

GENDER RECOGNITION ACT 2004

EXPLANATORY NOTES

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.