Defra group Supporting Trans and Non-binary Employees Policy

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Purpose

Defra group organisations support a culture where workplace relationships are built on tolerance and inclusivity. Everybody should be able to thrive, carry out their duties with respect and dignity, and be treated fairly at work.

This aligns with the Defra group Equality, Diversity and Inclusion Strategy and other Defra group departmental Equality, Diversity and Inclusion Strategies and standards set out in the relevant organisational code of conduct, governing principles and the Defra group Principles of Communication.

The purpose of this Policy and its Guidance: Supporting Trans and Non-binary Employees is to set out practical advice on how to support trans and non-binary colleagues at work. The Policy reflects the relevant provisions in the Equality Act (2010), Gender Recognition Act (2004) (GRA) and the Workplace (Health, Safety and Welfare) Regulations (1992).

Scope

This Policy and the supporting Guidance apply to all Defra group employees, including those on probation and fixed-term appointments. The principles also apply to anyone who works alongside civil servants but is not an employee of

Defra group organisations, such as contractors, consultants, and agency workers.

This Policy does not apply to service users, for example, members of the public attending a visitor centre or nature reserve.

Dignity and respect at work

Gender reassignment is a protected characteristic under the Equality Act. For individuals who are trans, this protection begins at the point at which the person proposes to undergo a process (or part of a process) for the purpose of reassigning their sex by changing physiological or other attributes of sex. This can include, but is not limited to, a medical transition.

The individual does not need to have obtained, applied for, or intend to apply for a Gender Recognition Certificate (GRC), or have or intend to have any medical or other intervention to be protected in law under the protected characteristic of gender reassignment.

There will be different views and beliefs in this area. Everybody is entitled to their own opinion or belief, as long as they conduct themselves professionally, treat their colleagues with respect and are considerate and sensitive to those who hold views and beliefs that differ from their own.

The Defra group Principles of Communication sets out the framework for all employees for creating a thriving, innovative and collaborative hybrid workplace, in a respectful, professional, and inclusive way – where everyone feels welcome in the workplace, regardless of differences of belief, experience or background, and where diversity of thought is welcomed and respected.

Where there is disagreement, it is important to understand rights and obligations in the context of acceptable conduct at work as outlined in your relevant organisational code of conduct.

Any bullying, harassment and discrimination will be tackled promptly. Should incidents arise please consult your relevant organisational Bullying, Harassment and Discrimination and Respect at Work Policies.

Data protection and confidentiality

Protecting personal data and confidentiality is vitally important and everyone needs to be aware of their responsibilities. Trans and non-binary employees have a right to privacy in respect of their trans and medical status.

Consent must be obtained if information needs to be shared, for example if an occupational health assessment is needed for workplace adjustments or similar.

Disclosure without consent can be distressing and, in some instances, breach the legislation listed below:

Data Protection Act 2018 (DPA) - Gender history forms part of an individual's special category data under the DPA. Special category data is highly sensitive personal data that requires extra protection and needs to be treated with greater care. Privacy and confidentiality must be maintained. The relevant Defra group organisation is responsible for handling all employee data in line with the DPA.

Gender Recognition Act 2004 (GRA) - Section 22 of this Act makes it a criminal offence for a person in an official capacity to disclose that an individual has applied for, or received a GRC, without the permission of that individual. Breaching this law can render employees personally liable for criminal prosecution. Where managers or colleagues come into possession of any information about someone's gender history, they should follow the relevant Defra group organisation's procedures for security and handling confidential data. Any files held in paper form should be securely stored and kept in accordance with the relevant Defra group organisational retention schedule. Please refer to your relevant Defra group organisational data protection policy.

Information held electronically, for example on HR systems, should avoid direct reference to any gender transition information.

Not all transitioning or transitioned individuals apply for a GRC. Defra group organisations will protect personal information of transitioning employees to the same extent as where they have a GRC, to ensure privacy is respected in every case.

Data Retention

You must comply with your relevant Defra group organisational data retention policy in respect of any information you process relating to transitioning or gender reassignment. Information should only be kept for as long as there is a business need to retain it and then securely destroyed.

Annex A: Glossary of terms

The terminology around sex and gender is constantly evolving. Many terms are used and individuals will choose the ones that are right for them. The terminology adopted in the Policy is intended to produce greater clarity.

This Glossary has been compiled by drawing on advice from the Civil Service Network Voice Advisory Group (NVAG) and the Office for Equality and Opportunity (OEO) and has been adopted by Defra group organisations. It follows guidance from the Equality and Human Rights Commission (EHRC), and Advisory, Conciliation and Arbitration Service (ACAS).

The Glossary does not seek to adopt language associated with any particular beliefs or groups but uses terms that are commonly understood and can be helpful to all employees.

These definitions may differ from strict legal definitions or terminology used by other specialist teams within your relevant Defra group organisation.

Sex

For the purpose of the Policy, this term refers to biological sex, based on a person's sex at birth. On this basis, a person's sex is either a man (male) or a woman (female). Therefore, in accordance with the Equality Act, the terms 'sex', 'woman' and 'man' mean, respectively, biological sex, biological woman and biological man. A person's sex remains their biological sex, whether they have a GRC or not.

Gender identity

Gender identity refers to a person's own sense of self as a man, woman, non-binary person or other sense of gender. Gender identity is mostly used by trans and non-binary people to express that their gender identity is different from their sex at birth.

A person may also be genderfluid, where their gender expression is flexible, and agender, where they do not identify with any gender at all. Many other terms are also used to describe non-binary identities (see below).

Trans

Although 'transsexual' is the term used in legislation, 'trans' or transgender' are now the most widely used terms. These terms are used in this Policy to refer to persons who have the protected characteristic of gender reassignment. Legal protection for the protected characteristic of gender reassignment arises when the individual proposes to undergo, is undergoing or has undergone a process (or part of a process) for the purpose of reassigning the person's sex by changing

physiological or other attributes of sex. A trans person is a person who has the protected characteristic of gender reassignment.

Non-binary people may or may not consider themselves to be trans and may or may not have the protected characteristic of gender reassignment.

The following terms may be used:

- Trans man: A female-to-male trans person whose sex at birth was female and who has the protected characteristic of gender reassignment.
- Trans woman: A male-to-female trans person whose sex at birth was male and who has the protected characteristic of gender reassignment.

The written terms ‘transman’ and ‘transwoman’ are considered to be offensive and should not be used. They are referenced here only for clarification.

Transitioning

This is the process that starts when trans individuals propose to begin presenting in a gender expression that matches their gender identity but not their sex. It may refer to social transition (for example, changing name or appearance), medical transition (for example, counselling, hormone therapy and/or surgery) or both.

Gender transition is sometimes known as gender affirmation or gender confirmation. It is an individual process and can take a long time, often years, especially when a person opts for surgery. There may be no specific endpoint to the transition.

Early stages of gender transition may involve changing appearance and behaviour in a manner that reflects the societal norms of an individual’s gender identity. It may include coming out to friends, family and colleagues or seeking professional assistance or counselling. Doctors may also prescribe hormone therapy and in some instances gender reassignment surgery, or other surgical interventions.

Defra group will endeavour to support a trans employee depending on their specific transition needs.

Non-binary

An umbrella term that includes people who do not accept binary notions of sex or gender and:

- do not identify as either male or female, or
- identify as both male and female, or
- have a flexible gender expression, or

- take another approach to gender entirely.

A non-binary person may or may not have the protected characteristic of gender reassignment.

Gender reassignment

A protected characteristic under the Equality Act. A person has the protected characteristic of gender reassignment if they are proposing to undergo, are undergoing or have undergone a process (or part of a process) for the purpose of reassigning their sex by changing physiological or other attributes of sex.

The Equality Act prohibits discrimination because of gender reassignment in employment. This includes treating employees less favourably because of a mistaken belief that the person is proposing to undergo, is undergoing, or has undergone the process of reassigning their gender.

A person who has the protected characteristic of gender reassignment will also be protected from discrimination because of their sex or the perception by others of their sex.

Gender reassignment surgery is also known as gender affirmation surgery or gender confirmation surgery.

Gender Recognition Certificate (GRC)

A certificate issued under the GRA which enables trans people to be legally recognised in their acquired or affirmed gender. A GRC is given to an individual who has made a successful application under the GRA to the Gender Recognition Panel.

See GOV.UK for information on what having a certificate means. It does not change a person's sex for the purpose of the Equality Act.

Affirmed gender

The gender in which a trans person lives and presents to the world.

The GRA uses the term 'acquired' to describe the affirmed gender i.e. the gender in which an applicant is living and may seek legal recognition. 'Affirmed' gender is now generally regarded as a preferred term, although the statutory language has not changed.

Gender expression/gender presentation

A person's outward expression of their gender. This may differ from their gender identity or may reflect it.

Gender dysphoria

A medical term describing the sense of discomfort or distress a person may have because of a mismatch between their sex and their gender identity. This may become so intense that it can lead to depression and anxiety and have a harmful impact on daily life. Further information is available from the NHS.

Deadnaming and misgendering

Deadnaming is calling a trans person by their birth name after they have changed their name. The term is often associated with trans people who have changed their name as part of their transition.

Misgendering is referring to someone using a word, especially a pronoun or a form of address, that does not correctly reflect the gender with which they identify. For example, it may be misgendering to use the terms man/woman when referencing a trans colleague if this refers to their sex at birth.

Deadnaming and misgendering may be unintentional i.e. a genuine mistake; or it could be a deliberate attempt to deny, mock or invalidate a person's trans identity. There are occasions when it may be legitimate to refer to a person's sex e.g. in a discussion about access to single-sex spaces.

Pronouns

For the purpose of this Policy, these words refer to people's gender in conversation or other communication - for example, 'he/him' or 'she/her'. Some people may prefer others to refer to them in gender-neutral language and use 'they/them' or other pronouns.

Gender critical

This refers to the view that sex is binary, and not a spectrum, and that it is not possible to change sex (whether or not a person has a GRC). It may include the rejection of the concept of gender identity or the view that not everyone has a gender identity.

De-transitioning

Although not legally defined, this generally refers to the act of stopping or reversing gender transition, which can involve social, medical, and/or legal changes.

Toilets

The following terms are used in this Policy and Guidance:

- Accessible toilet: toilet facilities that are designed to provide enough space and appropriate fixtures and fittings to accommodate persons with disabilities or mobility limitations.
- Mixed sex/unisex toilet: toilet facilities that are intended for the use of persons of any sex or gender identity i.e. they are available to all.
- Universal toilet: an individual self-contained lockable from the inside toilet room which contains a toilet, washbasin and hand-drying facilities.
- Shared toilets: toilets which include some element of shared facilities. For example, there may be shared washbasins and hand-drying facilities, alongside individual toilet cubicles.
- Single-sex toilet: means a facility that is designated and is intended for use by persons of one sex only.

Refer to the Defra group Facilities Consolidated Position Statement for more information.

Annex B: Defra group organisational Policy and Guidance

Please refer to your relevant organisational policy.

Bullying, Harassment and Discrimination

- Defra Civil Service (APHA, core Defra, RPA and VMD) Bullying, Harassment, Discrimination.

Code of Conduct

- Defra Civil Service (APHA, Cefas, core Defra, RPA and VMD) Defra Code of Conduct.
- Environment Agency Code of Conduct.
- Natural England Code of Conduct.

Data Protection Policy

- APHA Data Protection.
- Core Defra Data Protection.
- Environment Agency Data Protection.
- Natural England Data Protection.
- RPA Data Protection Hub.
- Data Protection Principles A guide to the data protection principles | ICO.

Dispute resolution

- Dispute Resolution (APHA, Defra, RPA and VMD).
- Grievance and dispute resolution policy and procedure (Environment Agency).
- Dispute resolution (Natural England).

Equality legislation

- Gender Recognition Act (2004).
- Equality Act (2010).
- Public Sector Equality Duty (2011).
- Workplace (Health, Safety and Welfare) Regulations (1992).

Flexible working

- Flexible Working Policy and Procedure (APHA, Defra, RPA, VMD).
- Flexible working, working patterns and flexitime (Environment Agency).
- Flexible working, working patterns and flexitime (Natural England).

Governing principles

- Civil Service Code of Conduct (civil servants) The Civil Service code - GOV.UK.
- Nolan Principles (public servants) The Seven Principles of Public Life - GOV.UK.

Intersex guidance

- Managing Attendance - Guidance for Managers

Leave guidance

- Managing Attendance Procedure (APHA, Defra, RPA and VMD)
- Special Leave Policy & Procedure (APHA, Defra, RPA and VMD)
- Attendance Management Policy (Natural England)
- Managing Sickness Absence (Environment Agency)

Principles of Communication

- Defra group Principles of Communication This guidance applies to all formal and informal workplace communication channels across Defra group.
- Principles of Communication This additional guidance applies to Environment Agency all formal and informal.

Respect at Work

- APHA, core Defra, RPA and VMD) Respect at Work
- Environment Agency Respect at Work.
- Natural England Respect at Work guidance.
- RPA Respect and Work and BHD Toolkit.

Security guidance

- Defra group Messaging platforms and security guidance.
- Defra group Security SharePoint pages.

Speak Up processes

- APHA, core Defra, RPA and VMD Defra's Speak Up process.
- Environment Agency Whistleblowing.
- Natural England Natural England Speak Up Process.