



HM Courts  
& Tribunals  
Service

## Guidance for Married People or those in Civil Partnerships

**Updated April 2007**

If you are considering applying for a Gender Recognition Certificate and you are married, there are considerations that you will need to be aware of before you make your decision. This leaflet is intended to address the specific circumstances that married transsexual people may find themselves to be in.

This leaflet should not be read on its own. You should also read the *Explanatory Leaflet: A Guide for Users*, which explains the Gender Recognition process and the consequences of gender recognition. That leaflet also contains a glossary of the terminology that we have used. Together, these two documents should answer most questions that you may have. If you have any further questions, you may wish to contact the Gender Recognition Panel.

The information in this publication is available in alternative formats on request. Please contact the Gender Recognition Panel on 0300 123 4503 or [grpenquiries@hmcts.gsi.gov.uk](mailto:grpenquiries@hmcts.gsi.gov.uk)

# 1. The Gender Recognition process for married people or people in civil partnership

To receive a full Gender Recognition Certificate, a transsexual person must be unmarried and not in a UK civil partnership. This is because, under the laws of the UK, a marriage is only valid if it is contracted by two people of the opposite sex in law. A civil partnership may only be formed between people of the same sex in law. So, for example, a male-to-female transsexual person who has not received legal recognition as a woman remains in law male and may only marry a woman. She may not marry a man.

Some transsexual people are legally married to people of the opposite gender to their birth gender (although after the transsexual person transitions, the couple may present as being of the same gender). These marriages are valid because until the transsexual party receives legal recognition in the acquired gender, he or she remains in law of their birth gender.

A holder of a full Gender Recognition Certificate has all the same rights as other people of his or her acquired gender. This means that he or she may marry someone of the opposite gender or form a civil partnership with a person of the same gender. For example, a male-to-female transsexual person may marry a man or form a civil partnership with a woman once she receives legal recognition of her acquired gender.

If you knowingly or unknowingly obtain a Gender Recognition Certificate whilst still married or in a civil partnership, this will invalidate it and any rights or benefits you would expect to receive in your acquired gender.

# 2. The annulment or dissolution process

If an applicant satisfies all the criteria for legal recognition but remains married, he or she will receive an interim Gender Recognition certificate. This may be used as evidence if either member of the couple chooses to end their marriage on the basis that an interim Gender Recognition certificate has been issued to a party to the marriage. In England, Wales and Northern Ireland, the marriage may be annulled on this ground. In Scotland, a decree of divorce may be granted on this ground. Please note that divorce proceedings must commence within six months of date of issue of the interim Gender Recognition certificate.

## **England, Wales and Northern Ireland**

In England, Wales and Northern Ireland, if a couple decide to annul or dissolve their marriage they can begin proceedings by filling in a form called a "Petition" and taking it to any divorce court. The Petition must include an explanation of the reason for applying to annul the marriage and will need to

be supported by various documents such as the marriage certificate and a copy of the interim Gender Recognition Certificate.

If there are children of the family, you will also need to include with the petition a statement of the arrangements being made for them after the marriage has been annulled. A copy of the form for this purpose can be provided free of charge from any court office. If you wish the court to consider the financial arrangements being made for the parties and children then you should indicate this on the petition.

(The court may make orders for maintenance pending suit, periodical payments, a lump sum order, a property adjustment order or those concerning pension sharing or attachment).

Once completed, the Petition and supporting documents should be left with the court, which will send copies to your spouse. He or she will then have an opportunity to provide their comments. Depending on the response provided by your spouse, you may be able to apply for a decree nisi of annulment of marriage. Under ordinary circumstances, the shortest amount of time that must then elapse before you can apply to the court for the decree to be made absolute is six weeks and one day. The decree absolute formally annuls the marriage.

### **Scotland**

In Scotland you can apply to either your local Sheriff Court or the Court of Session in Edinburgh for a divorce. If you apply to the Sheriff Court you must complete a form called an "initial writ", if you apply to the Court of Session the form for completion is called a "summons". Either form must state the reason for applying for divorce, and must contain any application for ancillary relief such as an order for financial provision that the party applying for the divorce wishes to make. An application for an order in relation to any children of the marriage must also be included on the form. The Court will require to be satisfied as to the arrangements for the care of any children before the decree of divorce will be granted. The initial writ or summons must also be accompanied by various documents such as the marriage certificate and the interim gender recognition certificate.

Once completed, the initial writ or summons and supporting documents should be left with the Court, which will then give permission for copies to be sent to your spouse. He or she is given an opportunity to comment. If your spouse chooses not to defend the application you can simply ask the Court to grant it. The Court will then grant decree of divorce if it is satisfied that suitable arrangements are in place to care for any children. The decree of divorce ends the marriage.

### **Other considerations**

Ending the marriage in law does not mean that the couple needs to cease living together. The annulment (or divorce) process is a necessary legal

precondition for a married transsexual person to be recognised legally in his or her acquired gender.

However, as indicated above, when deciding to end a marriage you should also consider the arrangements that are to be made for any children of the marriage and the division of any resources that the couple has to ensure that neither party nor any child is unduly disadvantaged.

In any event, you are strongly advised to seek legal advice about ending your marriage and how it will affect you, your spouse and your children (if you have any).

When the court formally annuls the marriage or grants a divorce (in Scotland), the court will issue a full Gender Recognition Certificate to the transsexual person.

If you apply to the Gender Recognition Panel and receive an interim Gender Recognition Certificate, you will be sent a separate guidance note explaining your options, including how to begin the process to end your marriage, should you wish to.

### 3. Pensions, benefits and tax issues

If you obtain a full Gender Recognition Certificate, there is likely to be an impact on the assessment of your NI Contributions and on the benefits or State Pension to which you are entitled. The *Guidance on Benefits and Pensions ('Benefit Note')* contains a detailed explanation of the likely consequences and you will wish to be aware of these.

If you are married/in a civil partnership and you end your marriage/civil partnership in order to obtain a full Gender Recognition Certificate, the assessment of your spouse's NI Contributions and benefit entitlement may also be affected. You should notify HMRC and DWP/SSA and VA immediately of when your marriage/civil partnership ended to ensure you and your partner's NI Contributions and benefits are reassessed correctly.

The amount of tax you pay is likely to be affected if you are currently married, as you will be required to end your marriage in order to get a full Gender Recognition Certificate. If you end your marriage, the amount of Income Tax, Capital Gains Tax and Inheritance Tax you pay may be affected. This could happen, for example, as a result of financial arrangements you make with your former husband or wife when ending your marriage.

A separate document is available explaining the impact on the private pensions of married couples. It is available on the GRP's website and if you or your spouse has a private pension, you may wish to read it.

For example, ending your marriage/civil partnership may mean that your husband/wife/civil partner may not be entitled to a survivor benefit should you die before him/her. So, before ending your marriage/civil partnership, you should find out from the people who run your pension scheme whether or not it would affect your pension. When a marriage/civil partnership ends, a Court can make a pension sharing order as part of the financial settlement. Your occupational pension may be affected by such an order and you might wish to seek further advice about this.

## 4. Civil partnerships

Couples who have ended their marriage in order for one partner to gain recognition in the acquired gender will be able to register as civil partners of each other, under the Civil Partnership Act 2004 and hence regain legal status for their relationship.

If you wish to enter into a Civil Partnership and you are successful in your application, you will be able to take advantage of a streamlined process whereby you can dissolve your marriage and register a Civil partnership on the same day. The same process is available for those people who form Civil partnerships and subsequently transition. This will allow them to transfer to marriage using a similar process.

## 5. Overseas marriages

We are aware that some people who wish to apply for a Gender Recognition Certificate in the United Kingdom have already had their acquired gender recognised elsewhere in the world. If your acquired gender has been recognised under the law of one of the countries or territories on our list of approved countries and territories, you may apply under the Overseas Track. This is a simpler application process. The list of approved countries and territories is available from the Gender Recognition Panel and is on the GRP website. The list is approved by Parliament and lists legal systems whose recognition criteria are at least as rigorous as those in the UK. Forms and guidance for the Overseas Track are also available from the Gender Recognition Panel, and these will tell you whether you are able to use this process.

If you qualify for the Overseas Track and you are married, the process will differ depending on your circumstances. The Gender Recognition Panel will need to know the date and place of legal recognition in the approved country or territory and the date and place that your current marriage was contracted.

If you married *after* your acquired gender had been legally recognised in that country (and you could legally enter into an opposite-sex marriage), you should state on the application form that you are not married. This is because, under the Gender Recognition Act, someone in a foreign post-

recognition marriage is not regarded as being married until he or she receives a UK Gender Recognition Certificate. If you are successful, you will receive a full Gender Recognition Certificate and your marriage will be regarded in the UK as valid from the time it was contracted.

However, if you married *before* your acquired gender was recognised in that country, you will only be granted an interim Gender Recognition Certificate. You must end your marriage before you can be granted a full Gender Recognition Certificate. If you are in this position, you should state on your application form that you are married.

If your gender change has been recognised in another country in the European Community or the European Economic Area, your gender change and your marriage may be valid for some purposes without you having to apply for a UK Gender Recognition Certificate. However, the law in this area is unclear and complex. It is therefore advisable to get a UK Gender Recognition Certificate in order to establish your gender and the validity of your marriage with certainty under UK law. You should state on the application form that you are not married.

This is a complex area and if your circumstances do not fit easily into those described, please do not worry. Please write to the Panel and describe fully the situation, including dates when marriage and legal change of gender took place, your own and your spouse's nationality and domicile. You should do this before you apply, since the Panel's advice may make you decide against applying.

The assessment of your NI Contributions and benefit entitlement may be affected. Therefore you should notify HMRC and DWP/SSA and VA immediately and provide them with all relevant details of your overseas-acquired gender and marriage/civil partnership and any advice received from the UK Gender Recognition Panel. This will ensure you and your partner's NI Contributions and benefits are assessed correctly.

## 6. Marriages entered into after transition

If you are a British transsexual person who married in your acquired gender, it is very likely that your marriage is not valid. So, for example, if you are a male-to-female transsexual person and you went through a ceremony of marriage to a man, this 'marriage' is not valid in the UK because it is, in the eyes of the law, a marriage between two people of the male gender.

If you apply for a Gender Recognition Certificate, you should state on the form that you are *not* married. The Panel will issue you a full Gender Recognition Certificate if you are not successful. You will then be able to enter into a valid marriage with your partner.

If the circumstances described here relate to you, you may wish to seek legal advice on the status of your marriage and the options that are open to you. If you are a foreign national and you married *after* your acquired gender had been legally recognised in a foreign country (and you could legally enter into an opposite-sex marriage), you should state on the application form that you *are not* married. This is because, under the Gender Recognition Act, someone in a foreign post-recognition marriage is not regarded as being married until he or she receives a UK Gender Recognition Certificate. If your application is successful, you will receive a full Gender Recognition Certificate and your marriage will be regarded in the UK as valid from the time it was contracted.

If you are a national of a country in the European Community or the European Economic Area, your gender change and your marriage may be valid for some purposes without you having to apply for a UK Gender Recognition Certificate. However, the law in this area is unclear and complex. It is therefore advisable to get a UK Gender Recognition Certificate in order to establish your gender and the validity of your marriage with certainty under UK law. You should state on the application form that you are not married.

## 7. Partnerships between two transsexual people

If both you and your partner are transsexual you may both wish to apply for a Gender Recognition Certificate. You may find some benefit from having your applications determined at the same time.

If you are a married couple, even though you are of opposite genders, your marriage must end before either of you can receive a full Gender Recognition Certificate. This is because the basis on which the marriage was originally contracted will change fundamentally when you change gender. Once you both change gender in law, you will be able to marry again.

Whether or not you are married, if you and your partner wish your applications to be considered at the same time you should place each application in a separate envelope and then put both envelopes in a larger one and send this to the Panel. You will receive an acknowledgement from the Panel. If it does not state that your applications will be determined together, you should telephone the person mentioned on the letter immediately.

## 8. Further information

You will find further information in the Gender Recognition Panel's Explanatory Leaflet: A Guide for Users. If you have any queries you should contact the Gender Recognition Panel.

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