

**EXPLANATORY MEMORANDUM TO THE
THE HIGH COURT (DISTRIBUTION OF BUSINESS) ORDER
2004 No. 3418 (L.27)**

1. This explanatory memorandum has been prepared by the Department for Constitutional Affairs and is laid before Parliament by Command of Her Majesty.

This memorandum contains information for the Joint Committee on Statutory Instruments.

2 Description

- 2.1 This Order assigns to the Family Division all proceedings in the High Court brought under sections 6 and 8 of the Gender Recognition Act 2004, and amends the Supreme Court Act 1981 (“the 1981 Act”) in consequence of this.

3 Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 None.

4 Legislative Background

- 4.1 The 1981 Act provides for certain business in the High Court to be distributed between the Queen’s Bench Division, the Chancery Division and the Family Division (section 61(1) and Schedule 1). The Lord Chancellor may by order under section 61(3) of the 1981 Act direct that unassigned business be assigned to a specified Division. Such an order may also amend Schedule 1 in consequence.
- 4.2 Sections 6 and 8 of the Gender Recognition Act 2004 provide for three different types of proceedings (further details about their nature are provided under Policy Background below and in the Explanatory Note), that are not assigned to any Division of the High Court. This Order assigns them to the Family Division and amends Schedule 1 in consequence. It is necessary to proceed in this way in order to have the power to amend the Family Proceedings Rules 1991 to make provision for these types of proceedings (under sections 40(1) and 32 of the Matrimonial and Family Proceedings Act 1984).

5 Extent

- 5.1 This instrument applies to England and Wales.

6 European Convention on Human Rights

- 6.1 The Lord Chancellor has made the following statement regarding Human Rights:

In my view the provisions of The High Court (Distribution of Business) Order 2004 are compatible with the Convention rights.

7 Policy background

- 7.1 The purpose of the Gender Recognition Act (“the 2004 Act”) is to provide transsexual people with legal recognition in their acquired gender. In order to obtain such recognition persons must apply to the Gender Recognition Panels which are established by the 2004 Act. The application is determined in accordance with statutory criteria. If an unmarried applicant’s application is granted, the Panel must issue a full gender recognition certificate. Only when a full gender recognition certificate is issued does the applicant obtain legal recognition.
- 7.2 If a married applicant’s application is granted, the Panel must issue an interim gender recognition certificate. The issue of an interim certificate, as a result of amendments made to the Matrimonial Causes Act 1973 by the 2004 Act, only permits either party to the marriage to seek its nullification. When a court makes absolute a decree of nullity granted on the ground that an interim gender recognition certificate has been issued to either party to the marriage, the court must issue a full gender recognition certificate to that party.
- 7.3 Section 6 of the 2004 Act provides for applications to a court for the issue of a corrected gender recognition certificate where the court has issued a gender recognition certificate which contains an error.
- 7.4 In addition to these proceedings, section 8(1) of the 2004 Act provides a statutory appeal to the High Court on a point of law against a decision of a Gender Recognition Panel to reject an application made to it, and section 8(5) provides for the Secretary of State to refer cases to the High Court where he considers an application for a gender recognition certificate to have been secured by fraud.
- 7.5 Following discussions with the President of the Family Division it is considered that the Family Division is the most appropriate Division to which to assign proceedings arising out of sections 6 and 8 of the 2004 Act.

8 Impact

- 8.1 A Regulatory Impact Assessment has not been prepared for this instrument as it has no impact on business, charities or voluntary bodies.
- 8.2 The impact on the public sector is negligible as the number of cases likely to arise is estimated to be very small.

9 Contact

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