

SCHEDULES

SCHEDULE 5

Section 12

CHANGE OF GENDER OF MARRIED PERSONS OR CIVIL PARTNERS

PART 1

APPLICATIONS BY MARRIED PERSONS AND CIVIL PARTNERS

Introduction

- 1 The Gender Recognition Act 2004 is amended in accordance with this Part of this Schedule.

Evidence

- 2 Section 3 (evidence): after subsection (6) insert—
- “(6A) If the applicant is married, an application under section 1(1) must include a statutory declaration as to whether the marriage is a marriage under the law of England and Wales, of Scotland, of Northern Ireland, or of a country or territory outside the United Kingdom.
- (6B) If the applicant is married, and the marriage is a protected marriage, an application under section 1(1) must also include—
- (a) a statutory declaration by the applicant’s spouse that the spouse consents to the marriage continuing after the issue of a full gender recognition certificate (“a statutory declaration of consent”) (if the spouse has made such a declaration), or
 - (b) a statutory declaration by the applicant that the applicant’s spouse has not made a statutory declaration of consent (if that is the case).
- (6C) If an application includes a statutory declaration of consent by the applicant’s spouse, the Gender Recognition Panel must give the spouse notice that the application has been made.”.

Successful applications

- 3 Section 4 (successful applications): for subsections (2) and (3) substitute—
- “(2) The certificate is to be a full gender recognition certificate if—
- (a) the applicant is neither a civil partner nor married,
 - (b) the applicant is a party to a protected marriage and the applicant’s spouse consents to the marriage continuing after the issue of a full gender recognition certificate, or

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- (c) the applicant is a party to a protected civil partnership and the Panel has decided to issue a full gender recognition certificate to the other party to the civil partnership.
- (3) The certificate is to be an interim gender recognition certificate if—
- (a) the applicant is a party to a protected marriage and the applicant’s spouse does not consent to the marriage continuing after the issue of a full gender recognition certificate,
 - (b) the applicant is a party to a marriage that is not a protected marriage,
 - (c) the applicant is a party to a protected civil partnership and the other party to the civil partnership has not made an application under section 1(1),
 - (d) the applicant is a party to a protected civil partnership and the Panel has decided not to issue a full gender recognition certificate to the other party to the civil partnership, or
 - (e) the applicant is a party to a civil partnership that is not a protected civil partnership.
- (3A) If a Gender Recognition Panel issues a full gender recognition certificate under this section to an applicant who is a party to a protected marriage, the Panel must give the applicant’s spouse notice of the issue of the certificate.
- (3B) Subsection (2)(c) is subject to section 5B.”.

Issue of full certificate after interim certificate: applicant married

4 After section 4 insert—

“Issue of full certificate after interim certificate: applicant married

4A Married person with interim certificate: issue of full certificate

- (1) A Gender Recognition Panel must issue a full gender recognition certificate to a person in either of the following cases.
- (2) Case A is where, on an application by the person, the Panel is satisfied that—
 - (a) an interim gender recognition certificate has been issued to the person;
 - (b) the person was a party to a protected marriage at the time when the interim gender recognition certificate was issued;
 - (c) the person is a party to a protected marriage; and
 - (d) the person’s spouse now consents to the marriage continuing after the issue of the full gender recognition certificate.
- (3) Case B is where, on an application by the person, the Panel is satisfied that—
 - (a) an interim gender recognition certificate has been issued to the person;
 - (b) the person was a party to a civil partnership at the time when the interim gender recognition certificate was issued;
 - (c) a conversion application has been made within the period of six months beginning with the day on which that certificate was issued;

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- (d) the conversion application has resulted in the civil partnership being converted into a marriage;
 - (e) the person is a party to that marriage; and
 - (f) the person's spouse consents to the marriage continuing after the issue of the full gender recognition certificate.
- (4) If, on an application under subsection (2) or (3), the Panel is not satisfied as mentioned in that subsection, the Panel must reject the application.
- (5) An application under subsection (2) must be made within the period of six months beginning with the day on which the interim gender recognition certificate is issued.
- (6) An application under subsection (3) must be made within the period of six months beginning with the day on which the civil partnership is converted into a marriage.
- (7) An application under subsection (2) or (3) must include a statutory declaration of consent made by the person's spouse.
- (8) An application under subsection (3) must also include—
- (a) evidence of the date on which the conversion application was made, and
 - (b) evidence of the conversion of the civil partnership into a marriage.
- (9) If an application is made under this section, the Gender Recognition Panel must give the applicant's spouse—
- (a) notice of the application; and
 - (b) if the Panel grants the application, notice of the issue of the full gender recognition certificate.
- (10) In this section “conversion application” means an application for the conversion of a civil partnership into a marriage under regulations under section 9 of the Marriage (Same Sex Couples) Act 2013.

4B Application under section 4A: death of spouse

- (1) In a case where an application is made under section 4A(2) or (3) and the applicant's spouse dies before the application is determined—
- (a) the application is to be treated as an application, made under section 5(2) in a case where a spouse has died, for a full gender recognition certificate to be issued; and
 - (b) that application is to be treated as having been made at the time when the application under section 4A was made.
- (2) The Gender Recognition Panel determining the application must specify the period within which the applicant is to produce the required evidence in support of the new application.
- (3) In this section—
- “new application” means the application under section 5(2) which the person is, by virtue of subsection (1), treated as having made;
 - “required evidence” means the evidence required by section 5(4).

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*Issue of full certificate after interim certificate:
 applicant no longer married or civil partner”.*

Applications by both civil partners

5 After section 5A insert—

“Other provision about applications and certificates

5B Applications by both civil partners

- (1) This section applies where the Panel decides to issue a full gender recognition certificate to a party to a protected civil partnership.
- (2) The Panel must not issue the full gender recognition certificate to that person unless the Panel issues a full gender recognition certificate to the other party to the protected civil partnership.
- (3) In such a case, the Panel must issue both certificates on the same day.
- (4) Those certificates take effect at the beginning of the day on which they are issued.”.

Errors in certificates

6 Section 6 (errors in certificates)—

- (a) for the title substitute “**Errors**”;
- (b) for subsection (1) substitute—

“(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) an interim gender recognition certificate, on the ground that a full gender recognition certificate has incorrectly been issued instead of an interim certificate;
- (b) a full gender recognition certificate, on the ground that an interim gender recognition certificate has incorrectly been issued instead of a full certificate; or
- (c) a corrected certificate, on the ground that the certificate which has been issued contains an error.”;
- (c) subsection (3): for paragraph (a) substitute—
 - “(a) must grant the application if satisfied that the ground on which the application is made is correct, and”;
- (d) subsection (4): for “a corrected” substitute “a correct, or a corrected,”.

Applications: supplementary

7 Section 7 (applications: supplementary), subsection (1): after “1(1),” insert “4A,”.

Appeals etc

8 Section 8 (appeals etc)—

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- (a) subsection (1): after “1(1),” insert “4A,”;
- (b) subsection (5): after “1(1),” insert “4A,”;
- (c) after subsection (5) insert—
 - “(5A) If an application under section 1(1), 4A, 5(2), 5A(2) or 6(1) is granted, the applicant’s spouse may apply to the High Court or Court of Session to quash the decision to grant the application on the grounds that its grant was secured by fraud.”;
- (d) subsection (6): after “subsection (5)” insert “or an application under subsection (5A)”.

Registration

- 9 (1) Section 10 (registration): after subsection (1) insert—

“(1A) Where a full gender recognition certificate is issued to a person who is a party to—

- (a) a marriage under the law of England and Wales, or
- (b) a civil partnership under that law,

the Secretary of State must send a copy of the certificate to the Registrar General for England and Wales.”.

- (2) Schedule 3 (registration), Part 1 (England and Wales): at end insert—

“Registration of marriages and civil partnerships

- 11A (1) The Registrar General may make regulations about—
- (a) the registration of qualifying marriages, and
 - (b) the registration of qualifying civil partnerships.
- (2) The regulations may, in particular, provide for the maintenance of—
- (a) a separate register in relation to qualifying marriages, and
 - (b) a separate register in relation to qualifying civil partnerships.
- (3) In this paragraph—
- “qualifying civil partnership” means a civil partnership under the law of England and Wales in a case where a full gender recognition certificate has been issued to each of the civil partners;
 - “qualifying marriage” means a marriage under the law of England and Wales in a case where a full gender recognition certificate has been issued to one, or each, of the spouses.”.

Change in gender of party to marriage

- 10 After section 11 insert—

“11A Change in gender of party to marriage

- (1) This section applies in relation to a protected marriage if (by virtue of section 4(2)(b) or 4A) a full gender recognition certificate is issued to a party to the marriage.

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- (2) The continuity of the protected marriage is not affected by the relevant change in gender.
- (3) If the protected marriage is a foreign marriage—
 - (a) the continuity of the marriage continues by virtue of subsection (2) notwithstanding any impediment under the proper law of the marriage;
 - (b) the proper law of the marriage is not affected by its continuation by virtue of subsection (2).
- (4) In this section—
 - “foreign marriage” means a marriage under the law of a country or territory outside the United Kingdom;
 - “impediment” means anything which affects the continuation of a marriage merely by virtue of the relevant change in gender;
 - “proper law”, in relation to a protected marriage, means the law of the country or territory under which the marriage was entered into;
 - “relevant change in gender” means the change or changes of gender occurring by virtue of the issue of the full gender recognition certificate or certificates.”.

Change in gender of civil partners

11 After section 11A (inserted by paragraph 10) insert—

“11B Change in gender of civil partners

The continuity of a civil partnership is not affected by the issuing of full gender recognition certificates (by virtue of section 4(2)(c)) to both civil partners.”.

Foreign gender change and marriage

12 Section 21 (foreign gender change and marriage)—

(a) after subsection (1) insert—

“(1A) Subsections (2) to (5) apply only in Scotland and Northern Ireland.”;

(b) subsection (2): for “Accordingly,” substitute “In accordance with subsection (1),”.

Prohibition on disclosure of information

13 Section 22 (prohibition on disclosure of information), subsection (2)(a): after “section” insert “4A,”.

Interpretation

14 Section 25 (interpretation)—

(a) after the definition of “Gender Recognition Panel” insert—

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- ““protected civil partnership” means a civil partnership under the law of England and Wales;
- “protected marriage” means—
- (a) a marriage under the law of England and Wales, or
 - (b) a marriage under the law of a country or territory outside the United Kingdom.”;
- (b) after the definition of “registered psychologist” insert—
- ““statutory declaration of consent” has the meaning given by section 3(6B)(a).”.

PART 2

ALTERNATIVE GROUNDS FOR GRANTING APPLICATIONS FOR GENDER RECOGNITION CERTIFICATES

Introduction

- 15 The Gender Recognition Act 2004 is amended in accordance with this Part of this Schedule.

Alternative grounds for granting applications

- 16 Section 2 (determination of applications): after subsection (3) insert—
- “(3A) This section does not apply to an application under section 1(1)(a) which states that it is an application for a certificate to be granted in accordance with section 3A.”
- 17 After section 3 insert—

“3A Alternative grounds for granting applications

- (1) This section applies to an application under section 1(1)(a) which states that it is an application for a certificate to be granted in accordance with this section.
- (2) The Panel must grant the application if satisfied that the applicant complies with the requirements imposed by and under section 3B and meets the conditions in subsections (3) to (6).
- (3) The first condition is that the applicant was a party to a protected marriage or a protected civil partnership on or before the date the application was made.
- (4) The second condition is that the applicant—
 - (a) was living in the acquired gender six years before the commencement of section 12 of the Marriage (Same Sex Couples) Act 2013,
 - (b) continued to live in the acquired gender until the date the application was made, and
 - (c) intends to continue to live in the acquired gender until death.
- (5) The third condition is that the applicant—

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- (a) has or has had gender dysphoria, or
 - (b) has undergone surgical treatment for the purpose of modifying sexual characteristics.
- (6) The fourth condition is that the applicant is ordinarily resident in England, Wales or Scotland.
- (7) The Panel must reject the application if not required by subsection (2) to grant it.”

Evidence for granting applications on alternative grounds

18 Section 3 (evidence): after subsection (8) insert—

“(9) This section does not apply to an application under section 1(1)(a) which states that it is an application for a certificate to be granted in accordance with section 3A.”

19 After section 3A (inserted by paragraph 17) insert—

“3B Evidence for granting applications on alternative grounds

- (1) This section applies to an application under section 1(1)(a) which states that it is an application for a certificate to be granted in accordance with section 3A.
- (2) The application must include either—
 - (a) a report made by a registered medical practitioner, or
 - (b) a report made by a registered psychologist practising in the field of gender dysphoria.
- (3) If the application is based on the applicant having or having had gender dysphoria—
 - (a) the reference in subsection (2) 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.
- (4) Subsection (2) 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.
- (5) The application must also include a statutory declaration by the applicant that the applicant meets the conditions in section 3A(3) and (4).
- (6) The application must include—
 - (a) a statutory declaration as to whether or not the applicant is married or a civil partner,
 - (b) any other information or evidence required by an order made by the Secretary of State, and

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- (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) If the applicant is married, the application must include a statutory declaration as to whether the marriage is a marriage under the law of England and Wales, of Scotland, of Northern Ireland, or of a country or territory outside the United Kingdom.
- (8) If the applicant is married, and the marriage is a protected marriage, the application must also include—
- (a) a statutory declaration of consent by the applicant’s spouse (if the spouse has made such a declaration), or
 - (b) a statutory declaration by the applicant that the applicant’s spouse has not made a statutory declaration of consent (if that is the case).
- (9) If the application includes a statutory declaration of consent by the applicant’s spouse, the Panel must give the spouse notice that the application has been made.
- (10) If the Panel which is to determine the application requires information or evidence under subsection (6)(c) it must give reasons for doing so.”.

Membership of Panels determining applications on alternative grounds

20 Schedule 1 (Gender Recognition Panels), paragraph 4: after sub-paragraph (2) insert—

“(3) But a Panel need not include a medical member when determining an application under section 1(1)(a) for a certificate to be granted in accordance with section 3A.”.