



# 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 [F14A,][F24C, 4F,] 5(2) [F3, 5A(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.
- [<sup>F4</sup>(6A) The power conferred by subsection (5) is exercisable by the Department of Justice in Northern Ireland (rather than the Secretary of State) where the provision to be made could be made by an Act of the Northern Ireland Assembly without the consent of the Secretary of State (see sections 6 to 8 of the Northern Ireland Act 1998).]
- (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.

#### Textual Amendments

- F1** Word in s. 22(2)(a) inserted (10.12.2014) by [Marriage \(Same Sex Couples\) Act 2013 \(c. 30\), s. 21\(3\), Sch. 5 para. 13](#); S.I. 2014/3169, art. 2
- F2** Words in s. 22(2)(a) inserted (S.) (16.12.2014) by [Marriage and Civil Partnership \(Scotland\) Act 2014 \(asp 5\), s. 36, Sch. 2 para. 19\(2\)](#); S.S.I. 2014/287, art. 3, Sch.
- F3** Words in s. 22(2)(a) inserted (5.12.2005) by [Civil Partnership Act 2004 \(c. 33\), ss. 250\(5\)\(c\), 263](#); S.I. 2005/3175, art. 3, Sch. 2
- F4** S. 22(6A) inserted (12.4.2010) by [The Northern Ireland Act 1998 \(Devolution of Policing and Justice Functions\) Order 2010 \(S.I. 2010/976\), art. 1\(2\), Sch. 14 para. 83\(2\)](#) (with arts. 28-31)

## 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.

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- (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, <sup>F5</sup>..., 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, <sup>F5</sup>... 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 <sup>F6</sup>... 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 [<sup>F7</sup>3D(6)(b),] 22 or 23 is subject to annulment in pursuance of a resolution of the Scottish Parliament.
- [<sup>F8</sup>(5A) Regulations made by the Registrar General for Scotland under paragraph 20A of Schedule 3 are subject to the negative procedure.
- (5B) An order under section 3C(5)(b)(ii) or 5D(1) is subject to the affirmative procedure.]
- (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)).

*Status: Point in time view as at 16/12/2014.*

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- (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.))).

#### Textual Amendments

- F5** Words in s. 24(1)(2) repealed (8.1.2007) by [Legislative and Regulatory Reform Act 2006 \(c. 51\)](#), ss. 30, 33, [Sch.](#) (with s. 30(2)-(5))
- F6** Words in s. 24(3) repealed (8.1.2007) by [Legislative and Regulatory Reform Act 2006 \(c. 51\)](#), ss. 30, 33, [Sch.](#) (with s. 30(2)-(5))
- F7** Word in s. 24(5) inserted (S.) (16.12.2014) by [Marriage and Civil Partnership \(Scotland\) Act 2014 \(asp 5\)](#), s. 36, [Sch. 2 para. 19\(3\)\(a\)](#); S.S.I. 2014/287, art. 3, [Sch.](#)
- F8** S. 24(5A)(5B) inserted (S.) (16.12.2014) by [Marriage and Civil Partnership \(Scotland\) Act 2014 \(asp 5\)](#), s. 36, [Sch. 2 para. 19\(3\)\(b\)](#); S.S.I. 2014/287, art. 3, [Sch.](#)

## 25 Interpretation

[<sup>F9</sup>(1)] 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,  
<sup>F10</sup>  
 .....

“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 [<sup>F11</sup>, [<sup>F12</sup>5 or 5A [<sup>F12</sup>4C, 4E, 4F, 5, 5A or 5D]]] 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,

[<sup>F13</sup>“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,]

[<sup>F14</sup>“protected Scottish civil partnership” means a civil partnership registered in Scotland,

“protected Scottish marriage” means a marriage solemnised in Scotland, ]

[<sup>F15</sup> “registered psychologist” means a person registered in the part of the register maintained under [<sup>F16</sup>the Health and Social Work Professions Order 2001] which relates to practitioner psychologists; ]

[<sup>F17</sup> “statutory declaration of consent” has the meaning given by section 3(6B)(a), ]

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“ 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).

[<sup>F18</sup>(2) A civil partnership which was registered outside the United Kingdom under an Order in Council made under Chapter 1 of Part 5 of the Civil Partnership Act 2004 is to be treated for the purposes of this Act as having been registered in Scotland if—

- (a) the parties to the civil partnership elected Scotland as the relevant part of the United Kingdom under the Order, and
- (b) details of the civil partnership have been sent to the Registrar General for Scotland.

(3) A marriage which was registered outside the United Kingdom under the Foreign Marriage Act 1892 (other than a marriage registered by virtue of section 18 of that Act) is to be treated for the purposes of this Act as having been solemnised in Scotland if details of the marriage have been sent to the Registrar General for Scotland.

(4) A marriage which was solemnised outside the United Kingdom and registered under an Order in Council made under the Registration of Births, Deaths and Marriages (Special Provisions) Act 1957 is to be treated for the purposes of this Act as having been solemnised in Scotland if details of the marriage have been sent to the Registrar General for Scotland.

(5) A consular marriage in relation to which the relevant part of the United Kingdom is Scotland is to be treated for the purposes of this Act as having been solemnised in Scotland.

(6) In subsection (5)—

“ consular marriage ” means a marriage solemnised in accordance with Part 1 of Schedule 6 to the Marriage (Same Sex Couples) Act 2013 and any Order in Council made under it,

“ relevant part of the United Kingdom ”, in relation to such a marriage, means the part of the United Kingdom determined in accordance with paragraph 1(2)(b) of that Part of that Schedule for the purposes of the marriage. ]

#### Textual Amendments

- F9** S. 25 renumbered as s. 25(1) (S.) (16.12.2014) by [Marriage and Civil Partnership \(Scotland\) Act 2014 \(asp 5\)](#), s. 36, Sch. 2 para. 2(a); [S.S.I. 2014/287](#), art. 3, Sch.
- F10** S. 25: definition of "chartered psychologist" omitted (1.7.2009) by virtue of [The Health Care and Associated Professions \(Miscellaneous Amendments and Practitioner Psychologists\) Order 2009 \(S.I. 2009/1182\)](#), art. 4(2), [Sch. 5 para. 8\(b\)](#) (with arts. 9, 10); [S.I. 2009/1357](#), [art. 2\(d\)](#)
- F11** Words in s. 25 substituted (5.12.2005) by [Civil Partnership Act 2004 \(c. 33\)](#), [ss. 250\(7\)](#), 263; [S.I. 2005/3175](#), art. 3, [Sch. 2](#)
- F12** Words in s. 25(1) substituted (S.) (16.12.2014) by [Marriage and Civil Partnership \(Scotland\) Act 2014 \(asp 5\)](#), s. 36, [Sch. 2 para. 2\(b\)](#); [S.S.I. 2014/287](#), art. 3, [Sch.](#)
- F13** S. 25: definitions of "protected civil partnership" and "protected marriage" inserted (10.12.2014) by [Marriage \(Same Sex Couples\) Act 2013 \(c. 30\)](#), s. 21(3), [Sch. 5 para. 14\(a\)](#); [S.I. 2014/3169](#), [art. 2](#)
- F14** Words in s. 25(1) inserted (S.) (16.12.2014) by [Marriage and Civil Partnership \(Scotland\) Act 2014 \(asp 5\)](#), s. 36, [Sch. 2 para. 2\(c\)](#); [S.S.I. 2014/287](#), art. 3, [Sch.](#); and inserted (E.W.N.I.) (27.1.2022) by

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The Civil Partnership (Scotland) Act 2020 and Marriage and Civil Partnership (Scotland) Act 2014 (Consequential Modifications) Order 2022 (S.I. 2022/74), art. 1, **Sch. 1 para. 1(5)**

- F15** S. 25: definition of "registered psychologist" inserted (1.7.2009) by The Health Care and Associated Professions (Miscellaneous Amendments and Practitioner Psychologists) Order 2009 (S.I. 2009/1182), art. 4(2), **Sch. 5 para. 8(b)** (with arts. 9, 10 ); S.I. 2009/1357, **art. 2(d)**
- F16** Words in s. 25 substituted (1.8.2012) by Health and Social Care Act 2012 (c. 7) , **ss. 213(8)(d)** , 306(4) (with s. 230(6) ); S.I. 2012/1319 , **art. 2(4)**
- F17** S. 25: definition of "statutory declaration of consent" inserted (10.12.2014) by Marriage (Same Sex Couples) Act 2013 (c. 30), s. 21(3), **Sch. 5 para. 14(b)**; S.I. 2014/3169 , **art. 2**
- F18** S. 25(2)-(6) inserted (S.) (16.12.2014) by Marriage and Civil Partnership (Scotland) Act 2014 (asp 5), s. 36, **Sch. 2 para. 2(d)**; S.S.I. 2014/287, **art. 3, Sch.**

## 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

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- (b) a report made by a [<sup>F19</sup>registered 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).

#### Textual Amendments

**F19** Words in s. 27(5) substituted (1.7.2009) by [The Health Care and Associated Professions \(Miscellaneous Amendments and Practitioner Psychologists\) Order 2009 \(S.I. 2009/1182\)](#), art. 4(2), [Sch. 5 para. 8\(c\)](#) (with arts. 9, 10); S.I. 2009/1357, [art. 2\(d\)](#)

## 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.

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*Status: Point in time view as at 16/12/2014.*

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- (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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