

## EXPLANATORY NOTE

*(This note is not part of the Order)*

Section 22 of the Gender Recognition Act 2004 (“the Act”) provides that it is an offence for a person who has acquired protected information in an official capacity to disclose the information to any other person. “Protected information” is defined in section 22(2) as information relating to a person who has applied for a gender recognition certificate under the Act, and which concerns that application (or a subsequent application by them), or their gender prior to being granted a full gender recognition certificate. Section 22(3) defines where a person acquires protected information in an official capacity.

Section 22(4) sets out certain circumstances where disclosure of protected information does not constitute an offence (for example, where the person to whom the information relates is not identifiable, or has agreed to the disclosure). This Order, which revokes and replaces S.I. 2005/635, prescribes additional circumstances where the disclosure of protected information does not constitute an offence. These concern disclosure for the purpose of obtaining legal advice (article 3), disclosure for religious purposes (article 4) or medical purposes (article 5), disclosure by or on behalf of a credit reference agency (article 6) and disclosure for purposes in relation to insolvency or bankruptcy (article 7). Article 5 uses the terms “registered medical practitioner” and (in relation to a nurse) “registered”. These terms are defined in Schedule 1 to the Interpretation Act 1978 (c. 30).

In some cases, the Order requires the disclosure to include the information that a full gender recognition certificate has been issued to the person to whom the information relates (“the subject” as defined in article 2). The effect of including this information is that the person to whom the disclosure is made will not be able to disclose the information to a third person in reliance on section 22(4)(c) of the Act (which permits disclosure where the person making it does not know or believe that a full gender recognition certificate has been issued).

This Order extends only to England and Wales and Northern Ireland.

**Changes to legislation:**

There are currently no known outstanding effects for the The Gender Recognition (Disclosure of Information) (England, Wales and Northern Ireland) (No. 2) Order 2005.