

SCHEDULE 2

(introduced by section 29)

CHANGE OF GENDER OF MARRIED PERSONS OR CIVIL PARTNERS

PART 1

APPLICATIONS BY MARRIED PERSONS AND CIVIL PARTNERS

Introductory

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

Interpretation

- 2 In section 25 (interpretation)—
 - (a) the existing words become subsection (1),
 - (b) in the definitions of “full gender recognition certificate” and “interim gender recognition certificate”, for “5 or 5A” substitute “4C, 4E, 4F, 5, 5A or 5D”,
 - (c) before the definition of “registered psychologist” insert—

““protected Scottish civil partnership” means a civil partnership registered in Scotland,
“protected Scottish marriage” means a marriage solemnised in Scotland,” and
 - (d) after subsection (1) insert—
 - “(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.

Status: This is the original version (as it was originally enacted).

(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.”.

Evidence

3 In section 3 (evidence), before subsection (7) insert—

“(6D) If the applicant is a party to a protected Scottish marriage, an application under section 1(1) must also include—

(a) a statutory declaration by the applicant that the applicant wishes the marriage to continue after the issue of a full gender recognition certificate (if that is the case), and

(b) either—

(i) 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

(ii) a statutory declaration by the applicant that no such declaration by the applicant’s spouse is included.

(6E) If an application includes a statutory declaration of consent by the applicant’s spouse under subsection (6D)(b)(i), the Gender Recognition Panel must give the spouse notice that the application has been made.

(6F) If the applicant is a party to a protected Scottish civil partnership, an application under section 1(1) must also include a statutory declaration as to where the civil partnership was registered and, if the civil partnership was registered outside the United Kingdom, that details of the civil partnership have been sent to the Registrar General for Scotland.”.

Successful applications

4 In section 4 (successful applications)—

(a) after subsection (1) insert—

“(1A) The certificate is to be a full gender recognition certificate if the applicant is neither married nor in a civil partnership.”,

(b) in subsection (2) (substituted by paragraph 3 of schedule 5 to the Marriage (Same Sex Couples) Act 2013)—

(i) after first “is” insert “also”,

(ii) paragraph (a) is repealed,

(c) in subsection (3) (as so substituted)—

(i) in paragraph (b), at the beginning insert “subject to subsection (3C) (a),” and

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- (ii) in paragraph (e), at the beginning insert “subject to subsection (3C)(b),” and
- (d) after subsection (3B) (as so substituted) insert—
 - “(3C) The certificate is also to be a full gender recognition certificate if—
 - (a) the applicant is a party to a protected Scottish marriage and both parties to the marriage consent to the marriage continuing after the issue of a full gender recognition certificate, or
 - (b) the applicant is a party to a protected Scottish civil partnership and the Gender Recognition Panel has decided to issue a full gender recognition certificate to the other party to the civil partnership.
 - (3D) The certificate is to be an interim gender recognition certificate if—
 - (a) the applicant is a party to a protected Scottish marriage and either party to the marriage does not consent to the marriage continuing after the issue of a full gender recognition certificate,
 - (b) subject to subsection (2)(b), the applicant is a party to a marriage which is not a protected Scottish marriage,
 - (c) the applicant is a party to a protected Scottish 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 Scottish civil partnership and the Gender Recognition Panel has decided not to issue a full gender recognition certificate to the other party to the civil partnership, or
 - (e) subject to subsection (2)(c), the applicant is a party to a civil partnership which is not a protected Scottish civil partnership.
 - (3E) If a Gender Recognition Panel issues a full gender recognition certificate under this section to an applicant who is a party to a protected Scottish marriage, the Panel must give the applicant’s spouse notice of the issue of the certificate.
 - (3F) Subsection (3C)(b) is subject to section 5C.”.

Issue of full gender recognition certificate after interim certificate: applicant married

5 Before section 5 insert—

“4C Married person with interim certificate: issue of full certificate (Scotland)

- (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,

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- (b) the person was a party to a protected Scottish marriage at the time when the interim gender recognition certificate was issued,
 - (c) the person is still a party to that protected Scottish marriage, and
 - (d) both parties to the marriage now consent 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 protected Scottish civil partnership at the time when the interim gender recognition certificate was issued,
 - (c) the protected civil partnership was a qualifying civil partnership (within the meaning of section 5(6) of the Marriage (Scotland) Act 1977) and the parties to the civil partnership submitted notice of intention to marry under section 3(1) of that Act within the period of six months beginning with the day on which that certificate was issued,
 - (d) the submitting of notice has resulted in the civil partnership becoming 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 becomes a marriage.
- (7) An application under subsection (2) or (3) must include a statutory declaration of consent (within the meaning of section 3(6D)(b)(i)) made by the person’s spouse.
- (8) An application under subsection (3) must also include—
- (a) evidence of the date on which the notice referred to in subsection (3) (c) was submitted, and
 - (b) evidence that the civil partnership has become a marriage.
- (9) If an application is made under this section, the 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.

4D Application under section 4C: death of spouse

- (1) In a case where an application is made under section 4C(2) or (3) and the applicant’s spouse dies before the application is determined—

Status: This is the original version (as it was originally enacted).

- (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 4C 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).

4E Married person with interim certificate: issue of full certificate on application to the sheriff (Scotland)

- (1) A person may make a summary application to the sheriff for the issue of a full gender recognition certificate where—
- (a) an interim gender recognition certificate has been issued to the person,
 - (b) the person is a party to a protected Scottish marriage, and
 - (c) the person is not in possession of a statutory declaration by the person’s spouse that the spouse consents to the marriage continuing after the issue of a full gender recognition certificate.
- (2) The sheriff must grant an application made under subsection (1) if the sheriff is satisfied that—
- (a) the applicant was a party to a protected Scottish marriage at the time when the interim gender recognition certificate was issued,
 - (b) the applicant is still a party to that protected Scottish marriage, and
 - (c) the application was made within the period of six months beginning with the day on which the interim gender recognition certificate was issued.
- (3) If an application is made under this section, the sheriff must give the applicant’s spouse—
- (a) notice of the application, and
 - (b) if the sheriff grants the application, notice of the issue of the full gender recognition certificate.
- (4) Where the sheriff issues a full gender recognition certificate, the sheriff must send a copy to the Gender Recognition Panel.

4F Death of civil partner or spouse: issue of full certificate (Scotland)

- (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,

Status: This is the original version (as it was originally enacted).

- (b) the person was a party to a protected Scottish civil partnership at the time when the interim gender recognition certificate was issued,
 - (c) the protected civil partnership was a qualifying civil partnership (within the meaning of section 5(6) of the Marriage (Scotland) Act 1977) and the parties to the civil partnership submitted notice of intention to marry under section 3(1) of that Act within the period of six months beginning with the day on which that certificate was issued, and
 - (d) the person’s civil partner died—
 - (i) before the submitting of notice had resulted in the civil partnership becoming a marriage, and
 - (ii) after the period of six months beginning with the day on which the interim gender recognition certificate was issued.
- (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 protected Scottish civil partnership at the time when the interim gender recognition certificate was issued,
 - (c) the protected civil partnership was a qualifying civil partnership (within the meaning of section 5(6) of the Marriage (Scotland) Act 1977) and the parties to the civil partnership submitted notice of intention to marry under section 3(1) of that Act within the period of six months beginning with the day on which that certificate was issued,
 - (d) the submitting of notice resulted in the civil partnership becoming a marriage, and
 - (e) the person’s spouse died—
 - (i) within the period of six months beginning with the day on which the civil partnership became a marriage, and
 - (ii) after the period of six months beginning with the day on which the interim gender recognition certificate was issued.
- (4) If, on an application under subsection (2) or (3), the Panel is not satisfied—
- (a) as mentioned in that subsection, or
 - (b) that the person is neither married nor a civil partner,
- the Panel must reject the application.
- (5) An application under subsection (2) or (3) must be made within the period of six months beginning with the day on which the death occurs.
- (6) An application under subsection (2) or (3) must include evidence of—
- (a) the death of the person’s civil partner or, as the case may be, spouse and the date on which it occurred,
 - (b) the date on which the notice under section 3(1) of the 1977 Act was submitted.”.

Issue of full gender recognition certificate after interim certificate: grounds of divorce

- 6 In section 5 (issue of full certificates where applicant has been married), after subsection (1), insert—

“(1A) Subsection (1) does not apply where a full gender recognition certificate has already been issued, to the party to whom the interim gender recognition certificate was issued, by the sheriff under section 4E.”.

Applications by both civil partners

7 Before section 6 insert—

“5C Protected Scottish civil partnership: applications by both civil partners

- (1) This section applies where a Gender Recognition Panel decides to issue a full gender recognition certificate to a party to a protected Scottish 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 Scottish 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.

5D Protected Scottish civil partnership: power to make further provision for issue of full certificate

- (1) The Scottish Ministers may by order provide for the issue by a Gender Recognition Panel, on an application under section 1(1) by a qualifying person, of a full gender recognition certificate in additional circumstances to those specified in section 4(3C)(b) or 5C.
- (2) In subsection (1), “qualifying person” means a person who is a party to a protected Scottish civil partnership.
- (3) An order under subsection (1) may include, in particular, provision about—
 - (a) the evidence or other information that is to be included with an application,
 - (b) the procedure to be followed in determining an application, including provision for the giving of notice to any person,
 - (c) the effect of the issuing to the applicant of a full gender recognition certificate in relation to the civil partnership to which the applicant is party.
- (4) Provision under subsection (3)(c) may include, in particular, provision for changing the civil partnership into a marriage.
- (5) An order under subsection (1) may modify this Act or any other enactment.
- (6) Before making an order under subsection (1), the Scottish Ministers must consult the following persons on a copy of the proposed draft order—
 - (a) the Registrar General for Scotland,
 - (b) the Gender Recognition Panel, and
 - (c) such other persons as the Scottish Ministers consider appropriate.”.

Appeals etc.

- 8 In section 8 (appeals etc.)—
- (a) in subsection (1), before “5(2)” insert “4C, 4F,”,
 - (b) in subsection (5), before “5(2)” insert “4C, 4E, 4F,”,
 - (c) before subsection (6) insert—
 - “(5B) If an application under section 1(1), 4C, 4E, 4F, 5(2), 5A(2) or 6(1) is granted, the applicant’s spouse or civil partner may apply to the Court of Session to quash the decision to grant the application on the grounds that its grant was secured by fraud.”, and
 - (d) in subsection (6), before “the” in the first place where it appears insert “or an application under subsection (5B)”.

Registration

- 9 (1) In section 10 (registration), before subsection (2) insert—
- “(1B) Where a full gender recognition certificate is issued by a Gender Recognition Panel or the sheriff to a person who is a party to a protected Scottish marriage or a protected Scottish civil partnership, the Panel must send a copy of the certificate to the Registrar General for Scotland.”.
- (2) In schedule 3 (registration), in Part 2 (Scotland)—
- (a) in paragraph 19(1), before “5(2)” insert “4C, 4E, 4F,”, and
 - (b) after paragraph 20 insert—
 - “20A (1) The Registrar General may, with the approval of the Scottish Ministers, make regulations about—
 - (a) the registration of qualifying Scottish marriages, and
 - (b) the registration of qualifying Scottish civil partnerships.
 - (2) Regulations under sub-paragraph (1) may in particular make provision for fees to be payable in respect of things done under the regulations.
 - (3) Regulations under sub-paragraph (1) may make different provision for different cases or circumstances.
 - (4) In this paragraph—
 - “qualifying Scottish civil partnership” means a civil partnership registered in Scotland in a case where a full gender recognition certificate has been issued to each of the civil partners,
 - “qualifying Scottish marriage” means a marriage solemnised in Scotland in a case where a full gender recognition certificate has been issued to one, or each, of the spouses.”.

Continuity of marriage

- 10 Before section 12 insert—

Status: This is the original version (as it was originally enacted).

“11C Continuity of marriage: Scotland

- (1) This section applies in relation to a protected Scottish marriage if (by virtue of section 4(3C)(a), 4C or 4E) a full gender recognition certificate is issued to a party to the marriage.
- (2) The continuity of the protected Scottish marriage is not affected by the issuing of a full gender recognition certificate.”.

Continuity of civil partnership

- 11 After section 11C (inserted by paragraph 10) insert—

“11D Continuity of civil partnership: Scotland

The continuity of a protected Scottish civil partnership is not affected by the issuing of full gender recognition certificates (by virtue of section 4(3C)(b)) to both civil partners.”.

Foreign gender change and marriage

- 12 In section 21 (foreign gender change and marriage), subsections (2) to (5) are repealed.

PART 2

ALTERNATIVE GROUNDS FOR GRANTING APPLICATIONS FOR GENDER RECOGNITION CERTIFICATES

Introductory

- 13 The Gender Recognition Act 2004 is further amended in accordance with this Part of this schedule.

Alternative grounds for granting applications

- 14 In section 2 (determination of applications), after subsection (3A) insert—
- “(3B) 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 3C.”.
- 15 After section 3B insert—

“3C Alternative grounds for granting applications: Scotland

- (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.

Status: This is the original version (as it was originally enacted).

- (2) The Panel must grant the application if satisfied that the applicant complies with the requirements imposed by and under section 3D and meets the conditions in subsections (3) to (6).
- (3) The first condition is that the applicant was a party to a protected Scottish marriage or a protected Scottish 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 29 of the Marriage and Civil Partnership (Scotland) Act 2014,
 - (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—
 - (a) has or has had gender dysphoria, or
 - (b) has undergone—
 - (i) surgical treatment, or
 - (ii) such other treatment as the Scottish Ministers may by order prescribe,
 for the purpose of modifying sexual characteristics.
- (6) The fourth condition is that the applicant is ordinarily resident in Scotland.
- (7) Before making an order under subsection (5)(b)(ii) the Scottish Ministers must consult the following persons on a copy of the proposed draft order—
 - (a) the Gender Recognition Panel,
 - (b) such other persons as the Scottish Ministers consider appropriate.
- (8) An order under subsection (5)(b)(ii)—
 - (a) may make different provision for different cases or circumstances,
 - (b) may amend any enactment (including this Act).
- (9) The Panel must reject the application if not required by subsection (2) to grant it.”.

Evidence for granting applications on alternative grounds

16 In section 3 (evidence), after subsection (9) insert—

“(10) 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 3C.”.

17 After section 3C (inserted by paragraph 15) insert—

“3D Evidence for granting applications on alternative grounds: Scotland

- (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 3C.

Status: This is the original version (as it was originally enacted).

- (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 3C(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 Scottish Ministers, and
 - (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 protected Scottish marriage.
- (8) If the applicant is married, and the marriage is a protected Scottish marriage, the application must also include—
 - (a) a statutory declaration of consent (within the meaning of section 3(6D)(b)(i)) by the applicant’s spouse (if the spouse has made such a declaration), or
 - (b) a statutory declaration by the applicant that no such declaration by the applicant’s spouse is included.
- (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

- 18 In schedule 1 (Gender Recognition Panels), in paragraph 4, after sub-paragraph (3) insert—
- “(4) 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 3C.”.

PART 3

CONSEQUENTIAL AMENDMENTS

- 19 (1) In section 7(1) (applications: supplementary), before “5(2)” insert “4C, 4F”.
- (2) In section 22(2)(a) (prohibition on disclosure of information), before “5(2)” insert “4C, 4F”.
- (3) In section 24 (procedure for orders and regulations)—
- (a) in subsection (5), after “section” insert “3D(6)(b),”, and
- (b) after subsection (5) insert—
- “(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.”.