

# Gender Legislation

**The key items of legislation in relation to Gender are:**

- Equal Pay Act 1970
- Sex Discrimination Act 1975
- Sex Discrimination (Gender Reassignment) Regulations 1999
- Equality Act 2006 (effective 07)

**The following summary of the Sex Discrimination Act 1975 is taken from the Equal Opportunities Commission website:**

The Sex Discrimination Act 1975 (SDA) prohibits sex discrimination against individuals in the areas of employment, education, and the provision of goods, facilities and services and in the disposal or management of premises. It also prohibits discrimination in employment against married people. It is not unlawful to discriminate against someone because they are not married. Victimisation because someone has tried to exercise their rights under the SDA or Equal Pay Act is prohibited.

The SDA applies to women and men of any age, including children.

Discriminatory advertisements are unlawful but only the Equal Opportunities Commission can take action against advertisers.

There are some general exceptions to when sex discrimination is unlawful. The main exceptions are:

- When a charity is providing a benefit to one sex only, in accordance with its charitable instrument.
- When people are competing in a sport in which the average woman is at a disadvantage to the average man because of physical strength, stamina or physique.
- In insurance where the discriminatory treatment reasonably relates to actuarial or other data.

The SDA applies to England, Wales and Scotland.

**The following summary of the Equal Pay Act 1970 is taken from the Equal Opportunities Commission website:**

The Equal Pay Act 1970 (EPA) gives an individual a right to the same contractual pay and benefits as a person of the opposite sex in the same employment, where the man and the woman are doing:

- Like work; or
- Work rated as equivalent under an analytical job evaluation study; or
- Work that is proved to be of equal value.

The employer will not be required to provide the same pay and benefits if it can prove that the difference in pay or benefits is genuinely due to a reason other than one related to sex.

The EPA has been interpreted to cover indirect sex discrimination as well as direct discrimination i.e. where the pay difference is due to a condition or practice which applies to men and women but which adversely affects a considerably larger proportion of one sex than the other and it is not justifiable, irrespective of sex, to apply that condition or practice. So, for example, the fact that a woman is paid a lower hourly rate than a man because she works part-time and he works full-time is unlikely to be a good defence to an equal pay claim.

The EPA applies to England, Wales and Scotland.

### **Sex Discrimination (Gender Reassignment) Regulations 1999**

The Sex Discrimination (Gender Reassignment) Regulations 1999 clarify GB law relating to gender reassignment. They are a measure to prevent discrimination against transsexual people on the grounds of sex in pay and treatment in employment and vocational training. This reflects a ruling by the European Court of Justice that the dismissal of an employee undergoing gender reassignment is contrary to the European Equal Treatment Directive. The UK (and all Member States) is obliged to implement such European law.

The effect of the Regulations is to insert into the Sex Discrimination Act 1975 a provision which extends the Act, insofar as it refers to employment and vocational training, to include discrimination on gender reassignment grounds. Thus, for the purposes of employment and vocational training, discrimination on grounds of gender reassignment constitutes discrimination on grounds of sex, and is contrary to the Sex Discrimination Act. Employers who breach the Sex Discrimination Act 1975 in respect of discrimination on gender reassignment grounds will be liable in the same manner they would, for example, for discrimination against a woman on grounds of sex.

### **Gender Recognition Act 2004**

The Gender Recognition Act gives legal recognition to transsexual people who satisfy a panel of lawyers and doctors known as a *Gender Recognition Panel*.

In order to satisfy the panel, the person must show that they:

- have or have had gender dysphoria
- have lived in their acquired gender for two years or more
- intend to live in the acquired gender permanently

Following recognition by the gender recognition panel, the person will be afforded all of the rights and responsibilities appropriate to their gender e.g. they can marry a person of the opposite gender and can receive the state retirement pension at the age appropriate to their new gender.

If they are unmarried, the person will receive a gender recognition certificate and if their birth was registered in the UK, they will be entered onto the gender recognition register held by the Registrar General. Their original birth register will be marked (confidentially) to show that they are now recognised in their new gender. If their birth was registered in the UK, the person will receive a new birth certificate reflecting their new identity.

If the person is married, they will receive an interim certificate, because marriage is not permitted between two persons of the same sex. However, if their marriage is annulled, they can apply for a full certificate and can then receive the rights and privileges appropriate to their gender

### **Equality Act 2006**

Creates a new duty to promote gender equality and to publish Gender Equality Scheme by 1 April 2007