

SCHEDULE 2 CHANGE OF GENDER OF MARRIED PERSONS OR CIVIL PARTNERS

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.
- (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.

Status: This is the original version (as it was originally enacted).

- (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.
- (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—

Status: This is the original version (as it was originally enacted).

- (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.”.