

SCHEDULE 5

CONSEQUENTIAL MODIFICATIONS TO PRIMARY LEGISLATION

Gender Recognition Act 2004

15.—(1) The Gender Recognition Act 2004(1) is amended as follows.

(2) In section 2 (determination of applications), after subsection (3B) insert—

“(3C) 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 3E.”.

(3) In section 3 (evidence), after subsection (9) (as inserted by paragraph 18 of Schedule 5 to the 2013 Act)—

“(11) 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 3E.”.

(4) After section 3D (evidence for granting applications on alternative grounds: Scotland) insert—

“3E Alternative grounds for granting applications: Scotland (English and Welsh residents)

(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) In this section, and section 3F, in so far as those sections extend to England and Wales, “protected Scottish civil partnership” and “protected Scottish marriage” have the meanings given by section 25.

(3) The Panel must grant the application if satisfied that the applicant complies with the requirements imposed by and under section 3F and meets the conditions in subsections (4) to (7).

(4) 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.

(5) 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.

(6) The third condition is that the applicant—

- (a) has or has had gender dysphoria; or
- (b) has undergone surgical treatment for the purpose of modifying sexual characteristics.

(7) The fourth condition is that the applicant is ordinarily resident in England or Wales.

(8) The Panel must reject the application if not required by subsection (3) to grant it.

3F Evidence for granting applications on alternative grounds: Scotland (English and Welsh residents)

(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 3E.

(1) 2004 c.7. Subsection (3B) was inserted into section 2 by the 2014 Act, schedule 2, paragraph 14. Section 3D was inserted by the 2014 Act, schedule 2, paragraph 17.

Status: This is the original version (as it was originally made).

- (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 3E(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; and
 - (b) 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 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
 - (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)(b) it must give reasons for doing so.”.
- (5) In section 8 (appeals etc.), after subsection (5B) insert—

“(5C) If an application under section 4C is granted, the applicant’s spouse or civil partner may apply to the High Court to quash the decision to grant the application on the grounds that its grant was secured by fraud.”.
- (6) After section 11B (change of gender of civil partners) insert—

“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.

11D Continuity of civil partnership: Scotland

11D 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.”.

(7) In section 21(1A) (foreign gender change and marriage), omit “Scotland and”.