

Gender Recognition Reform (Scotland) Bill

[AS INTRODUCED]

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**THE FOLLOWING ACCOMPANYING DOCUMENTS ARE ALSO PUBLISHED:
Explanatory Notes (SP Bill 13-EN), a Financial Memorandum (SP Bill 13-FM), a Policy
Memorandum (SP Bill 13-PM), a Delegated Powers Memorandum (SP Bill 13-DPM) and
statements on legislative competence (SP Bill 13-LC).**

Gender Recognition Reform (Scotland) Bill

[AS INTRODUCED]

An Act of the Scottish Parliament to reform the grounds and procedure for obtaining gender recognition; and for connected purposes.

References to the 2004 Act

1 Meaning of “2004 Act”

In this Act, the “2004 Act” means the Gender Recognition Act 2004.

Application for gender recognition certificate

2 Persons who may apply

After section 8 of the 2004 Act insert—

“Applications to the Registrar General for Scotland

8A Persons who may apply to Registrar General for Scotland for gender recognition certificate

- (1) A person of either gender may apply to the Registrar General for Scotland for a gender recognition certificate on the basis of living in the other gender if the person—
 - (a) is aged at least 16, and
 - (b) meets the condition in subsection (2).
- (2) The condition is that the person—
 - (a) is the subject of a Scottish birth register entry, or
 - (b) is not the subject of such an entry, but is ordinarily resident in Scotland.
- (3) In this Act, “Scottish birth register entry” means an entry containing a record of a person’s birth or adoption—
 - (a) in a register kept by the Registrar General for Scotland, or
 - (b) of which a certified copy is kept by the Registrar General for Scotland.
- (4) For the purposes of this Act, if a person is the subject of more than one UK birth register entry, the person is the subject of a Scottish birth register entry if the person’s most recent birth register entry is a Scottish birth register entry.”

3 Notice to be given on receipt of application

After section 8A of the 2004 Act (inserted by section 2) insert—

“8B Notice to be given by Registrar General for Scotland on receipt of application

- 5 (1) On receipt of an application under section 8A(1), the Registrar General for Scotland must notify the applicant in writing of the following matters—
- (a) that the application has been received,
 - (b) that the reflection period has begun,
 - (c) the date on which that period ends,
 - 10 (d) whether, if the application were granted, the Registrar General would issue a full gender recognition certificate or an interim gender recognition certificate,
 - (e) any statutory declaration or evidence which the applicant would have to give to the Registrar General under section 8D in order for the Registrar General to issue a full gender recognition certificate instead of an interim gender recognition certificate, if the application were
 - 15 (f) the effect of subsections (3) and (4).
- (2) At the same time as giving notice under subsection (1), the Registrar General must give the applicant such information as to the effect of the issue of a gender recognition certificate as the Registrar General considers appropriate.
- (3) The Registrar General must not determine the application unless, after the expiry of the reflection period, the applicant confirms by notice in writing that the applicant wishes to proceed with the application.
- (4) The application is to be treated as having been withdrawn if, at the end of the period of two years beginning with the day on which the reflection period ends, the applicant has neither given the Registrar General a notice of confirmation under subsection (3) nor withdrawn the application.
- 25 (5) In this section, the “reflection period” is the period of three months beginning with the day on which the Registrar General gives notice under subsection (1).”.

4 Grounds on which application to be granted

After section 8B of the 2004 Act (inserted by section 3) insert—

“8C Grounds on which application to be granted by Registrar General for Scotland

- 35 (1) The Registrar General for Scotland must grant an application under section 8A(1) if—
- (a) the application includes a statutory declaration by the applicant that the applicant—
 - (i) is aged at least 16,
 - (ii) meets the condition in section 8A(2),
 - 40 (iii) has lived in the acquired gender throughout the period of three months ending with the day on which the application is made, and
 - (iv) intends to continue to live in the acquired gender permanently, and

- (b) the application and the notice of confirmation under section 8B(3) comply with the requirements of—
 - (i) section 8D, and
 - (ii) any regulations under section 8U(1)(c).

- 5
- (2) The Registrar General must reject an application under section 8A(1) if not required by subsection (1) to grant it.
 - (3) In this Act, “the acquired gender”, in relation to a person who is applying or has applied for a gender recognition certificate under section 8A(1), means the gender in which the person is living when the application is made.”.

10 **5 Statutory declarations and other evidence in relation to marriage or civil partnership**

After section 8C of the 2004 Act (inserted by section 4) insert—

“8D Statutory declarations and other evidence to be given to Registrar General for Scotland in relation to marriage or civil partnership

- 15
- (1) An application under section 8A(1) must include a statutory declaration by the applicant as to whether or not the applicant is married or a civil partner.
 - (2) Subsection (3) applies where—
 - (a) at the time the application is made, the applicant and another person (“P”) are the parties to a marriage or a civil partnership, and
 - (b) at the time the applicant gives notice of confirmation under section 8B(3), the applicant and P are still, or have since become, the parties to a marriage or civil partnership.
 - (3) Either the application or the notice of confirmation must include—
 - (a) a statutory declaration by the applicant that the applicant—
 - 25 (i) wishes the marriage or (as the case may be) civil partnership to continue after the issue of a full gender recognition certificate, or
 - (ii) does not wish the marriage or civil partnership to continue after the issue of a full gender recognition certificate, and
 - (b) either—
 - 30 (i) a statutory declaration by P that P wishes the marriage or civil partnership to continue after the issue of a full gender recognition certificate, or
 - (ii) a statutory declaration by the applicant that no such declaration by P is included.
 - (4) Where an application includes a statutory declaration under paragraph (a) or (b) of subsection (3) (the “first declaration”)—
 - (a) the notice of confirmation may include a further statutory declaration under that paragraph (the “second declaration”), and
 - (b) if there is a second declaration, the second declaration replaces the first declaration.
 - (5) If an application or notice of confirmation includes a statutory declaration under subsection (3)(b)(i), the Registrar General for Scotland must give P notice that the application has been made.
 - (6) Subsection (7) applies where—
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- 40

- (a) the applicant is married or a civil partner at the time the application is made, and
- (b) before the applicant gives notice of confirmation under section 8B(3)—
 - (i) the marriage or (as the case may be) civil partnership is dissolved or annulled, or
 - (ii) the applicant’s spouse or (as the case may be) civil partner dies.
- (7) The notice of confirmation must include evidence of the dissolution or annulment or (as the case may be) death.
- (8) Subsection (7) applies whether or not the application included the statutory declarations mentioned in subsection (3).”.

6 **Certificate to be issued**

After section 8D of the 2004 Act (inserted by section 5) insert—

“8E Certificate to be issued by the Registrar General for Scotland

- (1) Where the Registrar General for Scotland grants an application under section 8A(1), the Registrar General must issue a gender recognition certificate to the applicant.
- (2) The certificate is to be a full gender recognition certificate if, at the time the application was made, the applicant was neither married nor in a civil partnership.
- (3) The certificate is to be a full gender recognition certificate if—
 - (a) at the time the application was made, the applicant was married or in a civil partnership, and
 - (b) the Registrar General is satisfied that, before the applicant gave notice of confirmation under section 8B(3)—
 - (i) the marriage or (as the case may be) civil partnership was dissolved or annulled, or
 - (ii) the applicant’s spouse or (as the case may be) civil partner died.
- (4) Subsections (5) and (6) apply where—
 - (a) at the time the application was made, the applicant was married to or in a civil partnership with another person (“P”), and
 - (b) at the time the applicant gave notice of confirmation under section 8B(3), the applicant and P were still, or had since become, the parties to a marriage or civil partnership.
- (5) The certificate is to be a full gender recognition certificate if both parties wish the marriage or (as the case may be) civil partnership to continue after the issue of a full gender recognition certificate.
- (6) Otherwise, the certificate is to be an interim gender recognition certificate.
- (7) If the Registrar General issues a full gender recognition certificate to a person under subsection (5), the Registrar General must give the person’s spouse or civil partner notice of the issue of the certificate.
- (8) The Scottish Ministers may by regulations specify the content and form of gender recognition certificates.

- (9) The Scottish Ministers must consult the Registrar General before making regulations under subsection (8).”.

7 Issue of full gender recognition certificate to person with interim certificate

After section 8E of the 2004 Act (inserted by section 6) insert—

“Issue of full certificate in place of interim certificate (Scotland)

8F Issue of full certificate by Registrar General for Scotland to applicant who is married or civil partner

- (1) The Registrar General for Scotland must issue a full gender recognition certificate to a person to whom an interim gender recognition certificate has been issued if—
- (a) the person applies to the Registrar General for a full gender recognition certificate under this subsection within the period of six months beginning with the day on which the interim gender recognition certificate is issued, and
 - (b) the Registrar General is satisfied that the condition in subsection (2) is met.
- (2) The condition is—
- (a) when the interim gender recognition certificate was issued, the applicant and another person (“P”) were the parties to a marriage or civil partnership,
 - (b) the applicant and P are still, or have since become, the parties to a marriage or civil partnership, and
 - (c) the application under subsection (1)(a) includes whichever of the following was not included with the application under section 8A(1) or the notice of confirmation given under section 8B(3)—
 - (i) a statutory declaration by the applicant that the applicant wishes the marriage or (as the case may be) civil partnership to continue after the issue of a full gender recognition certificate,
 - (ii) a statutory declaration by P that P wishes the marriage or civil partnership to continue after such a certificate is issued.
- (3) The Registrar General must reject an application under subsection (1) if not required by that subsection to grant it.
- (4) Where an application is made under subsection (1), the Registrar General must give P—
- (a) notice of the application, and
 - (b) if the application is granted, notice of the issue of the full gender recognition certificate.

8G Application under section 8F: death of spouse or civil partner

- (1) Where an application is made under section 8F(1) and the applicant’s spouse or (as the case may be) civil partner dies before the application is determined—
- (a) the application is to be treated as an application made under section 8K(1), and

- (b) that application is to be treated as having been made at the time when the application under section 8F(1) was made.
- (2) The Registrar General for Scotland must specify the period within which the applicant is to produce the required evidence in support of the new application.
- 5 (3) In this section—
- “new application” means the application under section 8K(1) which the person is, by virtue of subsection (1), treated as having made,
- “required evidence” means the evidence required by section 8K(4)(b).

8H Issue of full certificate by sheriff to applicant who is married or civil partner

- 10 (1) A sheriff must issue a full gender recognition certificate to a person to whom an interim gender recognition certificate has been issued if—
- (a) the person applies to the sheriff for a full gender recognition certificate within the period of six months beginning with the day on which the interim gender recognition certificate is issued, and
- 15 (b) the sheriff is satisfied that the condition in subsection (2) is met.
- (2) The condition is—
- (a) when the interim gender recognition certificate was issued, the applicant and another person (“P”) were the parties to a marriage or a civil partnership,
- 20 (b) the applicant and P are still, or have since become, the parties to a marriage or civil partnership, and
- (c) the applicant is not in possession of a statutory declaration by P that P wishes the marriage or (as the case may be) civil partnership to continue after the issue of a full gender recognition certificate.
- 25 (3) The sheriff must reject an application under subsection (1) if not required by that subsection to grant it.
- (4) Where an application is made under subsection (1), the sheriff must—
- (a) give P notice of the application, and
- 30 (b) if the application is granted—
- (i) give P notice of the issue of the full gender recognition certificate, and
- (ii) give a copy of the certificate to the Registrar General for Scotland.
- 35 (5) Proceedings under this section are to be heard in private if the applicant so requests.

8I Issue of full certificate by court on divorce or dissolution of civil partnership (Scotland)

- (1) Subsection (2) applies where—
- (a) a court grants—
- 40 (i) a decree of divorce on the ground that an interim gender recognition certificate has been issued to a party to the marriage, or

- (ii) a decree of dissolution on the ground that an interim gender recognition certificate has been issued to a party to a civil partnership, and
- (b) a full gender recognition certificate has not already been issued to that party under section 8H.

(2) The court must—

- (a) issue a full gender recognition certificate to the party to whom the interim gender recognition certificate was issued, and
- (b) give a copy of the full gender recognition certificate to the Registrar General for Scotland.

(3) In this section, a reference to an interim gender recognition certificate includes a reference to an interim gender recognition certificate issued under this Act as it applies in England and Wales or Northern Ireland.

8J Issue of full certificate by Registrar General for Scotland following divorce or dissolution of civil partnership

(1) The Registrar General for Scotland must issue a full gender recognition certificate to a person to whom an interim gender recognition certificate has been issued if—

- (a) the person applies to the Registrar General for a full gender recognition certificate under this subsection, and
- (b) the Registrar General is satisfied that the condition in subsection (2) is met.

(2) The condition is that, in proceedings instituted during the period of six months beginning with the day on which the interim gender recognition certificate was issued—

- (a) the person's marriage was dissolved or annulled, otherwise than on the ground that the interim gender recognition certificate was issued, or
- (b) the person's civil partnership was dissolved or annulled, otherwise than on that ground.

(3) The Registrar General must reject an application under subsection (1) if not required by that subsection to grant it.

(4) An application under subsection (1) must—

- (a) be made within the period of six months beginning with the day on which the marriage or (as the case may be) civil partnership is dissolved or annulled,
- (b) include evidence of—
- (i) the dissolution or annulment, and
- (ii) the date on which the proceedings for the dissolution or annulment were instituted.

8K Issue of full certificate by Registrar General for Scotland following death of spouse or civil partner

(1) The Registrar General for Scotland must issue a full gender recognition certificate to a person to whom an interim gender recognition certificate has been issued if—

- (a) the person applies to the Registrar General for a full gender recognition certificate under this subsection, and
- (b) the Registrar General is satisfied that the condition in subsection (2) is met.

- 5
- (2) The condition is that the applicant’s spouse or civil partner died within the period of six months beginning with the day on which the interim gender recognition certificate was issued.
 - (3) The Registrar General must reject an application under subsection (1) if not required by that subsection to grant it.
 - 10 (4) An application under subsection (1) must—
 - (a) be made within the period of six months beginning with the day on which the death occurs,
 - (b) include evidence of the death and the date on which it occurred.

15 **8L Application to Registrar General for Scotland or sheriff: calculation of periods of time**

- (1) Subsection (2) applies for the purpose of calculating the end of a period of months under sections 8B to 8K.
 - (2) Where the period would end on the 29th, 30th or 31st day of a month but for the fact that the month does not include such a day, the period ends on the last day of the month.”.
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Gender recognition outwith Scotland

8 Gender recognition obtained outwith Scotland

After section 8L of the 2004 Act (inserted by section 7) insert—

“8M Gender recognition obtained elsewhere in the United Kingdom

- 25
- (1) Where a person has been issued with a full gender recognition certificate under this Act as it applies in England and Wales or Northern Ireland—
 - (a) the person is to be treated for all purposes as if the person had, when that certificate was issued, been issued with a full gender recognition certificate by the Registrar General for Scotland, and
 - 30 (b) accordingly, the person’s gender is the acquired gender.
 - (2) In this Act, “the acquired gender”, in relation to a person mentioned in subsection (1), means the person’s gender under the law of England and Wales or Northern Ireland following the issue of the certificate.

8N Gender recognition obtained outwith the United Kingdom

- 35
- (1) Where a person has obtained overseas gender recognition—
 - (a) the person is to be treated for all purposes as if the person had, when that recognition was obtained, been issued with a full gender recognition certificate by the Registrar General for Scotland, and
 - (b) accordingly, the person’s gender is the acquired gender.
 - 40 (2) But subsection (1) does not apply if it would be manifestly contrary to public policy to treat the person as mentioned in subsection (1)(a).

- (3) In this Act—
- (a) “overseas gender recognition” means gender recognition obtained in a country or territory outwith the United Kingdom which resulted in a person’s gender under the law of that country or territory becoming male instead of female, or female instead of male,
 - (b) “the acquired gender”, in relation to a person mentioned in subsection (1) (where that subsection applies), means the person’s gender under the law of the country or territory in which the person obtained gender recognition, following the recognition being obtained.
- (4) This section—
- (a) applies whether or not the person has been issued with a confirmatory gender recognition certificate under section 8O,
 - (b) does not apply to a person who has been issued with a full gender recognition certificate under this Act (including as it applies in England and Wales or Northern Ireland).

8O Issue of confirmatory gender recognition certificate by Registrar General for Scotland

- (1) A person who has obtained overseas gender recognition may apply to the Registrar General for Scotland for a confirmatory gender recognition certificate.
- (2) A confirmatory gender recognition certificate is a certificate confirming that a person has obtained overseas gender recognition.
- (3) An application under subsection (1) must include—
- (a) evidence of the overseas gender recognition obtained by the applicant, or
 - (b) if the applicant is unable to provide such evidence, a statutory declaration by the applicant as to the matters set out in subsection (4).
- (4) Those matters are—
- (a) that the applicant has obtained overseas gender recognition,
 - (b) the reason that the applicant is unable to provide evidence of that recognition,
 - (c) the gender acquired by the applicant as a result of that recognition,
 - (d) the country or territory in which the recognition was obtained,
 - (e) the date on which the recognition was obtained,
 - (f) the place or register where details of the recognition—
 - (i) are available, or
 - (ii) if they are not available, would have been available and the reason why they are not available.
- (5) An application under subsection (1) must also set out the applicant’s reasons for making the application.
- (6) The Registrar General—
- (a) may reject an application under subsection (1) if—
 - (i) the application includes a statutory declaration under subsection (3)(b), and
 - (ii) the Registrar General is not satisfied that the applicant was unable to provide evidence of the overseas gender recognition,

- (b) otherwise, must grant an application under subsection (1) if satisfied that the applicant has obtained overseas gender recognition.
- (7) Where the Registrar General grants an application under subsection (1), the Registrar General must issue a confirmatory gender recognition certificate to the applicant.
- (8) The Scottish Ministers may by regulations specify the content and form of confirmatory gender recognition certificates.
- (9) The Scottish Ministers must consult the Registrar General before making regulations under subsection (8).

8P Determination by court of question as to overseas gender recognition

- (1) This section applies where a question arises as to whether—
- (a) a person has obtained overseas gender recognition, or
 - (b) it would be manifestly contrary to public policy to treat a person who has obtained overseas gender recognition as if the person had been issued with a full gender recognition certificate by the Registrar General for Scotland, in accordance with section 8N(1).
- (2) A court may make an order determining the question mentioned in subsection (1)—
- (a) where the question arises in the course of civil proceedings before the court, or
 - (b) on an application being made to the court by a person who has an interest in the question.
- (3) An order under subsection (2) may determine the question—
- (a) for all purposes, or
 - (b) for such purposes as are specified in the order.
- (4) Proceedings under this section are to be heard in private if the person to whom the question relates so requests.
- (5) Where a court makes an order under subsection (2), the court may make such other order as it considers appropriate in consequence of, or otherwise in connection with, the order under subsection (2).
- (6) In this section, “a court” means the Court of Session or a sheriff.
- (7) This section does not apply in relation to a person to whom a full gender recognition certificate has been issued under this Act (including as it applies in England and Wales or Northern Ireland).”

Further provision about applications and certificates

9 Review and appeal of decisions

After section 8P of the 2004 Act (inserted by section 8) insert—

*“Review and appeal of decisions by Registrar General for Scotland***8Q Review of Registrar General for Scotland’s decision on application for certificate**

- 5 (1) Subsection (2) applies where the Registrar General for Scotland has determined an application under—
- (a) section 8A(1) for a gender recognition certificate,
 - (b) section 8F(1), 8J(1) or 8K(1) for a full gender recognition certificate, or
 - (c) section 8O(1) for a confirmatory gender recognition certificate.
- 10 (2) The person who made the application (the “applicant”) may request that the Registrar General reviews the determination on the ground that—
- (a) the application was incorrectly rejected, or
 - (b) in the case of an application under section 8A(1), the wrong type of gender recognition certificate was issued.
- 15 (3) A request under subsection (2) is to be made in writing.
- (4) The Registrar General—
- (a) must comply with the request if it is made within the period of 40 working days beginning with the day on which the application is determined,
 - 20 (b) may (but need not) comply with the request if it is made after the end of that period.
- (5) Following a review under this section, the Registrar General must—
- (a) if satisfied that—
 - 25 (i) the application was incorrectly rejected, grant the application and issue a certificate to the applicant,
 - (ii) the wrong type of gender recognition certificate was issued, revoke the certificate that was issued and issue a new certificate to the applicant,
 - (b) otherwise, confirm the original determination.
- 30 (6) For the purposes of subsection (4)(a), a working day is any day other than a Saturday, a Sunday or a day which, under the Banking and Financial Dealings Act 1971, is a bank holiday in Scotland.

8R Appeal to sheriff against Registrar General for Scotland’s decision following review

- 35 (1) Where the Registrar General for Scotland determines a review under section 8Q, the person who requested the review may appeal to the sheriff against the determination.
- (2) An appeal under subsection (1)—
- 40 (a) must be made within the period of 28 days beginning with the day on which the determination is made,
 - (b) may be made on a point of law only,
 - (c) is to be heard in private if the appellant so requests.
- (3) On an appeal under subsection (1) the sheriff may—

- (a) allow the appeal and—
- (i) where the application was incorrectly rejected, issue the certificate applied for,
 - (ii) where the wrong type of certificate was issued, revoke the certificate that was issued and issue a new certificate,
- (b) allow the appeal and refer the matter to the Registrar General for redetermination, or
- (c) dismiss the appeal.
- (4) Subsection (5) applies where—
- (a) the sheriff issues a full gender recognition certificate under subsection (3)(a),
 - (b) the appellant and another person (“P”) were the parties to a marriage or civil partnership when the application to which the appeal relates was made, and
 - (c) when the appeal is determined, the appellant and P are still, or have since become, the parties to a marriage or civil partnership.
- (5) The sheriff must give P notice of the issue of the certificate.
- (6) The sheriff must give a copy of a certificate issued under subsection (3)(a) to the Registrar General.

8S Revocation of certificate on application to the sheriff

- (1) A person who has an interest in a gender recognition certificate may apply to the sheriff for the revocation of the certificate on the ground that—
- (a) the Registrar General for Scotland issued the wrong type of gender recognition certificate under section 8E,
 - (b) the application for the certificate was fraudulent, or
 - (c) the person to whom the certificate was issued was incapable of—
 - (i) understanding the effect of obtaining the certificate, or
 - (ii) validly making the application for the certificate.
- (2) A person who has an interest in a confirmatory gender recognition certificate may apply to the sheriff for the revocation of the certificate on the ground that the application for the certificate was fraudulent.
- (3) Where the sheriff grants an application under subsection (1) or (2), the sheriff—
- (a) must revoke the certificate,
 - (b) if the application was made under subsection (1)(a), must—
 - (i) issue a new certificate to the person to whom the revoked certificate was issued, or
 - (ii) refer the matter back to the Registrar General for redetermination, and
 - (c) may make such other order as the sheriff considers appropriate in consequence of, or otherwise in connection with, the revocation of the certificate.
- (4) Subsection (5) applies where—
- (a) the sheriff issues a full gender recognition certificate under subsection (3)(b)(i),

- (b) the person to whom the certificate is issued and another person (“P”) were the parties to a marriage or civil partnership when the application under section 8A(1) to which the certificate relates was made, and
- (c) when the application under subsection (1) is determined, the person to whom the certificate is issued and P are still, or have since become, the parties to a marriage or civil partnership.

(5) The sheriff must give P notice of the issue of the certificate.

(6) The sheriff must give a copy of a certificate issued under subsection (3)(b)(i) to the Registrar General.

(7) Proceedings under this section—

(a) are to be heard in private if—

(i) the person to whom the certificate was issued so requests, or

(ii) where the application is made under subsection (1)(c), another person with an interest in the personal wellbeing of the person to whom the certificate was issued so requests,

(b) where the application is made under subsection (1)(c), may be heard in private if—

(i) the applicant so requests, and

(ii) the applicant does not have an interest in the personal wellbeing of the person to whom the certificate was issued but the sheriff is satisfied that it is in the best interests of that person for the proceedings to be so heard.”.

10 Correction of error in certificate

After section 8S of the 2004 Act (inserted by section 9) insert—

“Correction of errors (Scotland)

8T Correction of error in certificate by Registrar General for Scotland

(1) Subsection (2) applies where the Registrar General for Scotland becomes aware that a gender recognition certificate or confirmatory gender recognition certificate issued by the Registrar General contains an error.

(2) The Registrar General may issue a corrected certificate to the person to whom the certificate relates.

(3) Nothing in this section enables the Registrar General to issue—

(a) a full gender recognition certificate in place of an interim gender recognition certificate,

(b) an interim gender recognition certificate in place of a full gender recognition certificate.”.

11 Further provision about applications

After section 8T of the 2004 Act (inserted by section 10) insert—

*“Further provision about applications to Registrar General for Scotland***8U Further provision about applications to Registrar General for Scotland**

- (1) The Registrar General for Scotland may by regulations make provision for or about—
- 5 (a) the form and manner in which an application is to be made,
 - (b) the form and manner in which a notice under section 8B(3) is to be given,
 - 10 (c) information or evidence to be included in an application or a notice under section 8B(3) (in addition to the information and evidence required by this Act),
 - (d) such other matters in connection with the making of an application as the Registrar General considers appropriate.
- (2) In subsection (1), “application” means an application made to the Registrar General under—
- 15 (a) section 8A(1) for a gender recognition certificate,
 - (b) section 8F(1), 8J(1) or 8K(1) for a full gender recognition certificate,
 - (c) section 8O(1) for a confirmatory gender recognition certificate.
- (3) Regulations under subsection (1)(c) may require information or evidence to be included by way of statutory declaration.
- 20 (4) Regulations under subsection (1)—
- (a) may be made only with the consent of the Scottish Ministers,
 - (b) may make—
 - 25 (i) incidental, supplementary, consequential, transitional, transitory or saving provision,
 - (ii) different provision for different purposes,
 - (c) may modify any enactment (including this Act).”.

12 Copies of certificates to be given to other Registrars General

After section 10 of the 2004 Act insert—

“10A Copies of certificates to be given by Registrar General for Scotland to other Registrars General

- 30 (1) This section applies in relation to a full gender recognition certificate—
- (a) issued by the Registrar General for Scotland, or
 - (b) a copy of which is given to the Registrar General for Scotland under section 8H(4)(b)(ii), 8I(2)(b), 8R(6) or 8S(6).
- 35 (2) The Registrar General for Scotland must send a copy of the certificate to the Registrar General for England and Wales if the person to whom it was issued—
- (a) is the subject of a UK birth register entry and the Registrar General for England and Wales keeps a certified copy of, or a register containing, that entry, or
 - 40 (b) is a party to a marriage or a civil partnership under the law of England and Wales.

- (3) The Registrar General for Scotland must send a copy of the certificate to the Registrar General for Northern Ireland if the person to whom it was issued—
- (a) is the subject of a UK birth register entry and the Registrar General for Northern Ireland keeps a certified copy of, or a register containing, that entry, or
 - (b) is a party to a marriage or a civil partnership under the law of Northern Ireland.”.

13 Continuity of marriage or civil partnership

After section 11D of the 2004 Act insert—

“11E Continuity in Scotland of marriage or civil partnership

- (1) The continuity of a marriage or civil partnership is not affected by the issuing of a full gender recognition certificate to either or both of the parties to the marriage or (as the case may be) civil partnership.
- (2) Subsection (3) applies in relation to—
 - (a) a marriage formed under the law of England and Wales, Northern Ireland or a country or territory outwith the United Kingdom,
 - (b) a civil partnership—
 - (i) formed under the law of England and Wales or Northern Ireland, or
 - (ii) which is an overseas relationship registered under the law of a country or territory outwith the United Kingdom which is treated as a civil partnership by virtue of Chapter 2 of Part 5 of the Civil Partnership Act 2004.
- (3) Subsection (1)—
 - (a) has effect notwithstanding anything in that law which affects the continuation of the marriage, civil partnership or (as the case may be) relationship merely by virtue of the change or changes of gender occurring by virtue of the issue of the full gender recognition certificate or certificates,
 - (b) does not affect that law.”.

14 Offences

After section 22 of the 2004 Act insert—

“22A Offence of making false declaration or application (Scotland)

- (1) A person commits an offence if the person knowingly makes a statutory declaration in accordance with this Act or regulations made under it which is false in a material particular.
- (2) A person commits an offence if the person knowingly includes any other information which is false in a material particular in—
 - (a) an application under—
 - (i) section 8A(1) for a gender recognition certificate,
 - (ii) section 8F(1), 8J(1) or 8K(1) for a full gender recognition certificate, or

- (iii) section 8O(1) for a confirmatory gender recognition certificate,
or
- (b) a notice of confirmation under section 8B(3).

- 5 (3) A person who commits an offence under subsection (1) or (2) is liable—
- (a) on summary conviction to imprisonment for a term not exceeding 12 months or a fine not exceeding the statutory maximum (or both),
 - (b) on conviction on indictment to imprisonment for a term not exceeding two years or a fine (or both).
- 10 (4) Sections 45 and 46(2) and (3) of the Criminal Law (Consolidation) (Scotland) Act 1995 apply to subsections (1) and (2), and to an offence under either of those subsections, as they apply to section 44(2)(a) of that Act and to an offence under that section.”.

Reporting on gender recognition

15 Registrar General’s duty to report

- 15 (1) The Registration of Births, Deaths and Marriages (Scotland) Act 1965 is amended as follows.
- (2) In section 1 (the Registrar General), in subsection (4), after “relates” insert “, the information mentioned in subsection (5)”.
- (3) After that subsection insert—
- 20 “(5) The information referred to in subsection (4) is—
- (a) the number of applications made to the Registrar General in the year to which the report relates for each of the following—
 - 25 (i) a gender recognition certificate under section 8A(1), 8F(1), 8J(1) or 8K(1) of the Gender Recognition Act 2004,
 - (ii) a confirmatory gender recognition certificate under section 8O(1) of that Act,
 - (b) the total number of gender recognition certificates and confirmatory gender recognition certificates issued by, or received from the Court of Session or a sheriff by, the Registrar General in that year,
 - 30 (c) of those certificates, the number which are—
 - (i) full gender recognition certificates,
 - (ii) interim gender recognition certificates,
 - (iii) confirmatory gender recognition certificates.
- 35 (6) But the Registrar General is not required to include any information mentioned in subsection (5) in the report if the Registrar General considers that the inclusion of that information (by itself or in combination with other information) would allow a person who applied for, or was issued with, a gender recognition certificate or a confirmatory gender recognition certificate to be identified.”.
- (4) In section 56(1) (interpretation), after the definition of “function” insert—
- 40 ““gender recognition certificate”, “confirmatory gender recognition certificate”, “full gender recognition certificate” and “interim gender

recognition certificate” have the meanings given by section 25(1) of the Gender Recognition Act 2004.”.

Further modification of enactments

16 Further modification of enactments

5 The schedule further modifies the 2004 Act and modifies other enactments.

Final provisions

17 Ancillary provision

- 10 (1) The Scottish Ministers may by regulations make any incidental, supplementary, consequential, transitional, transitory or saving provision they consider appropriate for the purposes of, in connection with or for giving full effect to this Act.
- (2) Regulations under this section may—
- (a) make different provision for different purposes,
 - (b) modify any enactment.
- (3) Regulations under this section—
- 15 (a) are subject to the affirmative procedure if they add to, replace or omit any part of the text of an Act,
- (b) otherwise, are subject to the negative procedure.

18 Commencement

- (1) This section and sections 17 and 19 come into force on the day after Royal Assent.
- 20 (2) The other provisions of this Act come into force on such day as the Scottish Ministers may by regulations appoint.
- (3) Regulations under this section may—
- (a) include transitional, transitory or saving provision,
 - (b) make different provision for different purposes.

19 Short title

25 The short title of this Act is the Gender Recognition Reform (Scotland) Act 2022.

SCHEDULE
(introduced by section 16)

FURTHER MODIFICATION OF THE 2004 ACT AND MODIFICATION OF OTHER ENACTMENTS

PART 1

GENDER RECOGNITION ACT 2004

5

1 The 2004 Act is amended in accordance with this Part.

2 The following provisions are repealed—

- (a) section 1 and schedule 1,
- (b) sections 2 to 8, apart from section 4(4),
- 10 (c) sections 11A to 11D,
- (d) section 21.

3 In section 10—

- (a) in subsection (1), after “issued” insert “under this Act as it applies in England and Wales and Northern Ireland”,
- 15 (b) subsection (1A) is repealed,
- (c) in subsection (1B)—
 - (i) after “Gender Recognition Panel” insert “under this Act as it applies in England and Wales or Northern Ireland”,
 - (ii) the words “or the sheriff” are repealed,
 - 20 (iii) for “protected Scottish marriage or a protected Scottish civil partnership” substitute “marriage solemnised in Scotland or civil partnership registered in Scotland”.

4 In section 17—

- (a) in subsection (1), for “a full gender recognition certificate has been issued to any person or revoked” substitute “a person’s gender has become, or ceased to be, the acquired gender”,
- 25 (b) in subsection (2), for “a full gender recognition certificate has been issued to any person or revoked” substitute “a person’s gender has become, or ceased to be, the acquired gender”.

30 5 In section 18, in subsection (2), for “Court of Session” substitute “sheriff”.

6 In section 20, in subsection (1), for “to whom a full gender recognition certificate has been issued were not” substitute “had not become”.

7 In section 22, for subsection (2) substitute—

“(2) “Protected information” means information which relates to a person—

- 35 (a) who has made an application for a gender recognition certificate or a confirmatory gender recognition certificate under this Act, and which concerns that application or any other application by the person under this Act, or

(b) whose gender has become the acquired gender, and which concerns the person's gender before it became the acquired gender.

(2A) In this section, a reference to an application under this Act includes a reference to an application under this Act as it applies in England and Wales or Northern Ireland.”

8 In section 24—

(a) after subsection (5) insert—

“(5ZA) Regulations made by the Scottish Ministers under section 8E(8) or 8O(8)—

- (a) may make incidental, supplementary, consequential, transitional, transitory or saving provision,
- (b) may make different provision for different purposes,
- (c) are subject to the negative procedure.”

(b) in subsection (5A)—

(i) after “under” insert “—

(a) section 8U(1) are subject to—

- (i) the affirmative procedure if they add to, omit or replace any part of the text of an Act,
- (ii) otherwise, the negative procedure,”

(ii) the words from “paragraph 20A” to the end become paragraph (b).

9 In section 25, in subsection (1)—

(a) in the definition of “the acquired gender”, for “section 1(2)” substitute “sections 8C(3), 8M(2) and 8N(3)(b),”

(b) after the definition of “the appointed day” insert—

““confirmatory gender recognition certificate” means a certificate issued as such under section 8O(6)(b), 8Q(5)(a) or 8R(3)(a),”

(c) for the definition of “full gender recognition certificate” (which includes definitions of “interim gender recognition certificate” and “gender recognition certificate”) substitute—

““full gender recognition certificate” means a certificate issued as such under section 8E(2), (3) or (5), 8F(1), 8H(1), 8I(2)(a), 8J(1), 8K(1), 8Q(5)(a), 8R(3)(a) or 8S(3)(b),

“gender recognition certificate” means a full gender recognition certificate or an interim gender recognition certificate,

“interim gender recognition certificate” means a certificate issued as such under section 8E(6), 8Q(5)(a), 8R(3)(a) or 8S(3)(b),”

(d) after the definition of “interim gender recognition certificate” (inserted by paragraph (c)) insert—

““overseas gender recognition” has the meaning given by section 8N(3)(a),

“Scottish birth register entry” has the meaning given by section 8A(3),”

(e) the definitions of the following terms are repealed—

- (i) approved country or territory,
- (ii) gender dysphoria,
- (iii) Gender Recognition Panel,
- 5 (iv) protected civil partnership,
- (v) protected marriage,
- (vi) protected Scottish civil partnership,
- (vii) protected Scottish marriage,
- (viii) registered psychologist,
- 10 (ix) statutory declaration of consent.

10 (1) Part 2 of schedule 3 is amended as follows.

(2) In paragraph 14—

(a) before sub-paragraph (1) insert—

“(A1) Sub-paragraph (1) applies where the Registrar General for Scotland—

- 15 (a) issues a full gender recognition certificate or a confirmatory gender recognition certificate to a person who is the subject of a Scottish birth register entry,
- (b) receives a copy of a full gender recognition certificate issued to such a person by a court under section 8H, 8I, 8R or 8S, or
- 20 (c) receives under section 10(1) a copy of a full gender recognition certificate issued to a person under this Act as it applies in England and Wales or Northern Ireland.”,

(b) in sub-paragraph (1), the words from “If” to “person” are repealed,

(c) in sub-paragraph (2), for “after an application under section 6(1)” substitute “under section 8T(2)”.

(3) In paragraph 19—

(a) for sub-paragraph (1) substitute—

“(1) Sub-paragraphs (2) and (3) apply if, after an entry has been made in the Gender Recognition Register in relation to a person—

- 30 (a) the Court of Session or a sheriff revokes the certificate to which the entry relates, or
- (b) the High Court of Justice makes an order quashing the decision to grant the person’s application for a gender recognition certificate under this Act as it applies in England and Wales or Northern Ireland.”,
- 35

(b) in sub-paragraph (2), for “or the Court of Session” substitute “, Court of Session or sheriff”,

(c) after sub-paragraph (3) insert—

“(4) The Registrar General must cancel an entry in the Gender Recognition Register if the Registrar General revokes the certificate to which the entry relates.”.

(4) In paragraph 20A—

(a) in sub-paragraph (4)—

(i) in the definition of “qualifying Scottish civil partnership”, after “certificate” insert “or a confirmatory gender recognition certificate”,

(ii) in the definition of “qualifying Scottish marriage”, after “certificate” insert “or a confirmatory gender recognition certificate”,

(b) after that sub-paragraph insert—

“(5) In sub-paragraph (4), a reference to a full gender recognition certificate includes a reference to a full gender recognition certificate issued under this Act as it applies in England and Wales or Northern Ireland.”.

PART 2

OTHER ENACTMENTS

Divorce (Scotland) Act 1976

In section 1 of the Divorce (Scotland) Act 1976 (grounds of divorce)—

(a) in subsection (1)(b), after “2004” insert “(as it applies in Scotland, England and Wales or Northern Ireland)”,

(b) in subsection (3B)—

(i) in paragraph (a), for “under the Gender Recognition Act 2004, the Gender Recognition Panel issue a full gender recognition certificate” substitute “a full gender recognition certificate under the Gender Recognition Act 2004 (as it applies in Scotland, England and Wales or Northern Ireland) is issued”,

(ii) in paragraph (b), for “4E” substitute “8H”.

Criminal Law (Consolidation) (Scotland) Act 1995

In section 44 of the Criminal Law (Consolidation) (Scotland) Act 1995 (false statements and declarations), after subsection (2) insert—

“(2A) Subsection (2)(a) does not apply to a statutory declaration made in accordance with the Gender Recognition Act 2004 or regulations made under section 8U(1)(c) of that Act.”.

Civil Partnership Act 2004

In section 117 of the Civil Partnership Act 2004 (dissolution)—

(a) in subsection (2)(b), after “(c. 7)” insert “(as it applies in Scotland, England and Wales or Northern Ireland)”,

(b) in subsection (3A)—

- (i) in paragraph (a), for “under the Gender Recognition Act 2004, a Gender Recognition Panel issues a full gender recognition certificate” substitute “a full gender recognition certificate under the Gender Recognition Act 2004 (as it applies in Scotland, England and Wales or Northern Ireland) is issued”,
- (ii) in paragraph (b), for “4E” substitute “8H”.

Marriage and Civil Partnership (Scotland) Act 2014

14 In section 30 of the Marriage and Civil Partnership (Scotland) Act 2014 (renewed marriage or civil partnership following issue of full gender recognition certificate)—

(a) in subsection (1)(a)—

- (i) for “protected Scottish marriage” substitute “marriage solemnised in Scotland”,
- (ii) after “certificate” insert “or a confirmatory gender recognition certificate”,

(b) in subsection (1)(b)—

- (i) for “protected Scottish civil partnership” substitute “civil partnership registered in Scotland”,
- (ii) for “full gender recognition certificates” substitute “a full gender recognition certificate or a confirmatory gender recognition certificate”,

(c) in subsection (2)—

- (i) in paragraph (a), the words “protected Scottish” are repealed,
- (ii) in paragraph (b), the words “protected Scottish” are repealed,

(d) for subsection (7) substitute—

“(7) In this section—

- (a) “full gender recognition certificate” has the meaning given by section 25(1) of the Gender Recognition Act 2004 and includes a full gender recognition certificate issued under that Act as it applies in England and Wales or Northern Ireland,
- (b) “confirmatory gender recognition certificate” has the meaning given by section 25(1) of the Gender Recognition Act 2004.”.

Courts Reform (Scotland) Act 2014

15 In schedule 1 of the Courts Reform (Scotland) Act 2014 (civil jurisdiction of summary sheriff), after paragraph 5A insert—

“Proceedings in relation to overseas gender recognition

5B Proceedings for or in relation to an order under section 8P of the Gender Recognition Act 2004.”.

The Gender Recognition (Approved Countries and Territories) Order 2011

- 16 The Gender Recognition (Approved Countries and Territories) Order 2011 (S.I. 2011/1630) is revoked.

Gender Recognition Reform (Scotland) Bill

[AS INTRODUCED]

An Act of the Scottish Parliament to reform the grounds and procedure for obtaining gender recognition; and for connected purposes.

Introduced by: Shona Robison
On: 2 March 2022
Bill type: Government Bill

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