

Supporting Gender Transition & Gender Identity: Guidance note, 18 July 2019, for HR Administrators and Dispensation Areas

This note is just for those work in HR administration. For those requiring further information the [Gender Transition and Gender Identity Code of Practice](#) needs to be read.

1. Recording of data on KeelePeople

Staff must be recorded as either female or male on KeelePeople in order to be paid, as it is a requirement of HMRC to have data on sex (section 3). In the UK, legal sex can currently only be male or female. There is no option for an intersex or a non-binary identifier.

If a new, or existing, employee at Keele wants to be identified as non-binary, you will need to explain that, for the purposes of HMRC, we currently need to record a sex of male or female. However, a different gender identity can be separately recorded for equality monitoring purposes (section 2). Most people will understand this and will recognise that this is the case on other documentation that they hold (e.g. birth certificate or passport). However, there are exceptions (section 6) and, in cases where someone has recently transitioned or is transitioning, there may be challenges relating to gender on official documents and the gender in which they present (section 7).

2. Employee self-service

Employees can change their sex identifier through KeelePeople employee self-service to “other”, for the purposes of equality data collection and anonymous reporting to HESA. We appreciate that it would be better to allow people to self-define their gender (non-binary, agender, gender fluid etc.) to avoid “othering”. However, “other” is how this has to be reported to HESA and free text boxes are problematic within our system. To do this the employee needs to log on to KeelePeople and change “sex identity” under the “sensitive information” section.

3. Why do HMRC require sex data?

HMRC need to record legal sex data for those women who opted in to reduced national insurance payments (married women’s national insurance contributions) before 1977. Any change in legal sex could impact on their national insurance contributions. Legal sex change in this case would only apply to those people with a gender recognition certificate. When state retirement ages were different for women and men any changes in gender could also have had a financial impact on these people.

It could be noted that the rationale for HMRC holding data on legal sex might be changing, with the change to equal retirement age and few employees paying married women’s national insurance contributions. However, until there is no gender pay gap, it is likely that many people would want HMRC to continue to hold this data.

4. Proposed legal changes

Since October 2018, the UK government has been consulting on the Gender Recognition Act, following concerns that (i) the current legal process to obtain a Gender Recognition Certificate (GRC) is too onerous and insufficiently transparent and (ii) our legal system does not recognise those who are intersex or identify with a non-binary gender. It is, therefore, possible that changes will be made to legal definitions of sex and gender in the near future.

5. Reporting gender and name changes to HMRC

HR administrators, payroll and the staff member undergoing transition all need to be involved in changing gender for the purposes of HMRC.

When employees (existing or new) tell Keele that they are undergoing a gender transition (male to female or female to male) payroll will need to contact HMRC to update gender and name data. At the same time this data will need changing on KeelePeople. Additionally, the employee will need to contact HMRC with any name changes. Gender can be changed with HMRC whether or not a gender recognition certificate is obtained. HMRC will maintain confidential records, such that the person undergoing transition is contacted with their new name and gender. Only if a GRC is obtained will any further changes be made (i.e. if changes impact on national insurance contributions).

6. Employees with intersex / non-binary identifiers on passports

In June 2018 the British High Court ruled against a bid for passports to have an X marker for those who are intersex or non-binary. However, a number of other countries do include intersex / non-binary identifiers on passports and, in employing international staff, including some from other EU countries, we may have new recruits with a non-binary / intersex identifier. How this is handled from a payroll perspective will require consultation with HMRC. In the event that an international staff member has such an identifier on their passport, this should be confidentially flagged with a senior member of the Human Resources team at the earliest opportunity.

7. Documentation checks

We recognise that there could be issues in managing the appointment process for people in the process of transitioning gender. The University has a legal obligation (under the 1996 Asylum and Immigration Act) to ensure that all employees have a valid entitlement to work and reside in the UK. Therefore, as part of the appointments process all prospective staff have to produce documentation, which will include either a passport or birth certificate. An applicant who is transitioning and has begun to live in their new gender may not have update their passport and may not (and may never) have a GRC allowing them to change their birth certificate. It is therefore important to ensure that the documentation will be held and processed confidentially by Human Resources, and to reassure the applicant that this will be so.

Additionally, new recruits who have transitioned / are transitioning may also have qualification certificates in a former name. If the name does not match any other documentation you will need to have reasonable reassurance that the certificates do belong to the new recruit. This would usually be in the form of some other documentation showing the name change (e.g. a DeedPoll).

8. Role Specific Notes

Staff should be made aware that the **Disclosure and Barring Service (DBS)** has a special applications procedure in recognition of the fact that checks might reveal the previous gender identity of the applicant. Further information is available confidentially from the DBS, via their sensitive applications team.

Few roles at Keele have a **Genuine Occupational Requirement** to be staffed by men or women. However, there is an exception relating to sex and gender reassignment under some circumstances. Gender-related exceptions might apply to certain posts such as particular positions in single-sex halls of residence. Any occupational requirement must be identified at the beginning of the recruitment and selection process, and it must be stated in the application pack. If a person, who is undergoing gender transition is already in a post that has an occupational requirement to be carried out by a person of a particular gender then it is essential that the University and the individual meet to discuss the situation as soon as possible.

9. Confidentiality

Staff confidentiality and privacy is protected. It is a criminal offence to divulge knowledge obtained in an official capacity on a person's gender identity history without their consent.

The University protects personal data in accordance with the General Data Protection Regulation and consent from the person will be required before information about their transition or gender identity is discussed or disclosed.