

15th October 2004

Dear Consultee

**Limited Consultation Exercise on draft Statutory Instrument
Gender Recognition Act 2004 (Approved Countries and Territories) Order 2004**

I am writing to you to consult on the draft Order which prescribes a list of countries and territories that it is intended will be approved by the Secretary of State for the purposes of applications to the Gender Recognition Panel for a UK Gender Recognition Certificate.

The Gender Recognition Act (GRA) 2004 comes into force in April 2005.

The Act provides that the Order, when made, will be subject to scrutiny and approval by a resolution of each House of Parliament.

The consultation period will last six weeks, which should give you time to fully consider the list. We are carrying out a targeted consultation, rather than releasing a full consultation paper for public comment, as the list will be of marginal import to the general public. A list of those included in the exercise is attached.

Background

The Government believes that it is fundamental to an inclusive society that individuals and groups are given the rights to which they are legitimately entitled and, wherever possible, be allowed to live their lives as they determine. Giving legal recognition to transsexual people is an important part of the Government's agenda for tackling social exclusion in all areas of society. There is a strong tradition of legislation in this country that has sought to respond to the concerns and needs of minority groups, whether these be ethnic minorities, people that are disabled, or now, with this Act, transsexual people.

The Act has a long history. The Government has been working on the issues affecting transsexual people since 1999. This work led to an announcement in December 2002 that legislation would be brought forward in this area and to the publication of a draft Bill in July 2003, for pre-legislative scrutiny by the Joint Committee on Human Rights.

The Gender Recognition Act has also been influenced by the judgments of the European Court of Human Rights. The Court, in interpreting the European Convention on Human Rights, which has been given further effect in the UK through the Human Rights Act 1998, has stated that a system for recognising transsexual people in their

acquired gender must exist and that transsexual people must be granted their rights under Article 8, the right to respect for private life, and Article 12, the right to marry. The House of Lords, in the case of *Bellinger*, stated that transsexual people ought to have a means of marrying in their acquired gender.

The Act provides for Gender Recognition Panels to assess applications from transsexual people seeking legal recognition in their acquired gender. Legal recognition will follow from the issue of a full gender recognition certificate by the Gender Recognition Panel. Before issuing a certificate, the Panel must be satisfied that the applicant:

- has, or has had, gender dysphoria,
- has lived in the acquired gender throughout the preceding two years, and
- intends to continue to live in the acquired gender until death.

In practical terms, legal recognition will have the effect that, for example, a male-to-female transsexual person will be legally recognised as a woman in English law. On the issue of a full gender recognition certificate, the person will be entitled to a new birth certificate reflecting the acquired gender (provided a UK birth entry already exists for the person), and will be able to marry someone of the opposite gender to his or her acquired gender.

Many overseas citizens live and work in the UK, just as UK citizens live and work overseas. There is no reason to deny access to basic rights in their acquired gender in the UK. Therefore, if either non-UK citizens, or UK citizens who have lived abroad, have already satisfied the acquired gender recognition criteria of another country, it is reasonable that they gain recognition in the UK by virtue of a simpler process.

The intention behind the simpler process is to reduce the evidentiary burden on transsexual people who have already met comparable requirements elsewhere. It also means that UK doctors and psychologists will not be asked to spend time providing evidence for applications rather than caring for patients.

However, to ensure that the criteria set out in the Act for recognition in the UK are not compromised, only applicants from those countries or territories which have a recognition scheme as rigorous as our own should be able to take advantage of the reduced evidentiary burden. The list therefore reflects the outcome of research to identify countries and territories that apply only robust gender recognition criteria.

If an applicant has recognition from a country or territory on the list, the Panel will only need to be satisfied that the applicant does indeed have recognition in that country or territory. There is no need for the UK Panels to make a fresh decision, starting again from all the available evidence.

Legal advisers working on behalf of British Embassies, High Commissions and Consulates overseas, and officials and their legal advisers in various overseas Government departments, were the major sources of information used in compiling the list.

Timing

We require responses to be submitted by **Friday 10th December**.

If you consider there is a country or territory which should be included, it would be helpful if you give reasons and legal references, and, if appropriate, provide relevant contact details.

Unless you express confidentiality in your response, it may be made available under the Open Government Code. Confidential responses will be included in any statistical summary of numbers of comments received and views expressed.

I look forward to receiving your comments.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Ann Holland', with a stylized flourish at the end.

Ann Holland
Senior Policy and Legislation Manager

Draft Order laid before Parliament under section 24(3) of the Gender Recognition Act 2004, for approval by resolution of each House of Parliament.

DRAFT STATUTORY INSTRUMENTS

2004 No. xxx

GENDER RECOGNITION

Gender Recognition Act 2004 (Approved Countries and Territories) Order 2004

Made - - - - - *[date]*

Coming into force - - - - - 4th April 2005

Whereas a draft of this Order has been approved by resolution of each House of Parliament;

Now, therefore, the Secretary of State, in exercise of the powers conferred by section 2(4) of the Gender Recognition Act 2004⁽¹⁾, and having consulted the Scottish Ministers and the Department of Finance and Personnel in Northern Ireland, hereby makes the following Order:

Citation, commencement and interpretation

1.—(1) This Order may be cited as the Gender Recognition Act 2004 (Approved Countries and Territories) Order 2004 and shall come into force on 4th April 2005.

(2) In this Order “the Act” means the Gender Recognition Act 2004.

Approved Countries and Territories

2.—(1) The countries and territories set out in the Schedule are prescribed for the purposes of the Act.

SCHEDULE

Regulation 2(1)

Approved Countries and Territories

The Australian territories of Australian Capital Territory, Northern Territory and the States of New South Wales, Queensland, South Australia, Tasmania, Victoria, Western Australia,

Austria,

Belgium,

Bulgaria,

the Canadian provinces of Alberta, British Columbia, Manitoba, New Brunswick, Newfoundland and Labrador, Nova Scotia, Ontario, Quebec, Saskatchewan and the Yukon Territory,

Republic of Cyprus,

(1) 2004 c.7.

Denmark,
Estonia,
Finland,
France,
Germany,
Greece,
Iceland,
Italy,
Latvia,
Luxembourg,
Malta,
Moldova,
Netherlands,
New Zealand
Norway,
Poland,
Romania,
Russian Federation,
Serbia and Montenegro,
Slovakia,
Slovenia,
South Africa,
Spain,
Sweden,
Switzerland,
Turkey,
Ukraine,
the District of Columbia and all of the states of the United States of America except for Idaho, Ohio,
Tennessee and Texas.

Signed by authority of the Secretary of State

Date

Name
Parliamentary Under-Secretary of State
Department for Constitutional Affairs

EXPLANATORY NOTE

(This note is not part of the Order)

This Order prescribes a list of countries and territories that have been approved by the Secretary of State for the purposes of applications under section 1(1)(b) of the Act.

Applicants under section 1(1)(b) are required to provide evidence that they have changed gender under the law of an approved country or territory outside the United Kingdom under section 3(5) of the Act. They need not meet the evidentiary requirements in sections 3(1) to 3(4), which apply to applications under section 1(1)(a) of the Act. This has the effect of reducing the evidentiary burden on transsexual people who have already met comparable requirements elsewhere.

The evidentiary requirements in sections 3(1) to 3(4) include one or more medical reports from a “registered medical practitioner” and/or a “chartered psychologist.” “Registered medical practitioner” is defined in the Interpretation Act 1978 and means “a fully registered person within the meaning of the Medical Act 1983 who holds a licence to practise under that Act.” “Chartered psychologist” is defined in section 25 of the Act and means “a person for the time being listed in the British Psychological Society’s Register of Chartered Psychologists.”

Gender Recognition – List of Consultees

Legal Consultees

England and Wales	Scotland
President of the Family Division	Faculty of Advocates
General Council of the Bar	Law Society of Scotland
Law Society	Advocate General for Scotland
Civil Justice Council	First Minister and Minister for Justice
Council on Tribunals	Scottish Legal Action Group
Equal Opportunities Commission	
Advice UK	Northern Ireland
Legal Action Group	Gillen J., Family Judge
Liberty	General Council of the Bar in NI
	Law Society of NI
	NI Law Centre
	Equality Commission for NI
	Human Rights Commission for NI
	NI Citizens Advice Bureau

Subject-specific Consultees

Press for Change
Gender Trust
Butterfly Club
Scottish Equality Network
FtM (Female to Male) Network
GIRES (Gender Identity Research and Education Society)
The Beaumont Society