

# GENDER RECOGNITION ACT 2004

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## EXPLANATORY NOTES

### INTRODUCTION

1. These explanatory notes relate to the Gender Recognition Act which received Royal Assent on 1 July 2004. They have been prepared by the Department for Constitutional Affairs to assist the reader in understanding the Act. They do not form part of the Act and have not been endorsed by Parliament.
2. The notes need to be read in conjunction with the Act. They are not, and are not meant to be, a comprehensive description of the Act. So where a section or part of a section does not seem to require any explanation or comment, none is given.

### SUMMARY AND BACKGROUND

3. 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. Before issuing a certificate, the Panel must be satisfied that the applicant:
  - has, or has had, gender dysphoria,
    - has lived in the acquired gender throughout the preceding two years, and
  - intends to continue to live in the acquired gender until death.Where applicants have been recognised under the law of another country or territory as having changed gender, the Panel need only be satisfied that the country or territory in question has been approved by the Secretary of State.

4. 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 in English law. On the issue of a full gender recognition certificate, the person will be entitled to a new birth certificate reflecting the acquired gender (provided a UK birth register entry already exists for the person) and will be able to marry someone of the opposite gender to his or her acquired gender.
5. Under the previous law, transsexual people were not recognised in their acquired gender under the law of any part of the United Kingdom. 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. These issues were first considered by an Interdepartmental Working Group convened in 1999. The Government announced its intention to bring forward legislation in this area on 13<sup>th</sup> December 2002. A draft Bill was published on 11<sup>th</sup> July 2003, and underwent pre-legislative scrutiny by the Joint Committee on Human Rights.
6. On 11<sup>th</sup> July 2002, the European Court of Human Rights delivered its judgements in the case of *Goodwin v The United Kingdom* and *I v The United Kingdom* (2002) 35 EHRR 18. The Court found that the UK had breached the Convention rights of these

two transsexual people, under Articles 8 (the right to respect for private life) and 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.

7. On 10<sup>th</sup> April 2003, the House of Lords gave judgment in the case of *Bellinger v Bellinger* [2003] 2 All ER 593. 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.

## **THE ACT**

8. 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 Panels and set out the requirements for making an application and the criteria by which the Panels will decide applications;
- *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.

## **COMMENTARY ON SECTIONS**

### ***Section 1: Applications***

9. This sets out who may apply for a gender recognition certificate and who determines that application. It also gives effect to *Schedule 1*.
10. Under *subsection (1)* applications may be made by someone living in the other gender (*subsection (1)(a)*), or by someone who has changed gender in another jurisdiction (*subsection (1)(b)*). An applicant must be aged at least 18.
11. Under *subsection (3)* a Gender Recognition Panel will determine an application for a gender recognition certificate.
12. *Subsection (4)* gives effect to *Schedule 1* which makes provisions for Gender Recognition Panels. The Panels will determine applications for gender recognition certificates. *Paragraph 1* prescribes the eligibility criteria for the legal and medical members to be appointed by the Lord Chancellor, after consulting the Scottish Ministers and the Department of Finance and Personnel in Northern Ireland. *Paragraph 2* provides that, after similar consultation, the Lord Chancellor must appoint one of the legal members as the President and one as the Vice-President.
13. *Paragraphs 4 and 5* of *Schedule 1* set out the requirements for the constitution of individual Panels. An application under *section 1(1)(a)*, on the basis of 'living in the other gender', must be determined by a Panel including at least one legal and

one medical member. Any other application may be determined by a legal member sitting alone. The President is given the power to determine the membership of Panels within these requirements. The President may also decide that certain applications require a Panel comprising more than the minimum number of members. *Paragraph 6* stipulates some of the procedure of the Panels and provides that the President may give directions on other matters of detail, after consulting with the Council on Tribunals. *Paragraph 9* places the Gender Recognition Panels under the supervision of the Council on Tribunals. The Council will keep the constitution and working of the Panels under review, and their comments on the administration of the Panels will be included in an annual report which is laid before Parliament by the Lord Chancellor, and before the Scottish Parliament by Scottish Ministers. *Paragraphs 10 and 11* provide that Panel members may not become members of the House of Commons or the Northern Ireland Assembly. The disqualification from the House of Commons automatically applies also to the Welsh Assembly. It is envisaged that a similar disqualification will apply for the Scottish Parliament and that this will be effected through an Order in Council.

## ***Section 2: Determination of applications***

14. The criteria for a successful application under *section 1(1)(a)* ('living in the other gender') are set out in *subsection (1)*: the applicant must have, or have had, gender dysphoria; have lived in the acquired gender for at least two years before making the application; intend to continue to live in the acquired gender for the rest of his or her life; and provide the evidence required by or under *section 3*.
15. *Subsection (2)* provides that applications made under *section 1(1)(b)* must be granted if the evidence requirements are met and if the Panel is satisfied that the gender change occurred under the law of an approved country or territory. *Subsection (4)* provides the Secretary of State with the power to prescribe what is an approved country or territory for this purpose. This power will be used to prescribe those countries that have recognition criteria which are at least as rigorous as those in the Act.

## ***Section 3: Evidence***

16. This stipulates what evidence must be provided as part of an application for a gender recognition certificate. *Subsections (1) to (3)* set out what medical evidence is needed for an application on the basis of 'living in the other gender' (*section 1(1)(a)*). There must be a report from a registered medical practitioner, or a chartered psychologist, either of whom must be practising in the field of gender dysphoria. This report must include details of diagnosis. The second report need not be from a medical professional practising in the field of gender dysphoria, but could be from any registered medical practitioner or chartered psychologist. At least one of the reports must include details of any treatment that the applicant has undergone, is undergoing or that is prescribed or planned, for the purposes of modifying sexual characteristics.
17. Under *subsection (4)*, an application must also include a statutory declaration by the applicant, stating that the applicant meets the conditions as to having lived in the acquired gender for at least two years and intending to continue to do so.
18. *Subsection (5)* provides that for applications under *section 1(1)(b)*, having changed gender under the law of another country or territory, evidence of this change is required.
19. There are also some evidence provisions shared by both types of application, and these are set out in *subsection (6)*. Hence, an application must include a statutory declaration as to whether or not the applicant is married. *Subsection (6)(b)* provides the Secretary of State with the power to specify, in effect, the further content of an application form. Hence, for example, an application will need to include details of name, date of birth, and correspondence address. This will be done by way of an order. *Subsection (6)(c)* provides the Panel with the flexibility to specify other evidence that will enable them better to determine whether the applicant meets the criteria for a successful application. The Panel must provide reasons for requiring any further information or evidence

(subsection (8)). Subsection (6) also provides the applicant with the right to supply other evidence pertaining to the criteria. When the Panels have been established there will be notes for applicants clarifying what evidence the Panel will regard as useful for satisfying the criteria set out in section 2.

#### **Section 4: Successful applications**

20. This stipulates that where a Panel has granted an application, it must issue a gender recognition certificate to the applicant. If the applicant is married, the certificate will be an interim gender recognition certificate. Subsection (4) brings Schedule 2 into effect. Schedule 2 provides that, in England, Wales and Northern Ireland, the fact that an interim gender recognition certificate has been issued to either party to a marriage is a ground for that marriage being voidable. Proceedings for dissolution on this basis must be begun within six months of the issue of the interim certificate. In Scotland, on account of differences in marriage law, the grant of an interim certificate will provide a ground for divorce, rather than make the marriage voidable.

#### **Section 5: Subsequent issue of full certificates**

21. Subsection (1) provides that where a court ends a marriage on the ground that an interim gender recognition certificate has been issued to one party, it must also issue a full gender recognition certificate to that party. However, under the remaining provisions of this section, if the marriage is dissolved or annulled on some other ground, in proceedings started within six months of the grant of an interim gender recognition certificate, or if the spouse of the person to whom an interim certificate has been issued dies within this period, the person with the interim certificate may apply again to the Panel within six months of the date on which the marriage comes to an end and the Panel must issue a full certificate if satisfied that the applicant is no longer married.

#### **Section 6: Errors in certificates**

22. This makes provision for the correction of a gender recognition certificate. The application for correction may be made by either the person to whom the certificate was issued or the Secretary of State. It must go to either the Panel or the court, depending on who issued the certificate. An application for a correction will be granted and a corrected certificate issued if the Panel or court is satisfied that the certificate contains an error.

#### **Section 7: Applications: supplementary**

23. Subsection (1) allows the Secretary of State to specify the form and manner of applications to the Gender Recognition Panel, for example how and where the application is to be made, after consultation with the Scottish Ministers and the Department of Finance and Personnel in Northern Ireland.
24. Subsection (2) makes provision for an application fee, the amount of which will be prescribed by order by the Secretary of State and which may differ according to circumstances. The fee will not be refundable.

#### **Section 8: Appeals etc.**

25. This provides the applicant with a right of appeal on a point of law to the High Court, or Court of Session in Scotland, and subsection (5) provides the Secretary of State with the right to refer a case to the High Court or Court of Session if he considers that the grant of an application was secured by fraud.
26. Subsection (4) stipulates that if an application under section 1(1) is rejected the applicant may not make a further application until six months have elapsed.

### **Section 9: General**

27. *Subsection (1)* states the fundamental proposition that once a full gender recognition certificate is issued to an applicant, the person's gender becomes for all purposes the acquired gender, so that an applicant who was born a male would, in law, become a woman for all purposes. She would, for example, be entitled to protection as a woman under the Sex Discrimination Act 1975; and she would be considered to be female for the purposes of section 11(c) of the Matrimonial Causes Act 1973, and so able to contract a valid marriage with a man.
28. *Subsection (2)* provides amplification of *subsection (1)*, making clear that the recognition is not retrospective, so the certificate does not rewrite the gender history of the transsexual person, and that the new gender applies for the interpretation of enactments, instruments and documents made before as well as after the issue of a certificate.
29. *Subsection (3)* means that the general proposition is subject to exceptions made by the remainder of the Act and, for the future, by any other enactment or subordinate legislation.

### **Section 10: Registration**

30. This provides the mechanisms by which individuals who have received recognition in the acquired gender and who have a UK birth register entry will have new entries created to reflect the acquired gender. *Subsection (4)* brings *Schedule 3* into effect. The UK has three Registrars General, covering England and Wales, Scotland, and Northern Ireland. There is separate legislation covering the functions of each and hence *Schedule 3* is divided into three parts.
31. *Paragraph 2 of Schedule 3* requires the Registrar General for England and Wales to create a Gender Recognition Register ("GRR"). This Register will not be open to public inspection or search.
32. *Paragraph 3* ensures that the issue of a gender recognition certificate obliges the Registrar General to make an entry in the GRR and to mark the original entry referring to the birth (or adoption) of the transsexual person to show that the original entry has been superseded. This will ensure that caution is exercised when an application is received for a certificate from the original birth (or adoption) record. If applicants for a birth certificate provide details of the name recorded on the birth certificate, they will be issued with a certificate from the birth record. If they supply the details recorded on the GRR, they will receive a certificate compiled from the entry in the GRR. The mark linking the two entries will be chosen carefully to ensure that the fact that an entry is contained in the GRR is not apparent. The mark will not be included in any certificate compiled from the entries on the register.
33. *Paragraph 4* provides that the annual index to birth records will include entries relating to the GRR. Such entries will be recorded in the index in the year in which the new record is created. The entry for a transsexual person's birth record will remain in the index for the year in which the birth was originally registered. The index will not disclose the fact that an entry relates to a record in the GRR.
34. *Paragraphs 5 and 6* make provision for certified copies to be made of any entry in the GRR and to be issued to anyone who would be entitled to a certified copy of the original entry relating to the transsexual person. They ensure that it will not be apparent from the certified copy that it is compiled from the GRR. Such certificates will look the same as any other birth (or adoption) certificate.
35. *Paragraph 7* gives the Register General the same power to re-register a birth recorded in the GRR to show a person as the father as a registrar would have under section 10 of the Births and Deaths Registration Act 1953. *Paragraph 8* gives the Registrar General

the power to correct an entry in the GRR in the same way as the original entry could be corrected.

36. *Paragraph 9* provides for any entry in the GRR, or mark relating to that entry in the original register, to be cancelled if the gender recognition certificate is revoked. *Paragraph 10* provides that a certified copy of an entry in the GRR will have the same evidential value as a certified copy of the entry in the original register.
37. *Paragraph 11* gives the Chancellor of the Exchequer an express power to make an order amending Part 1 of *Schedule 3* in consequence of any order made under the Regulatory Reform Act 2001 which includes provisions in relation to the system of registration of births and adoptions in England and Wales. Any order made by the Chancellor under this paragraph must, by *section 24(3)* of the Act, be made by the affirmative resolution procedure. An order is expected to be made under the Regulatory Reform Act to reform the legislation relating to the registration of births, marriages and deaths. Because of the restrictions contained in the Regulatory Reform Act (which prevent an order made under that Act reforming any law passed less than two years before the order is made) it will not be possible for that order to contain provisions amending *Schedule 3*. Without the power conferred by paragraph 11, either the order would have to be delayed, or the GRR would need to be kept in the ‘old’ format even though the format of other registers had been updated.
38. *Parts 2* and *3* of *Schedule 3* make equivalent provision in relation to Scotland and Northern Ireland.

### ***Section 11: Marriage***

39. This gives effect to *Schedule 4*.
40. *Paragraphs 1* and *2* of *Schedule 4* adjust the restrictions on marriage under section 1 of the Marriage Act 1949. There are, for example, restrictions on marriage between a woman and her ex-husband’s father. The adjustments made here will mean that where one party to the marriage is regarded as being of the acquired gender, the restrictions cover relationships flowing from any previous marriage in the birth gender, i.e. a woman who is a male-to-female transsexual person may not marry her ex-wife’s father. This provision is mirrored for Scotland in *paragraph 7* and for Northern Ireland in *paragraph 8*.
41. *Paragraph 3* amends the Marriage Act 1949 to provide an additional exception to the obligation on clergy in the Church of England and the Church in Wales to solemnise marriages. A clergyman will not be obliged to marry a person he reasonably believes to have changed gender under the Act. No such provision is needed for Northern Ireland or Scotland as there is no obligation to solemnise marriages on the clergy of churches in those jurisdictions.
42. *Paragraphs 4* to *6* amend the Matrimonial Causes Act 1973 so that if at the time of a marriage one party to the marriage did not know that the other was previously of another gender, the former may seek to annul the marriage. Equivalent provision is made for Northern Ireland in *paragraphs 9* to *11*. Scotland does not have the same concept of voidable marriage.

### ***Section 12: Parenthood***

43. This provides that though a person is regarded as being of the acquired gender, the person will retain their original status as either father or mother of a child. The continuity of parental rights and responsibilities is thus ensured.

### ***Section 13: Social security benefits and pensions***

44. This brings *Schedule 5* into effect.

45. *Paragraphs 3 to 6* of *Schedule 5* are designed to ensure that transsexual people are treated according to their acquired gender in so far as certain survivor's benefits are concerned. The benefits in question are Widowed Mother's Allowance, Widow's Pension, Widowed Parent's Allowance, Incapacity Benefit and Category A retirement pension.
46. Under *Paragraph 3* where, immediately before a full certificate is issued, a female-to-male transsexual person with dependant children is, or but for the absence of a claim would be, entitled to Widowed Mother's Allowance under section 37 of the 1992 Act (as defined in *paragraph 2(1)* of *Schedule 5*), that person will not be entitled to that Allowance after the certificate is issued. The reason for this is that Widowed Mother's Allowance is gender specific and it must therefore be brought to an end on legal recognition as a man. Widowed Parent's Allowance will be available instead to such a person in accordance with the normal rules. Under *sub-paragraph (2)* of *paragraph 3* it will not be necessary to make a claim for Widowed Parent's Allowance where the person is entitled to Widowed Mother's Allowance immediately before the full certificate is issued.
47. *Paragraph 4* ensures that where, immediately before a full certificate is issued, a female-to-male transsexual person is entitled to a Widow's Pension under section 38 of the 1992 Act, that person will not be entitled to that Pension after the certificate is issued. Widow's Pension is gender specific and must therefore also be brought to an end on legal recognition as a man.
48. Under *paragraph 5* where, immediately before a full certificate is issued, a male-to-female transsexual person is, or but for the absence of a claim would be, entitled to Widowed Parent's Allowance under section 39A of the 1992 Act, that person will continue to be eligible for that Allowance after the certificate is issued. Widowed Parent's Allowance is gender neutral.
49. *Paragraph 6* ensures that where, immediately before a full certificate is issued, a person is entitled to Incapacity Benefit, or a Category A retirement pension, under section 40 or 41 of the 1992 Act (which provisions are gender specific), that person will not be so entitled after the certificate is issued.
50. *Paragraphs 7 to 12* deal with Retirement Pensions. At present, there are differences in the treatment of men and women for the purposes of Retirement Pensions. The main difference is that men reach pensionable age at 65, while women reach pensionable age at 60. These inequalities will begin to disappear from April 2010, but the equalisation process will not be complete until 2020.
51. *Paragraph 7* relates to Category A pensions. Category A pensions are derived from the pensioner's own National Insurance contributions. *Sub-paragraph (1)* sets out the general provision that any question as to current or future entitlement to a Category A pension after the full gender recognition certificate is issued shall be determined on the basis of the transsexual person's new gender. That entitlement is to be calculated on the basis that the transsexual person's gender had always been the acquired gender. This ensures that, for instance, a man who becomes a woman will be assessed using the working life appropriate to a woman.
52. *Sub-paragraph (2)* makes clear that where a woman who is in receipt of a Category A pension changes gender before the age of 65 (i.e. the age when men can get a Retirement Pension) then entitlement to that pension will cease (a new claim for a Category A pension can be made as a man at age 65).
53. *Sub-paragraph (3)* provides that where a man changes gender and at the time he is under 65, but has attained the age at which a woman reaches pensionable age, for the purpose of determining entitlement to a Category A pension, that person will be treated as attaining the pensionable age for a woman when the full gender recognition certificate is issued.

54. *Sub-paragraph (4)* makes an exception to *sub-paragraph (1)*. It provides that in determining entitlement in accordance with *sub-paragraph (1)*, any
- (a) National Insurance contributions that have been paid or credited
  - (b) earnings that have been credited, and
  - ((c) entitlement to Home Responsibilities Protection will not be affected by the gender change.
55. *Paragraph 8* deals with Category B pensions (and increases to Category A pensions resulting from entitlement to Category B pensions). Category B pensions are based on the contributions of a spouse or former spouse. At present married women, widows and widowers can derive entitlement to Category B pensions. From 2010 Category B pensions will become available to married men and in addition current differences in the rules for widows and widowers will be addressed. Currently sections 48A and 51A of the 1992 Act apply only to married women, section 48B applies only to widows and section 51 only to widowers. Sections 48BB and 52 apply equally to men and women.
56. *Sub-paragraph (1)* sets out the general provision that any question as to current or future entitlement to a Category B pension or an increase to a Category A pension shall be determined on the basis of the transsexual person's acquired gender after the full gender recognition certificate is issued.
57. *Sub-paragraph (2)*, in conjunction with *sub-paragraph (1)* provides that where a woman is entitled to a Category B pension or an increase in her Category A pension then, if she changes gender, she may lose it. This would happen where it would not be available to a man in the same circumstances. Examples of this occurring include where immediately before the full gender recognition certificate is issued:
- (a) she has not attained the age of 65; or
  - ((b) she is bereaved before her 65<sup>th</sup> birthday, which falls before 6<sup>th</sup> April 2010, and her late spouse had died (after 6 April 1979) before reaching pensionable age; or
  - ((c) she is bereaved and her spouse died before 6<sup>th</sup> April 1979.
58. *Sub-paragraph (3)* provides that where a man changes gender and at the time he is under 65, but has attained the age at which a woman reaches pensionable age, for the purpose of determining entitlement to a Category B pension, that person will be treated as attaining the pensionable age for a woman when the full gender recognition certificate is issued.
59. *Sub-paragraph (4)* provides that a man who changes gender cannot get a Category B pension on the grounds of having been widowed if he would not have been entitled to one as a widower under section 51 of the 1992 Act.
60. *Paragraph 9* deals with shared additional pensions, which can derive from a pension sharing order granted when a marriage is dissolved.
61. *Sub-paragraph (1)* provides that any question relating to entitlement to, or the rate of, a shared additional pension shall be determined on the basis of the transsexual person attaining pensionable age on the same date as someone of the acquired gender and at the same age.
62. *Sub-paragraph (2)* makes clear that where a woman who is in receipt of a shared additional pension changes gender before the age of 65 then entitlement to that pension will cease (a new claim can be made as a man at age 65).
63. *Sub-paragraph (3)* provides that where a man changes gender and at the time he is under 65, but has attained the age at which a woman reaches pensionable age, for the purpose of determining entitlement to a shared additional pension, that person will be

treated as attaining the pensionable age for a woman when the full gender recognition certificate is issued.

64. *Paragraph 10* deals with deferment of Category A and B pensions and of shared additional pensions. Where a person defers claiming such a pension immediately on reaching pensionable age, he shall get an increase in the pension when it is claimed. This paragraph provides that for any period of deferral before a full gender recognition certificate is issued, the deferral for that period will only be effective if it could also have been made in the acquired gender.
65. *Paragraph 11* relates to Category C pensions. These are payable to people who were over pensionable age on 5<sup>th</sup> July 1948 or their wives or widows (if they are over pensionable age). There are still some pensioners getting Category C pensions and for consistency paragraph 11 provides that if a Category C pension is in payment to a married woman or widow then this should be divested on a gender change (as the pension is not available in the same circumstances to men).
66. *Paragraphs 12 and 13* deal with graduated retirement benefit. Employees could accrue entitlement to this benefit based on earnings between April 1961 and April 1975. There are different rules for men and women at present. These provisions enable amendments to be made to regulations to take account of a person changing gender.
67. *Paragraph 14* sets out how entitlement to a Guaranteed Minimum Pension (“GMP”) under the Pension Schemes Act 1993 will be affected when a full gender recognition certificate is issued to a person. The Pension Schemes Act 1993 provides that pensionable age in respect of men is 65 and in respect of women is 60. This difference in pensionable age also affects the accrual rate of GMPs.
68. *Sub-paragraph (1)* states that for this paragraph “the 1993 Act” means the Pension Schemes Act 1993.
69. *Sub-paragraph (2)* provides that the amount of a person’s accrued GMP entitlement will continue to be determined by reference to the person’s birth gender. This is necessary because a person’s entitlement to a GMP, like scheme benefits, has already accrued in the past and it is a general principle of the Act that the issue of a full gender recognition certificate should not affect events that occurred before its issue. The exception to this is that any increases in the GMP derived from revaluation under section 16 of the 1993 Act will be calculated by reference to a person’s GMP pensionable age after the issuing of the full gender recognition certificate.
70. *Sub-paragraph (3)* provides that a woman’s entitlement to a GMP will cease if she changes gender and she is under 65. The person’s GMP pensionable age will become 65 and so entitlement to a GMP will commence again when they become 65. The anti-franking requirements set out in Chapter 3 of Part 4 of the Pension Schemes Act will also apply when the person becomes 65. Anti-franking applies where a person, with a contract of employment ending before 1<sup>st</sup> June 1985, left a pension scheme before pensionable age. It ensures that any indexation or revaluation of GMP does not erode scheme benefits. Instead, any increase is added to the total scheme benefits. *Sub-paragraph (4)* provides that where a person’s GMP ceases under paragraph (3) then any pension already paid is not to be affected. Where a woman had been entitled to a GMP but deferred payment of it then any increases to the GMP because of the deferral will be added to their GMP when they become 65.
71. *Sub-paragraph (5)* provides that where a man who is aged at least 60 but has not reached 65 changes gender then he will be treated as attaining GMP pensionable age when the full gender recognition certificate is issued.
72. *Sub-paragraph (6)* provides that where a person changes gender after the age of 65 then their pensionable age for GMP purposes is not affected. As a result such a person’s GMP will not be affected by their change of gender.

73. *Sub-paragraph (7)* makes provision for a person's entitlement to a widow's or widower's GMP to continue following a change of gender. A widow's or widower's GMP will still only be payable to that person where the conditions regarding entitlement are satisfied.
74. *Sub-paragraph (8)* provides that where a person's GMP has been secured by an insurance policy or annuity in accordance with section 19 of the Pension Schemes Act 1993, then the issuing of a full gender recognition certificate will not affect the terms of that insurance policy or annuity contract.
75. *Paragraph 15* makes parallel provision in relation to the Pension Schemes (Northern Ireland) Act 1993 .
76. *Paragraph 16* deals with Equivalent Pension Benefits. These accrued between 1961 and 1975, in place of Graduated Retirement Benefit, for those individuals who had private pensions. The legislation operates differently in respect of men and women. This provision enables modifications to be made to take account of a person's change of gender. *Paragraph 17* makes a parallel provision in respect of Equivalent Pension Benefits of Northern Ireland.

#### ***Section 14: Discrimination***

77. This gives effect to *Schedule 6*.
78. *Schedule 6* amends the Sex Discrimination Act 1975 and the *Sex Discrimination (Northern Ireland) Order 1976 (S.I. 1976/1042 (N.I. 15))*. Those enactments, as amended by the *Sex Discrimination (Gender Reassignment) Regulations 1999 (S.I. 1999/1102)* and *Sex Discrimination (Gender Reassignment) Regulations (Northern Ireland) 1999 (S.R.1999 No.311)*, already make it unlawful to discriminate against a person in relation to employment and vocational training on the grounds that they intend to undergo, are undergoing or have undergone gender reassignment. The definition of gender reassignment in the Sex Discrimination Act and the Order includes *any part* of a process undertaken under medical supervision for the purpose of reassigning a person's sex by changing physiological or other characteristics of sex. A person who has been recognised in the acquired gender under the Gender Recognition Act will therefore necessarily be considered to be undergoing or to have undergone gender reassignment within the meaning of these enactments, and accordingly, discrimination against him or her on this ground will be unlawful. However, this is subject to exceptions based on 'genuine occupational qualifications'. If, for example, the nature of the job requires a woman, it is open to the employer to show that it is reasonable to treat a male to female transsexual person as being unsuitable for that job. The amendments made by *Schedule 6* mean that these exceptions will not be available once a person has been recognised in the acquired gender. They are then, for the purposes of employment, to be treated as being of their acquired gender (that is, of the opposite sex to their birth sex). The exceptions in section 19 of the Sex Discrimination Act 1975 and Article 21 of the Sex Discrimination (Northern Ireland) Order 1976, which exempt discrimination in relation to employment, authorisation or qualification for the purposes of an organised religion where that employment, authorisation or qualification is limited to persons who are not undergoing and have not undergone gender reassignment, are not affected. They continue to apply in relation to people who have been recognised in the acquired gender under this Act.

#### ***Section 15: Succession etc***

79. This provides that the fact that a person's gender has become the acquired gender does not affect the distribution of property under a will or other instrument made before the day on which the Act comes into force. For wills or other instruments made after that day, the general principle stated in *section 9(1)* will apply, e.g. if a will refers to the 'eldest daughter', and a person who was previously a son becomes the 'eldest daughter'

following recognition in the acquired gender, that person (subject to [section 18](#)) will inherit as the ‘eldest daughter’.

### ***Section 16: Peerages***

80. This provides an exception to the proposition stated in [section 9\(1\)](#). The descent of any peerage or dignity or title of honour will take place as if a person recognised in the acquired gender were still of the birth gender. The same rule applies to any property that passes with it, unless the will or other instrument governing the property departs from this rule by express provision.

### ***Section 17: Trustees and personal representatives***

81. A trustee or personal representative is responsible for conveying and distributing property from a trust or estate. This section relieves a trustee or personal representative from any fiduciary duty to inquire whether a gender recognition certificate has been issued to any person or revoked, even if that fact could affect entitlement to property which he is responsible for distributing. The beneficiary will nevertheless retain his or her claim to the property and may enforce this claim, e.g. by following the property into the hands of another person who has received it instead.

### ***Section 18: Orders where expectations defeated***

82. This makes provision for any situation where the disposition or devolution of property under a will or other instrument is different from what it would be but for the fact that a person is regarded as being of the acquired gender. If, for example, an instrument governs succession by reference to the ‘eldest daughter’ of the settlor, and there is an older brother whose gender becomes female under the Act, then the person who was previously the ‘eldest daughter’ may cease to enjoy that position. [Subsection \(2\)](#) allows a person who is adversely affected by the different disposition or devolution of the property to make an application to the High Court, or the Court of Session in Scotland. The court, if it is satisfied that it is just to do so, may make such order as it considers appropriate in relation to the person benefiting from the different disposition of the property.

### ***Section 19: Sport***

83. The section provides that a body responsible for regulating participation in competitive sporting events may prohibit or restrict the participation in such events of a person who is recognised in the acquired gender, and is seeking to compete in the acquired gender, if this is necessary to secure fair competition or the safety of other competitors.

### ***Section 20: Gender-specific offences***

84. Many definitions of sexual offences in the law of Scotland and Northern Ireland remain gender-specific and hence refer, for example, specifically to acts committed by a man upon a woman. This section ensures that where criminal liability would exist, but for the fact that a person, either the victim or the perpetrator, has become of the acquired gender, that criminal liability will exist regardless of the gender change. The Sexual Offences Act 2003 introduced gender-neutral terms for England and Wales, but this section extends to England and Wales, as well as Scotland and Northern Ireland, in order to ensure that there is no residual problem.

### ***Section 21: Foreign gender change and marriage***

85. [Subsection \(1\)](#) makes explicit that a person who has changed gender in another country or territory is not thereby recognised in the acquired gender in the UK. Subject to [subsection \(6\)](#), a person in this position will have to make an application under [section 1](#).

86. *Subsections (2) to (5)* set out the legal status of marriages formed in another country or territory by a person who had already changed gender in that or any other country or territory. These marriages are to have no standing under UK law until the party who has changed gender in another country or territory has also gained recognition in the acquired gender in the UK. The marriage will only be recognised in this way if no other valid marriage has been entered into in the interim and so long as one party had already changed gender in the other country or territory and the other party was not also of that acquired gender.
87. *Subsection (6)* adds the proviso that section 21 is subject to any enforceable community right. This means that a national of another country within the European Union or European Economic Area who has been granted legal recognition of their gender change under the law of that country will not need to make an application under *section 1*. Similarly, a post-recognition opposite-sex marriage where one of the parties is a EU or EEA national will be accepted as a valid marriage in the UK without the need for further application under *section 1*.

### ***Section 22: Prohibition on disclosure of information***

88. *Subsections (1) and (2)* establish that it is an offence for a person to disclose information he has acquired in an official capacity about a person's application for a gender recognition certificate or about the gender history of a successful applicant. This information is termed 'protected information' under this Act. *Subsection (3)* explains what is meant by 'an official capacity'.
89. *Subsection (4)* sets out exceptions to the general prohibition on disclosure. For example, disclosure will not constitute an offence where the person to be identified had consented to the disclosure or where the disclosure is for the purposes of proceedings before a court or tribunal. *Subsections (5) and (7)* make provision for the Secretary of State to prescribe further circumstances in which disclosure does not constitute an offence. *Subsection (6)* provides that this power is exercisable by the Scottish Ministers, rather than the Secretary of State, where the provision to be made is within the legislative competence of the Scottish Parliament.
90. *Undersubsection (8)*, a person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

### ***Section 23: Power to modify statutory provisions***

91. This provides the Secretary of State with the power to make an order modifying the operation of any enactment or subordinate legislation in relation to persons who have acquired a new legal gender under this Act or any description of such persons. This power is strictly limited and is provided due to the entirely novel nature of this legislation. Legislation has made distinctions on the basis of gender for centuries, and the use of gender-specific terms, though it has reduced, nevertheless continues in some contexts. Though a thorough analysis has been conducted of areas in which the facility to change gender may cause difficulties or complexities, this section acknowledges the possibility that other instances may come to light in the future. *Subsection (5)* provides that, before an order is made under this section, there must be appropriate consultation with persons likely to be affected by it.
92. This power is also extended, for the same reasons as given above, to Scottish Ministers and the appropriate Northern Ireland department should they need to modify legislation that falls within the devolved competence of the Scottish Parliament or the Northern Ireland Assembly respectively.

### ***Section 24: Orders and regulations***

93. This provides that any order-making powers conferred by this Act will be exercisable by statutory instrument (statutory rule in Northern Ireland). Any orders under *section 2*

or [paragraph 11](#) of [Schedule 3](#) must be approved by a resolution of each House of Parliament. Any orders under [section 7](#), [22](#) or [23](#) are subject to the negative resolution procedure. Orders or regulations made by the Scottish Ministers or the Northern Ireland department are also subject to negative procedure.

### ***Section 27: Applications within two years of commencement***

94. [Section 27](#) creates a ‘fast-track’ process for the first two years after commencement of the Act, under which applications may be made on the basis of having lived in the acquired gender for six years. This process is exclusive for the first six months after commencement of the Act, i.e. those transsexual people who have lived in the acquired gender for at least six years will have their applications dealt with first. After this period applications from those transsexual people who can only show that they have lived in the acquired gender for two years will be dealt with according to the normal procedure. However, those transsexual people who are able to show that they have lived in the acquired gender for six years will continue to benefit from the ‘fast-track’ process for a further eighteen months.
95. Applicants using this procedure will have to satisfy the criteria set out in [section 2\(1\)](#) as modified, that is, satisfy the Panel that they have lived in the other gender for six (rather than two) years; and that either they have or have had gender dysphoria, or that they have undergone surgical treatment for the purpose of modifying sexual characteristics.
96. Under [subsection \(5\)](#), the requirements for medical evidence stated in [section 3\(1\)](#) to [\(3\)](#) will not be applied to these applicants. Instead, if a person is applying on the basis of having or having had gender dysphoria, the application need only be accompanied by one medical report providing details of the diagnosis of gender dysphoria and details of treatment that the applicant has undergone, is undergoing, or that has been prescribed or planned for the applicant to undergo. This report must be provided by a registered medical practitioner or chartered psychologist practising in the field of gender dysphoria.
97. If a person is applying on the basis of having undergone surgical treatment for the purpose of modifying sexual characteristics, the application must be accompanied by one medical report containing details of the treatment undergone and any further treatment which has been prescribed or planned. This report must be provided by either a registered medical practitioner, or a chartered psychologist practising in the field of gender dysphoria.

## **COMMENCEMENT**

98. The provisions in the Act will come into force on a day appointed by an order of the Secretary of State.

## **HANSARD REFERENCES**

The following table sets out the dates and Hansard references for each stage of this Act's passage through Parliament.

<i>Stage</i>	<i>Date</i>	<i>Hansard Reference</i>
<b><i>House of Lords</i></b>		
Introduction	27 November 2003	Vol. 655 Col 24
Second Reading	18 December 2003	Vol. 655 Cols.1287-1326
Committee	13 January 2004 and	Vol. 656 Cols. 1-62GC and
	14 January 2004	Vol. 656 Cols. 63-134GC
Report	29 January 2004 and	Vol. 657 Cols. 357-436 and

*These notes refer to the Gender Recognition Act 2004  
(c.7) which received Royal Assent on 1 July 2004*

<i>Stage</i>	<i>Date</i>	<i>Hansard Reference</i>
	3 February 2004	Vol. 657 Cols. 616-670
Third Reading	10 February 2004	Vol. 657 Cols. 1060-1092
Re-introduction	26 May 2004	Vol. 661 Col 1430
Consideration of Commons Amendments	8 June 2004	Vol. 662 Cols. 149-153
<b><i>House of Commons</i></b>		
Introduction	11 February 2004	
Second Reading	23 February 2004	Vol. 418 Cols. 48-108
Committee	9 March 2004, 11 March 2004 and 16 March 2004	Hansard Standing Committee A
Report and Third Reading	25 May 2004	Vol. 421 Cols. 1445-1540
<b>Royal Assent – 1 July 2004</b>		House of Lords Hansard Vol. 663 Col 430
		House of Commons Hansard Vol. 423 Col 450