



National Assembly for **Wales**
Cynulliad Cenedlaethol **Cymru**

Gender Recognition Act 2004

Abstract

This paper provides background briefing on the Gender Recognition Act 2004, the process of applying for a Gender Recognition Certificate and highlights some of the areas where the issue of a certificate will have a potential impact.

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Gender Recognition Act 2004

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Executive Summary

Previously, transsexual people were not recognised in their acquired gender under the law. Following two judgements in the European Court of Human Rights, the UK Government was obliged to arrange for the law to be amended, to give transsexual people legal recognition in their acquired gender, including inter alia, the right to marry.

Under the provisions of the *Gender Recognition Act 2004* transsexual people who can demonstrate that they have taken decisive steps to live fully and permanently in their acquired gender, acquire the rights and entitlements appropriate to that gender.

The Act establishes the Gender Recognition Panel to which transsexual people who would like to register under their acquired gender would have to apply. If they meet the requirements, they would be issued with what is effectively a new birth certificate. Married transsexual people would have to dissolve their marriage before a new birth certificate is issued, as marriage is only legally valid if contracted between two people of the opposite sex.

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Gender Recognition Act 2004

1 Background

The purpose of the *Gender Recognition Act* is to provide transsexual people with legal recognition in their acquired gender. Legal recognition will follow from the issue of a full gender recognition certificate by a Gender Recognition Panel who, before issuing a certificate, must be satisfied that the applicant satisfies the relevant criteria.

In practical terms, legal recognition will have the effect that, for example, a male-to-female transsexual person will be legally recognised as a woman.

Under the previous law, transsexual people were not recognised in their acquired gender. Although transsexual people could obtain some official documents in their new name and gender, they could not obtain new birth certificates or enjoy any rights confined by law to people of the gender to which they feel they belong. For instance, they could not marry in their acquired gender.

Over the last few years there have been a number of important cases in which the previous legal treatment of transsexual people has been held to be contrary to the European Convention of Human Rights.

On 11th July 2002, the European Court of Human Rights delivered its judgement in the case of *Goodwin v The United Kingdom and I v The United Kingdom*¹. The Court found that the UK had breached the European Convention rights of these two transsexual people, under Article 8 (the right to respect for private life) and Article 12 (the right to marry). The UK Government has a positive obligation under international law to secure the Convention rights and freedoms and must rectify these ongoing breaches.

On 10th April 2003, the House of Lords gave judgement in the case of *Bellinger v Bellinger*². Mrs Bellinger, a male-to-female transsexual person, was seeking legal recognition of her 1981 marriage to a man. Their Lordships were sympathetic to Mrs Bellinger's plight but ruled that the marriage was void. They declared that section 11(c) of the *Matrimonial Causes Act 1973* was incompatible with the *Human Rights Act 1998*. The result of this was that legislation was needed to enable transsexual people to marry in their new gender.

2 The Act

In the Act:

- ◆ Sections 1 to 8, and Schedules 1 and 2, establish a process for the issue of a gender recognition certificate, that is, for gaining recognition in the acquired gender. They create the Gender Recognition Panel and set out the requirements for making an application and the criteria by which the Panel will decide applications;

¹ (2002) 35 EHRR 18

² [2003] 2 All ER 593



- ◆ Sections 9 to 21, and Schedules 3 to 6, set out the consequences of the issue of a certificate. The general principle is that the transsexual person will for all purposes be regarded as being of the acquired gender. These sections go on to describe particular consequences in terms of the issue of a new birth certificate, marriage, parenthood, benefits and pensions, discrimination, inheritance, sport, gender-specific offences and foreign gender change; and
- ◆ Sections 22 to 29 contain supplementary provisions. For example, they include a prohibition on disclosure of information relating to a person's application for a certificate or the gender history of a successful applicant. They also limit applications, for the first six months after the Act comes into force, to those transsexual people who have been living in the acquired gender for at least six years. As these applicants will have been living in the acquired gender for so long, the criteria to be applied are also slightly different.

The Act contains various requirements on the Secretary of State to consult the Scottish Ministers and the Department of Finance and Personnel in Northern Ireland but not the National Assembly for Wales.

The *Gender Recognition Act 2004* received Royal Assent on 1 July 2004. The Act can be seen in full at:

<http://www.opsi.gov.uk/acts/acts2004/20040007.htm>

The Explanatory Notes to the Act can be seen at:

<http://www.opsi.gov.uk/acts/en2004/2004en07.htm>

3 The Gender Recognition Panel

The Gender Recognition Panel assesses applications from transsexual people for legal recognition of the gender in which they now live. The Gender Recognition Panel will not normally require a hearing to determine a case. Instead, almost all applications will be decided on the written application. If a person is successful in their application to the Panel they will be issued with a full Gender Recognition Certificate and that person's gender will become for all purposes their acquired gender.

3.1 Applications

An applicant's personal circumstances will determine what type of application they should submit and what evidence they will be required to provide. There are three ways of applying for gender recognition. These are:

3.1.1 Fast-track applications

The fast track application process requires applicants to demonstrate that they:

- ◆ have, or have had, gender dysphoria³ or have undergone surgery for the purpose of modifying sexual characteristics:

³ The NHS Direct website provides the following definition of gender dysphoria: "A person with gender dysphoria experiences anxiety, uncertainty or persistently uncomfortable feelings about their birth gender. They feel that they have a gender identity that is different from their anatomical sex."

- ◆ have lived fully for the last six years in their acquired gender:
- ◆ intend to live permanently in their acquired gender.

Less medical evidence is required for fast track applications than for applications made using the standard process.

The Gender Recognition Panel will only be able to accept applications under the fast track process from 4 April 2005 until 3 April 2007.

3.1.2 Overseas applications

The overseas application process requires applicants to demonstrate that they have been recognised in their acquired gender in a country or territory that is on the Panel's approved list.

If their acquired gender has been recognised in another country and that country is on the approved list they can apply using the overseas recognition process. If not, they will need to apply using the fast track or standard application process.

3.1.3 Standard applications

The standard application process requires applicants to demonstrate that they:

- ◆ have, or have had, gender dysphoria;
- ◆ have lived fully for the last two years in their acquired gender:
- ◆ intend to live permanently in their acquired gender

The application forms and guidance for the standard application process will be available from July 2005. The Panel will begin assessing these applications in October 2005.

3.2 Evidence

An application for a Gender Recognition Certificate must include evidence. In the case of applications under either the fast-track 'six-year' rule or the standard-track 'two-year rule', this will include medical evidence and evidence of transition date, as well as a statutory declaration. Overseas applications do not require either medical evidence or evidence of the date of transition, but do require a statutory declaration.

3.2.1 Proof of transition⁴

Proof of transition date may take many forms. It may be a passport that was issued in their new gender, a driving licence, a P60 from their employer, a benefits agency payment book, telephone bills, an examination certificate, or a letter from the inland revenue that states when they started paying their tax and national insurance payments in their new identity.

⁴ The transition date is the date on which a trans person began to live permanently in their new gender.

3.2.2 *Medical evidence*

The requirement for medical evidence (if any) depends on the type of application being made.

Overseas applications

Applicants making an 'overseas application' (i.e. those who apply on the basis of having received gender recognition in an approved country or territory overseas) do not have to produce any medical evidence.

Standard track applications

Those applying under the 'standard-track' 'two-year' rule must supply two medical reports:

- ◆ One from a doctor or psychologist who is a specialist in the field of gender dysphoria, including "details of the diagnosis of the applicant's gender dysphoria"; and
- ◆ One from another doctor, who need not be a specialist .

If the applicant has undergone or is undergoing treatment for the purpose of modifying sexual characteristics, or treatment for that purpose has been prescribed or planned for the applicant, at least one of the reports required must include details of the treatment. Applicants do not have to have had surgery to apply under the standard track.

Fast-track applications

Fast-track applicants have a choice of what medical evidence they supply:

- ◆ If they have undergone "surgical treatment for the purpose of modifying sexual characteristics", they need submit only one medical report, which must give details of the surgery. That report does not have to be from a specialist.
- ◆ If they have not had surgery, they must submit the same medical evidence as would be required for a standard-track application, i.e. two medical reports, one of which must be from a specialist who gives details of a diagnosis of gender dysphoria.

Applicants do not have to have had surgery to apply under the fast track, provided that they have a specialist medical report.

4 Gender Recognition Certificate

There are many implications of receiving official recognition in a transsexual person's new gender. Some of these are highlighted below.

4.1.1 *Birth Certificate*

Prior to legal recognition, a transsexual person's Birth Certificate states the original gender.

If an applicant is successful, and their birth was registered by the UK, the Gender Recognition Panel will notify the Registrar General of the issue of a full Gender Recognition Certificate. The Registrar General will then contact the successful applicant and offer them options for the type of Birth Certificate available in their acquired gender.

4.1.2 *Marriage*

To receive a full Gender Recognition Certificate, a transsexual person must be unmarried and not in a civil partnership. This is because under the *Matrimonial Clauses Act 1973* a marriage is only valid if it is contracted by two people of the opposite sex in law. A civil partnership may only be registered between people of the same sex.

The marriages of those transsexual people who are legally married to people of the opposite gender to their birth gender (although after the transsexual person transitions, the couple may present as being of the same gender) are valid because until the transsexual party receives legal recognition in the acquired gender, he or she remains in law of their birth gender.

A holder of a full Gender Recognition Certificate has the same rights as other people of his or her acquired gender. This means that he or she may marry someone of the opposite gender or register a civil partnership with a person of the same gender. For example, a male-to-female transsexual person may marry a man once she receives legal recognition of her acquired gender or register a civil partnership with a woman.

If an applicant satisfies all the criteria for legal recognition but remains married, he or she will receive an Interim Gender Recognition Certificate. This certificate is valid for a period of six months from the date on which it is issued and may be used as evidence if either member of the couple chooses to end their marriage.

Guidance for Married People or those in Civil Partnerships is available from the Gender Recognition Panel website at:

http://www.grp.gov.uk/forms/guide_married_civil_partner_05.pdf

4.1.3 *Children*

If a transsexual person has children, legal recognition in their acquired gender will not effect their status as the father or mother of their children. Their rights and responsibilities as a parent will not be effected and the birth certificate of the child will not be altered.

4.1.4 *Pensions and retirement*

At present, women are entitled to retire and receive state pension aged 60. Men must reach age 65. A holder of a full Gender Recognition Certificate has all the same rights as other people of their acquired gender. As a result, transsexual persons will be able to retire at the age appropriate to their gender.

4.1.5 *Social Security Benefits*

The potential impacts of a legal change to gender on Social Security benefits are outlined in a Gender Recognition Panel paper *Guidance on Benefits and Pensions* at: http://www.grp.gov.uk/forms/guide_married_civil_partner_05.pdf

4.1.6 *Inheritance*

Some wills specify the gender of the beneficiary; i.e. a will might say, "my house should go to my eldest son". If a transsexual person would have inherited something except for the fact that they have become legally recognised in their acquired gender, they may be able to apply to the courts to have the will interpreted in light of the Gender Recognition Act.

4.1.7 Privacy

The Gender Recognition Act safeguards the privacy of transsexual people by defining much information in relation to the Gender Recognition Process as 'protected information'. Anyone who acquires that information 'in an official capacity' would be breaking the law if they disclosed it without the consent of the person to whom it refers. However, the Act does contain a series of exemptions that allow information to be disclosed for valid public policy reasons without consent, for example, for preventing or investigating crime.

People who might gain protected information 'in an official capacity' include anyone to whom a Gender Recognition Certificate is shown to obtain the rights that are associated with it. In addition, all the people who handle the applications for gender recognition are bound by law to respect the privacy of applicants and no information will be disclosed to third parties unless it is permitted in the Act.

4.1.8 Discrimination

It is already unlawful discrimination for an employer to treat a job applicant or an employee less favourably because that employee intends to undergo, is undergoing, or has undergone gender reassignment except in exceptional circumstances.

Once a person has become the acquired gender these circumstances no longer apply and an employer must treat a transsexual woman with a Gender Recognition Certificate no less favourably than other female employees.

4.1.9 Sport

The Act enables the governing bodies of UK sport to continue to make decisions about whether individual transsexual people may participate in sports competitions. Sporting bodies would be able to prohibit or restrict the participation as competitors of persons with an acquired gender, in order only to secure fair competition or the safety of competitors.

4.1.10 Payment

Applicants for a Gender Recognition Certificate may have to pay a one-off fee. Some may pay a reduced fee because of their financial circumstances, others will pay no fee at all.

The cost of applying for a Gender Recognition Certificate will depend on an applicant's personal relevant income:

Applicant's relevant income (per annum)	Fee payable
Greater than £22,575	£140
Between £15,050 & £22,575	£30
Less than £15,050	Nil

A person's 'relevant income' includes their employment income, profit from a trade, profession or vocation, and any chargeable gains for the tax year immediately preceding the year in which the application is made. The tax year ends on 5th April, and the date of their application will be the date that they sign and date section 10 of the application form.

However, no fee is payable:



- ◆ in relation to an application for a Full Gender Recognition Certificate from an applicant who had received an Interim Gender Recognition Certificate;
- ◆ by an applicant whose relevant income is less than £15,050 per annum;
- ◆ in relation to an application for a correction to a Gender Recognition Certificate; or
- ◆ by an applicant who, at the time when a fee would otherwise become payable, is in receipt of any qualifying benefit.

Information on fees payable is available in Gender Recognition Panel guidance at:

http://www.grp.gov.uk/forms/new_application_fees_050405.pdf

5 Passage through Parliament

Stage	House	Date
Introduction	House of Lords	27 November 2003
Second Reading		18 December 2003
Committee		13 and 14 January 2004
Report		29 January 2004 and 3 February 2004
Third Reading		10 February 2004
Introduction	House of Commons	11 February 2004
Second Reading		23 February 2004
Committee		9, 11 and 16 March 2004
Report and Third Reading		25 May 2004
Re-introduction	House of Lords	26 May 2004
Consideration of Commons Amendments		8 June 2004
Royal Assent		1 July 2004

6 Further information

Further information and advice is available from the following sources. The list is not exhaustive.

Department for Constitutional Affairs

Information on the *Gender Recognition Act* and its passage through Parliament is available from the DCA at: <http://www.dca.gov.uk/index.htm>

Press for Change

Press for Change is a political lobbying and educational organisation, which campaigns to achieve equal civil rights and liberties for all transsexual and transgendered people in the United Kingdom, through legislation and social change. Their website provides information on trans issues, including the *Gender Recognition Act*.

<http://www.pfc.org.uk>

GRA-info

The GRA-info website, managed by Press for Change, has been created to help people applying for gender recognition through the processes laid down in the *Gender Recognition Act 2004*. <http://www.gra-info.org.uk/>

Gender Recognition Panel

Information, guidance and application forms are available from the Gender Recognition Panel website at: <http://www.grp.gov.uk>

The FTM Network

The FTM network is an informal and Ad hoc self-help group, open to all female to male transgender and transsexual people, or those exploring this aspect of their gender.

<http://www.ftm.org.uk/>

The Gender Trust

The Gender Trust is a registered charity in the United Kingdom which specifically helps adults who are Transsexual, Gender Dysphoric or Transgender.

<http://www.gendertrust.org.uk/index1.htm>

Inner Enigma

Inner Enigma is a registered charity supporting intersexed and transsexual people, primarily in the Manchester area of the UK. <http://www.innerenigma.org.uk/>

The Beaumont Society

The Beaumont Society is a transgendered support group and an advocate for transgender, transvestism and gender dysphoria rights.

<http://www.beaumontsociety.org.uk/>