

Asylum Cases Involving Gender Recognition

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Introduction

The Gender Recognition Act 2004 (GRA) came into effect on 04 April 2005. Its purpose is to provide transsexual people who meet specific criteria with legal recognition in the UK in their acquired gender. Legal recognition will follow from the issue of a full Gender Recognition Certificate (GRC) by a Gender Recognition Panel. In practical terms, legal recognition will have the effect that, for example, a male-to-female transsexual person is recognised as a woman for all purposes in law and secure all rights appropriate to the acquired (female) gender.

The Act also establishes that it is an offence for a person to disclose information they have acquired in an official capacity about an individual's application for a GRC or about the gender history of a successful applicant, other than in the limited circumstances set out in the Act. For example, disclosure will not constitute an offence where the applicant has given their consent, or the disclosure is for the purpose of proceedings before a court or tribunal.

The Act stipulates that unlawful disclosure, a strict liability criminal offence, may lead to the imposition of a fine on the official who committed the offence. It is important therefore, that officers ensure that such information remains confidential when an asylum applicant states that they have applied for a GRC or that they have been issued with one.

Further guidance is contained in Immigration Directorate Instructions (IDI) [Chapter 1, section 16](#).

Application of this instruction in respect of children and those with children

Section 55 of the Borders, Citizenship and Immigration Act 2009 requires the UK Border Agency to carry out its existing functions in a way that takes into account the need to safeguard and promote the welfare of children in the UK. It does not impose any new functions, or override existing functions.

Officers must not apply the actions set out in this instruction either to children or to those with children without having due regard to Section 55. The UK Border Agency instruction 'Arrangements to Safeguard and Promote Children's Welfare in the United Kingdom Border Agency' sets out the key principles to take into account in all Agency activities.

Our statutory duty to children includes the need to demonstrate:

- Fair treatment which meets the same standard a British child would receive;
- The child's interests being made a primary, although not the only consideration;
- No discrimination of any kind;
- Asylum applications are dealt with in a timely fashion;
- Identification of those that might be at risk from harm.

Effect of the Gender Recognition Act on The Asylum Process

It is expected that the effect of the GRA on the asylum process will be limited. However, should an asylum claimant submit a GRC (or a certified copy), it will be necessary to create a new paper file and a new CID record to reflect the person's new identity and not to disclose the change of gender to anyone who is not dealing with the asylum claim. The Home Office file should be marked 'Restricted'. This will have the effect of restricting the way files are stored and transmitted from location to location, thus reducing the risk of unauthorised access to the records.

Interim Gender Recognition Certificate

Where a person was married, or was recognised as a civil partner in their original gender, and that marriage or partnership has not been legally dissolved at the time a Panel agrees to the issue of a GRC, an interim certificate only will be issued. Once the marriage/civil partnership has been legally dissolved, a full GRC can be issued, after which details of their previous identity become 'protected information.'

Addressing a Person who has been issued with a Gender Recognition Certificate

Where a person has submitted a GRC, all correspondence should be prepared in the new identity. Letters and documents should not refer to the previous identity. Where an officer considers that reference to the previous identity is essential, the advice of a senior caseworker should be sought. The senior caseworker may need to seek advice from Asylum Policy Unit.

Transsexual Persons who do not hold a Gender Recognition Certificate

While disclosure of information about the gender history of a transsexual who has not applied for a GRC is not an offence under the Gender Recognition Act 2004, officers should nonetheless not disclose that information. Correspondence should normally be prepared using the preferred identity of the applicant. Officers should be aware of the provisions of the Data Protection Act 1998, which prevent the processing of sensitive personal information other than in the limited circumstances set out in that Act, and the Freedom of Information Act 2000. Further information is contained in the: Asylum Instruction on [Disclosure and Confidentiality of Information](#) and [IDI Chapter 24 on Disclosure Data Protection](#).

Records

The following action should be taken where an asylum claimant submits a GRC at any time, whether before or after the decision on the claim has been made:

Disclosure

Subject to some exceptions, it is an offence for a member of the civil service to disclose information acquired in an official capacity about a transsexual person's application for legal recognition or about their gender history.

Exceptions to this rule include where a person has agreed to the disclosure and where the information does not enable the person to be identified. The Act does allow for the disclosure of such information when this is necessary for the purposes of investigating a crime or for legal

proceedings. If the officer dealing with an asylum claim considers that disclosure would be warranted in a particular case, advice from a senior caseworker **MUST** be sought. The senior caseworker may need to seek advice from Asylum Policy Unit.

Request for the issue of a new Immigration Status Document

A refugee or a person who has been granted Humanitarian Protection, Discretionary Leave or Exceptional Leave may submit a GRC and request that their immigration status document is reissued in their acquired identity. Guidance on dealing with requests for replacing immigration status documents is not yet available. In the meantime, any such requests should be considered by a senior caseworker, and advice sought from APPU.

Request for a replacement Application Registration Card (ARC)

Where a GRC has been submitted during consideration of an asylum claim, a new CID record has been created as described in paragraph 3 above, and the claimant requests a replacement Application Registration Card (ARC), the case should be referred to APPU for advice on the procedure to follow.

Where the claimant does not hold a GRC, but has submitted acceptable evidence (e.g. a medical report) showing that they are now permanently living in their new gender identity, then the 'Person Details' field on CID may be amended. A senior caseworker should be consulted before accepting such a change. The claimant should then be advised to contact Central Event Booking Unit (CEBU) (PO Box 222, Liverpool, L69 2TY, tel: 0151 237 6375) to request a replacement ARC.

Document Control

Change Record

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