

# Gender Recognition Act 2004

## 2004 Chapter 7 - continued

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An Act to make provision for and in connection with change of gender.

[1st July 2004]

BE IT ENACTED by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:-

### *Applications for gender recognition certificate*

## **1 Applications**

(1) A person of either gender who is aged at least 18 may make an application for a gender recognition certificate on the basis of-

- (a) living in the other gender, or
- (b) having changed gender under the law of a country or territory outside the United Kingdom.

(2) In this Act "the acquired gender", in relation to a person by whom an application under subsection (1) is or has been made, means-

- (a) in the case of an application under paragraph (a) of that subsection, the gender in which the person is living, or
- (b) in the case of an application under paragraph (b) of that subsection, the gender to which the person has changed under the law of the country or territory concerned.

(3) An application under subsection (1) is to be determined by a Gender Recognition Panel.

(4) Schedule 1 (Gender Recognition Panels) has effect.

## **2 Determination of applications**

(1) In the case of an application under section 1(1)(a), the Panel must grant the application if satisfied that the applicant-

- (a) has or has had gender dysphoria,

(b) has lived in the acquired gender throughout the period of two years ending with the date on which the application is made,

(c) intends to continue to live in the acquired gender until death, and

(d) complies with the requirements imposed by and under section 3.

(2) In the case of an application under section 1(1)(b), the Panel must grant the application if satisfied-

(a) that the country or territory under the law of which the applicant has changed gender is an approved country or territory, and

(b) that the applicant complies with the requirements imposed by and under section 3.

(3) The Panel must reject an application under section 1(1) if not required by subsection (1) or (2) to grant it.

(4) In this Act "approved country or territory" means a country or territory prescribed by order made by the Secretary of State after consulting the Scottish Ministers and the Department of Finance and Personnel in Northern Ireland.

### **3 Evidence**

(1) An application under section 1(1)(a) must include either-

(a) a report made by a registered medical practitioner practising in the field of gender dysphoria and a report made by another registered medical practitioner (who may, but need not, practise in that field), or

(b) a report made by a chartered psychologist practising in that field and a report made by a registered medical practitioner (who may, but need not, practise in that field).

(2) But subsection (1) is not complied with unless a report required by that subsection and made by-

(a) a registered medical practitioner, or

(b) a chartered psychologist,

practising in the field of gender dysphoria includes details of the diagnosis of the applicant's gender dysphoria.

(3) And subsection (1) is not complied with in a case where-

- (a) the applicant has undergone or is undergoing treatment for the purpose of modifying sexual characteristics, or
- (b) treatment for that purpose has been prescribed or planned for the applicant,

unless at least one of the reports required by that subsection includes details of it.

(4) An application under section 1(1)(a) must also include a statutory declaration by the applicant that the applicant meets the conditions in section 2(1)(b) and (c).

(5) An application under section 1(1)(b) must include evidence that the applicant has changed gender under the law of an approved country or territory.

(6) Any application under section 1(1) must include-

- (a) a statutory declaration as to whether or not the applicant is married,
- (b) any other information or evidence required by an order made by the Secretary of State, and
- (c) any other information or evidence which the Panel which is to determine the application may require,

and may include any other information or evidence which the applicant wishes to include.

(7) The Secretary of State may not make an order under subsection (6)(b) without consulting the Scottish Ministers and the Department of Finance and Personnel in Northern Ireland.

(8) If the Panel which is to determine the application requires information or evidence under subsection (6)(c) it must give reasons for doing so.

#### **4 Successful applications**

(1) If a Gender Recognition Panel grants an application under section 1(1) it must issue a gender recognition certificate to the applicant.

(2) Unless the applicant is married, the certificate is to be a full gender recognition certificate.

(3) If the applicant is married, the certificate is to be an interim gender recognition certificate.

(4) Schedule 2 (annulment or dissolution of marriage after issue of interim gender recognition certificate) has effect.

(5) The Secretary of State may, after consulting the Scottish Ministers and the Department of Finance and Personnel in Northern Ireland, specify the content and form of gender recognition certificates.

## **5 Subsequent issue of full certificates**

(1) A court which-

(a) makes absolute a decree of nullity granted on the ground that an interim gender recognition certificate has been issued to a party to the marriage, or

(b) (in Scotland) grants a decree of divorce on that ground,

must, on doing so, issue a full gender recognition certificate to that party and send a copy to the Secretary of State.

(2) If an interim gender recognition certificate has been issued to a person and either-

(a) the person's marriage is dissolved or annulled (otherwise than on the ground mentioned in subsection (1)) in proceedings instituted during the period of six months beginning with the day on which it was issued, or

(b) the person's spouse dies within that period,

the person may make an application for a full gender recognition certificate at any time within the period specified in subsection (3) (unless the person is again married).

(3) That period is the period of six months beginning with the day on which the marriage is dissolved or annulled or the death occurs.

(4) An application under subsection (2) must include evidence of the dissolution or annulment of the marriage and the date on which proceedings for it were instituted, or of the death of the spouse and the date on which it occurred.

(5) An application under subsection (2) is to be determined by a Gender Recognition Panel.

(6) The Panel-

(a) must grant the application if satisfied that the applicant is not married, and

(b) otherwise must reject it.

(7) If the Panel grants the application it must issue a full gender recognition certificate to the applicant.

## **6 Errors in certificates**

(1) Where a gender recognition certificate has been issued to a person, the person or the Secretary of State may make an application for a corrected certificate on the ground that the certificate which has been issued contains an error.

(2) If the certificate was issued by a court the application is to be determined by the court but in any other case it is to be determined by a Gender Recognition Panel.

(3) The court or Panel-

(a) must grant the application if satisfied that the gender recognition certificate contains an error, and

(b) otherwise must reject it.

(4) If the court or Panel grants the application it must issue a corrected gender recognition certificate to the applicant.

## **7 Applications: supplementary**

(1) An application to a Gender Recognition Panel under section 1(1), 5(2) or 6(1) must be made in a form and manner specified by the Secretary of State after consulting the Scottish Ministers and the Department of Finance and Personnel in Northern Ireland.

(2) The applicant must pay to the Secretary of State a non-refundable fee of an amount prescribed by order made by the Secretary of State unless the application is made in circumstances in which, in accordance with provision made by the order, no fee is payable; and fees of different amounts may be prescribed for different circumstances.

## **8 Appeals etc.**

(1) An applicant to a Gender Recognition Panel under section 1(1), 5(2) or 6(1) may appeal to the High Court or Court of Session on a point of law against a decision by the Panel to reject the application.

(2) An appeal under subsection (1) must be heard in private if the applicant so requests.

(3) On such an appeal the court must-

- (a) allow the appeal and issue the certificate applied for,
- (b) allow the appeal and refer the matter to the same or another Panel for re-consideration, or
- (c) dismiss the appeal.

(4) If an application under section 1(1) is rejected, the applicant may not make another application before the end of the period of six months beginning with the date on which it is rejected.

(5) If an application under section 1(1), 5(2) or 6(1) is granted but the Secretary of State considers that its grant was secured by fraud, the Secretary of State may refer the case to the High Court or Court of Session.

(6) On a reference under subsection (5) the court-

- (a) must either quash or confirm the decision to grant the application, and
- (b) if it quashes it, must revoke the gender recognition certificate issued on the grant of the application and may make any order which it considers appropriate in consequence of, or otherwise in connection with, doing so.

*Consequences of issue of gender recognition certificate etc.*

## **9 General**

(1) Where a full gender recognition certificate is issued to a person, the person's gender becomes for all purposes the acquired gender (so that, if the acquired gender is the male gender, the person's sex becomes that of a man and, if it is the female gender, the person's sex becomes that of a woman).

(2) Subsection (1) does not affect things done, or events occurring, before the certificate is issued; but it does operate for the interpretation of enactments passed, and instruments and other documents made, before the certificate is issued (as well as those passed or made afterwards).

(3) Subsection (1) is subject to provision made by this Act or any other enactment or any subordinate legislation.

## **10 Registration**

(1) Where there is a UK birth register entry in relation to a person to whom a full gender recognition certificate is issued, the Secretary of State must send a copy of the certificate to the appropriate Registrar General.

(2) In this Act "UK birth register entry", in relation to a person to whom a full gender recognition certificate is issued, means-

(a) an entry of which a certified copy is kept by a Registrar General, or

(b) an entry in a register so kept,

containing a record of the person's birth or adoption (or, if there would otherwise be more than one, the most recent).

(3) "The appropriate Registrar General" means whichever of-

(a) the Registrar General for England and Wales,

(b) the Registrar General for Scotland, or

(c) the Registrar General for Northern Ireland,

keeps a certified copy of the person's UK birth register entry or the register containing that entry.

(4) Schedule 3 (provisions about registration) has effect.

## **11 Marriage**

Schedule 4 (amendments of marriage law) has effect.

## **12 Parenthood**

The fact that a person's gender has become the acquired gender under this Act does not affect the status of the person as the father or mother of a child.

## **13 Social security benefits and pensions**

Schedule 5 (entitlement to benefits and pensions) has effect.

## **14 Discrimination**

Schedule 6 (amendments of Sex Discrimination Act 1975 (c. 65) and Sex Discrimination (Northern Ireland) Order 1976 (S.I. 1976/1042 (N.I. 15))) has effect.

## **15 Succession etc.**

The fact that a person's gender has become the acquired gender under this Act does not affect the disposal or devolution of property under a will or other instrument made before the appointed day.

## **16 Peerages etc.**

The fact that a person's gender has become the acquired gender under this Act-

(a) does not affect the descent of any peerage or dignity or title of honour, and

(b) does not affect the devolution of any property limited (expressly or not) by a will or other instrument to devolve (as nearly as the law permits) along with any peerage or dignity or title of honour unless an intention that it should do so is expressed in the will or other instrument.

## **17 Trustees and personal representatives**

(1) A trustee or personal representative is not under a duty, by virtue of the law relating to trusts or the administration of estates, 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 the property).

(2) A trustee or personal representative is not liable to any person by reason of a conveyance or distribution of the property made without regard to whether a full gender recognition certificate has been issued to any person or revoked if the trustee or personal representative has not received notice of the fact before the conveyance or distribution.

(3) This section does not prejudice the right of a person to follow the property, or any property representing it, into the hands of another person who has received it unless that person has purchased it for value in good faith and without notice.

## **18 Orders where expectations defeated**

(1) This section applies where the disposition or devolution of any property under a will or other instrument (made on or after the appointed day) is different from what it would be but for the fact that a person's gender has become the acquired gender under this Act.

(2) A person may apply to the High Court or Court of Session for an order on the ground of being adversely affected by the different disposition or devolution of the property.

(3) The court may, if it is satisfied that it is just to do so, make in relation to any person benefiting from the different disposition or devolution of the property such order as it considers appropriate.

(4) An order may, in particular, make provision for-

(a) the payment of a lump sum to the applicant,

(b) the transfer of property to the applicant,

(c) the settlement of property for the benefit of the applicant,

(d) the acquisition of property and either its transfer to the applicant or its settlement for the benefit of the applicant.

(5) An order may contain consequential or supplementary provisions for giving effect to the order or for ensuring that it operates fairly as between the applicant and the other person or persons affected by it; and an order may, in particular, confer powers on trustees.

## **19 Sport**

(1) A body responsible for regulating the participation of persons as competitors in an event or events involving a gender-affected sport may, if subsection (2) is satisfied, prohibit or restrict the participation as competitors in the event or events of persons whose gender has become the acquired gender under this Act.

(2) This subsection is satisfied if the prohibition or restriction is necessary to secure-

(a) fair competition, or

(b) the safety of competitors,

at the event or events.

(3) "Sport" means a sport, game or other activity of a competitive nature.

(4) A sport is a gender-affected sport if the physical strength, stamina or physique of average persons of one gender would put them at a disadvantage to average persons of the other gender as competitors in events involving the sport.

(5) This section does not affect-

(a) section 44 of the Sex Discrimination Act 1975 (c. 65) (exception from Parts 2 to 4 of that Act for acts related to sport), or

(b) Article 45 of the Sex Discrimination (Northern Ireland) Order 1976 (S.I. 1976/1042 (N.I. 15)) (corresponding provision for Northern Ireland).

## **20 Gender-specific offences**

(1) Where (apart from this subsection) a relevant gender-specific offence could be committed or attempted only if the gender of a person to whom a full gender recognition certificate has been issued were not the acquired gender, the fact that the person's gender has become the acquired gender does not prevent the offence being committed or attempted.

(2) An offence is a "relevant gender-specific offence" if-

(a) either or both of the conditions in subsection (3) are satisfied, and

(b) the commission of the offence involves the accused engaging in sexual activity.

(3) The conditions are-

(a) that the offence may be committed only by a person of a particular gender, and

(b) that the offence may be committed only on, or in relation to, a person of a particular gender,

and the references to a particular gender include a gender identified by reference to the gender of the other person involved.

## **21 Foreign gender change and marriage**

(1) A person's gender is not to be regarded as having changed by reason only that it has changed under the law of a country or territory outside the United Kingdom.

(2) Accordingly, a person is not to be regarded as being married by reason of having entered into a foreign post-recognition marriage.

(3) But if a full gender recognition certificate is issued to a person who has entered into a foreign post-recognition marriage, after the issue of the certificate the marriage is no longer to be regarded as being void on the ground that (at the time when it was entered into) the parties to it were not respectively male and female.

(4) However, subsection (3) does not apply to a foreign post-recognition marriage if a party to it has entered into a later (valid) marriage before the issue of the full gender recognition certificate.

(5) For the purposes of this section a person has entered into a foreign post-recognition marriage if (and only if)-

(a) the person has entered into a marriage in accordance with the law of a country or territory outside the United Kingdom,

(b) before the marriage was entered into the person had changed gender under the law of that or any other country or territory outside the United Kingdom,

(c) the other party to the marriage was not of the gender to which the person had changed under the law of that country or territory, and

(d) by virtue of subsection (1) the person's gender was not regarded as having changed under the law of any part of the United Kingdom.

(6) Nothing in this section prevents the exercise of any enforceable Community right.

### *Supplementary*

## **22 Prohibition on disclosure of information**

(1) It is an offence for a person who has acquired protected information in an official capacity to disclose the information to any other person.

(2) "Protected information" means information which relates to a person who has made an application under section 1(1) and which-

(a) concerns that application or any application by the person under section 5(2) or 6(1), or

(b) if the application under section 1(1) is granted, otherwise concerns the person's gender before it becomes the acquired gender.

(3) A person acquires protected information in an official capacity if the person acquires it-

(a) in connection with the person's functions as a member of the civil service, a constable or the holder of any other public office or in connection with the functions of a local or public authority or of a voluntary organisation,

(b) as an employer, or prospective employer, of the person to whom the information relates or as a person employed by such an employer or prospective employer, or

(c) in the course of, or otherwise in connection with, the conduct of business or the supply of professional services.

(4) But it is not an offence under this section to disclose protected information relating to a person if-

(a) the information does not enable that person to be identified,

(b) that person has agreed to the disclosure of the information,

(c) the information is protected information by virtue of subsection (2)(b) and the person by whom the disclosure is made does not know or believe that a full gender recognition certificate has been issued,

(d) the disclosure is in accordance with an order of a court or tribunal,

(e) the disclosure is for the purpose of instituting, or otherwise for the purposes of, proceedings before a court or tribunal,

(f) the disclosure is for the purpose of preventing or investigating crime,

(g) the disclosure is made to the Registrar General for England and Wales, the Registrar General for Scotland or the Registrar General for Northern Ireland,

(h) the disclosure is made for the purposes of the social security system or a pension scheme,

(i) the disclosure is in accordance with provision made by an order under subsection (5), or

(j) the disclosure is in accordance with any provision of, or made by virtue of, an enactment other than this section.

(5) The Secretary of State may by order make provision prescribing circumstances in which the disclosure of protected information is not to constitute an offence under this section.

(6) The power conferred by subsection (5) is exercisable by the Scottish Ministers (rather than the Secretary of State) where the provision to be made is within the legislative competence of the Scottish Parliament.

(7) An order under subsection (5) may make provision permitting-

(a) disclosure to specified persons or persons of a specified description,

- (b) disclosure for specified purposes,
- (c) disclosure of specified descriptions of information, or
- (d) disclosure by specified persons or persons of a specified description.

(8) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

## **23 Power to modify statutory provisions**

(1) The Secretary of State may by order make provision for modifying the operation of any enactment or subordinate legislation in relation to-

- (a) persons whose gender has become the acquired gender under this Act, or
- (b) any description of such persons.

(2) The power conferred by subsection (1) is exercisable by the Scottish Ministers (rather than the Secretary of State) where the provision to be made is within the legislative competence of the Scottish Parliament.

(3) The appropriate Northern Ireland department may by order make provision for modifying the operation of any enactment or subordinate legislation which deals with a transferred matter in relation to-

- (a) persons whose gender has become the acquired gender under this Act, or
- (b) any description of such persons.

(4) In subsection (3)-

"the appropriate Northern Ireland department", in relation to any enactment or subordinate legislation which deals with a transferred matter, means the Northern Ireland department which has responsibility for that matter,

"deals with" is to be construed in accordance with section 98(2) and (3) of the Northern Ireland Act 1998 (c. 47), and

"transferred matter" has the meaning given by section 4(1) of that Act.

(5) Before an order is made under this section, appropriate consultation must be undertaken with persons likely to be affected by it.

## 24 Orders and regulations

(1) Any power of the Secretary of State, the Chancellor of the Exchequer, the Scottish Ministers or a Northern Ireland department to make an order under this Act includes power to make any appropriate incidental, supplementary, consequential or transitional provision or savings.

(2) Any power of the Secretary of State, the Chancellor of the Exchequer or the Scottish Ministers to make an order under this Act, and any power of the Registrar General for England and Wales or the Registrar General for Scotland to make regulations under this Act, is exercisable by statutory instrument.

(3) No order may be made under section 2 or paragraph 11 of Schedule 3 unless a draft of the statutory instrument containing the order has been laid before, and approved by a resolution of, each House of Parliament.

(4) A statutory instrument containing an order made by the Secretary of State under section 7, 22 or 23 is subject to annulment in pursuance of a resolution of either House of Parliament.

(5) A statutory instrument containing an order made by the Scottish Ministers under section 22 or 23 is subject to annulment in pursuance of a resolution of the Scottish Parliament.

(6) Any power of a Northern Ireland department to make an order or regulations under this Act is exercisable by statutory rule for the purposes of the Statutory Rules (Northern Ireland) Order 1979 (S.I. 1979/1573 (N.I. 12)).

(7) Orders and regulations made by a Northern Ireland department under this Act are subject to negative resolution (within the meaning of section 41(6) of the Interpretation Act (Northern Ireland) 1954 (c. 33 (N.I.))).

## 25 Interpretation

In this Act-

"the acquired gender" is to be construed in accordance with section 1(2),

"approved country or territory" has the meaning given by section 2(4),

"the appointed day" means the day appointed by order under section 26,

"chartered psychologist" means a person for the time being listed in the British Psychological Society's Register of Chartered Psychologists,

"enactment" includes an enactment contained in an Act of the Scottish Parliament or in any Northern Ireland legislation,

"full gender recognition certificate" and "interim gender recognition certificate" mean the certificates issued as such under section 4 or 5 and "gender recognition certificate" means either of those sorts of certificate,

"gender dysphoria" means the disorder variously referred to as gender dysphoria, gender identity disorder and transsexualism,

"Gender Recognition Panel" (and "Panel") is to be construed in accordance with Schedule 1,

"subordinate legislation" means an Order in Council, an order, rules, regulations, a scheme, a warrant, bye-laws or any other instrument made under an enactment, and

"UK birth register entry" has the meaning given by section 10(2).

## **26 Commencement**

Apart from sections 23 to 25, this section and sections 28 and 29, this Act does not come into force until such day as the Secretary of State may appoint by order made after consulting the Scottish Ministers and the Department of Finance and Personnel in Northern Ireland.

## **27 Applications within two years of commencement**

(1) This section applies where applications are made under section 1(1)(a) during the period of two years beginning with the appointed day ("the initial period").

(2) Section 2(1)(a) has effect as if there were inserted at the end "or has undergone surgical treatment for the purpose of modifying sexual characteristics,".

(3) In the case of an application which-

(a) is made during the first six months of the initial period, or

(b) is made during the rest of the initial period and is based on the applicant having undergone surgical treatment for the purpose of modifying sexual characteristics,

section 2(1)(b) has effect as if for "two" there were substituted "six".

(4) Subsections (5) and (6) apply in the case of an application to which subsection (3) applies and in the case of an application-

(a) made during the rest of the initial period,

(b) based on the applicant having or having had gender dysphoria, and

(c) including a statutory declaration by the applicant that the applicant has lived in the acquired gender throughout the period of six years ending with the date on which the application is made.

(5) Section 3 has effect as if for subsections (1) to (3) there were substituted-

"(1) An application under section 1(1)(a) must include either-

(a) a report made by a registered medical practitioner, or

(b) a report made by a chartered psychologist practising in the field of gender dysphoria.

(2) Where the application is based on the applicant having or having had gender dysphoria-

(a) the reference in subsection (1) to a registered medical practitioner is to one practising in the field of gender dysphoria, and

(b) that subsection is not complied with unless the report includes details of the diagnosis of the applicant's gender dysphoria.

(3) Subsection (1) is not complied with in a case where-

(a) the applicant has undergone or is undergoing treatment for the purpose of modifying sexual characteristics, or

(b) treatment for that purpose has been prescribed or planned for the applicant,

unless the report required by that subsection includes details of it."

(6) Paragraph 4(2) of Schedule 1 has effect with the omission of paragraph (b).

## 28 Extent

(1) The following provisions extend only to England and Wales-

- (a) Part 1 of Schedule 2,
- (b) Part 1 of Schedule 3, and
- (c) Part 1 of Schedule 4.

(2) The following provisions extend only to Scotland-

- (a) section 24(5),
- (b) Part 2 of Schedule 2,
- (c) Part 2 of Schedule 3, and
- (d) Part 2 of Schedule 4.

(3) The following provisions extend only to England and Wales and Scotland-

- (a) paragraphs 12, 14 and 16 of Schedule 5, and
- (b) Part 1 of Schedule 6.

(4) The following provisions extend only to Northern Ireland-

- (a) section 23(3) and (4),
- (b) section 24(6) and (7),
- (c) Part 3 of Schedule 2,
- (d) Part 3 of Schedule 3,
- (e) Part 3 of Schedule 4,
- (f) paragraphs 13, 15 and 17 of Schedule 5, and
- (g) Part 2 of Schedule 6.

(5) Subject to subsections (1) to (4), this Act extends to Northern Ireland (as well as to England and Wales and Scotland).

## 29 Short title

This Act may be cited as the Gender Recognition Act 2004.

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