

GENDER RECOGNITION BILL 2008

Explanatory Memorandum

1. The Bill is promoted by the Council of Ministers.
2. The purpose of the Bill 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 in the United Kingdom.
3. *Clause 1* deals with interpretation. *Clauses 2 to 11 and Schedules 1 and 2* deal with the consequences in Manx law of the issue of a UK gender recognition certificate. The general principle is that the transsexual person will for all purposes be regarded as being of the acquired gender. These clauses and Schedules make specific provision relating to birth certificates, marriage, parenthood, inheritance, sport, gender-specific offences and foreign gender change.
4. *Clauses 12 to 15* are supplementary. *Clause 12* deals with confidentiality of information and *clause 13* contains powers to modify statutory provisions to ensure consistency with the Bill's provisions. *Clause 14* deals with the validity of some relevant subordinate legislation and *clause 15* deals with the short title and commencement of the Bill.
5. The Bill is not expected to increase the expenditure of Government nor to reduce the income of Government.
6. In the view of the member moving the Bill its provisions are compatible with the Convention rights within the meaning of the Human Rights Act 2001.

Arrangement of Sections

Section

1. Interpretation
2. Effect of gender recognition certificate, etc
3. Civil registration
4. Marriage
5. Parenthood
6. Succession, etc
7. Trustees and personal representatives
8. Orders where expectations defeated
9. Sport
10. Gender-specific offences
11. Foreign gender change and marriage
12. Prohibition on disclosure of information
13. Power to modify statutory provisions
14. Validity of subordinate legislation
15. Short title and commencement

SCHEDULES —

Schedule 1 — Gender recognition - registration practice

Schedule 2 — Amendment of enactments relating to marriage

A BILL

to make provision for and in connection with change of gender; and for connected purposes.

BE IT ENACTED by the Queen’s Most Excellent Majesty, by and with the advice and consent of the Council and Keys in Tynwald assembled, and by the authority of the same, as follows —

1. In this Act —

Interpretation

“the acquired gender” means the gender to which the person has changed as a consequence of a full certificate being issued;

5 “full certificate” means a gender recognition certificate issued as a full gender recognition certificate under the UK Act;

10 “gender recognition certificate” means a gender recognition certificate (including a corrected certificate) issued under the UK Act and includes a certificate issued before the commencement of this Act;

“interim certificate” means a gender recognition certificate granted as an interim gender recognition certificate under the UK Act; and

15 “the UK Act” means the Gender Recognition Act 2004 (of Parliament).

2. (1) The fact that a person’s gender has become the acquired gender (so that, if the acquired gender is the male gender, the

Effect of gender recognition certificate, etc

person's gender becomes that of a man and, if it is the female gender, the person's gender becomes that of a woman) does not affect things done, or events occurring, before the full certificate is issued, or before the commencement of this Act, whichever is the later.

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(2) However, it does operate for the interpretation of enactments passed, and public documents made, before such issue or commencement (as well as those passed or made afterwards).

(3) This section is subject to any statutory provision to the contrary (including provision made by this Act).

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Civil
registration

3. Schedule 1 has effect in respect of registration practice and the related matters provided for in that Schedule.

P2004/7/Sch 3

Marriage

4. Schedule 2 (amendment of marriage law) has effect.

P2004/7/11

Parenthood

5. The fact that a person's gender has become the acquired gender does not affect the status of the person as the father or mother of a child.

P2004/7/12

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Succession,
etc

6. (1) The fact that a person's gender has become the acquired gender does not affect the disposal or devolution of property under a will or other instrument made before the commencement of this Act.

P2004/7/15 &
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(2) The fact that a person's gender has become the acquired gender does not affect the devolution of any property limited (expressly or not) by a will or other instrument to devolve (as nearly as the law permits) along with any peerage or dignity or title of honour unless an intention that it should do so is expressed in the will or other instrument.

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Trustees and
personal
representatives

7. (1) A trustee or personal representative is not under a duty, by virtue of the law relating to trusts or the administration of estates, to enquire, before conveying or distributing any property, whether a full certificate has been issued to any person or revoked (if that fact could affect entitlement to the property).

P2004/7/17

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(2) A trustee or personal representative is not liable to any person by reason of a conveyance or distribution of the property made without regard to whether a full certificate has been issued to any person or revoked if the trustee or personal representative has not received notice of the fact before the conveyance or distribution.

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(3) This section does not prejudice the right of a person to follow the property, or any property representing it, into the hands of another person who has received it unless that person has purchased it for value in good faith and without notice.

5 **8.** (1) This section applies where the disposition or devolution of any property under a will or other instrument (made on or after the commencement of this Act) is different from what it would be but for the fact that a person's gender has become the acquired gender. Orders where expectations defeated
P2004/7/18

10 (2) A person may apply to the High Court for an order on the ground of being adversely affected by the different disposition or devolution of the property.

15 (3) The Court may, if it is satisfied that it is just to do so, make in relation to any person benefiting from the different disposition or devolution of the property such order as it considers appropriate.

(4) An order may, in particular, make provision for —

(a) the payment of a lump sum to the applicant;

(b) the transfer of property to the applicant;

20 (c) the settlement of property for the benefit of the applicant;

(d) the acquisition of property and either its transfer to the applicant or its settlement for the benefit of the applicant.

25 (5) An order may contain consequential or supplementary provisions for giving effect to the order or for ensuring that it operates fairly as between the applicant and the other person or persons affected by it; and an order may, in particular, confer powers on trustees.

30 **9.** (1) A body responsible for regulating the participation of persons as competitors in an event or events involving a gender-affected sport may, if subsection (2) is satisfied, prohibit or restrict the participation as competitors in the event or events of persons whose gender has become the acquired gender. Sport
P2004/7/19

35 (2) This subsection is satisfied if the prohibition or restriction is necessary to secure —

(a) fair competition; or

(b) the safety of competitors,

at the event or events.

(3) “Sport” means a sport, game or other activity of a competitive nature.

(4) A sport is a gender-affected sport if the physical strength, stamina or physique of average persons of one gender would put them at a disadvantage to average persons of the other gender as competitors in events involving the sport. **5**

Gender-specific offences

P2004/7/20

10. (1) Where (apart from this subsection) a relevant gender-specific offence could be committed or attempted only if the gender of a person to whom a full certificate has been issued were not the acquired gender, the fact that the person’s gender has become the acquired gender does not prevent the offence being committed or attempted. **10**

(2) An offence is a “relevant gender-specific offence” if — **15**

(a) either or both of the conditions in subsection (3) are satisfied; and

(b) the commission of the offence involves the accused engaging in sexual activity.

(3) The conditions are — **20**

(a) that the offence may be committed only by a person of a particular gender; and

(b) that the offence may be committed only on, or in relation to, a person of a particular gender,

and the references to a particular gender include a gender identified by reference to the gender of the other person involved. **25**

Foreign gender change and marriage

P2004/7/21

11. (1) A person’s gender is not to be regarded as having changed by reason only that it has changed under the law of a country or territory outside the Island and the United Kingdom.

(2) Accordingly, a person is not to be regarded as being married by reason of having entered into a foreign post-recognition marriage. **30**

(3) But if a full certificate is issued to a person who has entered into a foreign post-recognition marriage, after the issue of the certificate the marriage is no longer to be regarded as being **35**

void on the ground that (at the time when it was entered into) the parties to it were not respectively male and female.

5 (4) However, subsection (3) does not apply to a foreign post-recognition marriage if a party to it has entered into a later (valid) marriage before the issue of the full certificate.

(5) For the purposes of this section a person has entered into a foreign post-recognition marriage if (and only if) —

10 (a) the person has entered into a marriage in accordance with the law of a country or territory outside the Island and the United Kingdom;

(b) before the marriage was entered into the person had changed gender under the law of that or any other country or territory outside the Island and the United Kingdom;

15 (c) the other party to the marriage was not of the gender to which the person had changed under the law of that country or territory; and

(d) by virtue of subsection (1) the person's gender was not regarded as having changed under the law of the Island and the United Kingdom.

20 12. (1) It is an offence for a person who has acquired protected information in an official capacity to disclose the information to any other person.

Prohibition on disclosure of information

P2004/7/22

25 (2) "Protected information" means information which relates to a person who has made an application for a gender recognition certificate and which —

(a) concerns that application; or

(b) if the application for a gender recognition certificate is granted, otherwise concerns the person's gender before it becomes the acquired gender.

30 (3) A person acquires protected information in an official capacity if the person acquires it —

35 (a) in connection with the person's functions as a member of the civil service, a constable or the holder of any other public office or in connection with the functions of a public authority or of a voluntary organisation;

(b) as an employer, or prospective employer, of the person to whom the information relates or as a person employed by such an employer or prospective employer; or

- (c) in the course of, or otherwise in connection with, the conduct of business or the supply of professional services.
- (4) But it is not an offence under this section to disclose protected information relating to a person if —
- (a) the information does not enable that person to be identified; **5**
 - (b) that person has agreed to the disclosure of the information;
 - (c) the information is protected information by virtue of subsection (2)(b) and the person by whom the disclosure is made does not know or believe that a full gender recognition certificate has been issued; **10**
 - (d) the disclosure is in accordance with an order of a court or tribunal;
 - (e) the disclosure is for the purpose of instituting, or otherwise for the purposes of, proceedings before a court or tribunal; **15**
 - (f) the disclosure is for the purpose of preventing or investigating crime;
 - (g) the disclosure is made to the Chief Registrar; **20**
 - (h) the disclosure is made by the Chief Registrar to the Secretary of State in circumstances in which the Chief Registrar considers that the grant of an interim certificate, a full certificate or a corrected certificate was obtained by fraud; **25**
 - (i) the disclosure is made by the Chief Registrar to the Registrar General in the relevant part of the United Kingdom;
 - (j) the disclosure is made for the purposes of the social security system or a pension scheme; **30**
 - (k) the disclosure is in accordance with provision made by an order under subsection (5); or
 - (l) the disclosure is in accordance with any provision of, or made by virtue of, an enactment other than this section.
- (5) The Council of Ministers may by order make provision prescribing circumstances in which the disclosure of protected information is not to constitute an offence under this section. **35**

(6) An order under subsection (5) may make provision permitting —

- 5 (a) disclosure to specified persons or persons of a specified description;
- (b) disclosure for specified purposes;
- (c) disclosure of specified descriptions of information; or
- (d) disclosure by specified persons or persons of a specified description.

10 (7) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding £5,000.

13. (1) The Council of Ministers may by order make provision for modifying the operation of any statutory provision in relation to —

Power to modify statutory provisions

- 15 (a) persons whose gender has become the acquired gender; or
- (b) any description of such persons.

P2004/7/23

(2) An order under this section shall not come into operation unless it is approved by Tynwald.

20 14. (1) The Gender Recognition Act 2004 (Application) Order 2004 and the Gender Recognition Act 2004 (Application) (No. 2) Order 2004 shall be treated as always having been validly made.

Validity of subordinate legislation

(2) The orders mentioned in subsection (1), insofar as they apply section 22 of the UK Act to the Island, shall cease to have effect upon the coming into force of section 12.

[S.D. 875/04]
[S.D. 876/04]

25 15. (1) This Act may be cited as the Gender Recognition Act 2008.

Short title and commencement

30 (2) This Act (other than this section) shall come into operation on such day as the Council of Ministers may by order appoint and different days may be so appointed for different provisions and for different purposes.

SCHEDULES

Section 3

SCHEDULE 1

GENDER RECOGNITION - REGISTRATION PRACTICE

Gender Recognition Register and registration

1. (1) The Chief Registrar shall maintain in the General Registry a register to be called the Gender Recognition Register.

(2) The form in which the Gender Recognition Register is to be maintained shall be determined by the Chief Registrar.

(3) The Gender Recognition Register shall not be open to public inspection or search.

2. (1) Sub-paragraph (2) applies where —

(a) there is a Manx birth register entry in relation to a person to whom a full certificate is issued; and

(b) the following documents are delivered to the Chief Registrar by or on behalf of the person to whom the certificate relates —

(i) the original full certificate; and

(ii) a certified copy of the Manx birth register entry of the person to whom that certificate relates.

(2) Where the documents are delivered under sub-paragraph (1)(b), the Chief Registrar shall —

(a) make a copy of the full certificate (which shall not be available to public inspection or search) and return the original full certificate and certified copy of the Manx birth register entry to the person who delivered them;

(b) make an entry in the Gender Recognition Register containing such particulars as may be prescribed in relation to the person's birth and any other prescribed matter; and

(c) otherwise than by annotating in any way the birth register, make traceable the connection between the Manx birth register entry and the entry in the Gender Recognition Register.

(3) Sub-paragraph (2) does not apply if the certificate was issued after an application under section 6(1) (corrected certificate) of the UK Act and that sub-paragraph has already been complied with in relation to the person.

(4) Information kept by the Chief Registrar for the purposes of sub-paragraph (2)(c) shall not be open to public inspection or search.

(5) In this paragraph —

“Manx birth register entry”, in relation to a person to whom a full certificate is issued, means — SCH. 1

- (a) an entry of which a certified copy is kept by the Chief Registrar; or
- (b) an entry in a register so kept,
containing a record of the person’s birth or adoption (or, if there would otherwise be more than one, the most recent);

“prescribed” means prescribed by regulations made by the First Deemster.

- (6) Regulations under this paragraph shall be laid before Tynwald.

Indexing of entries in Gender Recognition Register

3. (1) The Chief Registrar shall make arrangements for each entry made in the Gender Recognition Register to be included in the relevant index kept in the General Registry.

(2) Any right to search the relevant index includes the right to search entries included in it by virtue of sub-paragraph (1).

(3) Where by virtue of sub-paragraph (1) an index includes entries in the Gender Recognition Register, the index must not disclose that fact.

(4) In this section “the relevant index”, in relation to an entry made in the Gender Recognition Register in relation to a person, means the index of the certified copies of entries in registers, or of entries in registers, which includes the person’s Manx birth register entry.

Certified copies of entries in Gender Recognition Register

4. (1) Anyone who may have a certified copy of the Manx birth register entry of a person issued with a full certificate may have a certified copy of the entry made in relation to the person in the Gender Recognition Register.

(2) Any fee which would be payable for a certified copy of the person’s Manx birth register entry is payable for a certified copy of the entry made in relation to the person in the Gender Recognition Register.

(3) If the person’s Manx birth register entry is an entry in the Gender Recognition Register, sub-paragraph (1) applies as if the person’s Manx birth register entry were the most recent entry within paragraph 2(5)(a) or (b) containing a record of the person’s birth or adoption which is not an entry in the Gender Recognition Register.

(4) A certified copy of an entry in the Gender Recognition Register must not disclose the fact that the entry is contained in the Gender Recognition Register.

Short certificates of birth compiled from Gender Recognition Register

5. Where a short certificate of birth under section 37 of the Civil Registration Act 1984 (“the 1984 Act”) is compiled from the Gender Recognition Register, [c.12] the certificate must not disclose that fact.

Gender Recognition Register: re-registration

- 6.** (1) Section 13 of the 1984 Act (re-registration of birth of a non-marital child) applies where an entry relating to a person's birth has been made in the Gender Recognition Register as where the birth of a child has been registered under that Act.
- (2) In its application by virtue of sub-paragraph (1) section 13 has effect —
- (a) as if the reference to the registrar in subsection (1) were to the Chief Registrar; and
- (b) with the omission of subsections (2) and (3).
- (3) Sections 17 and 17A of the 1984 Act (re-registration in cases of legitimation and after declaration of parentage) apply where an entry relating to a person's birth has been made in the Gender Recognition Register as if the references in those sections to the Chief Registrar authorising re-registration of the person's birth were to the Chief Registrar re-registering it.

Correction etc. of Gender Recognition Register

- 7.** (1) Any power or duty of the Chief Registrar or any other person to correct, alter, amend, mark or cancel the marking of a person's Manx birth register entry is exercisable, or falls to be performed, by the Chief Registrar in relation to an entry in the Gender Recognition Register which —
- (a) relates to that person; and
- (b) under paragraph 3(1) is included in the index which includes the person's Manx birth register entry.
- (2) If the person's Manx birth register entry is an entry in the Gender Recognition Register, the references in sub-paragraph (1) to the person's Manx birth register entry are to the most recent entry within paragraph 2(5)(a) or (b) containing a record of the person's birth or adoption which is not an entry in the Gender Recognition Register.
- (3) The Chief Registrar may correct the Gender Recognition Register by entry in the margin (without any alteration of the original entry) in consequence of the issue of a full certificate after an application under section 6(1) (corrected certificate) of the UK Act.

Alteration of Gender Recognition Register after revocation of gender recognition certificate

- 8.** (1) This paragraph applies if, after an entry has been made in the Gender Recognition Register in relation to a person, the decision to grant the person's application for a full certificate has been quashed under section 8(6) of the UK Act (power of court where allegation that the grant was secured by fraud).
- (2) The person concerned must forthwith inform the Chief Registrar of the quashing of such a decision.
- (3) Subject to any appeal that affects the grant of a person's application for a full certificate, the Chief Registrar must cancel the entry in the Gender Recognition Register.

(4) Any failure to notify the Chief Registrar as required by sub-paragraph (2) shall be an offence for which the person shall be liable on summary conviction to a fine not exceeding £5,000. SCH. 1

Evidence

9. (1) Section 38(6) of the 1984 Act (certified copy of entry in register under that Act deemed to be true copy) applies in relation to the Gender Recognition Register as if it were a register under that Act.

(2) A certified copy of an entry made in the Gender Recognition Register in relation to a person is to be received, without further or other proof, as evidence —

- (a) if the relevant index is the index of the Adopted Children Register maintained under section 38(1) of the Adoption Act 1984, of the matters of which a certified copy of an entry in that Register is evidence; [c.14]
- (b) if the relevant index is the index of the Parental Order Register maintained under regulations made under section 89(8)(a) of the Children and Young Persons Act 2001, of the matters of which a certified copy of an entry in that Register is evidence; and [c.20]
- (c) otherwise, of the person's birth.

Section 4

SCHEDULE 2

AMENDMENT OF ENACTMENTS RELATING TO MARRIAGE

Marriage Act 1984 (c.13)

1. For section 1(3) substitute —

“(3) Subject to the following provisions of this section, nothing in subsections (1) and (2) applies to a marriage between —

- (a) a man and a woman who is the sister, aunt or niece of a former wife of his (whether living or not); or
- (b) a woman and a man who is the brother, uncle or nephew of a former husband of hers (whether living or not).

(3A) In the case of a party to a marriage whose gender has become the acquired gender in accordance with the Gender Recognition Act 2008 (referred to here as “the relevant person”), the reference in subsection (3) to a former wife or former husband of the relevant person includes (respectively) any former husband or former wife of the relevant person.”.

2. After section 5 insert —

”Marriages involving person of acquired gender **5A.** No clergyman is obliged to solemnise the marriage of a person whose gender has become the acquired gender in accordance with the Gender Recognition Act 2008.”.

Matrimonial Proceedings Act 2003 (c.7)

3. In section 13 (grounds on which marriage is voidable), after paragraph (f) insert —

“(g) that an interim gender recognition certificate under the Gender Recognition Act 2004 (an Act of Parliament) has, after the time of the marriage, been issued to either party to the marriage;

(h) that the respondent is a person whose gender at the time of the marriage had become the acquired gender under the Gender Recognition Act 2004 (an Act of Parliament).”.

4. In section 14 (bars to relief) —

(a) after subsection (2) insert —

“(2A) Without prejudice to subsection (1), the court shall not make an annulment order under section 13 on the ground mentioned in paragraph (g) of that section unless it is satisfied that proceedings were instituted within 6 months from the date of issue of the interim gender recognition certificate.”;

- (b) in subsections (2), (3) and (4), for “(e) or (f)” substitute “(e), (f) or (h)”. SCH. 2

5. In paragraph 2 of Schedule 4 (grounds on which a marriage celebrated before 1st April 1976 is voidable) —

- (a) in sub-paragraph (2), after paragraph (d) insert —

“(e) that an interim gender recognition certificate under the Gender Recognition Act 2004 (an Act of Parliament) has been issued to either party to the marriage;”;

- (b) after sub-paragraph (4) insert —

“(4A) The court shall not make an annulment order in a case falling within sub-paragraph (2)(e) unless it is satisfied that proceedings were instituted within 6 months from the date of issue of the interim gender recognition certificate.”.

IN THE KEYS

Gender Recognition

A BILL

to make provision for and in connection with change of gender; and for connected purposes.

Approved by the Council of Ministers for introduction in the House of Keys.

MR. BROWN

JUNE 2008
