

This Order supersedes S.I.2005/635 and is being issued free of charge to all known recipients of that Statutory Instrument.

STATUTORY INSTRUMENTS

2005 No. 916

**GENDER RECOGNITION,
ENGLAND AND WALES
GENDER RECOGNITION, NORTHERN IRELAND**

The Gender Recognition (Disclosure of Information)
(England, Wales and Northern Ireland) (No. 2) Order 2005

<i>Made</i>	- - - -	<i>23rd March 2005</i>
<i>Laid before Parliament</i>		<i>24th March 2005</i>
<i>Coming into force</i>	- -	<i>4th April 2005</i>

The Secretary of State, in exercise of the powers conferred upon him by section 22(5) and (7) of the Gender Recognition Act 2004(1), hereby makes the following Order:

Citation, commencement and extent

1.—(1) This Order may be cited as the Gender Recognition (Disclosure of Information) (England, Wales and Northern Ireland) (No. 2) Order 2005 and shall come into force on 4th April 2005.

(2) This Order extends to England and Wales and Northern Ireland only.

Interpretation

2. In this Order—

“the Act” means the Gender Recognition Act 2004; and

“the subject”, in relation to any protected information, means the person to whom the information relates.

Disclosure for purpose of obtaining legal advice

3. It is not an offence under section 22 of the Act to disclose protected information for the purpose of obtaining legal advice.

Disclosure for religious purposes

4.—(1) It is not an offence under section 22 of the Act for a person who acquired protected information in an official capacity in relation to an organised religion to disclose that information to any other person acting in such a capacity if the conditions set out in paragraphs (2) and (where applicable) (3) are met.

(2) The first condition is that the disclosure is made for the purpose of enabling any person to make a decision—

- (a) whether to officiate at or permit the marriage of the subject;
- (b) whether the marriage of the subject is valid or should be annulled or dissolved;
- (c) whether to admit or appoint the subject—
 - (i) as a minister of religion,
 - (ii) to any employment, office or post for purposes of an organised religion,
 - (iii) to any religious order or community associated with an organised religion, or
 - (iv) to membership (or any category of membership) of an organised religion;
- (d) whether any admission or appointment mentioned in sub-paragraph (c) is valid or should be suspended, terminated or revoked; or
- (e) whether the subject is eligible to receive or take part in any religious sacrament, ordinance or rite, or take part in any act of worship or prayer, according to the practices of an organised religion.

(3) The second condition is that, if the disclosure is made for the purpose of enabling any person to make a decision of the kind mentioned in paragraph (2)(c), (d) or (e), the person making the disclosure reasonably considers that that person may need the information in order to make a decision which complies with the doctrines of the religion in question or avoids conflicting with the strongly held religious convictions of a significant number of the religion's followers.

(4) It is not an offence under section 22 of the Act for a person who acquired protected information in an official capacity in relation to an organised religion to disclose that information to any person responsible for supervising him in relation to a decision of the kind mentioned in paragraph (2).

Disclosure for medical purposes

5.—(1) It is not an offence under section 22 of the Act to disclose protected information if—

- (a) the disclosure is made to a health professional;
- (b) the disclosure is made for medical purposes; and
- (c) the person making the disclosure reasonably believes that the subject has given consent to the disclosure or cannot give such consent.

(2) “Medical purposes” includes the purposes of preventative medicine, medical diagnosis and the provision of care and treatment.

(3) “Health professional” means any of the following—

- (a) a registered medical practitioner;
- (b) a registered dentist within the meaning of section 53(1) of the Dentists Act 1984(2);
- (c) a registered pharmaceutical chemist within the meaning of section 24(1) of the Pharmacy Act 1954(3) or a registered person within the meaning of article 2(2) of the Pharmacy (Northern Ireland) Order 1976(4);

(2) 1984 c. 24.

(3) 1954 c. 61.

- (d) a registered nurse;
- (e) a person who is registered under the Health Professions Order 2001⁽⁵⁾ as a paramedic or operating department practitioner;
- (f) a person working lawfully in a trainee capacity in any of the professions specified in this paragraph.

Credit reference agencies

- 6.—(1) It is not an offence under section 22 of the Act to disclose protected information if—
- (a) the disclosure is made by or on behalf of a credit reference agency;
 - (b) the information consists of information contained in an order of a court or tribunal; and
 - (c) if the credit reference agency has been informed that a full gender recognition certificate has been issued to the subject, the disclosure also contains that information.
- (2) It is not an offence under section 22 of the Act, when making a disclosure under paragraph (1), also to disclose protected information obtained from an electoral register.
- (3) “Credit reference agency” has the meaning given in section 145(8) of the Consumer Credit Act 1974⁽⁶⁾.

Insolvency

- 7.—(1) It is not an offence under section 22 of the Act to disclose protected information if—
- (a) the disclosure is made by or to a relevant officeholder;
 - (b) the disclosure is necessary for the relevant officeholder to perform functions under the Bankruptcy (Scotland) Act 1985⁽⁷⁾, the Insolvency Act 1986⁽⁸⁾, the Company Directors Disqualification Act 1986⁽⁹⁾, the Insolvency (Northern Ireland) Order 1989⁽¹⁰⁾ or the Company Directors Disqualification (Northern Ireland) Order 2002⁽¹¹⁾; and
 - (c) if the person making the disclosure knows or believes that a full gender recognition certificate has been issued to the subject, the disclosure also contains that information.
- (2) “Relevant officeholder” means—
- (a) a person acting as an insolvency practitioner within the meaning given by section 388 of the Insolvency Act 1986 or article 3 of the Insolvency (Northern Ireland) Order 1989;
 - (b) the official receiver within the meaning given by section 399(1) of the Insolvency Act 1986 or article 2 of the Insolvency (Northern Ireland) Order 1989, in whatever capacity he is acting; or
 - (c) the Accountant in Bankruptcy within the meaning of the Bankruptcy (Scotland) Act 1985.

(4) (S.I. 1976/1213 (N.I. 22).

(5) SI 2002/254.

(6) 1974 c. 39.

(7) 1985 c. 66; relevant amendments are made by the Bankruptcy (Scotland) Act 1993 (c. 6), the Scotland Act 1998 (c. 46) Schedule 8, paragraph 22, and by S.I. 1999/1820, 2003/2109 and 2004/468.

(8) 1986 c. 45; amended by the Bankruptcy (Scotland) Act 1993 (c. 6) section 11(1), the Insolvency Act 2000 (c. 39) section 4, the Enterprise Act 2002 (c. 40) Part 10, and by S.I. 1994/2421, 2002/1240 and 2002/2708; and applied by the Building Societies Act 1986 (c. 53) Schedules 15 and 15A and the Friendly Societies Act 1992 (c. 40) Schedule 10.

(9) 1986 c. 46; amended by the Insolvency Act 2000 (c. 39) Schedule 4, and by the Enterprise Act 2002 (c. 40) section 204.

(10) S.I. 1989/2405 (N.I. 19), amended by S.I. 2001/3649; there are other amending instruments but none is relevant.

(11) S.I. 2002/3150 (N.I. 4).

Revocation

8. The Gender Recognition (Disclosure of Information) (England, Wales and Northern Ireland) Order 2005(12) is revoked.

Signed by authority of the Secretary of State

23rd March 2005

Cathy Ashton
Parliamentary Under-Secretary of State
Department for Constitutional Affairs

EXPLANATORY NOTE

(This note is not part of the Order)

Section 22 of the Gender Recognition Act 2004 (“the Act”) provides that it is an offence for a person who has acquired protected information in an official capacity to disclose the information to any other person. “Protected information” is defined in section 22(2) as information relating to a person who has applied for a gender recognition certificate under the Act, and which concerns that application (or a subsequent application by them), or their gender prior to being granted a full gender recognition certificate. Section 22(3) defines where a person acquires protected information in an official capacity.

Section 22(4) sets out certain circumstances where disclosure of protected information does not constitute an offence (for example, where the person to whom the information relates is not identifiable, or has agreed to the disclosure). This Order, which revokes and replaces S.I. 2005/635, prescribes additional circumstances where the disclosure of protected information does not constitute an offence. These concern disclosure for the purpose of obtaining legal advice (article 3), disclosure for religious purposes (article 4) or medical purposes (article 5), disclosure by or on behalf of a credit reference agency (article 6) and disclosure for purposes in relation to insolvency or bankruptcy (article 7). Article 5 uses the terms “registered medical practitioner” and (in relation to a nurse) “registered”. These terms are defined in Schedule 1 to the Interpretation Act 1978 (c. 30).

In some cases, the Order requires the disclosure to include the information that a full gender recognition certificate has been issued to the person to whom the information relates (“the subject” as defined in article 2). The effect of including this information is that the person to whom the disclosure is made will not be able to disclose the information to a third person in reliance on section 22(4)(c) of the Act (which permits disclosure where the person making it does not know or believe that a full gender recognition certificate has been issued).

This Order extends only to England and Wales and Northern Ireland.