

**EXPLANATORY MEMORANDUM TO THE
GENDER RECOGNITION (APPLICATION FEES) ORDER 2005**

2005 No.638

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 instrument prescribes fees for applications under the Gender Recognition Act 2004 (“the Act”).

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

- 3.1 None.

4. **Legislative Background**

- 4.1 Section 7(2) of the Gender Recognition Act 2004 (“the Act”), provides for fees to be payable in relation to applications to a Gender Recognition Panel under section 1(1), 5(2) and 6(1) of the Act. This Order prescribes the level of those fees.
- 4.2 Section 7 of the Act comes into force on 4 April 2005 by virtue of the Gender Recognition Act 2004 (Commencement) Order 2005 S.I. 2005/54 (C.2). This instrument is made in advance of that date in reliance on section 13 of the Interpretation Act 1978. It is the first exercise of the power in section 7(2).

5. **Extent**

- 5.1 This instrument applies to all of the United Kingdom.

6. **European Convention on Human Rights**

- 6.1 The Parliamentary Under-Secretary of State, Baroness Ashton, has made the following statement regarding Human Rights:

“In my view the provisions of the Gender Recognition (Application Fees) Order 2005 are compatible with the Convention rights.”

7. Policy objectives

- 7.1 The Order prescribes a fee of £140 for applicants whose relevant income is greater than £21,900, and a fee of £30 for applicants whose relevant income is greater than £14,600 but not greater than £21,900. It prescribes that no fee is payable in circumstances where the applicant's relevant income is £14,600 or less or the applicant is in receipt of a qualifying benefit.
- 7.2 "Relevant income" and "qualifying benefit" are defined in articles 4 and 5. "Relevant income" includes an applicant's employment income, income from a trade, profession or vocation, and their chargeable gains for the tax year immediately preceding the year in which the application is made. Under article 4(6), applicants who are not resident, ordinarily resident or domiciled in the UK are treated as if they were.
- 7.3 The Order also prescribes that no fee is payable if the application is made under section 5(2) (application for a full gender recognition certificate within 6 months of grant of an interim gender recognition certificate) or under section 1(1) where the applicant had previously received an interim gender recognition certificate. This reflects the Government's policy that, whilst married applicants should be granted only an interim gender recognition certificate, and should be entitled to a full gender recognition certificate only once the marriage has come to an end, people in this category should not have to pay more for their gender recognition certificate as a result. In addition no fee is payable where the application is made under section 6(1) (application for a corrected certificate where the original contains an error).

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. Whilst a small number of applicants may need to obtain a new award notice in relation to their pension, benefit or tax credit, this is a service already undertaken by the relevant departments for a number of more common means tests. The number of additional applicants created by this instrument will be extremely small and will not create any significant additional burden. It is estimated that there may only be 5,000 transsexual people across the UK.

9. Contact

- 9.1 Ann Holland at the Department for Constitutional Affairs (0207 210 1421, ann.holland@dca.gsi.gov.uk) can answer any queries regarding the instrument.