



# Gender Recognition Act 2004

## 2004 CHAPTER 7

### *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,

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- (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

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“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,

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“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.

### Subordinate Legislation Made

P1 S. 26 power fully exercised: 4.5.2005 appointed by {S.I. 2005/54}, art. 2

## 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

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- (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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