

# MARRIAGE (SAME SEX COUPLES) ACT 2013

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## EXPLANATORY NOTES

### COMMENTARY ON SECTIONS AND SCHEDULES

#### *Schedule 5 – Change of gender of married persons or civil partners*

##### **Part 1**

145. **Part 1** of Schedule 5 makes changes to the Gender Recognition Act 2004 (the “Gender Recognition Act”). The Gender Recognition Act enables transsexual people to change their legal gender by applying for a gender recognition certificate under section 1 of that Act. The issue of a full gender recognition certificate enables recipients to be recognised for all legal purposes in their new gender (“the acquired gender”). Under the previous law, transsexual people who are married or in a civil partnership must end their marriage or civil partnership before a full gender recognition certificate can be issued. This is achieved by the Gender Recognition Panel issuing an interim gender recognition certificate to married applicants and applicants in civil partnerships, which causes the marriage or civil partnership to become voidable. Applicants then have six months from the date of issue of the interim gender recognition certificate to apply to the court to end their marriage or civil partnership. Once a marriage or civil partnership has been annulled (or a divorce or dissolution has occurred in Scotland) the court can issue a full gender recognition certificate.
146. **Part 1** of this Schedule amends the Gender Recognition Act to enable an existing marriage registered in England and Wales or outside the UK (“protected marriage” defined in paragraph 14 as a marriage under the law of England and Wales, or a marriage under the law of a country or territory outside the United Kingdom) to continue where one or both parties change their legal gender and both parties wish to remain married. It also amends that Act to enable a civil partnership (“protected civil partnership” defined in paragraph 14 as a civil partnership under the law of England and Wales) to continue where both parties change their legal gender simultaneously and wish to remain in their civil partnership.
147. **Paragraph 2** inserts new subsections (6A), (6B) and (6C) which amend the evidence requirements in section 3 of the Gender Recognition Act. At present, section 3(6)(a) of that Act requires transsexual people who apply to the Gender Recognition Panel for a gender recognition certificate to submit a statutory declaration as to whether they are married or in a civil partnership. This enables the Gender Recognition Panel to determine whether to issue a full gender recognition certificate (for people who are not married or in a civil partnership) or an interim certificate (for people who are married or in a civil partnership).
148. New subsection (6A) requires married applicants to include in their statutory declaration an additional declaration as to where their marriage was registered. This will enable the Gender Recognition Panel to determine whether the marriage is a protected marriage. Where the marriage is a protected marriage, new subsection (6B) requires an application to contain a declaration by the applicant’s spouse that he or she consents to the marriage continuing after the issue of a full gender recognition certificate (a

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“statutory declaration of consent”), or a statutory declaration by the applicant that his or her spouse has not made such a declaration. If the application contains a statutory declaration of consent by the applicant’s spouse, new subsection (6C) requires the Gender Recognition Panel to inform the spouse that an application has been made.

149. [Paragraph 3](#) replaces existing subsections (2) and (3) of section 4 of the Gender Recognition Act (which provides for the issue of interim and full gender recognition certificates following an application) and inserts new subsections (3A) and (3B) into that section. The effect of these amendments is to enable a full gender recognition certificate to be issued:
- to single applicants (new subsection (2)(a));
  - to applicants who are party to a protected marriage and the applicant’s spouse has issued a statutory declaration of consent (new subsection (2)(b)); and
  - to applicants who are party to a protected civil partnership and the Gender Recognition Panel has decided to issue the other party to the civil partnership with a full gender recognition certificate (new subsection (2)(c)).
150. Interim gender recognition certificates will be issued:
- to applicants in protected marriages if the applicant’s spouse has not consented to the marriage continuing (new subsection (3)(a));
  - to applicants in non-protected marriages (new subsection (3)(b));
  - to applicants in protected civil partnerships where the other party to the civil partnership has not made an application for a gender recognition certificate at the same time as the applicant, or the other party has made such an application but the Panel has decided not to issue a full gender recognition certificate to him or her (new subsections (3)(c) and (3)(d)); and
  - to applicants in non-protected civil partnerships (new subsection (3)(e)).
151. New subsection (3A) requires the Gender Recognition Panel to notify an applicant’s spouse where they issue a full gender recognition certificate to the applicant. New subsection (3B) provides that section 4 of the Gender Recognition Act is subject to new section 5B (inserted into that Act by paragraph 5 of this Schedule).
152. [Paragraph 4](#) inserts new sections 4A and 4B into the Gender Recognition Act.
153. New section 4A provides for two situations (“Case A” and “Case B”). Case A provides for the situation where an applicant is in a protected marriage but his or her spouse has not issued a statutory declaration of consent to the marriage continuing. If the applicant’s spouse changes his or her mind before the marriage is annulled and wishes the marriage to continue, subsection (2) provides that the applicant can apply to the Gender Recognition Panel for a full gender recognition certificate. The Panel can only issue a full gender recognition certificate to the applicant following such an application if they are satisfied that the following conditions are met:
- an interim gender recognition certificate has been issued to the applicant (subsection (2)(a));
  - the applicant was a party to a protected marriage at the time the interim gender recognition certificate was issued (subsection (2)(b));
  - the applicant is in a protected marriage (subsection (2)(c)); and
  - the applicant’s spouse consents to the protected marriage continuing (subsection (2)(d)).

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154. If these conditions are not met, the Gender Recognition Panel will reject an application for a full gender recognition certificate (subsection (4)). Subsection (5) sets a time limit for an application under Case A. The time limit is six months from the date on which the interim certificate was issued.
155. Case B provides for the situation where an application is made by a civil partner, an interim gender recognition certificate is issued and the couple subsequently decide to convert their civil partnership into a protected marriage under section 9 of this Act. Subsection (3) provides that following a conversion taking place, such applicants can apply for a full gender recognition certificate. The Gender Recognition Panel can only issue a full gender recognition certificate to the applicant if they are satisfied that the following conditions are met:
- an interim gender recognition certificate has been issued to the applicant (subsection (3)(a));
  - the applicant was a party to a civil partnership at the time the interim gender recognition certificate was issued (subsection (3)(b));
  - the conversion application was made within six months of the date of issue of the interim gender recognition certificate (subsection 3(c));
  - the conversion process under section 9 (of this Act) has resulted in the civil partnership being converted into a marriage (subsection (3)(d));
  - the applicant is a party to that marriage (subsection (3)(e)); and
  - the applicant's spouse consents to the marriage continuing (subsection (3)(f)).
156. If these conditions are not met, the Gender Recognition Panel will reject an application for a full gender recognition certificate (subsection (4)). Subsection (6) sets a time limit for conversion of an interim gender recognition certificate to a full certificate under this section. The time limit is six months from the date when the civil partnership is converted to a marriage.
157. Applications under Case A and Case B require the applicant's spouse to issue a statutory declaration of consent to the marriage continuing (subsection (7)). Applications under Case B must additionally include evidence of the date on which the application for conversion under section 9 was made and evidence that the civil partnership has been converted to a marriage (subsection (8)).
158. Where the Gender Recognition Panel receives an application to issue a full gender recognition certificate in either Case A or Case B, section 4A, subsection (9) requires them to notify the applicant's spouse both of the application and also of the issue of the full gender recognition certificate.
159. New section 4B provides for the situation where an applicant has made an application for a full gender recognition certificate under new section 4A but before that application can be determined the applicant's spouse dies. Under the previous law, if the applicant's spouse dies within six months of the interim gender recognition certificate being issued, the applicant can apply for a full gender recognition certificate within six months from the date the death occurred (section 5(2)(b) of the Gender Recognition Act). This section may not be available to applicants if the application has not been determined within the time limit in new section 4A(5) and (6). New section 4B provides that in such cases the applicant can still rely on section 5(2)(b) to apply for a full gender recognition certificate.
160. [Paragraph 5](#) inserts new section 5B into the Gender Recognition Act. If both parties to a protected civil partnership make successful applications to the Gender Recognition Panel, amended section 4(2)(c) of the Gender Recognition Act applies, and both parties will be entitled to full gender recognition certificates. In such cases, new section 5B enables the Gender Recognition Panel to issue full gender recognition certificates to

both parties simultaneously, ensuring that the continuity of the civil partnership is not affected by the changes to both parties' legal gender.

161. [Paragraph 6](#) amends section 6 (Errors in certificates) of the Gender Recognition Act. The amendments provide for the situation where the Gender Recognition Panel or court inadvertently issues the wrong gender recognition certificate or issues a gender recognition certificate with incorrect information. New subsection (1) allows the person covered by the certificate or the Secretary of State to apply to the Gender Recognition Panel or court which issued the certificate to issue the correct certificate or to correct information in the certificate.
162. [Paragraphs 7 and 8](#) make consequential amendments to section 7 (Applications: supplementary) and section 8 (Appeals etc) of the Gender Recognition Act. Paragraph 8 also inserts new subsection (5A) into section 8 of that Act. New subsection (5A) enables an applicant's spouse to apply to the court where he or she considers that a full gender recognition certificate has been obtained by his or her spouse fraudulently.
163. [Paragraph 9 \(1\)](#) amends section 10 of the Gender Recognition Act. New subsection (1A) provides that if the Gender Recognition Panel issue full gender recognition certificates to one or both parties in a protected marriage or both parties in a protected civil partnership, the Secretary of State must send a copy of the full gender recognition certificate(s) to the Registrar General for England and Wales.
164. [Paragraph 9\(2\)](#) amends Part 1 of Schedule 3 to the Gender Recognition Act. New paragraph 11A provides the Registrar General of England and Wales with a power to make regulations about the registration of qualifying marriages and civil partnerships (defined as marriages and civil partnerships registered in England and Wales where one or both parties (both parties in relation to civil partnerships) have been issued with full gender recognition certificates). In particular the regulations may provide for the maintenance of separate marriage and civil partnership registers that record details of qualifying marriages and civil partnerships.
165. [Paragraph 10](#) inserts new section 11A into the Gender Recognition Act. Subsection (2) provides that, throughout the United Kingdom, the continuity of a protected marriage registered under the law of England and Wales is not affected by the issuing of full gender recognition certificates to one or both of the parties to the marriage. Despite this provision's United Kingdom extent, this provision does not require the law of Scotland or Northern Ireland to recognise such unions as marriages. The provision merely ensures that for the purposes of the law of England and Wales, there is no break in the continuity of marriages registered in England and Wales which continue following one or both parties obtaining gender recognition. Subsection (3)(a) provides that the continuity of a protected marriage registered under the law of a country outside the United Kingdom is not affected by the issuing of full gender recognition certificates to one or both of the parties to the marriage. However, subsection (3)(b) provides that protected marriages registered under the law of a country outside the United Kingdom are still subject to the law of the country in which they are registered, despite being recognised by the law in the United Kingdom whilst the couple are resident there.
166. [Paragraph 11](#) inserts a new section 11B into the Gender Recognition Act. Section 11B provides that, throughout the United Kingdom, the continuity of a protected civil partnership is not affected by the issuing of full gender recognition certificates to both of the parties to the civil partnership under section 4(2)(c) of that Act.
167. [Paragraph 12](#) has the effect of disapplying section 21(2) to (5) of the Gender Recognition Act (Foreign gender change and marriage). Section 21(2) to (5) provides for the situation where a transsexual person claims to have changed legal gender in their country of origin and married a person of the opposite sex to their acquired gender in that country or another country outside the UK. At present, these marriages have no standing under the law of England and Wales until a full gender recognition certificate has been issued by the Gender Recognition Panel because the law of the England and

Wales regards the parties as having not been respectively male and female when the marriage was solemnized. As marriages in England and Wales will now be available to legally same sex couples, these sections can be disapplied for the purposes of the law of England and Wales.

168. **Paragraph 13** makes a consequential amendment to section 22 of the Gender Recognition Act.
169. **Paragraph 14** inserts the definitions of “protected civil partnership”, “protected marriage” and “statutory declaration of consent” into section 25 of the Gender Recognition Act (Interpretation).

## **Part 2 – Alternative grounds for granting applications for gender recognition certificates**

170. **Part 2** of Schedule 5 makes additional changes to the Gender Recognition Act. When the Gender Recognition Act came into force on 4 April 2005, section 27 included a modified evidence process which was open to applicants who could produce evidence that they had been living in their acquired gender for six years prior to the date on which they made their application. The so-called “fast track” process ran for the first two years after commencement of the Gender Recognition Act and expired on 3 April 2007. Part 2 of Schedule 5 inserts a new modified evidence process into the Gender Recognition Act which is not limited in time. The modified evidence process set out in new section 3B of the Gender Recognition Act will only be available to applicants who meet the four conditions set out in new section 3A of the Act.
171. **Paragraph 16** inserts new subsection (3A) into section 2 of the Gender Recognition Act. New subsection (3A) provides that section 2 of the Gender Recognition Act (Determination of applications) does not apply to any application under section 1(1)(a) of the Gender Recognition Act where the applicant indicates that they are making an application for a gender recognition certificate to be granted in accordance with new section 3A of the Gender Recognition Act.
172. **Paragraph 17** inserts new section 3A into the Gender Recognition Act. New section 3A(2) provides that, if the Gender Recognition Panel is satisfied that the applicant meets the four conditions set out in new sections 3A(3) to (6) and has complied with the evidence requirements set out in new section 3B, it must grant the application subject to section 4 of the Gender Recognition Act (Successful applications). If the Gender Recognition Panel is not satisfied, it must reject the application in accordance with new section 3A(7).
173. New subsections 3A(3) to (6) set out the four conditions applicants must meet to be eligible to rely on the modified evidence process set out in new section 3B of the Gender Recognition Act:
  - The first condition is that the applicant was a party to a protected marriage or protected civil partnership on or before the date they make their application for gender recognition.
  - The second condition is that the applicant: was living in their acquired gender for six years prior to the date of commencement of section 12 of the Act; has continued to live in their acquired gender until the date they made their application; and intends to continue living in their acquired gender until death.
  - The third condition is that the applicant has or has had gender dysphoria or has undergone treatment for the purpose of modifying sexual characteristics.
  - The fourth condition is that the applicant is ordinarily resident in England, Wales or Scotland.

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174. **Paragraph 18** inserts new subsection (9) into section 3 of the Gender Recognition Act which disapplies the evidence requirements set out in section 3 in respect of applications where the applicant indicates that they are making an application for a gender recognition certificate to be issued in accordance with new section 3A of the Gender Recognition Act.
175. **Paragraph 19** inserts new section 3B into the Gender Recognition Act. New section 3B sets out the modified evidence process an applicant who meets the four conditions in new section 3A of the Gender Recognition Act is entitled to rely on.
176. New subsections 3B(2) to (4) set out medical evidence applicants are required to submit. If the applicant is applying on the basis of having or having had gender dysphoria, a report made by a registered medical practitioner specialising in the field of gender dysphoria or a registered psychologist practising in the field of gender dysphoria which sets out details of the diagnosis of gender dysphoria is required. If the applicant is applying on the basis of having undergone treatment for the purpose of modifying sexual characteristics, or if the applicant indicates that they are currently undergoing such treatment or that such treatment has been planned or prescribed for them, a report made by a registered medical practitioner or registered psychologist practising in the field of gender dysphoria which sets out details of the treatment is required.
177. New sections 3B(5) to (8) set out the additional evidence applicants are required to submit. New section 3B(5) requires applicants to include a statutory declaration that they meet the conditions in new section 3A of the Gender Recognition Act. New section 3B(6) requires applicants to include in their statutory declaration a declaration as to whether they are single, married or in a civil partnership. The Secretary of State can amend the evidence requirements in new section 3B by order and the Gender Recognition Panel may require applicants to submit any additional evidence it requires to determine the application provided it gives reasons for such requests (new section 3B(10)). Applicants can also submit any additional evidence they wish to include in their application.
178. If an applicant indicates that they are married, new section 3B(7) requires married applicants or applicants in civil partnerships to include in their statutory declaration an additional declaration as to where their marriage or civil partnership was registered. This will enable the Gender Recognition Panel to determine whether the marriage or civil partnership is a protected marriage or civil partnership. Where the marriage is a protected marriage, new section 3B(8) requires an application to contain a statutory declaration of consent (“statutory declaration of consent” defined in new section 3(6B) of the Gender Recognition Act as “a declaration by the applicant’s spouse that he or she consents to the marriage continuing after the issue of a full gender recognition certificate”) or a statutory declaration by the applicant that his or her spouse has not made such a declaration. If the application contains a statutory declaration of consent by the applicant’s spouse, new section 3B(9) requires the Gender Recognition Panel to inform the spouse that an application has been made.
179. **Paragraph 20** amends Schedule 1 to the Gender Recognition Act to insert new subparagraph (3) to paragraph 4. New paragraph 4(3) provides that the Gender Recognition Panel need not include a medical member when determining any application under section 1(1)(a) of the Gender Recognition Act where the application is for a gender recognition certificate to be granted in accordance with new section 3A of that Act.