

Benefits and Pensions note

How getting a full Gender Recognition Certificate may affect National Insurance, pensions and other social security benefits for applicants and their spouses or civil partners.

This guidance note will apply to you if you make a successful application to the Gender Recognition Panel and are awarded a full Gender Recognition Certificate.

From the date of your certificate you will be legally recognised in your acquired gender.

The following information does **not** apply if:

- you decide not to apply for a Gender Recognition Certificate; or,
- your application for a Gender Recognition Certificate is unsuccessful; or,
- you receive an interim Gender Recognition Certificate.

Transgender terms and abbreviations used

Acquired gender

Acquired gender refers to the gender in which a transgender person lives and presents themselves to the world. This is not the gender that they were registered in at birth, but it is the gender in which they should be treated.

Transgender Man

A female to male transgender person. For the purposes of this note, we assume that he has received a full Gender Recognition Certificate unless otherwise stated.

Transgender Woman

A male to female transgender person. For the purposes of this note, we assume that she has received a full Gender Recognition Certificate unless otherwise stated.

Introduction

This note can help you if you are thinking about applying to the Gender Recognition Panel for a full Gender Recognition Certificate. It tells you how getting a full Gender Recognition Certificate would affect National Insurance contributions, your tax liability and benefits and pensions you or your spouse or civil partner may be receiving now, or in the future.

It may help you understand your situation better if you read this note alongside the information contained in the full Gender Recognition Application Pack.

It also explains how obtaining a full Gender Recognition Certificate may affect pensions that may be payable to your spouse or civil partner based on your earnings or National Insurance contributions and the actions required to ensure that the organisations which administer your pensions have the appropriate information.

This note is intended as a general guide only and not a full statement of the law. It does not cover every circumstance. It should not be relied upon as a substitute for obtaining information on entitlement as it applies to you. We have done our best to make sure the leaflet is correct as at January 2018. Some of the information may be simplified or may become inaccurate over time, for example because of changes to the law.

Before you apply for a Gender Recognition Certificate you are advised to seek further information on the financial implications of doing so in your specific circumstances.

Further information on benefits is available at www.gov.uk.

If you are resident in Northern Ireland, the Isle of Man or the Channel Islands then the authorities there may have other requirements to those stated in this document. You should contact them directly to check what you need to do.

There are further details on page 9 if you are an Isle of Man resident.

Updating your National Insurance, benefit and pensions records

When you apply to the Gender Recognition Panel, it is recommended that you ask them to notify Her Majesty's Revenue and Customs (HMRC) upon issue of a full Gender Recognition Certificate.

HMRC will update your National Insurance and tax records with details of your acquired gender. The Department for Work and Pensions (DWP)/ Department for Communities in Northern Ireland (DfCNI) will similarly update their records.

Or you can choose to notify HMRC directly by sending them your full Gender Recognition Certificate.

HMRC will ensure that the amount of National Insurance contributions that you pay will be based on your acquired gender.

HMRC will automatically update your National Insurance record to reflect any changes to your personal details (e.g. change of name) and will restrict access to your record to specialist staff; this is to comply with the extra privacy requirements stipulated in the Gender Recognition Act 2004. HMRC will write to you letting you know that they have updated your record. The letter that is sent to you will not refer to gender recognition in any way.

DWP/DfCNI will also reassess any existing benefits and pensions paid to you and notify you of any changes that result from getting a full Gender Recognition Certificate. The letter that is sent to you will not refer to gender recognition in any way.

DWP/DfCNI will also mirror the restrictions placed on your record by HMRC.

If you wish, you can waive the restrictions placed on your record by HMRC; you can do this by:

- personally notifying HMRC that you have received a full Gender Recognition Certificate and at the same time let them know that you wish to waive the restrictions they would normally place on your record; or
- you can write to HMRC at any time and inform them that you wish to waive the restrictions placed on your record.

However, if you choose to waive the restrictions then you may lose out on some of the associated advantages. The restrictions mean that your records will be handled sensitively. So, for example, if you, or your spouse or civil partner make a claim to State Pension it will be handled by the DWP Gender recognition team to ensure that your gender recognition is properly taken into consideration in both your own State Pension calculation and any calculation for your spouse or civil partner based on your National Insurance contributions.

Tax and National Insurance contributions

If you change gender you will pay National Insurance contributions on the basis of your acquired gender.

If you are a transgender woman you will only have to pay National Insurance contributions up to the point when you reach your female State Pension age. State Pension age for women is gradually increasing from 6 April 2010 until it equalises with male State Pension age in December 2018. From 2019 onwards there are further increases to State Pension age for both women and men. The section below on State Pension age gives further details.

If you have already reached your female State Pension age when your full Gender Recognition Certificate is issued, you will not need to pay any further National Insurance contributions.

If you are a transgender man, you will normally have to pay National Insurance contributions on earnings from the point when your full Gender Recognition Certificate is issued until you reach State Pension age in your acquired gender.

Provisions in the Marriage (Same Sex Couples) Act 2014 mean that you may not need to end your marriage in order to get a full Gender Recognition Certificate if your marriage was registered in England or Wales or outside the UK. Similarly you may not need to end your civil partnership if it was registered in England and Wales and both partners seek gender recognition. Similar provisions introduced by the Marriage and Civil Partnership (Scotland) Act 2014 applied from 16th December 2014 if your marriage or civil partnership was registered in Scotland.

If you do end your marriage or civil partnership, the amount of Income Tax, Capital Gains Tax and Inheritance Tax you pay may be affected. For Capital Gains Tax and Inheritance Tax, this could happen, for example, as a result of financial arrangements you make with your former husband or wife, or civil partner when ending your marriage or civil partnership. For income tax, you will no longer be able to claim the Married Couple's Allowance (available only where one partner was born before 6 April 1935) if you end your marriage or civil partnership.

If you do end your marriage or civil partnership, you should contact HMRC to advise them of your change of circumstances.

It may also help you to read the self-assessment helpsheet HS281 for Capital Gains Tax – "Husband and wife, civil partners, divorce, dissolution and separation" or talk to an independent financial advisor (you might have to pay for their advice).

If you are single getting a full Gender Recognition Certificate will have no effect on your tax position.

If you would like to discuss the impact your application could have on your tax and National Insurance contributions position, please contact your usual HMRC office or for more general information about tax and National Insurance contributions go to www.gov.uk/hmrc.

Changes in the law affecting marriages

The Marriage (Same Sex Couples) Act 2013 which applies to marriages registered under the law of England and Wales, received Royal Assent on 17 July 2013 and is being implemented in 2 phases.

- Under phase 1 same sex couples have been able to marry in civil ceremonies in England and Wales since 13 March 2014.
- Under phase 2, from 10th December 2014;
 - civil partners who registered their civil partnership in England and Wales are able to convert their partnership to a marriage; and
 - a person who married under the law in England and Wales, or of a country or territory outside of the UK, may be able to change their legal gender without having to first end their marriage.

The Marriage and Civil Partnership (Scotland) Act 2014 introduces similar provision, from 16th December 2014, for couples who registered a civil partnership or entered into a marriage in Scotland.

Pensions and other social security benefits

When you get your full Gender Recognition Certificate, your social security benefits will be paid on the basis of your acquired gender. This means that your right to any benefit or pension may change. This could result in an increase or decrease in the amount of benefit paid to you or your entitlement to a benefit or pension may start or stop.

If you become eligible for a benefit or pension you must make a claim or application for that benefit or pension in the normal way. You are advised to do this immediately as any delay may affect your entitlement. You will not normally be automatically paid a benefit or pension on getting a full Gender Recognition Certificate).

If you are overpaid DWP benefits or pensions, you may be liable to repay them.

Obtaining a full Gender Recognition Certificate may affect a pension payable to your spouse or civil partner that is based on your earnings or National Insurance contributions. It is important that you or your spouse ensure that the organisations which administer your pensions have the appropriate information to enable them to correctly calculate pension payments.

For advice on the State Pension you should contact the DWP Gender Recognition team:
Their contact details are:

Phone number 0191 218 7622 Monday to Friday 8am to 6pm (UK time)
Fax number 0191 613 8193

Post –
DWP Gender Recognition team
The Pension Service 20
Mail Handling Site A
Wolverhampton
WV98 1LT

Email npc.grteam@dwp.gsi.gov.uk

More information from DWP about benefits and pensions is published online.

For benefits information go to www.gov.uk/browse/benefits

For pensions information go to www.gov.uk/new-state-pension

For advice on a private, occupational or workplace pension you should contact your pension provider or the scheme administrator.

State Pension age

State Pension age is the earliest age at which a person can get their State Pension.

You can claim your State Pension when you reach the State Pension age appropriate to your acquired gender. The State Pension age calculator on www.gov.uk/state-pension-age allows you to check the date you can get your State Pension, under the current law. The table below gives an outline guide to State Pension age based on the law as it currently stands.

State Pension age is regularly reviewed by the government and may change in the future, so make sure you regularly check what yours is. If you were born between 6 April 1970 and 5 April 1978 then you may be affected by recent [proposals to bring forward the increase of the State Pension age](#) to 68 to between 2037 and 2039. People born before 6 April 1970 or after 5 April 1978 are not affected by these latest proposals – but everyone should continue to check their State Pension age as there may be changes in the future.

These proposed changes would have to be approved by Parliament before they are agreed.

Date of birth	State Pension age
Women born before 6 April 1953	Between 60 and 63
Women born between 6 April 1953 and 5 December 1953	Between 63 and 65
Men born before 6 December 1953	65
Born between 6 December 1953 and 5 October 1954	Between 65 and 66
Born between 6 October 1954 and 5 April 1960	66
Born between 6 April 1960 and 5 March 1961	Between 66 and 67
Born between 6 March 1961 and 5 April 1977	67
Born on or between 6 April 1977 and 5 April 1978	Between 67 and 68
Born on or after 6 April 1978	68

The DWP will normally invite customers to claim their State Pension four months before their State Pension age.

If following receipt of your full Gender Recognition Certificate you think you may be entitled to your State Pension you should contact the Pension Service as soon as possible.

www.gov.uk/state-pension/how-to-claim

Any delay in making a claim may affect the date from which you become entitled to your State Pension.

State Pension

The new State Pension

The old two tier State Pension scheme of basic and additional State Pension was replaced by the new State Pension on 6 April 2016.

The new State Pension applies only to those people reaching State Pension age on or after 6 April 2016. Qualification is based on an individual's own National Insurance records, and people will normally need to satisfy the minimum qualifying period, which is set at ten National Insurance qualifying years, to receive any new State Pension.

People with no National Insurance record before 6 April 2016 who gain 35 qualifying years will receive the full weekly amount when they reach State Pension age. People with NI contributions from before April 2016 will have calculations made under transitional arrangements, which take their past National Insurance record into account.

The changes to State Pension are not yet law in Northern Ireland. However, it is anticipated that subject to the approval of the Northern Ireland Assembly similar changes may be made.

The old State Pension (paid to people who reached SPA before 6 April 2016)

There are two main elements to the old State Pension:

- basic State Pension; and
- additional State Pension.

The basic State Pension is based on the number of qualifying years for which you have paid, are treated as having paid or have been credited with National Insurance contributions.

The additional State Pension is related to the level of your earnings on which you have paid (or are treated as having paid) Class 1 National Insurance Contributions during your working life. You may have been "contracted-out" of the additional State Pension by joining your workplace pension scheme or a personal or stakeholder pension scheme.

If you are already in receipt of your State Pension it may be affected by getting a full Gender Recognition Certificate, e.g. if you are a transgender man your State Pension age may increase.

Some examples of situations where your State Pension may be affected are if:

- you don't have enough National Insurance contributions and are thinking about paying voluntary contributions,
- you are thinking about putting off claiming your State Pension,
- you are eligible for a State Pension that is payable by virtue of your husband, wife or civil partner's National Insurance contributions,
- you are a widow/widower/surviving civil partner receiving an additional State Pension based on your late husband, wife or civil partner's contributions.

You are strongly advised to seek further information so that you are fully aware of the effect that changing your gender may have on your State Pension. Further information is available on www.gov.uk/new-state-pension or if you are already in receipt of a benefit or pension please contact the office dealing with your claim. You may wish to speak to the DWP Gender Recognition team (see page 5 for their contact details).

State Pension for a spouse or civil partner – important information

In the old State Pension scheme, which applied to anyone reaching State Pension age before 6 April 2016, a married person or civil partner may qualify for some basic State Pension using their spouse or civil partner's National Insurance contributions, if they only have a small State Pension of their own.

A widow, widower or surviving civil partner may also inherit part of their late spouse or civil partner's State Pension. In some circumstances these provisions apply **only** to women married to men or women whose husbands have died.

However, as part of the changes in the law to enable a person to legally change gender and remain in their marriage a woman whose spouse legally changes gender from male to female during the marriage will still be able to qualify for State Pension on the same basis as a woman married to, or the widow of, a man.

This means that if you remain in your marriage after legally changing your gender from **male to female**, any State Pension based on your National Insurance contributions which your spouse is or would be entitled to before you legally changed gender will not be affected.

There are no plans to introduce the marriage of same sex couples into Northern Ireland so if you are married, under the law of Northern Ireland different rules will apply; the marriage of a same sex couple under the law in England and Wales is treated as a civil partnership in Northern Ireland.

If you change your legal gender from **female to male** after you've reached State Pension age for a woman but before you've reached State Pension age for a man with your date of birth, any State Pension your spouse is already receiving based on your National Insurance contributions will stop along with your own State Pension. Your entitlement to State Pension will be re-assessed when you reach your new State Pension age. You will be required to make a further application at that time. If you do not re-claim your State Pension straightaway,

or your spouse has no State Pension entitlement of their own, they may need to make a fresh claim.

The provisions enabling a person to qualify for State Pension based on their spouse or civil partner's National Insurance contributions are part of the current State Pension scheme and will continue to be available to people reaching State Pension age before 6 April 2016, regardless of whether their spouse or civil partner reaches State Pension age before or after that date. However, any such State Pension will be based only on National Insurance contributions their spouse or civil partner made for the period before the new State Pension starts.

Obtaining a full Gender Recognition Certificate may affect a pension or bereavement benefit payable to a spouse or civil partner that is based on your earnings or National Insurance contributions. It is important that in the event of a claim you or your spouse are able to provide DWP with the appropriate information to enable them to correctly calculate benefit, bereavement allowances or pension payments. DWP may request sight of your Gender Recognition Certificate and marriage certificate to verify any claim. In some circumstances you or your spouse may need to show them your original marriage certificate to confirm the date your marriage started.

People reaching State Pension age on or after 6 April 2016 will normally qualify for a State Pension based just on their own National Insurance contributions. There are two exceptions:

- a person who is widowed or whose civil partner has died may be able to inherit some of the additional State Pension their late spouse or civil partner had built up before 6 April 2016, provided their marriage or civil partnership began before 6 April 2016 and they do not remarry or form a new civil partnership before State Pension age;
- a person who chose to pay married woman's reduced rate National Insurance contributions may qualify under special rules.

For more information about this and other changes to deriving and inheriting State Pension see www.gov.uk/state-pension-through-partner

Occupational pension schemes

An occupational pension scheme is a scheme set up by an employer to provide pension or death benefits for their employees. These schemes are also called workplace pension schemes. In order to find out how your pension may be affected if you receive a full Gender Recognition Certificate, you will need to contact your pension provider or scheme administrator.

There are two main types of occupational pension schemes – defined benefit and defined contribution schemes. With a defined contribution scheme the amount of your pension depends on how much contributions have been paid into your pension pot and how that has been invested. Normally when you retire you can take some as a tax-free lump sum and use the rest to buy yourself an income such as an annuity. With a defined benefit arrangement

you are promised a certain amount of pension at retirement usually based on your pay and length of service. Usually, you can work out in advance how much pension you'll get when you retire.

Until April 2016, it was possible to leave – or ‘contract-out’ of - the additional State Pension into a defined benefit occupational pension scheme. This meant that you left the additional State Pension scheme, and contributed towards an occupational pension scheme, so when you retired you would get a pension from your employer’s scheme, and not the additional State Pension. If you do not know whether you are or were previously contracted-out of the additional State Pension, you should talk to your employer or pension provider.

Some pension schemes provide as part of your pension package, survivor benefits for spouses in the event of the death of the scheme member. The type of survivor benefits provided will vary depending on the type of scheme, the rules of that scheme and how long you have been a member of the scheme. Gender and sexual orientation can also affect survivor benefit provision. If you are unsure about survivor benefits in your scheme you should contact your employer or pension provider.

However, under the Marriage (Same Sex Couples) Act 2013 which applies to marriages under the law of England and Wales, or of a country or territory outside of the UK, there is provision that a surviving spouse whose deceased spouse legally changed gender during the marriage will still be able to qualify for a survivor benefit on the same basis as they would have done before the legal change of gender. The same provisions also exist for applicants in a Scottish marriage. It is important your pension scheme is kept informed of any change in your circumstances in order that your surviving spouse can receive the correct benefit.

Couples living together

The rules on benefits/pensions and tax credits that relate to couples who are married or who are in a civil partnership will also apply to transgender men or women who have a full Gender Recognition Certificate and who marry or form a civil partnership in their acquired gender.

If a couple who are living together are not married or have not formed a civil partnership then DWP/HMRC apply a “living together” test to decide whether they are living together as a married couple. The test takes into account a number of factors, including domestic and financial arrangements. If they are found to be living together as a married couple this may affect the amount of benefits they get. In addition, a partner’s circumstances may be taken into account in a Child Support Maintenance Assessment.

These rules do not apply to the State Pension. A person may only derive or inherit State Pension based on another person’s National Insurance contributions if they are, or were, legally married to that other person or in a legal civil partnership with them.

See also the section dealing with State Pension for your spouse or civil partner

Bereavement benefits

If you are a transgender woman or a transgender man who obtains a full Gender Recognition Certificate, your Bereavement Support Payment, Widowed Parent's Allowance or Bereavement Allowance will not be affected. If you are a transgender man who gets a full Gender Recognition Certificate then your entitlement to Widow's Allowance, Widow's Pension and Widowed Mother's Allowance will stop, as these benefits are only payable to women.

Example: Widow's Pension

A widow, aged under 60 getting a Widow's Pension who obtains a full Gender Recognition Certificate, will as a transgender man no longer be entitled to the Widow's Pension, as it is not payable to men.

War Pensions

The basic war disablement pensions and majority of allowances are unaffected by receipt of a Gender Recognition Certificate.

For further advice please contact Veterans UK; Free Helpline on (UK only) 0808 1914 2 18 / (Overseas): +44 1253 866043 or further information is available at www.gov.uk/pensions-and-compensation-for-veterans

Information for Isle of Man residents

The Isle of Man Government introduced the Gender Recognition Act 2009 (of Tynwald), which came into force on 31st July 2010. This Act provides that in the Isle of Man transgender people who have been issued with a full Gender Recognition Certificate by the U.K. Gender Recognition Panel are legally recognised in their acquired gender for all the same purposes as in the U.K.

As there is no Gender Recognition Panel in the Isle of Man, resident transgender people of the Isle of Man who meet the qualifying criteria will be able to make an application to the U.K. Gender Recognition Panel.

A person who has received a full Gender Recognition Certificate and whose birth was registered in the Island will be able to obtain a new birth certificate which records their acquired gender, new name, etc, which can then be used instead of their original birth certificate.

Isle of Man residents who were born in the U.K., and who have made a successful application to the U.K. Gender Recognition Panel, can apply to the General Registrar for the relevant part of the U.K. for a new birth certificate in their acquired gender.

From 4th April 2005 up to 31 July 2010, a transgender man or transgender woman who had been issued with a full Gender Recognition Certificate (by the U.K. Gender Recognition Panel) was legally recognised in their acquired gender for social security and National Insurance purposes only.

There are a number of differences between the Island's social security scheme and the United Kingdom's, however National Insurance and State Pension arrangements are broadly the same in the Isle of Man as they are in the UK.

On the 13 July 2016 the Marriage and Civil Partnership (Amendment) Act 2016 received Royal Assent, this Act made provision for the marriage of same sex couples and for civil partnerships of opposite sex couples and therefore same sex marriages in the UK will now be treated as a same sex marriage in the Isle of Man

Frequently asked Question and Answers about Pensions

State pension

Q1 Why could the amount of State Pension change when I get a full Gender Recognition Certificate?

A1 State Pension entitlement is based on the National Insurance contributions a person has paid or been credited with during their working life. The working life starts with the tax year in which a person reaches age 16 and ends with the tax year before the one in which they reach State Pension age. For people born before 6 December 1953, the State Pension age is lower for women than for men. This means that if you were born before that date your entitlement may change when a Gender Recognition Certificate is awarded because your State Pension age may change.

The old pension arrangements are for those who reach State Pension age on or after 6 April 2010 their basic State Pension is based upon 30 years of paying or being credited with National Insurance contributions, this is the same for both men and women. If you receive additional State Pension or are likely to receive it this may be affected by a change in your State Pension age after you receive a Gender Recognition Certificate.

People who reach State Pension age on or after 6 April 2016 (men born on or after 6 April 1951 and women born on or after 6 April 1953) will retire under the new State Pension scheme which has different rules. If you get a Gender Recognition Certificate on or after 6 April 2016 then you may be affected by this.

If your spouse or civil partner receives a pension based on your National Insurance contributions it could be affected if you get a Gender Recognition Certificate. You or they should contact the Gender Recognition team (see page 5 for contact details).

Q2 I am already over State Pension age and receiving State Pension – will getting a full Gender Recognition Certificate make any difference to my pension?

A2 If you are over State Pension age when you get your full Gender Recognition Certificate and so have already reached State Pension age in both your birth and acquired gender then your rate of State Pension will remain as in your birth gender and will not be affected by you getting a Gender Recognition Certificate.

Q3 I have not yet reached the State Pension age for either my birth or acquired gender – will getting a full Gender Recognition Certificate make any difference to me?

A3. The issue of a full Gender Recognition Certificate may change the date at which you reach State Pension age and can therefore determine when you can make a claim to State Pension. You can use the calculator at: www.gov.uk/state-pension-age to find out what your State Pension age would be in your birth or acquired gender.

To help you work out what effect getting a full Gender Recognition Certificate may have on your State Pension you could get a State Pension statement see www.gov.uk/check-state-pension . This will give you an estimate of your State Pension based on your current circumstances.

Q4 If I get a full Gender Recognition Certificate when I am between women’s State Pension age and men’s State Pension age how will this affect me?

A4 If you were born before 6 December 1953 you could be affected because men and women born before that date have different State Pension ages. The two examples below explain the effect.

Example 1 transgender man born on 6 April 1951 who gets his full Gender Recognition Certificate aged 63

He would lose entitlement to any State Pension awarded in his birth gender and would not be entitled to State Pension until he reaches the State Pension age of his acquired gender which will be 65 as he was born before 6 December 1953. A new calculation would be made to work out the amount of State Pension he will be entitled to when he makes a claim for it at age 65. He may be able to apply for other income-related benefits, such as Pension Credit.

The date he reaches his new State Pension age will be 6 April 2016 and therefore his entitlement will be based on the rules for the new State Pension. For most people this will mean entitlement is based solely on their own National Insurance record. There are some exceptions to this – see Q11.

Example 2 transgender woman born on 6 April 1951 who gets her full Gender Recognition Certificate aged 64

She will be entitled to claim her State Pension from the date she gets her full Gender Recognition certificate as this is later than the date she reached her female State Pension age (6 May 2012, aged 61). The amount of her State Pension entitlement will be based on her National Insurance contribution record and may be less than in her birth gender.

If she is considering putting off claiming her State Pension she should seek further advice from DWP as getting a full Gender Recognition Certificate may affect the amount of State Pension she will get.

Any other DWP/ benefits in payment at this point would also be reassessed and the entitlement or amount payable may change.

Q5 I am a transgender man who had put off claiming my State Pension and received a lump sum payment before I got a full Gender Recognition Certificate. Will I have to repay the lump sum?

A5. No, the lump sum is not affected by receipt of a full Gender Recognition Certificate. This is because it is a one-off payment and when you put off claiming your State Pension you were legally still a woman and entitled to your State Pension at the time you got the lump sum. So if you put off claiming your State Pension before getting a full Gender Recognition Certificate you are treated no differently than if you had not put off claiming.

Q6 I am a transgender woman aged between women's State Pension age and men's State Pension age, can I get my State Pension backdated to my 60th birthday?

A6. If you were born after 3 October 1945, and therefore were aged 60 on or after 4 October 2005 when the Gender Recognition Act became fully operational, eligibility to State Pension can only start from the date that you are issued with a full Gender Recognition Certificate. You will need to make a claim for your State Pension and meet the National Insurance contribution conditions appropriate to your acquired gender.

If you were born before 4 October 1945 you may be eligible for your State Pension to be paid with reference to an earlier date. You should contact the DWP Gender recognition team for further information (see page 5 for contact details) or find more information on www.gov.uk/government/publications/transgender-people-equal-treatment-for-state-pension

Q7 I am currently married/in a civil partnership. Do I need to end my marriage/civil partnership to get a full Gender Recognition Certificate?

A7 Previously, all married people who wished to obtain a full Gender Recognition Certificate had to end their marriage first.

The law has changed and some married couples will be able to remain married when one partner gains a Gender Recognition Certificate. The provisions allowing married people to legally change gender and for civil partners to be able to “convert” their partnership to a marriage came into force on 10th December 2014 for couples who married under the law of England and Wales or the law of a country or territory outside of the UK and those who formed a civil partnership under the law of England or Wales. If you entered into your marriage in Scotland or your civil partnership was registered in Scotland then similar arrangements had effect from 16th December 2014.

Once these provisions are in place you may no longer need to end your marriage to get a full Gender Recognition Certificate

There is no equivalent Northern Ireland same sex marriage legislation therefore the Pensions Act (Northern Ireland) 2015 provides that a marriage of a same sex couple under the law in England and Wales will be treated as a civil partnership in NI. This will reflect the wording of paragraph 2(1) to Schedule 2 of the Marriage (SSC) Act 2013

Q8 I am a married woman already getting a State Pension based on my husband's contributions. How will this be affected if he legally changes gender?

A8 A member of a married same sex couple will normally only be able to qualify for some basic State Pension based on their spouse's contributions if their spouse was born on or after 6 April 1950. But a woman whose spouse legally changes gender from male to female after the marriage began, where there has been no break in the marriage, may still be able to have her basic State Pension improved by using her spouse's contributions even if her spouse was born before 6 April 1950. The rules would be the same as if her spouse had not legally changed her gender.

These rules only apply if she reaches State Pension age before 6 April 2016. People reaching State Pension age on or after that date will come under the new State Pension scheme which is normally based on a person's own National Insurance record alone.

Q9 Will my wife be able to inherit any of my State Pension if I legally change gender during our marriage?

A9 If you were legally male when you married and there has been no break in your marriage your wife will be treated the same for State Pension inheritance purposes as if you had remained in your male birth gender.

In most circumstances, the inheritance provisions apply in the same way to widows, widowers and surviving civil partners.

The exception is where the surviving member of the couple reached State Pension age before 6 April 2010 **and** their spouse or civil partner died while still under State Pension age. In this situation, a woman whose husband has died can inherit some (or all) of his additional State Pension – known as SERPS or State Second Pension – but a widower, a woman whose wife has died (except a woman whose female spouse had legally changed gender from male to female during their marriage) or a surviving civil partner cannot.

In the event of your death DWP may need to verify with your wife that she was married to you before you changed gender and that there has been no break in your marriage for her to receive the correct pension or bereavement entitlement. She may be asked to produce a marriage certificate and/or other documentation such as your Gender Recognition Certificate.

The DWP Gender recognition team may be able to provide further information based on your individual circumstances.

The rules have changed for people who reached State Pension age on or after 6 April 2016.

There is more information about this on www.gov.uk/state-pension-through-partner

Q10 If I do end my marriage/civil partnership how will my State Pension be affected?

A10 The Marriage (Same Sex Couples) Act 2013 and The Marriage and Civil Partnership (Scotland) Act 2014 mean that from December 2014 some people will no longer have to end their marriage to get a full GRC.

But if you do end your marriage or civil partnership and you are over State Pension age now, or reached State Pension age before 6 April 2016, you may be able to use the National Insurance contributions of your former spouse or civil partner to improve your basic State Pension if your own basic State Pension is less than the full rate. This does not affect the amount of State Pension they are entitled to. These provisions don't apply if you remarry or form a civil partnership before you reach State Pension age, or if you reach State Pension age on or after 6 April 2016.

When a marriage or civil partnership is ended, a Court can make a pension sharing order as part of the financial settlement. Your additional State Pension may be affected (or part of your total State Pension award if you reach State Pension age on or after 6 April 2016) by such an order and you might wish to seek further advice about this.

You should provide evidence to HMRC/DWP of when your marriage/civil partnership ends. This will ensure your National Insurance contributions and benefits are reassessed correctly and allow them to update your records for your acquired gender and pay any new benefits you may be entitled to. If they have to seek advice from the Gender Recognition Panel they will write to you to let you know that they have done this. If you do not inform them of the changes you may not receive correct payments.

HMRC/DWP will reassess your National Insurance contributions, any benefits, pensions and services and notify you of any changes. The letter that is sent to you will not refer to gender recognition in any way.

Q11 Can I use my spouse's/ civil partner's NI contributions to improve my State Pension if I reach State Pension age on after 6 April 2016?

A11 The new State Pension is an individual pension which will normally be based on a person's own National Insurance contributions. However, there are transitional rules for people who, before May 1977, chose to start paying the married woman's reduced-rate National Insurance contributions or chose not to pay Class 2 contributions as a self-employed married woman. This is called the married woman's reduced rate election (MWRRE). If the MWRRE applied at the beginning of the 35 year period ending on the 5th April before they reach their State Pension age, their State Pension will be the higher of:

- their entitlement under the normal new State Pension rules; or
- the old lower-rate basic State Pension if they are married, or the old full rate basic State Pension if they are widowed or divorced, plus any additional State Pension they had built up before 6 April 2016.

These transitional arrangements will also apply to transgender men who meet the same entitlement conditions.

In addition to these special rules for people with a MWRRE, a person who is widowed or whose civil partner has died may be able to inherit part of their late spouse or civil partner's additional State Pension. These rules will apply in the same way to widows, widowers and surviving civil partners.

There is more information about the changes to State Pension entitlement based on a spouse or civil partner's contributions at www.gov.uk/state-pension-through-partner.

Q12 I am living with my partner but we are not married/civil partners.

A12 The tax credit and benefit rules currently treat:

- two people of the opposite sex who are living together as if they were a married couple, and
- a same sex couple who are living together as if they had formed a civil partnership.

DWP apply a "living together" test to decide whether two people are living together as a married couple. The test takes into account a number of factors, including domestic and financial arrangements. If they are found to be living together as a married couple, this may affect the amount of benefits they get. In addition, a partner's circumstances may be taken into account in a Child Support Maintenance Assessment.

Q13 How will getting a full Gender Recognition Certificate affect my child support position?

A13 Your status as a parent of a child will not be affected if you get a full Gender Recognition Certificate.

This means that a person's status as a non-resident parent or parent with care in child support terms is not affected.

However if, due to getting a full Gender Recognition Certificate, a person's benefit entitlement changes then the amount of child support that they have to pay may also change.

In addition, a partner's circumstances may be taken into account in a Child Support Maintenance assessment.

Occupational Pensions

Q14 How will my pension be affected by getting a full Gender Recognition Certificate?

A14 If you get a full Gender Recognition Certificate, it may result in a change to your pension and any benefits associated with your pension, for example survivor benefits. We recommend that you check with your pension provider or scheme administrator.

Q15 How will my spouse's survivor benefits be affected if I chose to remain married when getting a full Gender Recognition Certificate?

A15 Under the Marriage (Same Sex Couples) Act 2013 which applies to marriages under the law of England and Wales, or of a country or territory outside of the UK, there is provision that a surviving spouse whose deceased spouse legally changed gender during the marriage will still be able to qualify for a survivor benefit on the same basis as they would have done before the legal change of gender. The same provisions also exist for applicants in a Scottish marriage.

In the event of your death your pension provider or scheme administrator may need to verify your continuing marriage with your spouse in order for them to receive the correct survivor benefits. They may be asked to produce evidence to this effect, for example your marriage certificate, birth certificates and/or your Gender Recognition Certificate. You are advised to contact your pension scheme to inform them of your change of circumstances and to establish what will be required from your spouse in the event of your death.

Q16 I am currently getting a survivor benefit from my deceased husband/wife/civil partner's occupational pension scheme – can I continue to receive this?

A16 Yes. As your survivor benefit is in part based on your deceased husband/wife/civil partner's previous earnings and your marital status, your right to the amount of benefit will not change. However, you may be required to meet the eligibility conditions such as continuing to have an underlying entitlement to certain social security benefits.

Your entitlement could come to an end, however, if you remarry, form a civil partnership or live with someone as husband and wife or as if a civil partner.

Q17 I had to end my marriage or civil partnership in order to get a full Gender Recognition Certificate. How will my occupational pension be affected?

A17 Many occupational pension schemes will only pay a survivor's benefit to a legal husband, wife or civil partner. Ending your marriage or civil partnership may therefore mean that your former husband/wife or civil partner may not be entitled to a survivor benefit should you die before him/her. So, you should find out from the people who run your pension scheme whether or not ending your marriage or civil partnership will affect your pension. When a marriage or civil partnership ends, a Court can make a pension sharing order as part of the financial settlement. Your occupational pension may be affected by such an order and you might wish to seek further advice about this.

Q18 I had to end my marriage in order to get a full Gender Recognition Certificate; I then formed a Civil Partnership with the same person. How will my occupational pension be affected?

A18 You or your partner should check with the people who run your partner's pension scheme.

Q19 When I left my contracted-out pension scheme my employers bought an annuity/insurance policy. Will this be affected?

A19 No. The pension rights that you built up will have been secured by a policy that was contracted on the basis of your birth gender and this will not be affected.

Q20 Who can I contact to find out more about my pension scheme?

A20 For further information and advice on your pension scheme you will need to approach your scheme's Trustees or administrators. They will be able to offer further advice on your rights according to your scheme's Trust Deed and Scheme Rules.

Q21 I am not sure whether my occupational pension scheme is contracted-out or not. Does this make a difference?

A21 If you are not sure whether or not your occupational pension scheme is contracted-out you can contact your employer to find out.

There are specific rules that apply to occupational pension schemes that are contracted-out because they must provide certain benefits in place of the additional State Pension.

Schemes that are not contracted-out, or which provide benefits over and above contracted-out rights, have their own procedures to comply with the provisions of the Gender Recognition Act.

Version: January 2018