

Gender Recognition Act 2004

1. Background

1.1 The Gender Recognition Act 2004 was given Royal Assent on 1 July 2004, but it did not come into effect until 5 April 2005. The purpose of the Act is to provide transsexual people with legal recognition in their acquired gender. Prior to its implementation, the estimated 5000 transsexual people living in the UK were not recognised in their acquired gender under the law of any part of the UK.

2. Provisions

2.1 The Act enables people who are over 18 and have changed gender, to apply to a Gender Recognition Panel for a gender recognition certificate. Legal recognition of the person's acquired gender will follow from the issue of a full gender recognition certificate. People who have changed their gender under the law of a country or territory outside the UK may also make an application to the Panel for a gender recognition certificate.

2.2 In order to be granted such a certificate the applicant will need to demonstrate to the Panel that:

- they have, or have had, gender dysphoria (that is that they have a deep conviction that their gender identity does not match their appearance and/or anatomy), and
- they have been living for at least the last two years in their acquired gender, and
- they intend to live in the acquired gender until death.

2.3 Recognition is not retrospective, so it does not affect anything done before the certificate is issued.

3. Full gender recognition certificates

3.1 Once a full certificate has been issued the person's legal gender becomes for all purposes the "acquired gender". For example they will have the right to

- Marry in their acquired gender
- Obtain a birth certificate reflecting their acquired gender (where the individual has a UK birth entry)
- Acquire the benefits from the state in their acquired gender on the same basis as all others of that gender

4. Interim gender recognition certificates

4.1 When deciding to seek legal recognition in an acquired gender a person has to take all of the implications of that change into account, including the effect of that on an existing marriage. UK law does not recognise marriage

between two people of the same legal gender, so, in order to obtain a full gender recognition certificate, the existing marriage must be brought to an end.

4.2 If, at the time of application for a certificate, an applicant is married, he or she will only be issued with an interim gender recognition certificate. The issuance of an interim certificate is a ground for ending the marriage. Therefore those holding an interim certificate can apply for their marriage to be annulled, or in Scotland, dissolved on this basis, provided proceedings are begun within six months of the date of issue of the interim certificate. A full gender recognition certificate will be issued once the court has granted a decree absolute of nullity or, in Scotland, divorce.

4.3 If however proceedings to end the marriage are not brought within six months of the issue of the interim certificate, then individuals may, if they so wish, begin the process again by making a fresh application for a gender recognition certificate]

4.4 The sole purpose of an interim certificate is to provide grounds to end a marriage. It has no other legal effect. Only once a person has obtained a full gender recognition certificate do they have the rights set out above.

5. Parenthood

5.1 Though a person is regarded as being of the acquired gender, the person will retain their original status as either the father or mother of a child.

6. Foreign gender change

6.1 Many other countries and territories now make provision in their law for transsexual people to change gender. Ordinarily a person is likely to apply for gender recognition in the country where their birth was registered, as this will usually enable them to obtain a new birth certificate. However a person may also apply for gender recognition in the country where they are currently living and working. Having obtained legal recognition for their change of gender in a country or territory outside the UK, they may then wish to have that gender change recognised in the UK. For example, they may wish to marry someone here, or they may be living and working here.

6.2 The Act does not generally provide for overseas gender changes to be automatically recognised in the UK. However it does allow a person whose change of gender has been recognised overseas to apply for a UK gender recognition certificate on the basis of a simplified procedure, provided the country or territory in question is one which has been approved for this purpose by the Secretary of State. The full list of countries or territories which have been approved can be found on the Gender Recognition Panel website – www.grp.gov.uk

6.3 If the applicant has changed gender in a country not on the 'approved list', he or she will need to apply under the normal rules.

6.4 The need to obtain a UK full gender recognition certificate enables the UK to ensure that the procedures set out in the Act are not undermined by less rigorous procedures which may exist in some other countries. Requiring the person to apply for a UK gender recognition certificate also ensures that the appropriate mechanism for enabling any existing marriage to be brought to an end is applied, rather than becoming a marriage between two people of the same sex. Obtaining a UK full gender recognition certificate also provides a precise point at which the person has legal recognition for their gender change in the UK.

7. Foreign gender change and marriage

7.1 Many approved countries and territories require transsexual people who are married to end their existing marriage before obtaining legal recognition for a change of gender, just as is required in the UK. However some approved countries or territories do not impose such a requirement. So the situation can arise where a person marries a person of the opposite gender, and then subsequently changes their own legal gender under the law of an overseas country or territory but is not required to bring the *pre-existing* marriage to an end. Where such a person then applies for a gender recognition certificate in the UK under the simplified procedure referred to above, the usual requirement to bring the marriage to an end will apply. They will only be issued with an interim gender recognition certificate, and will not be able to obtain a full gender recognition certificate until they have ended their marriage. They will, however, be able to form a civil partnership under the Civil Partnership Act 2004 to obtain continued legal recognition for their relationship.

7.2 If the applicant first obtained overseas recognition of their gender change, and *subsequently* got married overseas in their acquired gender, to a person of the gender opposite to that acquired gender, then this will not immediately be recognised as a marriage under UK law. This is because it was a marriage between two people who, under UK law, were not of opposite sex at the time of the marriage. This is what is termed in section 21 of the Act as a “foreign post-recognition marriage”, and in this situation the marriage has no standing under UK law until the person who has changed gender (in another country or territory) has also gained recognition in the acquired gender in the UK. Accordingly in their application to the Panel, the individual is advised to state that they are *not* married under UK law, and if their application is successful they will be granted a *full* gender recognition certificate and the marriage will subsequently be recognised under UK marriage law. [NB. The marriage will only be recognised in this way if no other valid marriage or civil partnership has been entered into in the interim.]

7.3 EU and EEA countries

7.3.1 The Act recognises the right of free movement which all individuals from EU and EEA countries enjoy. Those free movement rights mean that where a person’s change of gender has been recognised in one of those

countries, an application for a UK gender recognition certificate is not strictly necessary. This means that, if an individual has received legal recognition for their gender change in an EU or EEA country, they will be treated in their acquired gender when visiting or living in the UK, without first having to apply for a UK gender recognition certificate. The validity of any subsequent marriage to a person of the gender opposite to the individual's acquired gender will also be recognised.

7.3.2 However, given the complexity of the law in this area, the guidance for applicants encourages people in this category to consider seeking a UK gender recognition certificate in addition, in order to secure added certainty as to their position (both as regards their gender change and the validity of any subsequent marriage). Also, those living here for any period of time may find it convenient to apply for legal recognition in the UK as employers, public authorities and other bodies might be more familiar with the UK gender recognition certificate.

7.3.3 A very few countries in the EU/EEA do not require existing marriages to be brought to an end before legal recognition can be granted for a change of gender. Applicants who have already obtained legal recognition for their change of gender in these countries may therefore have a previous marriage (to a person of the gender opposite to their birth gender) which has not been brought to an end. Until such time as the legal position is tested in the courts, the validity of such marriages must be considered uncertain under UK law. The applicant may wish to consider dissolving their marriage and instead registering as civil partners under the Civil Partnership Act 2004, in order to ensure that they have a legally recognised relationship under UK law. They may need to take expert legal advice on their particular circumstances. If they do apply for a UK gender recognition certificate, they will not be able to obtain a full gender recognition certificate without first ending the marriage. [Similarly complex issues may arise where another EU/EEA country allows a person to change their legal gender without first terminating an overseas same-sex relationship. If they do apply for a UK gender recognition certificate, they will not be able to obtain a full gender recognition certificate without first ending any existing civil partnership.]

8. Disclosure of information

8.1 Under the Act it is an offence for a person to disclose information he or she has acquired in an official capacity about a person's application for a gender recognition certificate or about the gender history of a successful applicant. This information is called 'protected information'. In the nationality context this information includes details such as the name at birth, previous gender etc.

8.2 There are, however, exceptions to the general rule on disclosure. For example, disclosure will not be an offence where the person concerned has given consent, or where disclosure is necessary to prevent crime. A full list of exceptions can be found at section 22(4) of the Act.

8.3 Given the sensitivities surrounding disclosure in these cases all cases where an applicant has obtained a gender recognition certificate should be referred to NPSCU for consideration. You should ensure that you do not disclose any information that relates to the previous gender of the individual (such as name at birth, previous gender etc)