

EXPLANATORY MEMORANDUM

The Gender Recognition (Application) Fees Order 2006 No. 758

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), 5A(2) and 6(1) of the Act. This Order prescribes the level of those fees for applications made on or after 6th April 2006. It revokes and replaces the Gender Recognition (Application Fees) Order 2005 (S.I. 2005/638) (“the 2005 Order”), subject to a saving for applications made before 6th April 2006.

5. Extent

5.1 This instrument applies to all of the United Kingdom.

6. European Convention on Human Rights

6.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

7.1 The Order retains the same level of fees as set out in the 2005 Order, but increases the thresholds for relevant income at which the fees of £30 and £140 become payable. The fee of £140 will now apply to applicants whose relevant income is greater than £23,185 (formerly £22,575), and the fee of £30 will now apply to applicants whose relevant income is greater than £15,460 (formerly £15,050) but not greater than £23,185. No fee will be payable in circumstances where the applicant’s relevant income is £15,460 or less or the applicant is in receipt of a qualifying benefit. The sum of £15,460 derives from the inland revenue. It is used as a qualifying threshold for several benefits including working tax credits. The upper figure of £23,185 reflects a percentage increase of 2.7%, based on the annual Retail Price index, on the previous upper limit of £22,575. Only those who earn in excess of £23,185 will pay the full fee.

- 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(5), applicants who were not resident, ordinarily resident and domiciled in the UK at the relevant times are treated as if they were.
- 7.3 As in the 2005 Order, this Order prescribes that no fee is payable if the application is made under section 1(1) where the applicant had previously received an interim gender recognition certificate, or under section 5(2) (application for a full gender recognition certificate following grant of an interim gender recognition certificate where applicant has been married). In addition it prescribes that no fee is payable if the application is made under section 5A(2) (application for a full gender recognition certificate following grant of an interim gender recognition certificate where applicant has been a civil partner). This reflects the Government’s policy that, whilst applicants who are married or who are civil partners should be granted only an interim gender recognition certificate, and should be entitled to a full gender recognition certificate only once the marriage or civil partnership has come to an end, people in this category should not have to pay more for their gender recognition certificate as a result. Section 5A was inserted into the Act (and consequential amendments made to sections 5 and 7) by section 250 of the Civil Partnership Act 2004 (c.33). 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 Lola Bello at the Department for Constitutional Affairs (020 7210 0631, lola.bello@dca.gsi.gov.uk) can answer any queries regarding the instrument.