



Isle of Man
Government

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Gender Recognition Bill 2008

**Invitation to submit comments
on the draft Bill**

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Gender Recognition Bill 2008

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Gender Recognition Bill 2008

1. Gender Identity, Gender Dysphoria and Transsexuality

- 1.1 Gender identity is how a person feels themselves to be male or female. Generally a person's gender identity is the same as his or her biological sex. However, for reasons that are still poorly understood, this is not always the case.
- 1.2 Gender dysphoria, also known as "gender identity disorder", is a medical term for a person's confusion or discomfort about their birth gender. Those who feel they have been born into the wrong gender are often aware there is "something wrong" early in childhood.
- 1.3 Transsexual people are those who have a life-long and extreme form of gender dysphoria, and who seek to alter their anatomical sex with hormone treatment and surgery. It has been found that most transsexual people who undergo such treatment experience a successful outcome in terms of the subjective quality of their lives.
- 1.4 Gender dysphoria should not be confused with transvestitism or cross-dressing, where a person's gender identity matches their birth gender but they enjoy dressing as the opposite sex for emotional or sexual pleasure.
- 1.5 Further information about gender dysphoria and transsexuality can be found on NHS Direct website at:
<http://www.nhsdirect.nhs.uk/articles/article.aspx?articleId=435§ionId=1>

2. The Human Rights Position

- 2.1 On 11th July 2002 the European Court of Human Rights in Strasbourg ("the European Court") delivered its judgement in the cases of *Goodwin v United Kingdom* and *I v United Kingdom*. Both applicants were post operative male to female transsexual persons who had complained about the lack of legal recognition of their acquired gender in the United Kingdom.
- 2.2 The judges of the European Court who considered the case found unanimously that there had been a violation by the United Kingdom of the rights of the applicants under Article 8 (Right to respect for private and family life) and Article 12 (Right to marry) of the European Convention on Human Rights ("the European Convention").
- 2.3 All State Parties to the European Convention have to respect the case law of the European Court and take its judgements into account in the development of national legislation and practice¹. However, where the European Court has found a particular State to have violated rights under the European Convention that State has a positive obligation to address the violation.
- 2.4 In addition to the judgement of the European Court, on 10th April 2003 the House of Lords gave its judgment in the case of *Bellinger v Bellinger*. Mrs Bellinger, a male-to-female transsexual person, was seeking legal recognition of her 1981 marriage to a man. Their Lordships were sympathetic to Mrs Bellinger's plight but ruled that the

¹ The majority of European countries now have some form of legal recognition of a person's changed gender, and the process of countries recognising transsexual persons' human rights is continuing – for example, in the Republic of Ireland in February 2008 the Courts found that Irish civil registration law which prevents a transsexual person from obtaining a new birth certificate in their acquired gender is incompatible with the European Convention and therefore must be amended.

marriage was void. However, they declared that section 11(c) of the Matrimonial Causes Act 1973² was incompatible with the Human Rights Act 1998.

- 2.5 The United Kingdom had to amend its legislation so as to respect the Convention rights of transsexual people. The result was the Gender Recognition Act 2004 (“the UK Act”) which received Royal Assent on 1st July 2004 and which came fully into force on 1st April 2005. A copy of the UK Act as enacted can be found on the internet at: http://www.opsi.gov.uk/acts/acts2004/pdf/ukpga_20040007_en.pdf
- 2.6. As the UK’s ratification of the European Convention extends to the Isle of Man and, for the purposes of the Convention, the Island is considered to be part of the UK “State Party” the same obligations to secure the Convention rights and to comply with judgements of the European Court apply to the Isle of Man.
- 2.7 In addition, with the Human Rights Act 2001 now fully in force, a case could be taken to the Isle of Man Courts. Given the case law of the European Court and the House of Lords it is almost certain that current Isle of Man law in relation to transsexual people would be ruled to be incompatible with the European Convention.
- 2.8. Given the Island’s human rights obligation and the Isle of Man Government’s commitment to social inclusion, the Council of Ministers therefore agreed to the drafting of an appropriate legislation to provide legal recognition of a transsexual person’s change of gender.

3. Background information about the draft Bill

- 3.1 The draft Gender Recognition Bill is attached to this paper at Appendix 1. The Bill covers many of the matters dealt with in the UK Act, such as the right to obtain a new birth certificate and the ability to marry someone of the opposite gender to the transsexual person’s acquired gender, but it does not seek to replicate all of the UK Act’s provisions.
- 3.2 The main points of the Bill are as follows:
 - A transsexual person who has been issued with a full gender recognition certificate is to be legally regarded for all purposes as being of their acquired gender, e.g. a male to female transsexual person will be legally a woman under Isle of Man law. However, this reassignment is not retrospective³ and it is subject to any exceptions set out either in the rest of the Bill or in any other Manx legislation.
 - The General Registry will establish a Gender Recognition Register to record the details of all gender recognition certificates that have been delivered to the Chief Registrar. The GRR will not be open to public inspection. A transsexual person may have a replacement birth certificate created from the GRR entry but the original birth certificate is retained in the Manx birth register. The Chief Registrar will maintain a confidential link between the entries in the GRR and birth register.
 - A transsexual person will be able to marry a person of the opposite gender to their acquired gender (e.g. a female to male transsexual person will be legally a man and therefore able to marry a woman). However, no clergyman would be obliged to

² Section 11 of 1973 Act deals with the grounds on which a marriage celebrated after 31st July 1971 shall be void, and paragraph (c) that a marriage shall be void if “the parties are not respectively male and female”.

³ It will not have effect in the Isle of Man prior to the person obtaining the full certificate or the Bill coming into operation, whichever is the later. (However, a person who has a full certificate is already legally considered to be their acquired gender for social security and pension provisions – see paragraphs 3.10 & 3.11)

solemnise such a marriage. In addition, in certain circumstances where it can be shown that one party to a marriage did not know that the other person had previously been of the other gender then the marriage can be declared void.

- To ensure the continuity of parental rights and responsibilities, although a person is regarded as being of the acquired gender, the person will retain their original status as either father or mother of a child.
- There are provisions to deal with succession and inheritance where a person has legally changed their gender.
- To ensure fairness and safety of competition, it will be for the governing body of a gender-affected sport⁴ to decide whether transsexual people can compete in that sport in their acquired gender.
- In the case of gender specific offences, where criminal liability would exist but for the fact that a person, either the victim or the perpetrator, has become of the acquired gender, that criminal liability will exist regardless of the gender change⁵.
- A person who has legally changed their gender outside the Island and the UK and subsequently married will not be regarded as being legally married under the law of the Island unless they have also obtained a full gender recognition certificate⁶.
- Anyone who discloses information that they have obtained in an official capacity about a transsexual person's application for a certificate or, if they have a certificate, information about the person's gender history commits an offence and is liable to a fine of up to £5,000⁷. However, there are a number of circumstances under which disclosure is appropriate⁸ and that do not constitute an offence.

3.3 It is not considered that the Bill requires any additional resources, nor will it reduce Government income.

3.4 The provisions of the UK Act that have not been incorporated into the Bill fall into three main areas:

- the Gender Recognition Panel and the issuing of gender recognition certificates;
- social security and pensions provisions;
- discrimination in employment.

3.5 The matters that are covered by the Bill are described more fully in the Commentary section of the Bill's draft Explanatory Notes, a copy of which can be found at Appendix 2.

3.6 The reasons behind not including the establishment of an Isle of Man Gender Recognition Panel and certain other provisions in the Bill are set out in the following paragraphs.

⁴ A sport is a gender-affected sport if the strength, stamina or physique of average persons of one gender would put them at a disadvantage to average persons of the other gender as competitors in the sport.

⁵ For example, s.1 of the Sexual Offences Act 1992 refers to rape as an offence committed by a man. Therefore, an unlikely but conceivable set of circumstances might be as follows:

A man rapes a woman; he is not initially caught and subsequently undergoes gender reassignment and obtains a full gender recognition certificate (a process that would take at least two years) so that in law that person becomes a woman; evidence then comes to light showing the person committed the offence of rape prior to acquiring the female gender; the person can still be charged with the offence.

⁶ The UK Government maintains a list of other countries which it recognises as providing appropriate procedures for change of gender. A person from such a country only has to demonstrate to the UK Panel that their gender change had been recognised in their home country to be automatically able to obtain a full UK certificate.

⁷ This is to protect the transsexual person's right to privacy under the Human Rights Convention.

⁸ Examples of permitted disclosures include where it is relevant to court or tribunal proceedings, or the investigation or prevention of crime.

The Gender Recognition Panel

- 3.7 The procedure by which a transsexual person is assessed as being eligible for recognition in their acquired gender is obviously central to any legislation in this area. The Gender Recognition Panel is the body, consisting of legally and medically qualified persons, established by the UK Act to assess applications from transsexual people for the issuing of a gender recognition certificate, with legal recognition following from a person obtaining a full gender recognition certificate⁹.
- 3.8 Before being issued with a certificate a person must be able to demonstrate that they meet strict evidential criteria, and the Panel must be satisfied that the applicant:
- has, or has had, gender dysphoria,
 - has lived fully in the acquired gender for at least the preceding two years, and
 - intends to continue to live in the acquired gender until death.
- 3.9 A deliberate decision was taken during the drafting of the Bill that a Gender Recognition Panel should not be established in the Isle of Man but instead legal recognition of a person's acquired gender in the Island should follow from the issuing of a full gender recognition certificate by the UK Panel. There were several reasons for this decision:
- Gender dysphoria is a recognised medical condition and treatment is available under the National Health Service. However, the diagnosis and treatment of the condition is very specialised and, following an initial referral, for Isle of Man residents it is almost certain to have taken place in the United Kingdom;
 - The assessment of whether a transsexual person meets the detailed evidential criteria for the granting of a gender recognition certificate is also very specialised and establishing a panel of suitably qualified and experienced persons from amongst Island residents would be very difficult;
 - Given the size of the Island and the very small number of cases it would have to deal with, it was not considered that the cost and resources of establishing and running an Island Panel (together with arrangements to allow for appeals against decisions of the Panel) could be justified when an alternative was available;
 - In a small community such as the Isle of Man it is more likely that the privacy of a person seeking a gender recognition certificate will be maintained through application to an off-Island body;
 - Isle of Man residents can already apply to the UK Panel for a gender recognition certificate under the same conditions as a person who is resident in the UK.

Social security and pensions provisions

- 3.10 In January 2005 Tynwald approved four Orders that related to the UK Act¹⁰. The Orders were made under the Pensions Act 1995 and the Social Security Act 2000 (Acts of Tynwald). Their effect was to apply to the Isle of Man as part of the law of the Island (with appropriate modifications) those provisions of the UK Act relating to social

⁹ Further information about the operation of the Gender Recognition Panel can be found at its website: <http://www.grp.gov.uk/index.htm>

¹⁰ The four Orders were:

The Social Security Act 2000 (Amendment) (No.3) Order 2004 – SD 873/04;

The Pension Schemes Order 2004 – SD 874/04;

The Gender Recognition Act 2004 (Application) Order 2004 – SD 875/04;

The Gender Recognition Act 2004 (Application) (No.2) Order 2004 – SD 876/04.

security and pensions, together with necessary related provisions. The Orders were needed because of the requirement under the reciprocal agreement between the Island and the UK on social security matters to keep relevant Isle of Man legislation in line with that of the UK.

- 3.11 Consideration was given during the drafting process as to whether the social security and pensions provisions should be incorporated into the Bill. However, given that these provisions of the UK Act already apply to the Island under Acts of Tynwald, and also given that the Bill is inextricably linked to the UK Act through the gender recognition certificate process, it was considered that the repeal of the DHSS subordinate legislation and the incorporation of social security and pensions provisions into the Bill would have been an unnecessary complication. It is intended, however, that the prohibition on disclosure of information provision applied by the Orders will be revoked as this forms an integral part of the Bill.

Discrimination in employment

- 3.12 Comprehensive employment anti-discrimination legislation is in the process of being developed by the Department of Trade and Industry. It is intended that the Employment Equality Bill will provide protection for transsexual people who experience discrimination in the workplace.

4. Invitation to submit comments

- 4.1 The Council of Ministers is now seeking comments on the draft Gender Recognition Bill.

- 4.2 Any comments should be submitted in writing to:

Ms Anne Shimmin
Chief Secretary's Office
Government Office
Bucks Road
Douglas
Isle of Man
IM1 3PN

or by email to anne.shimmin@cso.gov.im

- 4.3 The closing date for the receipt of comments is **Friday 23rd May 2008**.
- 4.4 Unless specifically requested otherwise, any responses received may be published either in part or in their entirety.

Gender Recognition Bill 2008

Explanatory Memorandum

1. The Bill is promoted by the Council of Ministers.
2. The purpose of the Bill is to provide transsexual people with legal recognition in their acquired gender. Legal recognition will follow from the issue of a full gender recognition certificate in the United Kingdom.
3. *Clause 1 deals with interpretation. Clauses 2 to 11 and Schedules 1 and 2 deal with the consequences in Manx law of the issue of a UK gender recognition certificate. The general principle is that the transsexual person will for all purposes be regarded as being of the acquired gender. These clauses and Schedules make specific provision relating to birth certificates, marriage, parenthood, inheritance, sport, gender-specific offences and foreign gender change.*
4. Clauses 12 to 15 are supplementary. *Clause 12 deals with confidentiality of information and clause 13 contains powers to modify statutory provisions to ensure consistency with the Bill's provisions. Clause 14 deals with the validity of some relevant subordinate legislation and clause 15 deals with the short title and commencement of the Bill.*
5. The Bill is not expected to increase the expenditure of Government nor to reduce the income of Government.
6. In the view of the member moving the Bill its provisions are compatible with the Convention rights within the meaning of the Human Rights Act 2001.

Arrangement of Sections

Section

1. Interpretation
2. Effect of gender recognition certificate, etc
3. Civil registration
4. Marriage
5. Parenthood
6. Succession, etc
7. Trustees and personal representatives
8. Orders where expectations defeated
9. Sport
10. Gender-specific offences
11. Foreign gender change and marriage
12. Prohibition on disclosure of information
13. Power to modify statutory provisions
14. Validity of subordinate legislation
15. Short title and commencement

Schedules –

Schedule 1 – Gender recognition – registration practice

Schedule 2 – Amendment of enactments relating to marriage



A BILL

to make provision for and in connection with change of gender; and for connected purposes.

BE IT ENACTED, by the Queen's Most Excellent Majesty, by and with the advice and consent of the Council and Keys in Tynwald assembled, and by the authority of the same, as follows —

Interpretation

1. In this Act —

“the acquired gender” means the gender to which the person has changed as a consequence of a full certificate being issued;

“full certificate” means a gender recognition certificate issued as a full gender recognition certificate under the UK Act;

“gender recognition certificate” means a gender recognition certificate (including a corrected certificate) issued under the UK Act and includes a certificate issued before the commencement of this Act;

“interim certificate” means a gender recognition certificate granted as an interim gender recognition certificate under the UK Act; and

“the UK Act” means the Gender Recognition Act 2004 (of Parliament).

Effect of gender recognition certificate, etc P2004/7/9

2. (1) The fact that a person's gender has become the acquired gender (so that, if the acquired gender is the male gender, the person's gender becomes that of a man and, if it is the female gender, the person's gender becomes that of a woman) does not affect things done, or events occurring, before the full certificate is issued, or before the commencement of this Act, whichever is the later.

(2) However, it does operate for the interpretation of enactments passed, and public documents made, before such issue or commencement (as well as those passed or made afterwards).

(3) This section is subject to any statutory provision to the contrary (including provision made by this Act).

Civil registration P2004/7/Sch 3

3. Schedule 1 has effect in respect of registration practice and the related matters provided for in that Schedule.

Marriage P2004/7/11

4. Schedule 2 (amendment of marriage law) has effect.

Parenthood P2004/7/12

5. The fact that a person's gender has become the acquired gender does not affect the status of the person as the father or mother of a child.

Succession, etc P2004/7/15 & 16

6. (1) The fact that a person's gender has become the acquired gender does not affect the disposal or devolution of property under a will or other instrument made before the commencement of this Act.

(2) The fact that a person's gender has become the acquired gender does not affect the devolution of any property limited (expressly or not) by a will or other instrument to devolve (as nearly as the law permits) along with any peerage or dignity or title of honour unless an intention that it should do so is expressed in the will or other instrument.

Trustees and personal representatives P2004/7/17

7. (1) A trustee or personal representative is not under a duty, by virtue of the law relating to trusts or the administration of estates, to enquire, before conveying or distributing any property, whether a full certificate has been issued to any person or revoked (if that fact could affect entitlement to the property).

(2) A trustee or personal representative is not liable to any person by reason of a conveyance or distribution of the property made without regard to whether a full certificate has been issued to any person or revoked if the trustee or personal representative has not received notice of the fact before the conveyance or distribution.

(3) This section does not prejudice the right of a person to follow the property, or any property representing it, into the hands of another person who has received it unless that person has purchased it for value in good faith and without notice.

Orders where expectations defeated P2004/7/18

8. (1) This section applies where the disposition or devolution of any property under a will or other instrument (made on or after the commencement of this Act) is different from what it would be but for the fact that a person's gender has become the acquired gender.

(2) A person may apply to the High Court for an order on the ground of being adversely affected by the different disposition or devolution of the property.

(3) The Court may, if it is satisfied that it is just to do so, make in relation to any person benefiting from the different disposition or devolution of the property such order as it considers appropriate.

(4) An order may, in particular, make provision for –

- (a) the payment of a lump sum to the applicant,
- (b) the transfer of property to the applicant,
- (c) the settlement of property for the benefit of the applicant,
- (d) the acquisition of property and either its transfer to the applicant or its settlement for the benefit of the applicant.

(5) An order may contain consequential or supplementary provisions for giving effect to the order or for ensuring that it operates fairly as between the applicant and the other person or persons affected by it; and an order may, in particular, confer powers on trustees.

Sport P2004/7/19

9. (1) A body responsible for regulating the participation of persons as competitors in an event or events involving a gender-affected sport may, if subsection (2) is satisfied, prohibit or restrict the participation as competitors in the event or events of persons whose gender has become the acquired gender.

(2) This subsection is satisfied if the prohibition or restriction is necessary to secure –

- (a) fair competition, or
- (b) the safety of competitors,

at the event or events.

(3) “Sport” means a sport, game or other activity of a competitive nature.

(4) A sport is a gender-affected sport if the physical strength, stamina or physique of average persons of one gender would put them at a disadvantage to average persons of the other gender as competitors in events involving the sport.

Gender-specific offences P2004/7/20

10. (1) Where (apart from this subsection) a relevant gender-specific offence could be committed or attempted only if the gender of a person to whom a full certificate has been issued were not the acquired gender, the fact that the person’s gender has become the acquired gender does not prevent the offence being committed or attempted.

(2) An offence is a “relevant gender-specific offence” if –

- (a) either or both of the conditions in subsection (3) are satisfied, and
- (b) the commission of the offence involves the accused engaging in sexual activity.

(3) The conditions are –

- (a) that the offence may be committed only by a person of a particular gender, and
- (b) that the offence may be committed only on, or in relation to, a person of a particular gender,

and the references to a particular gender include a gender identified by reference to the gender of the other person involved.

Foreign gender change and marriage P2004/7/21

11. (1) A person’s gender is not to be regarded as having changed by reason only that it has changed under the law of a country or territory outside the Island and the United Kingdom.

(2) Accordingly, a person is not to be regarded as being married by reason of having entered into a foreign post-recognition marriage.

(3) But if a full certificate is issued to a person who has entered into a foreign post-recognition marriage, after the issue of the certificate the marriage is no longer to be regarded as being void on the ground that (at the time when it was entered into) the parties to it were not respectively male and female.

(4) However, subsection (3) does not apply to a foreign post-recognition marriage if a party to it has entered into a later (valid) marriage before the issue of the full certificate.

(5) For the purposes of this section a person has entered into a foreign post-recognition marriage if (and only if) –

- (a) the person has entered into a marriage in accordance with the law of a country or territory outside the Island and the United Kingdom,
- (b) before the marriage was entered into the person had changed gender under the law of that or any other country or territory outside the Island and the United Kingdom,

- (c) the other party to the marriage was not of the gender to which the person had changed under the law of that country or territory, and
- (d) by virtue of subsection (1) the person's gender was not regarded as having changed under the law of the Island.

Prohibition on disclosure of information

P2004/7/22

12. (1) It is an offence for a person who has acquired protected information in an official capacity to disclose the information to any other person.

(2) "Protected information" means information which relates to a person who has made an application for a gender recognition certificate and which –

- (a) concerns that application; or
- (b) if the application for a gender recognition certificate is granted, otherwise concerns the person's gender before it becomes the acquired gender.

(3) A person acquires protected information in an official capacity if the person acquires it–

- (a) in connection with the person's functions as a member of the civil service, a constable or the holder of any other public office or in connection with the functions of a public authority or of a voluntary organisation,
- (b) as an employer, or prospective employer, of the person to whom the information relates or as a person employed by such an employer or prospective employer, or
- (c) in the course of, or otherwise in connection with, the conduct of business or the supply of professional services.

(4) But it is not an offence under this section to disclose protected information relating to a person if –

- (a) the information does not enable that person to be identified,
- (b) that person has agreed to the disclosure of the information,
- (c) the information is protected information by virtue of subsection (2)(b) and the person by whom the disclosure is made does not know or believe that a full gender recognition certificate has been issued,
- (d) the disclosure is in accordance with an order of a court or tribunal,
- (e) the disclosure is for the purpose of instituting, or otherwise for the purposes of, proceedings before a court or tribunal,
- (f) the disclosure is for the purpose of preventing or investigating crime,
- (g) the disclosure is made to the Chief Registrar,
- (h) the disclosure is made by the Chief Registrar to the Secretary of State in circumstances in which the Chief Registrar considers that the grant of an interim certificate, a full certificate or a corrected certificate was obtained by fraud,
- (i) the disclosure is made by the Chief Registrar to the Registrar General in the relevant part of the United Kingdom,
- (j) the disclosure is made for the purposes of the social security system or a pension scheme,
- (k) the disclosure is in accordance with provision made by an order under subsection (5), or
- (l) the disclosure is in accordance with any provision of, or made by virtue of, an enactment other than this section.

(5) The Council of Ministers may by order make provision prescribing circumstances in which the disclosure of protected information is not to constitute an offence under this section.

(6) An order under subsection (5) may make provision permitting –

- (a) disclosure to specified persons or persons of a specified description,
- (b) disclosure for specified purposes,
- (c) disclosure of specified descriptions of information, or
- (d) disclosure by specified persons or persons of a specified description.

(7) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding £5,000.

Power to modify statutory provisions P2004/7/23

13. (1) The Council of Ministers may by order make provision for modifying the operation of any statutory provision in relation to –

- (a) persons whose gender has become the acquired gender, or
- (b) any description of such persons.

(2) An order under this section shall not come into operation unless it is approved by Tynwald.

Validity of subordinate legislation

14. (1) The Gender Recognition Act 2004 (Application) Order 2004 [S.D. 875/04] and the Gender Recognition Act 2004 (Application) (No. 2) Order 2004 [S.D. 876/04] shall be treated as always having been validly made.

(2) The orders mentioned in subsection (1), insofar as they apply section 22 of the UK Act to the Island, shall cease to have effect upon the coming into force of section 12.

Short title and commencement

15. (1) This Act may be cited as the Gender Recognition Act 2008.

(2) This Act shall come into operation on such day as the Council of Ministers may by order appoint and different days may be so appointed for different provisions and for different purposes.

SCHEDULES

Section 3

SCHEDULE 1

GENDER RECOGNITION – REGISTRATION PRACTICE

Gender Recognition Register and registration

1. (1) The Chief Registrar shall maintain in the General Registry a register to be called the Gender Recognition Register.

(2) The form in which the Gender Recognition Register is to be maintained shall be determined by the Chief Registrar.

(3) The Gender Recognition Register shall not be open to public inspection or search.

2. (1) Sub-paragraph (2) applies where –

- (a) there is a Manx birth register entry in relation to a person to whom a full certificate is issued, and
- (b) the following documents are delivered to the Chief Registrar by or on behalf of the person to whom the certificate relates–

- (i) the original full certificate; and
 - (ii) a certified copy of the Manx birth register entry of the person to whom that certificate relates.
- (2) Where the documents are delivered under sub-paragraph (1)(b), the Chief Registrar shall –
- (a) make a copy of the full certificate (which shall not be available to public inspection or search) and return the original full certificate and certified copy of the Manx birth register entry to the person who delivered them,
 - (b) make an entry in the Gender Recognition Register containing such particulars as may be prescribed in relation to the person’s birth and any other prescribed matter, and
 - (c) otherwise than by annotating in any way the birth register, make traceable the connection between the Manx birth register entry and the entry in the Gender Recognition Register.
- (3) Sub-paragraph (2) does not apply if the certificate was issued after an application under section 6(1) (corrected certificate) of the UK Act and that sub-paragraph has already been complied with in relation to the person.
- (4) Information kept by the Chief Registrar for the purposes of sub-paragraph (2)(c) shall not be open to public inspection or search.
- (5) In this paragraph –
- “Manx birth register entry”, in relation to a person to whom a full certificate is issued, means -
- (a) an entry of which a certified copy is kept by the Chief Registrar, or
 - (b) an entry in a register so kept,
- containing a record of the person’s birth or adoption (or, if there would otherwise be more than one, the most recent);
- “prescribed” means prescribed by regulations made by the First Deemster.
- (6) Regulations under this paragraph shall be laid before Tynwald.

Indexing of entries in Gender Recognition Register

- 3.** (1) The Chief Registrar shall make arrangements for each entry made in the Gender Recognition Register to be included in the relevant index kept in the General Registry.
- (2) Any right to search the relevant index includes the right to search entries included in it by virtue of sub-paragraph (1).
- (3) Where by virtue of sub-paragraph (1) an index includes entries in the Gender Recognition Register, the index must not disclose that fact.
- (4) In this section “the relevant index”, in relation to an entry made in the Gender Recognition Register in relation to a person, means the index of the certified copies of entries in registers, or of entries in registers, which includes the person’s Manx birth register entry.

Certified copies of entries in Gender Recognition Register

- 4.** (1) Anyone who may have a certified copy of the Manx birth register entry of a person issued with a full certificate may have a certified copy of the entry made in relation to the person in the Gender Recognition Register.
- (2) Any fee which would be payable for a certified copy of the person’s Manx birth register entry is payable for a certified copy of the entry made in relation to the person in the Gender Recognition Register.

(3) If the person's Manx birth register entry is an entry in the Gender Recognition Register, sub-paragraph (1) applies as if the person's Manx birth register entry were the most recent entry within paragraph 2(5)(a) or (b) containing a record of the person's birth or adoption which is not an entry in the Gender Recognition Register.

(4) A certified copy of an entry in the Gender Recognition Register must not disclose the fact that the entry is contained in the Gender Recognition Register.

Short certificates of birth compiled from Gender Recognition Register

5. Where a short certificate of birth under section 37 of the Civil Registration Act 1984 [c.12] ("the 1984 Act") is compiled from the Gender Recognition Register, the certificate must not disclose that fact.

Gender Recognition Register: re-registration

6. (1) Section 13 of the 1984 Act (re-registration of birth of a non-marital child) applies where an entry relating to a person's birth has been made in the Gender Recognition Register as where the birth of a child has been registered under that Act.

(2) In its application by virtue of sub-paragraph (1) section 13 has effect –

- (a) as if the reference to the registrar in subsection (1) were to the Chief Registrar, and
- (b) with the omission of subsections (2) and (3).

(3) Sections 17 and 17A of the 1984 Act (re-registration in cases of legitimation and after declaration of parentage) apply where an entry relating to a person's birth has been made in the Gender Recognition Register as if the references in those sections to the Chief Registrar authorising re-registration of the person's birth were to the Chief Registrar re-registering it.

Correction etc. of Gender Recognition Register

7. (1) Any power or duty of the Chief Registrar or any other person to correct, alter, amend, mark or cancel the marking of a person's Manx birth register entry is exercisable, or falls to be performed, by the Chief Registrar in relation to an entry in the Gender Recognition Register which –

- (a) relates to that person, and
- (b) under paragraph 3(1) is included in the index which includes the person's Manx birth register entry.

(2) If the person's Manx birth register entry is an entry in the Gender Recognition Register, the references in sub-paragraph (1) to the person's Manx birth register entry are to the most recent entry within paragraph 2(5)(a) or (b) containing a record of the person's birth or adoption which is not an entry in the Gender Recognition Register.

(3) The Chief Registrar may correct the Gender Recognition Register by entry in the margin (without any alteration of the original entry) in consequence of the issue of a full certificate after an application under section 6(1) of the UK Act.

Alteration of Gender Recognition Register after revocation of gender recognition certificate

8. (1) This paragraph applies if, after an entry has been made in the Gender Recognition Register in relation to a person, the decision to grant the person's application for a full certificate has been quashed under section 8(6) of the UK Act (power of court where allegation that the grant was secured by fraud).

(2) The person concerned must forthwith inform the Chief Registrar of the quashing of such a decision.

(3) Subject to any appeal that affects the grant of a person's application for a full certificate, the Chief Registrar must cancel the entry in the Gender Recognition Register.

(4) Any failure to notify the Chief Registrar as required by sub-paragraph (2) shall be an offence for which the person shall be liable on summary conviction to a fine not exceeding £5,000.

Evidence

9. (1) Section 38(6) of the 1984 Act (certified copy of entry in register under that Act deemed to be true copy) applies in relation to the Gender Recognition Register as if it were a register under that Act.

(2) A certified copy of an entry made in the Gender Recognition Register in relation to a person is to be received, without further or other proof, as evidence –

- (a) if the relevant index is the index of the Adopted Children Register maintained under section 38(1) of the Adoption Act 1984 [c.14], of the matters of which a certified copy of an entry in that Register is evidence,
- (b) if the relevant index is the index of the Parental Order Register maintained under regulations made under section 89(8)(a) of the Children and Young Persons Act 2001 [c.20], of the matters of which a certified copy of an entry in that Register is evidence, and
- (c) otherwise, of the person's birth.

Section 3

SCHEDULE 2

AMENDMENT OF ENACTMENTS RELATING TO MARRIAGE

Marriage Act 1984 (c.13)

1. For section 1(3) substitute –

“(3) Subject to the following provisions of this section, nothing in subsections (1) and (2) applies to a marriage between –

- (a) a man and a woman who is the sister, aunt or niece of a former wife of his (whether living or not), or
- (b) a woman and a man who is the brother, uncle or nephew of a former husband of hers (whether living or not).

(3A) In the case of a party to a marriage whose gender has become the acquired gender in accordance with the Gender Recognition Act 2008 (referred to here as “the relevant person”), the reference in subsection (3) to a former wife or former husband of the relevant person includes (respectively) any former husband or former wife of the relevant person.”.

2. After section 5 insert –

“5A Marriages involving person of acquired gender

No clergyman is obliged to solemnise the marriage of a person whose gender has become the acquired gender in accordance with the Gender Recognition Act 2008.”.

Matrimonial Proceedings Act 2003 (c.7)

3. In section 13 (grounds on which marriage is voidable), after paragraph (f) insert -

- “(g) that an interim gender recognition certificate under the Gender Recognition Act 2004 (an Act of Parliament) has, after the time of the marriage, been issued to either party to the marriage;
- (h) that the respondent is a person whose gender at the time of the marriage had become the acquired gender under the Gender Recognition Act 2004 (an Act of Parliament).”.

- 4.** In section 14 (bars to relief) –
- (a) after subsection (2) insert –
- “(2A) Without prejudice to subsection (1), the court shall not make an annulment order under section 13 on the ground mentioned in paragraph (g) of that section unless it is satisfied that proceedings were instituted within 6 months from the date of issue of the interim gender recognition certificate.”;
- (b) in subsections (2), (3) and (4), for “(e) or (f)” substitute “(e), (f) or (h)”.
- 5.** In paragraph 2 of Schedule 4 (grounds on which a marriage celebrated before 1st April 1976 is voidable) –
- (a) in sub-paragraph (2), after paragraph (d) insert –
- “(e) that an interim gender recognition certificate under the Gender Recognition Act 2004 (an Act of Parliament) has been issued to either party to the marriage;”;
- (b) after sub-paragraph (4) insert –
- “(4A) The court shall not make an annulment order in a case falling within sub-paragraph (2)(e) unless it is satisfied that proceedings were instituted within 6 months from the date of issue of the interim gender recognition certificate.”.
-

GENDER RECOGNITION BILL 2008
EXPLANATORY NOTES
(draft 09/04/08)

These notes are circulated for the information of Members with the approval of the Member in charge of the Bill, xxxxxxxxxxxx MHK

INTRODUCTION

1. These explanatory notes relate to the Gender Recognition Bill 2008. They have been prepared by the Chief Secretary's Office in order to assist readers of the Bill. They do not form part of the Bill and have not been endorsed by the House of Keys.
2. The notes need to be read in conjunction with the Bill. They are not, and are not meant to be, a comprehensive description of the Bill.

SUMMARY AND BACKGROUND

Purpose of the Bill

3. The purpose of the Gender Recognition Bill is to provide transsexual people¹¹ with legal recognition in their acquired gender. This is necessary to bring Manx law into compliance with the European Convention for the Protection of Human Rights and Fundamental Freedoms ("the European Convention")¹².
4. Currently transsexual people are not recognised in their acquired gender for most purposes under the law of the Island. Although transsexual people can obtain some official documents (e.g. driving licence or passport) in their new name and gender, they cannot enjoy all the rights confined by law to people of the gender to which they feel they belong.
5. In practical terms, legal recognition will mean that a male to female transsexual person will be legally recognised as a woman, and a female to male transsexual person will be recognised as a man in Manx law. Amongst other things, the transsexual person will be entitled to a new birth certificate¹³ reflecting their acquired gender and they will be able to marry someone of the opposite gender to his or her acquired gender.

The Human Rights Position

6. On 11th July 2002, the European Court of Human Rights in Strasbourg ("the European Court") delivered its judgement in the cases of *Goodwin v the United Kingdom* and *I v the United Kingdom*¹⁴. Both applicants were post-operative male to female transsexual persons who had complained about the legal status of transsexual people in the United Kingdom.
7. The Court found that the UK had breached the rights of these two transsexual people, under Article 8 (Right to respect for private life) and Article 12 (Right to marry) of the European Convention.

¹¹ Further information about transsexuality (gender dysphoria) can be found on NHS Direct website at: <http://www.nhsdirect.nhs.uk/articles/article.aspx?articleId=435§ionId=1>

¹² The text of the convention can be found at: <http://conventions.coe.int/Treaty/en/Treaties/Html/005.htm>

¹³ A new birth certificate will only be available to a person for whom there is an entry in the Isle of Man birth register.

¹⁴ The full text of the European Court judgements can be found on its website at: <http://www.echr.coe.int/echr/>

8. All State Parties to the European Convention have an obligation under international law to comply with the rights set out in the convention and to take into account the European Court's interpretation of those rights in the development of national legislation and practice. And, in particular, where the European Court has found a State to have violated a person's rights under the European Convention that State has a positive obligation to address the violation.
9. In addition to the judgement of the European Court, on 10th April 2003 the House of Lords gave its judgement in the case of *Bellinger v Bellinger*¹⁵. Mrs Bellinger, a male to female transsexual person, was seeking legal recognition of her 1981 marriage to a man. Their Lordships were sympathetic to Mrs Bellinger's plight but ruled that the marriage ceremony was not valid. However, they declared that section 11(c) of the UK's Matrimonial Causes Act 1973¹⁶ was incompatible with the Human Rights Act 1998¹⁷.
10. The United Kingdom therefore amended its legislation so as to respect the rights of transsexual people under the European Convention. The result was the Gender Recognition Act 2004¹⁸ ("the UK Act") which received Royal Assent on 1st July 2004 and which came fully into force on 1st April 2005. A copy of the UK Act can be found on the website of the UK's Office of Public Sector Information at: http://www.opsi.gov.uk/acts/acts2004/pdf/ukpga_20040007_en.pdf
11. As the UK's ratification of the European Convention extends to the Isle of Man and, for the purposes of the convention, the Island is considered to be part of the UK "State Party" the same obligations to secure the convention rights and comply with judgements of the European Court apply to the Isle of Man. In addition, now that the Human Rights Act 2001 is in force, the legal status of transsexual people in the Isle of Man could be challenged in the Island's Courts. Given the case law of the European Court and the House of Lords it is almost certain that current Manx law in relation to transsexual persons would be found to be incompatible with the European Convention.

The Bill

12. The starting point for the Gender Recognition Bill was consideration of the UK Act but it does not replicate all of the UK Act's provisions. The provisions of the UK Act that have not been incorporated into the Bill fall into three main areas:
 - the Gender Recognition Panel and the issuing of gender recognition certificates;
 - social security and pensions provisions;
 - discrimination in employment.
13. The matters that are covered by the Bill are described fully in the Commentary section of these Notes; the reasons for not including certain provisions within this Bill are set out briefly paragraphs 14 to 21 of these Notes.

The Gender Recognition Panel

14. The Gender Recognition Panel is the body, consisting of legally and medically qualified persons, established by the UK Act to assess applications from transsexual people for

¹⁵ [2003] 2 All ER 593

¹⁶ Section 11 of 1973 Act deals with the grounds on which a marriage celebrated after 31st July 1971 shall be void, and paragraph (c) states that a marriage shall be void if "the parties are not respectively male and female".

¹⁷ The full text of the House of Lords judgement can be found at:

<http://www.publications.parliament.uk/pa/ld200203/ldjudgmt/jd030410/bellin-1.htm>

¹⁸ 2004 c.7

the issuing of a gender recognition certificate, with legal recognition under the UK Act following from a person obtaining a full gender recognition certificate¹⁹.

15. Before being issued with a certificate a person must be able to demonstrate that they meet strict evidential criteria, and the Panel must be satisfied that the applicant:
 - has, or has had, gender dysphoria,
 - has lived fully in the acquired gender for at least the preceding two years, and
 - intends to continue to live in the acquired gender until death.
16. An Isle of Man Gender Recognition Panel is not established by the Bill, instead legal recognition in the Island of a person's acquired gender results from the issuing of a full gender recognition certificate by the UK Panel.
17. Isle of Man residents can already apply to the UK Panel for a gender recognition certificate under the same conditions as a person who is resident in the UK; the diagnosis and treatment of a transsexual person from the Island is likely to have taken place in the UK; and it is more likely that the privacy of a person seeking a gender recognition certificate will be maintained through application to an off-Island body.

Social security provisions

18. Under the Island's Reciprocal Agreement with the United Kingdom, the Isle of Man Government is obliged to keep certain social security and pensions provisions in line with those of the UK.
19. In January 2005, Tynwald approved four Orders²⁰ relating to the UK Act that had been made by the Department of Health and Social Security (DHSS). The Orders were made under the Pensions Act 1995 and the Social Security Act 2000 (Acts of Tynwald). Their effect was to apply (with appropriate modifications) those provisions of the UK Act relating to social security and pensions, together with necessary related provisions, as part of the law of the Island.
20. Consideration was given during the drafting process as to whether the social security and pensions provisions should be incorporated into the Bill. However, given that these provisions have already been applied to the Island under Acts of Tynwald, and also given that the Bill is inextricably linked to the UK Act through the gender recognition certificate process, it was considered that the revocation of the DHSS subordinate legislation and incorporation of equivalent provisions into the Bill would have been an unnecessary complication. However, see paragraphs 49 to 51 in relation to clause 14 of the Bill.

Discrimination in employment

21. Comprehensive employment anti-discrimination legislation is in the process of being developed by the Department of Trade and Industry. The Employment Equality Bill will provide protection for transsexual people who experience discrimination in the workplace.

¹⁹ Further information about the operation of the Gender Recognition Panel can be found at its website: <http://www.grp.gov.uk/index.htm>

²⁰ The four Orders are:

The Social Security Act 2000 (Amendment) (No.3) Order 2004 – SD 873/04;

The Pension Schemes Order 2004 – SD 874/04;

The Gender Recognition Act 2004 (Application) Order 2004 – SD 875/04;

The Gender Recognition Act 2004 (Application) (No.2) Order 2004 – SD 876/04

COMMENTARY

Clause 1: Interpretation

22. **Clause 1** defines certain important expressions that are used within the Bill.

Clause 2: Effect of gender recognition certificate, etc

23. **Clause 2** deals with the effect in Manx law of a person changing their gender as a result of the UK Gender Recognition Panel issuing them with a full gender recognition certificate.
24. Sub-clause (1) establishes that when a person's gender has become the acquired gender as set out in a full gender recognition certificate (so that a person who was born biologically male will, in law, become a woman for all purposes and a person who was born biologically female will, in law, become a man for all purposes) this does not rewrite the gender history of the transsexual person.
25. However, sub-clause (2) provides the acquired gender does apply for the interpretation of enactments, instruments and documents made before this Bill comes into force or before the person's gender recognition certificate was issued.
26. Sub-clause (3) provides that the fact that a person's gender has become the acquired gender is subject to any exceptions made by the remainder of the Bill or by any other enactment or subordinate legislation.

Clause 3: Civil Registration

27. **Clause 3** gives effect to Schedule 1 concerning registration practice and related matters.

Clause 4: Marriage

28. **Clause 4** gives effect to Schedule 2 which amends existing marriage law to take into account the marriages of persons who may have changed gender.

Clause 5: Parenthood

29. **Clause 5** provides that although a person is regarded as being of the acquired gender, the person will retain their original status as either father or mother of a child. The continuity of parental rights and responsibilities is thus ensured.

Clause 6: Succession, etc

30. In **clause 6**, sub-clause (1) provides that a person's gender becoming the acquired gender does not affect the distribution of property under a will or other instrument made before the Bill comes into operation. For wills or other instruments made after that day, the general principle stated in clause 1 will apply, e.g. if a will refers to the "eldest daughter", and a person who was previously a son becomes the "eldest daughter" following recognition in the acquired gender, that person will (subject to clause 7) inherit as the "eldest daughter".
31. Sub-clause (2) provides an exception to the general principle of clause 1. The descent of any property that passes with a peerage or dignity or title of honour will take place as if a person recognised in the acquired gender were still of their birth gender, unless

the will or other instrument governing the property departs from this rule by express provision.

Clause 7: Trustees and personal representatives

- 32.** Where a trustee or personal representative is responsible for conveying and distributing property from a trust or estate, **clause 7** relieves that person from any fiduciary duty to inquire whether a gender recognition certificate has been issued to any person (or has been revoked), even if that fact could affect entitlement to property which they are responsible for distributing. The beneficiary will nevertheless retain his or her claim to the property and may enforce that claim, e.g. by following the property into the hands of another person who has received it instead.

Clause 8: Orders where expectations defeated

- 33.** **Clause 8** makes provision for any situation where the disposition or devolution of property under a will or other instrument is different from what it would have been but for the fact that a person is regarded as being of the acquired gender. If, for example, an instrument governs succession by reference to the “eldest daughter” of the settlor, and there is an older brother whose gender becomes female under the Act, then the person who was previously the “eldest daughter” may cease to enjoy that position.
- 34.** A person who is adversely affected by the different disposition or devolution of the property may make an application to the High Court. The court, if it is satisfied that it is just to do so, may make such order as it considers appropriate in relation to the person benefiting from the different disposition of the property.

Clause 9: Sport

- 35.** **Clause 9** provides that a body responsible for regulating participation in competitive sporting events may prohibit or restrict the participation in such events of a person who is recognised in the acquired gender, and is seeking to compete in the acquired gender, if this is necessary to secure fair competition or the safety of other competitors.

Clause 10: Gender-specific offences

- 36.** Many definitions of sexual offences in the law of the Isle of Man remain gender-specific and hence refer, for example, specifically to acts committed by a man upon a woman. **Clause 10** ensures that where criminal liability would exist, but for the fact that a person, either the victim or the perpetrator, has become of the acquired gender, the criminal liability will continue to exist regardless of the gender change.

Clause 11: Foreign gender change and marriage

- 37.** In **clause 11**, sub-clause (1) provides that a person who has changed their gender in a country or territory other than the Isle of Man and UK is not thereby recognised in the acquired gender in the Island.
- 38.** Sub-clause (2) provides that a person who has entered into a foreign post-recognition marriage is not regarded as being married under the law of the Island.
- 39.** However, sub-clause (3) provides that if a full gender recognition certificate is subsequently issued to the transsexual person who has entered into the foreign post-recognition marriage, then the marriage is no longer to be considered void on the grounds that (at the time when it was entered into) the parties to it were not, in the eyes of Isle of Man law, respectively male and female.

40. Sub-clause (4) provides that sub-clause (3) does not apply to a foreign post-recognition marriage if prior to the issuing of the full gender recognition certificate either person has entered into a later legally valid marriage.
41. Sub-clause (5) fully defines what is meant by entering into a foreign post-recognition marriage.

Clause 12: Prohibition on disclosure of information

42. In **clause 12** sub-clauses (1) and (2) establish that it is an offence for a person to disclose information they have acquired in an official capacity about a person's application for a gender recognition certificate or about the gender history of a successful applicant. This information is termed "protected information".
43. Sub-clause (3) explains what is meant by acquiring information in an official capacity. This includes information obtained in the course of a person's duties as a civil servant or holder of any other public office; or as the employer of the transsexual person; or in the course of conduct of business or the supply of professional services to the transsexual person.
44. Sub-clause (4) sets out exceptions to the general prohibition on disclosure of information. For example, disclosure will not constitute an offence where the person to be identified has consented to the disclosure or where the disclosure is in accordance with an order of a court or tribunal.
45. Sub-clauses (5) and (6) make provision for the Council of Ministers to prescribe further circumstances in which the disclosure of protected information does not constitute an offence.
46. Under sub-clause (7), a person who discloses information in contravention of this clause is guilty of an offence and that person is liable on summary conviction to a fine not exceeding £5,000.

Clause 13: Power to modify statutory provision

47. Sub-clause (1) of **clause 13** provides that the Council of Ministers may by Order modify other statutory provisions in relation to persons whose gender has changed as a consequence of a full certificate being issued to them. The power is strictly limited and is provided due to the specific nature of this legislation. Legislation has made distinctions on the basis of gender for centuries, and the use of gender-specific terms, though it has reduced, nevertheless continues in some contexts. This provision allows the Council of Ministers to address any future unforeseen difficulties or complexities that might arise in the operation of other legislation as a result of the facility to change gender under this Bill.
48. Sub-clause (2) provides that an order made by the Council of Minister under sub-clause (1) cannot come into operation unless it is approved by Tynwald.

Clause 14: Validity of subordinate legislation

49. The Department of Health and Social Security (the "DHSS") has the power to apply certain UK legislation (with exceptions, adaptations and modifications) to the Island under section 1 of the Pension Schemes Act 1995 and section 1 of the Social Security Act 2000. It was necessary to make orders under section 1(3) of the 1995 Act and

section 1(6) of the 2000 Act, to provide the enabling power (“enabling orders”) for specific provisions of the UK Act to be applied to the Island by order (“application orders”). The enabling orders must be made and come into operation before the application orders are made. However, in the case of the Gender Recognition Act 2004 (of Parliament), the enabling orders and the application orders were all made at the same time.

50. The legal validity of the Gender Recognition Act 2004 (Application) Order 2004 and the Gender Recognition Act 2004 (Application) (No.2) Order 2004 (“the 2004 application orders”) is therefore questionable. The validity of the Social Security Act 2000 (Amendment) (No.3) Order 2004 and the Pension Schemes Order 2004 (“the enabling orders”) is not in doubt and it would therefore be possible for the DHSS to make new application Orders under the 1995 and 2000 Acts. However, as it is not known whether any transsexual persons have benefited from the provisions of the original Orders since they were made, Chambers considers that it is preferable for those Orders to be given retrospective legal certainty through a provision in this Bill, which is achieved through **clause 14(1)**.
51. Amongst other provisions, the 2004 application Orders applied section 22 of the UK Act to the Island so that if a person in the Island gained information concerning a transsexual person in an official capacity, the disclosure of such information was prohibited except in the circumstances set out in that section. As an equivalent prohibition on disclosure of information provision is included in clause 12 of the Bill that aspect of the 2004 application Orders is revoked by **clause 14(2)**.

Clause 15: Short title, etc

52. Sub-clause (1) of **clause 15** gives the Bill its short title. Sub-clause (2) provides that the Council of Ministers has the power to make an Appointed Day Order to bring the Bill into operation, and different days may be appointed for different provisions and purposes.

Schedule 1

53. **Schedule 1** deals with registration practice in the Island following the issuing of a gender recognition certificate.
54. Paragraph 1 requires the Chief Registrar to establish and maintain a register to be called the Gender Recognition Register. The form of this register is determined by the Chief Registrar and it is not to be open to public inspection or search.
55. Paragraph 2 applies where there is an entry in the Manx birth register for the person to whom a full gender recognition certificate has been issued.
56. Where an original gender recognition certificate and a certified copy of that person’s birth certificate are delivered to the Chief Registrar he must make a copy of the gender recognition certificate, make an entry in the Gender Recognition Register (GRR) containing prescribed information about the person’s birth and other matters, and establish a traceable connection between the GRR and birth register entries.
57. As the birth register is open to public inspection the connection may not include any mark on the original register entry as this could indicate to a member of the public that an associated entry existed in the GRR. The copies of the full certificates to be held by the Chief Registrar and any information held in relation to the link between GRR and birth register entries must also not to be open to public inspection or search.

58. Paragraph 3 requires the Chief Registrar to include each entry in the Gender Recognition Register in the relevant index kept in the General Registry. Whilst entries in the index drawn from the GRR may be searched in the same way as other entries the index must not reveal they are contained in that register.
59. Paragraph 4 provides that anyone who is normally entitled to a certified copy of a person's Manx birth register entry is entitled to a certified copy of the entry in the GRR, but such a certified copy must not disclose the fact that it was drawn from the GRR.
60. Paragraph 5 deals with "short birth certificates" compiled from an entry in the GRR. Under section 37 of the Civil Registration Act 1984 any person is entitled, on payment of a fee, to a copy of a short certificate compiled from the original birth register entry (as opposed to a full certified copy of the original certificate) of any other person. Such a certificate includes the name, surname, sex and date of birth of the person but not any particulars relating to parentage or adoption. This paragraph ensures that where a short birth certificate has been compiled from the GRR it does not disclose that fact.
61. Paragraph 6 gives the Chief Registrar the power to re-register an entry in the GRR in the same way registrar has in relation to entries in the birth register under sections 13, 17 or 17A of the Civil Registration Act 1984 when the circumstances set out in those sections apply to an entry in the GRR.
62. Paragraph 7 gives the Chief Registrar the power to correct an entry in the GRR in the same way an entry in the birth register can be corrected.
63. Paragraph 8 deals with the situation where a person's gender recognition certificate has been quashed by a court under section 8(6) of the UK Act following an allegation that the certificate was obtained by fraud. The person concerned must inform the Chief Registrar that the certificate has been quashed and the Chief Registrar must then cancel the entry in the GRR. Failure to notify the Chief Registrar that a gender recognition certificate has been quashed is an offence and on conviction the person is liable to a fine of up to £5,000.
64. Paragraph 9 provides that a certified copy of an entry in the GRR will have the same evidential value as a certified copy of the entry in the original register.

Schedule 2

65. **Schedule 2** concerns the amendment of existing marriage legislation to take account of the legal recognition of a transsexual person's acquired gender.
66. Paragraph 1 makes a consequential amendment to section 1 of the Marriage Act 1984 ("the 1984 Act") in relation to marriages within prohibited degrees to take account of the fact that a person may have legally changed their gender.
67. Paragraph 2 inserts new section 5A into the 1984 Act to explicitly exempt any clergyman from being obliged to solemnise the marriage of a person whose gender has become the acquired gender in accordance with this Bill.
68. Paragraph 3 amends section 13 of the Matrimonial Proceedings Act 2003 ("the 2003 Act") to add two new grounds on which a marriage is voidable:
 - The first situation is where one of the parties to the marriage has been issued with an interim gender recognition certificate. An interim certificate is issued to a person

who otherwise fulfils the criteria for a full certificate but who is still married in their birth gender.

- The second situation is if at the time of the marriage one party to the marriage did not know that the other was previously of another gender, the former may seek to annul the marriage.

69. Paragraph 4(a) inserts new subsection (2A) into section 14 of the 2003 Act to provide that a court may not annul a marriage on the grounds that an interim gender recognition certificate has been issued unless it is satisfied that proceedings were started within six months from the date of the interim certificate being issued.

70. Paragraph 4(b) consequentially amends subsections (2), (3) and (4) of section 14 of the 2003 Act:

- The amendment to subsection (2) provides that, subject to subsection (4), a court may not annul a marriage on the grounds that one party to a marriage did not know that the other party was previously of another gender unless proceedings are begun within three years from the date of the marriage. This means that the situation is treated in the same way as several other grounds on which a marriage is voidable;
- The amendment to subsection (3) provides that a court may not annul a marriage on the grounds that one party to a marriage did not know that the other party was previously of another gender unless it is satisfied that the applicant was, at the time of the marriage, genuinely ignorant of the facts. Again this means that the situation is treated in the same way as certain other grounds on which a marriage is voidable;
- The amendment to subsection (4) provides that, as with the other grounds for annulment under subsection (2), a court may, on an application made to it, grant leave for the institution of proceedings after the expiration of the period of three years from the date of the marriage if certain conditions are met.

71. Paragraph 5 amends paragraph 2 of Schedule 4 to the 2003 Act which deals with the grounds on which a marriage celebrated before 1st April 1976 is voidable. Sub-paragraph (a) adds the situation where an interim gender recognition certificate has been issued as grounds for annulment under the paragraph. Sub-paragraph (b) inserts new sub-paragraph (4A) to provide that a court may not annul a marriage on the grounds that an interim gender recognition certificate has been issued unless it is satisfied that proceedings were started within six months from the date of issue.

FINANCIAL EFFECTS OF THE BILL AND EFFECTS ON PUBLIC SERVICE MANPOWER

72. The Bill is not expected to increase the expenditure of Government or to reduce the income of Government. The Bill is also not expected to require any additional public service manpower.

COMMENCEMENT

73. The Gender Recognition Act will enter into operation on a day appointed by Order made by the Council of Ministers, and the Council of Ministers may appoint different days for different sections of the Act and for different purposes.

The information in this booklet can be provided in large print or audio
tape on request

Chief Secretary's Office
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Douglas
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www.gov.im/cso