

THE GENDER RECOGNITION ACT 2009 AND THE CHURCH

Background

1 Since April 2005, under the Gender Recognition Act 2004 (of Parliament) ('the UK Act') people with the disorder variously referred to as gender dysphoria, gender identity disorder and transsexualism have been able to apply in the United Kingdom for a certificate entitling them to be recognised in law as having acquired the other gender than that in which they were born.

2 Under the law as it stood before the UK Act, transsexual people could not obtain legal recognition in the United Kingdom in their 'acquired gender'. Although they could obtain some official documents in their new name and gender, they could not obtain a new birth certificate, nor could they marry a person of the same 'birth' gender. The UK Government's decision to legislate to provide for legal recognition of a person's change of gender followed judicial rulings in the European Court of Human Rights and the House of Lords that the existing law in the United Kingdom violated the rights of transsexual people under the European Convention on Human Rights and the Human Rights Act 1998 (of Parliament).

3 The UK Act did not extend to the Isle of Man, so the legal position in the Island continued as it was in the UK before April 2005, i.e. a person's 'acquired gender' was not legally recognised in the Island. However, on 5th April 2010 the Gender Recognition Act 2009 (an Act of Tynwald) ('the Manx Act') came into force. From that date, people who have obtained a full 'gender recognition certificate' ('GRC') in the United Kingdom are also recognised in the Isle of Man as having acquired the opposite gender. There is no provision for the issue of such a certificate in the Isle of Man.

4 This note is intended as an outline of the main implications of the Manx Act for the Church in the Isle of Man. It is based on a note entitled *The Gender Recognition Act 2004 and the Church — What the law says*, issued by the Church of England's Mission and Public Affairs and Legal Divisions in April 2005.

Gender recognition certificate

5 The UK Act provides for those aged 18 or over who wish to be legally recognised as being in the opposite gender to that of their birth – the 'acquired gender' – to apply for such recognition to a panel including both legal and medical experts. Recognition will be granted if the person has, or has had, gender dysphoria, has lived in the acquired gender (whether or not that has involved a surgical operation or medical treatment) for a full 2 years, and intends to continue to live in that gender until death.

6 An applicant who satisfies the statutory criteria will be granted a full GRC, which means that that person's change of gender is recognised in law. If the person's birth is registered in the UK, the change is registered in a confidential Gender Recognition Register kept by the appropriate Registrar General. The person can then obtain a replacement birth certificate, showing the new gender and any new name, which will be indistinguishable from an original birth certificate, and thus will not reveal the change of gender.

7 An applicant who is married will not be granted a full GRC while the marriage remains in existence. In the United Kingdom (as in the Isle of Man), a marriage may only, as a matter of law, exist between a man and a woman. If the person concerned wishes the change of gender to be legally recognised then the marriage must be terminated; until it is, a married transsexual who meets the statutory criteria will be granted an interim GRC. The interim GRC entitles the person concerned, if domiciled in the UK (or resident for 12 months in the UK), to apply within 6 months to a court in the UK for a decree of nullity, and the court which grants the decree will also issue the full GRC.

Recognition of change of gender in the Isle of Man

8 Under the Manx Act, since 5th April 2010 a full GRC has had the same effect in the Isle of Man as it has in the United Kingdom. That is, for all legal purposes the person concerned is treated as of the 'acquired gender' in accordance with the GRC.

9 If a full GRC is issued to a person whose birth is registered in the Isle of Man, the person may apply for the change to be registered in a confidential Gender Recognition Register kept by the Chief Registrar, and can also then obtain a replacement birth certificate, showing the new gender and any new name, which will be indistinguishable from an original birth certificate, and thus will not reveal the change of gender.

10 The effect of an interim GRC is not the same as in the United Kingdom. Although it entitles the person concerned, if domiciled in the Isle of Man (or resident for 12 months in the Isle of Man), to apply within 6 months to the Manx High Court for annulment of the marriage, the Court cannot issue a full GRC, and the person must re-apply for a full GRC to a panel in the UK.

Disclosure of Information

11 The Manx Act protects the right to privacy of a person who applies for an officially recognised change of gender by protecting the confidentiality of information about the application or, if it is successful, about the gender history of the person concerned. Section 12 of the Act makes it a criminal offence for someone who has obtained this 'protected information' in an official capacity to disclose it except in the circumstances laid down by the Act (e.g. that the person to whom the information relates consents to the disclosure, or that it does not enable that person to be identified).

12 Under the Manx Act the Council of Ministers may also make an order specifying other circumstances where disclosure is permitted. That has now been done by the **Gender Recognition (Disclosure of Information) Order 2010**; for example, the order provides that disclosure is not unlawful if it is made in order to obtain legal advice.

Disclosure for religious purposes

13 In certain circumstances, disclosure for religious purposes will not be an offence. As these relate to all 'organised religions' the order does not use the term 'clergy' or other distinctively Anglican (or Christian) terminology.

14 The legislation applies to cases where one person '*who acquired protected information in an official capacity in relation to an organised religion .. [discloses] .. that information to any other person acting in such a capacity*' provided certain conditions are satisfied. This is clearly intended to cover a situation where one minister of religion discloses the information to another minister, but it can also include other people who hold office in the religion concerned or carry official functions for it.

15 The other main requirement is that the information is shared to enable a person to make a decision over certain specified issues. A number of these circumstances are not expected to arise in relation to the Church of England. The types of decision that may be relevant for Anglicans are:

15.1 Marriage - Whether to officiate or permit the marriage of the transgendered person;

15.2 Admission or appointment - Whether to admit or appoint the person concerned:

15.2.1 as a minister of religion;

15.2.2 to any employment, office or post for purposes of an organized religion;

15.2.3 to a religious order or community ; or

15.3 Whether any such admission or appointment is valid or should be suspended, terminated or revoked.

16 In 15.2 or 15.3 the exemption from criminal liability applies only if the person making the disclosure 'reasonably considers' that the person making the decision may need the information to ensure that the decision complies with the doctrines of the religion in question or avoids conflicting with the strongly held religious convictions of a significant number of the religion's followers'. In other words the discloser may not actually know the views of the person who is making the decision, but must reasonably consider that that person may need the information in order to do so.

17 In 15.1, 15.2 or 15.3 the person who has to make the decision in question can disclose the information to a person responsible for 'supervising' him or her in relation to the decision.

18 It is important to note that the person to whom the disclosure is made will also be bound by the rules against disclosure in the Act. Thus he or she must also treat the information as confidential, within the terms of the legislation.

Some implications for the Church of England

Marriage

19 The responsibility on Church of England clergy to carry out the marriages of those who live in their parishes or have their names on the church electoral roll is addressed by section 5A of the Marriage Act 1984 (as amended by the Manx Act):

5A. (1) No cleric shall be obliged to solemnize a marriage falling within subsections (2) to (5). . . .

(5) A marriage falls within this subsection if one of the parties is a person whose gender the cleric reasonably believes to be the acquired gender within the meaning of the Gender Recognition Act 2009.

(6) No cleric shall be obliged to permit a marriage falling within subsections (2) to (5) to be solemnized in the church or chapel of which the cleric is the incumbent.

20 This exemption is the same as that applying to clergy of the Church in Wales, but is wider than that applying in England, where no provision equivalent to section 5A(6) is in force.

21 There is no obligation on the person who has obtained recognition of a new gender and wishes to marry in that new gender to reveal this. Thus there may be no opportunity for clergy who are not prepared to conduct a marriage which includes a transsexual person to learn of the change of gender of one of the parties. Even where they think a change of gender may have taken place, they may not be able to establish the facts beyond doubt. The clergy can put a question to any individual but there is no legal obligation on that person to answer, or to answer truthfully. The Manx Act is therefore framed in terms of 'reasonable belief'.

Admission and Appointment

22 The law permits those acting 'in an official capacity in relation to an organised religion' to share information about a person's change of gender in making decisions about whether to admit or appoint them as ministers or to appoint them to any 'employment, office or post for purposes of an organized religion'. This wording would cover the selection of a candidate for ordination, or appointment to a parochial or other post.

Church Records

23 The Act does not require (or permit) official records (such as baptismal or confirmation registers) made when a person was in their birth gender to be altered once their gender change has been recognised. Nor does it prevent access to those records.

Further Information

24 The most substantial exploration of the theological issues around gender dysphoria or transsexualism from the House of Bishops is found in *Some Issues in Human Sexuality: A Guide to the debate* (Church House Publishing; London, 2003) pp. 221-249.

25 The Manx Act and the Disclosure of Information Order (SD 140/10) are obtainable from the Tynwald Library, Legislative Building, Finch Road, Douglas. The Act and Order are also available on the Government website *www.gov.im*.

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