

MARRIAGE AND CIVIL PARTNERSHIP (SCOTLAND) ACT 2014

EXPLANATORY NOTES

SCHEDULES

Schedule 2: Change of gender of married persons or civil partners

Part 2 – Alternative grounds for granting applications for gender recognition certificates

296. **Part 2** of schedule 2 makes additional changes to the Gender Recognition Act. When the Gender Recognition Act came into force on 4 April 2005, section 27 included a modified evidence process which was open to applicants who could produce evidence that they had been living in their acquired gender for six years prior to the date on which they made their application under section 27. The so-called “fast track” process ran for the first two years after commencement of the Gender Recognition Act and expired on 3 April 2007. Part 2 of schedule 2 inserts a new modified evidence process into the Gender Recognition Act. The modified evidence process set out in new section 3D of the Gender Recognition Act will only be available to applicants who meet the four conditions set out in new section 3C of the Act.
297. **Paragraph 14** inserts new subsection (3B) into section 2 of the Gender Recognition Act. New subsection (3B) provides that section 2 of the Gender Recognition Act (determination of applications) does not apply to any application under section 1(1)(a) of the Gender Recognition Act where the applicant indicates that the application is for a gender recognition certificate to be granted in accordance with new section 3C of the Gender Recognition Act.
298. **Paragraph 15** inserts new section 3C into the Gender Recognition Act. New section 3C(2) provides that, if the Panel is satisfied that the applicant meets the four conditions set out in new sections 3C(3) to (6) and has complied with the evidence requirements set out in new section 3D, it must grant the application. If the Panel is not required by section 3C(2) to grant an application, it must reject the application in accordance with new section 3C(9).
299. New section 3C(3) to (6) set out the four conditions applicants must meet to be eligible to rely on the modified evidence process:
- 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 for gender recognition is made.
 - the second condition is that the applicant: was living in the acquired gender for six years prior to the date of commencement of section 29 of this Act; has continued to live in the acquired gender until the date the application was made; and intends to continue living in the acquired gender until death.

*These notes relate to the Marriage and Civil Partnership (Scotland)
Act 2014 (asp 5) which received Royal Assent on 12 March 2014*

- the third condition is that the applicant has or has had gender dysphoria or has undergone surgery or other treatment for the purpose of modifying sexual characteristics as may be laid down by order by the Scottish Ministers.
 - the fourth condition is that the applicant is ordinarily resident in Scotland.
300. [Paragraph 16](#) inserts new subsection (10) into section 3 of the Gender Recognition Act which disapplies the evidence requirements set out in section 3 in respect of applications where the applicant indicates that the application for a gender recognition certificate to be issued is being made in accordance with new section 3C of the Gender Recognition Act.
301. [Paragraph 17](#) inserts new section 3D into the Gender Recognition Act. New section 3D sets out the modified evidence process an applicant who meets the four conditions in new section 3C of the Gender Recognition Act is entitled to rely on.
302. New section 3D(2) to (4) set out medical evidence applicants are required to submit. If the applicant is applying on the basis of having or having had gender dysphoria, a report made by a registered medical practitioner specialising in the field of gender dysphoria or a registered psychologist practising in the field of gender dysphoria must include details of the diagnosis of gender dysphoria. If the applicant is applying on the basis of having undergone treatment for the purpose of modifying sexual characteristics, or if the applicant is currently undergoing such treatment or such treatment has been planned or prescribed for the applicant, a report made by a registered medical practitioner or registered psychologist practising in the field of gender dysphoria must include details of the treatment.
303. New section 3D(5) to (8) set out the additional evidence applicants are required to submit. New section 3D(5) requires applicants to include a statutory declaration that they meet the conditions in new section 3C(3) and (4) of the Gender Recognition Act. New section 3D(6) requires applicants to include a statutory declaration as to whether they are married or in a civil partnership. The Scottish Ministers can by order specify other information or evidence which applicants may be required to provide under section 3D(6) and the Panel may require applicants to submit any additional evidence it requires to determine the application provided it gives reasons for such requests (new section 3D(10)). Applicants can also submit any additional evidence they wish to include in their application.
304. If an applicant is married, new section 3D(7) requires the applicant to include in the application a statutory declaration as to whether the marriage is a protected Scottish marriage. If it is, new section 3D(8) requires an application to contain a statutory declaration of consent (within the meaning of new section 3(6D)(b)(i) of the Gender Recognition Act, which is “a declaration by the applicant’s spouse that the spouse consents to the marriage continuing after the issue of a full gender recognition certificate”) or a statutory declaration by the applicant that no such declaration by the applicant’s spouse is included. If the application contains a statutory declaration of consent by the applicant’s spouse, new section 3D(9) requires the Panel to inform the spouse that an application has been made.
305. [Paragraph 18](#) amends Schedule 1 to the Gender Recognition Act to insert new subparagraph (4) into paragraph 4. New paragraph 4(4) provides that the Panel need not include a medical member when determining any application under section 1(1)(a) of the Gender Recognition Act where the application is for a gender recognition certificate to be granted in accordance with new section 3C of that Act.