

Planning for Future Families

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Planning for Future Families

(in some respects, the future is already here)

Gender Recognition



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First, some quiz questions to set the scene...

Join via **slido**:

- Connect to internet
- Open web browser
- Go to [slido.com](https://www.slido.com)
- Enter #stepgsy23
- OR join via QR code:



Question 1

How many genders does Facebook allow users to select between?

Possible answers:

1. 3
2. 15
3. 32
4. 56
5. 74

Question 2

How many legally recognised genders are there in the UK?

Possible answers:

1. Two
2. Three
3. Five
4. Seven
5. Nine

Question 3

How many gender recognition certificates were issued in the UK in 2020/2021?

Possible answers:

1. 365
2. 369
3. 379
4. 443
5. 466

Inherited Wealth

It is worth considering how gender identity and transitioning can affect provisions set out in existing wills. How might this affect distributions of wealth and estate?

E.g. When Sally passed away in 1988 she left a will in the following terms: *“My Trustees shall hold my estate for my eldest son, Matthew, to pay the income of my estate to my said son from the date he attains the age of 21 years during his lifetime, and subject thereto my Trustees shall hold my estate and the income thereof upon trust for the first and every other son of Matthew born before the Vesting Date successively according to seniority in tail male.”*

Matthew dies in 2009. He is succeeded by his three children Emma (27), John (25) and Sam (20). Emma transitions to become male and asks to go by the name Ethan. Can

Ethan inherit what would otherwise be John’s share of Sally’s estate? **CAREY OLSEN**

Gender Recognition Act 2005

- This act outlines that, in the UK, if a person obtains a Gender Recognition Certificate after having lived as their desired gender for two years and will continue to do so for the rest of their lives, then they should be treated legally as their acquired gender.
- Legal gender cannot be changed without this certificate, the person must be over 18, must have gender dysphoria and a medical report is required
- The Gender Recognition Certificate is not retrospective
- Is effective for wills that are executed after 4th April
- This act offers individuals the opportunity to acquire a new birth certificate which will affirm their desired gender
- The act also protects individuals in that it follows that reference to the birth name/and or previous gender in a will that pre-dates the gender change will not affect the validity of the gift to that person
- No effect on “disposal or devolution of property under a will or other instrument made before the appointed day” (s.15)

What else does the UK act say

- Trustees and PRs
 - NO duty to enquire, before conveying or distributing any property, whether a full gender recognition certificate has been issued to any person or revoked (if that fact could affect entitlement to property)
 - NOT “liable to any person by reason of a conveyance or distribution of a conveyance or distribution of the property made without regard to whether a full gender recognition certificate has been issued...IF the trustee or personal representative has not received notice of the fact before the conveyance or distribution”
- However - a beneficiary’s rights to “follow the property... into the hands of another person who has received it” are preserved (save for bona fide purchasers for value)
- So NB that beneficiary claims vs trustees and recipients to trace property are still possible, even if the trustee is not liable for/has not committed any default

General succession to estates following transition

- According to the GRA 2005 law, a gift 'to my sons' in a will made in 2003 would still include a man who has transitioned to become a woman; however, if the same gift was given in a will in 2005, the man who has transitioned to a woman would not receive this gift as he is legally female. A female child of the deceased who had transitioned to a man would receive the gift as he now falls under the class of sons.
- E.g. Phil Dunphy passes away and leaves 70% of his estate to his daughters and 30% to his sons. His daughter Hailey transitions to become Harry and receives his Gender Recognition Certificate. Harry will now receive part of the 30% share provided to Phil's sons.
- If Claire and Phil wanted to avoid any confusion they might propose their estate is divided amongst their children equally or by referring to the child by their specific name. Harry would be able to receive a gift promised to Hailey by providing evidence of his former name.

Exceptions to GRA 2005

It is useful to be aware of the exceptions: Parenthood and Primogeniture

A person's gender change does not affect their status as the father or mother of the child, but as more gender neutral terms such as 'parent' come into use more frequently this may change

A person's gender change does not legally affect the descent of any peerage or dignity or title of honour. A transgender woman (who was born male) and is recognised as female may still inherit a title, property and estate that pass with it over their older sisters. Equally, a transgender man (who was born female) is regarded as a woman for these purposes and will be passed over in favour of other male relatives

E.g. Phil is a duke. Harry would not receive the title, despite being legally the eldest son, and this title would go to his brother Luke.

Position in Guernsey

- No equivalent to the GRA
- But – European Convention on Human Rights (incorporated into Guernsey law via Human Rights (Bailiwick of Guernsey) Law 2000
- *In re X* Royal Court approved HM Greffier altering the General Register of Births to issue a new birth certificate to X in her new name and gender

Questions

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