of opportunity."

Rosie Winterton MP

Parliamentary Secretary at the Lord Chancellor's Department

11. On 11th July 2002, judgments were delivered by the European Court of Human Rights in the cases of [Goodwin -v- The United Kingdom](#) and [I-v- The United Kingdom](#). In relation to transsexual people, the UK was found to have breached Article 8 and Article 12 of the European Convention on Human Rights (the right to respect for private life and the right to marry).

Extracts from the judgments of the European Court of Human Rights in Goodwin -v- UK and I -v- UK delivered on 11 July 2002

It remains the case that there are no conclusive findings as to the cause of transsexualism and, in particular, whether it is wholly psychological or associated with physical differentiation in the brain. The expert evidence in the domestic case of *Bellinger -v- Bellinger* was found to indicate a growing acceptance of findings of sexual differences in the brain that are determined pre-natally, though scientific proof for the theory was far from complete. The Court considers it more significant however that transsexualism has wide international recognition as a medical condition for which treatment is provided in order to afford relief (for example, the Diagnostic and Statistical Manual

fourth edition (DSM-IV) replaced the diagnosis of transsexualism with "gender identity disorder"; see also the International Classification of Diseases, tenth edition (ICD-10)).

The United Kingdom national health service, in common with the vast majority of Contracting States, acknowledges the existence of the condition and provides or permits treatment, including irreversible surgery. The medical and surgical acts which in this case rendered the gender re-assignment possible were indeed carried out under the supervision of the national health authorities. Nor, given the numerous and painful interventions involved in such surgery and the level of commitment and conviction required to achieve a change in social gender role, can it be suggested that there is anything arbitrary or capricious in the decision taken by a person to undergo gender re-assignment. In those circumstances, the ongoing scientific and medical debate as to the exact causes of the condition is of diminished relevance.

While it also remains the case that a transsexual cannot acquire all the biological characteristics of the assigned sex (*Sheffield and Horsham*, cited above, p. 2028, § 56), the Court notes that with increasingly sophisticated surgery and types of hormonal treatments, the principal unchanging biological aspect of gender identity is the chromosomal element. It is known however that chromosomal anomalies may arise naturally (for example, in cases of intersex conditions where the biological criteria at birth are not congruent) and in those cases, some persons have to be assigned to one sex or the other as seems most appropriate in the circumstances of the individual case. It is not apparent to the Court that the chromosomal element, amongst all the others, must inevitably take on decisive significance for the purposes of legal attribution of gender identity for transsexuals (see the dissenting opinion of Thorpe LJ in *Bellinger -v- Bellinger* cited in paragraph 52 above; and the judgment of Chisholm J in the Australian case, *Re Kevin*, cited in paragraph 55 above).

The Court is not persuaded therefore that the state of medical science or scientific knowledge provides any determining argument as regards the legal recognition of transsexuals... The Court attaches less importance to the lack of evidence of a common European approach to the resolution of the legal and practical problems posed, than to the clear and uncontested evidence of a continuing international trend in favour not only of increased social acceptance of transsexuals but of legal recognition of the new sexual identity of post-operative transsexuals.... [The Court] is not convinced...that the need to uphold rigidly the integrity of the historic basis of the birth registration system takes on the same importance in the current climate as it did in 1986...

...In the twenty first century the right of transsexuals to personal development and to physical and moral security in the full sense enjoyed by others in society cannot be regarded as a matter of controversy requiring the lapse of time to cast clearer light on the issues involved. In short, the unsatisfactory situation in which post-operative transsexuals live in an intermediate zone as not quite one gender or the other is no longer sustainable. (Domestic recognition of this evaluation may be found in the report of the Interdepartmental Working Group and the Court of Appeal's judgment of *Bellinger -v- Bellinger*).

The Court does not underestimate the difficulties posed or the important repercussions which any major change in the system will inevitably have, not

only in the field of birth registration, but also in the areas of access to records, family law, affiliation, inheritance, criminal justice, employment, social security and insurance. However, as is made clear by the report of the Interdepartmental Working Group, these problems are far from insuperable... No concrete or substantial hardship or detriment to the public interest has indeed been demonstrated as likely to flow from any change to the status of transsexuals and, as regards other possible consequences, the Court considers that society may reasonably be expected to tolerate a certain inconvenience to enable individuals to live in dignity and worth in accordance with the sexual identity chosen by them at great personal cost.

12. The Government immediately committed itself to carrying forward the Court's judgments and tasked the Interdepartmental Working Group to consider their implications urgently. Ministers gave [undertakings to Parliament](#) to honour the Government's international obligations and implement the rulings in the cases of *Goodwin* and "*I*". The Working Group delivered its advice to Ministers on 1st November 2002 and the way forward has been agreed across Government.

13. The Government [has announced](#) how it intends to implement the rulings of the European Court in the cases of *Goodwin* and "*I*".

14. Inevitably, it takes time to secure a Bill in a busy legislative programme but there is a series of steps being taken to further the Government's strategy concerning transsexual people. These include:

- drafting the provisions of a Parliamentary Bill and publishing these for scrutiny and public response;
- consulting further and raising awareness about the problems faced by transsexual people;
- talking to the insurance and pensions industries, to representative bodies for competitive sports, to the churches, and to Government agencies about the practical implications of their dealings with transsexual people;
- developing further the Government's strategy for transsexual people in the context of other family, social and health policies;
- undertaking a thorough review of the Government's vision of equality and the priorities, role and structure of equality institutions in Great Britain, to help deliver that vision for transsexual people and all other groups that have legal protection against discrimination.

Work to combat prejudice and discrimination against transsexual people is already under way in the criminal justice field

The **Prison Service's** Equal Opportunities Policy says that prison officers who have undergone gender reassignment, and been accepted by the Prison Service in their acquired gender, may carry out the normal physical searching duties of an officer of that gender.

The **Crown Prosecution Service** is working to encourage more reporting of "hate crimes" against transsexual people, along with gay men, lesbians and bisexual people.

The Equality Sub-Committee of the **Association of Chief Police Officers** is

soon to consider a paper from the Gay Police Association, highlighting the difficulties transsexual people face.

Plans for the reform of the rape laws recently announced by the **Home Secretary** will remove any doubt that transsexual people have the same protection under the law as other people.

Outside Government

15. The Government appreciates the help and support provided to transsexual people in the UK by many social and health agencies, the churches, and transsexual campaign and support groups. Personal support and detailed advice is available within the transsexual community, for example through the websites of organisations like [Press for Change](#) and the [Gender Trust](#).

Your comments are welcome - how to contact us

16. The Government looks forward to hearing views from transsexual people and others on its proposals, as it works towards implementation of the European Court of Human Rights judgments. Comments may be addressed to:

Secretariat to the Interdepartmental Working Group on Transsexual People
Gender Registration Division
Department for Constitutional Affairs
Room 502, Selborne House
54-60 Victoria Street
London SW1E 6QT.

E-mail: [email](#)

The telephone number for general enquiries about policy on transsexual people is 020-7210 8205.

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