

# **GENDER RECOGNITION ACT 2004**

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## **EXPLANATORY NOTES**

### **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.