

STATES OF JERSEY

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DRAFT GENDER RECOGNITION (JERSEY) LAW 200

Lodged au Greffe on 25th November 2008
by the Chief Minister

STATES GREFFE



Jersey

DRAFT GENDER RECOGNITION (JERSEY) LAW 200

European Convention on Human Rights

In accordance with the provisions of Article 16 of the Human Rights (Jersey) Law 2000 the Chief Minister has made the following statement –

In the view of the Chief Minister the provisions of the Draft Gender Recognition (Jersey) Law 200- are compatible with the Convention Rights.

(Signed) **Senator F.H. Walker**

REPORT

Introduction

1. This Law is to provide for the legal recognition in Jersey of changes in gender by transsexual people so that they may enjoy any rights conferred by the law of Jersey on people of their acquired gender.
2. This Law will bring Jersey into compliance with the Island's obligations in relation to legal recognition of changes in gender pursuant to the European Convention on Human Rights (the "ECHR")^[1].
3. Legal recognition will follow from the issue of a full gender recognition certificate (a "full certificate") by the Royal Court. Before issuing a certificate the Royal Court must be satisfied that the applicant has been recognised under the law of an approved jurisdiction as having changed gender.
4. On issue of a full certificate, a transsexual person will be entitled to a new Jersey birth certificate reflecting his or her acquired gender (provided that a Jersey birth register entry already exists for the person) and will be able to marry in Jersey someone of the opposite gender to his or her acquired gender.

Background

5. On 11th July 2002, the European Court of Human Rights delivered its judgment in the cases of Goodwin - v- United Kingdom^[2] and I -v- United Kingdom^[3]. In those cases it found that the United Kingdom had breached the Article 8 ECHR rights (right to respect for private life) and Article 12 ECHR rights (right to marry) of the two transsexual people involved.
6. These judgments have the effect that all State parties to the ECHR now have a positive obligation under international law to secure the ECHR rights and freedoms identified in Goodwin and I and must rectify any ongoing breaches by providing for the legal recognition of changes in gender by transsexual people and by permitting transsexual people to marry in their acquired gender.
7. The ECHR was ratified by the United Kingdom on behalf of Jersey on 23rd October 1953. This ratification enabled persons to bring actions in European Court of Human Rights against the United Kingdom (as the State party with international responsibility for Jersey) for breaches by Jersey of the ECHR rights.
8. On 10th December 2006 the Human Rights (Jersey) Law 2000^[4] was brought into force in Jersey. It enshrined the ECHR rights in the law of Jersey and enabled persons to bring actions in the Courts of Jersey for breaches by Jersey of the ECHR rights.
9. The Strategic Plan 2006–2011 of the States of Jersey^[5] provides at Commitment 3.1 that–
"Basic rights and equal opportunities are established for all sectors of society"
10. Jersey has therefore made a longstanding and continuing commitment to protecting the ECHR rights and as a result has an obligation to ensure that its law complies with the judgments of the European Court of Human Rights in Goodwin and I.
11. Currently, changes in gender of transsexual people are not recognised under the law of Jersey. Although transsexual people are able to obtain some official documents in their new name and gender, they cannot obtain new birth certificates or enjoy any rights confined by law to people of the gender to which they have changed. For instance, they cannot marry in the gender to which they have changed. The law of Jersey therefore requires amendment to bring it into line with the judgments in Goodwin and I.
12. In order to achieve this amendment, the drafting of this Law was first considered in 2003 by the then Home Affairs Committee and then by the Legislation Committee. In 2005 the Legislation Committee agreed that the Policy and Resources Committee should take this matter forward and law drafting time was secured in 2006. Subsequently, the Chief Minister, in conjunction with the Legislation Advisory Panel and Law Officers' Department, has brought forward this Law.

Gender Dysphoria, Gender Identity Disorder and Transsexualism

13. As this Law is to provide for the legal recognition in Jersey of changes in gender by transsexual people it

is important to understand why transsexual people need special treatment under the law.

14. This issue is complex. However, in brief, transsexual people have a condition known as gender dysphoria, gender identity disorder, transsexualism, gender incongruence or transgenderism. This means that transsexual people feel that they are trapped within a body of a sex that does not match their gender identity. Transsexual people may therefore seek medical treatment and assistance to allow them to change gender to the gender to which they feel they belong. As part of this treatment transsexual people may choose to have legal recognition of this change in gender.
15. It should be made clear that gender dysphoria is not transvestism or cross-dressing for sexual thrill, psychological comfort or compulsion. It is not an orientation towards people of the same sex. It is not related to paedophilia. It has nothing to do with drag queens. Transsexual people do not choose their gender identity. Gender dysphoria is an overpowering sense of different gender identity rather than any sexual orientation: transsexual people may be heterosexual, gay/lesbian or celibate. It is not a mental illness. It is a condition considered in itself to be free of other pathology (though transsexual people can suffer depression or illnesses like anyone else).^[6]
16. Detailed information on gender dysphoria, gender identity disorder and transsexualism can be found at: <http://www.nhsdirect.nhs.uk/articles/article.aspx?articleId=435§ionId=1#>
17. Further information and links can be found at – <http://www.justice.gov.uk/whatwedo/genderrecognition.htm>

The process for legal recognition of a change in gender in Jersey

18. Although we have no local statistics, it is suggested that –
“Estimates vary, but perhaps one man in every 12,000 feels he is a woman. The proportion of women who feel they are men is smaller...”^[7]
The number of transsexual people in Jersey is therefore likely to be very small indeed. This should not, however, be taken as diminishing the importance of ensuring that the ECHR rights of transsexual people in Jersey are respected.
19. There are no medical experts or persons with appropriate experience in gender dysphoria in Jersey to provide medical treatment (including surgery where appropriate) to persons with gender dysphoria. Transsexual people from Jersey must therefore seek expert treatment in another jurisdiction. As part of this treatment transsexual people from Jersey are likely to seek legal recognition in the jurisdiction in which they receive their treatment.
20. In practice, transsexual people from Jersey are likely to be treated in the United Kingdom and therefore may apply to the UK Gender Recognition Panel (“**UKGRP**”) for legal recognition in the United Kingdom pursuant to the UK Gender Recognition Act 2004^[8] (the “**UK Act**”).
21. Following enquiries with the UK Ministry of Justice, it is understood that there is nothing in the UK Act which precludes Jersey residents from making applications to the UKGRP and that the UKGRP would be obliged to consider applications from such a person. Legal recognition by the UKGRP is based on the fulfilment of certain legal and medical recognition criteria. More information on the UKGRP and recognition criteria can be found at <http://www.grp.gov.uk/>.
22. In order to facilitate the legal recognition of a change in gender in the United Kingdom or any other approved jurisdiction, the Law will amend the Matrimonial Causes (Jersey) Law 1949 to provide that transsexual people can apply for a decree of nullity in respect of their marriage under the law of Jersey where they satisfy prescribed conditions and have taken prescribed steps in an approved jurisdiction for the recognition of their change in gender, but cannot have such recognition while they are still married.^[9] To ensure that this happens as quickly as possible, a decree of nullity on this ground is absolute on pronouncement.^[10]
23. The approved jurisdictions will be prescribed by an Order pursuant to the Law and will include the UK and those jurisdictions that are prescribed for the purposes of the UK Act^[11] as such jurisdictions will

have recognition criteria which are at least as rigorous as those contained in the UK Act^[12].

24. Once a transsexual person has received legal recognition in an approved jurisdiction, they may make an application to the Royal Court for legal recognition in Jersey.^[13] This application will include evidence that the applicant has had legal recognition of his or her change in gender in an approved jurisdiction and has therefore fulfilled the recognition criteria of that jurisdiction. The Royal Court will consider such applications in private and on the papers unless it considers that an oral hearing is necessary.^[14] The Royal Court will grant the application where the requirements of the Law are met.^[15]
25. Where the requirements of the Law are met and the applicant is unmarried, the Royal Court will issue a full gender recognition certificate (a “full certificate”). Where the applicant is married the Royal Court will issue an interim gender recognition certificate (an “interim certificate”).^[16]
26. Where an applicant has been issued with an interim certificate, they may apply to the Royal Court for a decree of nullity in respect of their marriage.^[17] Once such a decree of nullity has been made, the Royal Court will issue a full certificate to the applicant.^[18]
27. Where an applicant has been issued with an interim certificate but the applicant’s marriage is dissolved or annulled other than as set out, or the applicant’s spouse dies, the applicant may apply for a full certificate and the Royal Court will grant a full certificate if satisfied that the applicant is no longer married.^[19]
28. Once a person is issued with a full certificate they are recognised under the law of Jersey as having changed gender.^[20]
29. Where a full certificate is issued to a person who has a Jersey birth register entry,^[21] the Royal Court will send a copy of the full certificate to the Superintendent Registrar^[22] who will arrange for the re-registration of the person’s birth.^[23] This will enable the person to obtain a birth certificate showing their new details including their new name and gender.
30. Transsexual people will usually, as part of their treatment, change name by deed poll to reflect their change in gender, prior to obtaining legal recognition of their change in gender.^[24] In Jersey, any person who changes their name by deed poll and whose previous name is recorded in the books of the Public Registry of Contracts, the Register of Procurations or the Register of Obligations (the “registers”) is required to have their deed poll registered and their new name entered on the public registers.^[25]
31. Transsexual people may also change their name by having their new name entered on their new birth register entry following the issuance of a full certificate. If transsexual people change their name in this way, rather than by deed poll, and their previous name is recorded in the registers the Court will direct the Judicial Greffier to record their new name in the registers in the same way as if they had changed their name by registered deed poll.^[26]

The effect of legal recognition in Jersey

32. The general effect of legal recognition is that the person acquires, for all purposes in Jersey, the gender to which he or she has changed.^[27] This means that, for example, if the person’s acquired gender is the female gender, the person’s gender becomes that of a woman.^[28] This means that, for example, she will be able to enter into a valid marriage in Jersey with a man.
33. It should be noted, however, that this change is not retrospective, so the certificate does not rewrite the gender history of the transsexual person.^[29] However, the person’s acquired gender does operate for the interpretation of enactments, instruments and documents made before as well as after the issue of the certificate.^[30]
34. The general effect of the Law is subject to certain specific provisions set out in the Law and, for the

future, by any other enactment.^[31] The specific provisions relate to the following: parenthood;^[32] succession;^[33] titles;^[34] trustees, executors or administrators;^[35] orders where expectations defeated;^[36] sport;^[37] gender-specific offences;^[38] and foreign gender change and marriage.^[39]

Disclosure of information

35. In order to protect the privacy of transsexual people, the Law defines some information relating to the gender recognition process as ‘protected information’.^[40]
36. The Law makes it an offence to disclose protected information acquired in an official capacity to any other person.^[41]
37. The Law also provides specific circumstances in which the disclosure of protected information will not constitute an offence.^[42]

Actions required to implement the Law

38. The following actions will be required to implement the Law –
 - 38.1. the Royal Court will make rules of Court to deal with the application procedure and documentation required by the Law;
 - 38.2. the Chief Minister will by Order prescribe the approved jurisdictions;
 - 38.3. the Chief Minister will by Order prescribe any further situations in which disclosure of protected information will not constitute an offence. It is anticipated that this will include, for example: disclosure for the purpose of obtaining legal advice; disclosure for religious purposes; disclosure for medical purposes; credit reference agencies; and bankruptcy;
 - 38.4. all States departments will need to review their policies and procedures to ensure that any consequential issues arising from the legal recognition of a change in gender in Jersey can be dealt with in such a way that such persons are able to enjoy any rights conferred by the law of Jersey on people of their acquired gender. In particular, this is likely to affect pensions, taxation, social security and health; and
 - 38.5. any future sex discrimination legislation should be drafted to cover discrimination against transsexual persons on the basis of having changed gender.

Financial/manpower implications

All departments which will be affected have confirmed that financial implications are minimal. There are no additional manpower implications.

European Convention on Human Rights

Article 16 of the Human Rights (Jersey) Law 2000 requires the Minister in charge of a Projet de Loi to make a statement about the compatibility of the provisions of the Projet with the Convention rights (as defined by Article 1 of the Law). On 19th November 2008 the Chief Minister made the following statement before Second Reading of this Projet in the States Assembly –

In the view of the Chief Minister the provisions of the Draft Gender Recognition (Jersey) Law 200- are compatible with the Convention Rights.

Explanatory Note

Part 1 – Interpretation

Article 1 provides for the interpretation of expressions used in this draft Law. In particular, it should be noted that a reference to a person acquiring a gender means that the person has been issued a full gender recognition certificate under this Law.

Part 2 – Issue of gender recognition certificate

Article 2 provides that, in order to apply for a gender recognition certificate, a person must be of full age (that is, aged 18 or over) and have already changed gender in accordance with the law of an approved jurisdiction. The Chief Minister (the “Minister”) will prescribe, by Order, jurisdictions that will be approved for this purpose. These will be jurisdictions whose equivalent to a gender recognition certificate issued under this Law is to be recognized in Jersey as proof of a person’s change of gender.

Article 3 requires the Royal Court (the “Court”) to grant a certificate if the requirements of Article 2 are satisfied. If, at the time of grant, the applicant is married, the applicant receives a interim certificate. If the applicant is unmarried, he or she receives a full certificate. The applicant is only treated as a person of the acquired gender on and from the issue of a full certificate.

It should be noted that, in determining whether or not a person is married, Article 17(2) has the effect that any marriage entered into, after the applicant changed gender according to the law of another jurisdiction, with a person who is of the same sex as the applicant was before the change of gender, would be treated as void at the time of the determination and would therefore not be an impediment to the grant of a full certificate.

Articles 4 and 5 specify circumstances in which a full certificate will be issued once an applicant is no longer married.

Article 4 is linked with amendments made to the Matrimonial Causes (Jersey) Law 1949 by Schedule 2 to this draft Law. Those amendments add new grounds for the annulment of a marriage, amongst them the fact that an interim certificate has been issued. On the annulment of the marriage on that ground, the Court shall automatically issue a full certificate.

Article 5 sets out the process for obtaining a full certificate in all other cases where the applicant ceases to be married. The applicant must apply once more to the Court, within 6 months of the marriage being dissolved or annulled or of the death of the applicant’s spouse. The divorce or annulment proceedings themselves must have been started within 6 months of the issue of the interim certificate. The Court has a discretion to waive or extend any time limits in this Article.

Article 6 allows the Court to correct an error in a gender recognition certificate, on the application of either the person to whom the certificate was issued or the Attorney General.

Article 7 allows the Attorney General to refer a case to the Court if the Attorney General considers that the grant of a certificate has been obtained by fraud (for example, the production of forged documentation as to a person’s change of gender according to the law of an approved jurisdiction). The Court is empowered to revoke a certificate and make any other appropriate order.

Part 3 – Consequences of issue of full certificate

Article 8 states the general principle, which is that, on and from the issue of a full certificate, the person acquires the other gender according to law. There are certain exceptions to this, set out in the following provisions of this Part. Further exceptions may be made by amendment of other enactments by Regulations made by the States (see Article 21).

Article 9 gives effect to Schedule 1, which provides for the alteration of various public registers to reflect a person’s acquired gender.

Article 10 provides that the acquisition of a gender does not affect a person’s status as the parent of a child. For example, the father of a child remains its father, although he acquires the female gender.

Article 11 provides that a disposition in a will or other instrument made before this Law comes into force is unaffected by the provisions of the Law. For example, if a will which pre-dates the Law states “I leave my jewellery to my daughters”, the disposition is unaffected by the person’s son acquiring the female gender.

Article 12 provides that succession to titles or property entailed to pass with a title, is unaffected by a person's acquisition of a gender, unless a contrary intention appears in a will or other instrument.

Article 13 makes it clear that trustees, executors and administrators are not under an obligation, before making any distribution, to make enquiries about whether there has been a certificate issued that might affect the distribution.

Article 14 allows a person to apply to the Court if the person's interest in property bequeathed under a will made after this Law comes into force is adversely affected by the fact that a person acquires a gender. The Court may then, if it thinks it just to do so, make an order adjusting the disposition or devolution of the estate.

Article 15 allows that, in the interests of fair competition and safety, organizers of sporting events may prohibit or restrict a person's participation in his or her acquired gender.

Article 16 deals with gender-specific offences. For these purposes, the fact that, for example, a man has acquired the female gender, does not prevent that person being found to have committed or attempted an offence which involves a sexual act by the perpetrator and either can only be committed by a man or can only be committed against a woman.

Article 17 is concerned with the status of a marriage entered into in another jurisdiction by a person, before the person's change of gender is recognized under this Law as having been acquired, where the other party to the marriage is of the sex that the person had before changing gender. For example, this would apply where a man changes to the female gender in another jurisdiction and then, in that jurisdiction, marries a man. This Article has the effect that, unless and until a full certificate is issued, the marriage is treated, in Jersey, as void on the grounds that the parties to it were not a man and a woman. However, on the issue of a full certificate, the marriage ceases to be treated as void on that ground.

Part 4 – Supplementary

Article 18 imposes restrictions on the disclosure of information which would reveal that a person has an acquired gender or has applied for a certificate under this Law.

Article 19 requires that applications under this Law shall be determined or heard in private by the Court. As a general rule, such applications are to be dealt with on paper, although the Court can order a hearing.

Article 20 empowers the Minister to make Orders under the Law.

Article 21 gives effect to Schedule 2 and empowers the States, by Regulations, to amend or modify other enactments in their application to persons of acquired gender. For example, amendments to social security and pensions legislation may be required so as to clarify the pensions entitlement of a person of the acquired gender.

Article 22 enables Orders and Regulations to include ancillary provisions.

Article 23 cites the name of the Law and provides for it to come into force on an appointed day.

Schedule 1 contains administrative procedures for various registers that are open to the public to be altered when a person acquires a gender.

Schedule 2 amends the Matrimonial Causes (Jersey) Law 1949, as described in relation to Article 4, above, and the Stamp Duties and Fees (Jersey) Law 1998, to specify the court fee for an application under Article 2 of this Law.



Jersey

DRAFT GENDER RECOGNITION (JERSEY) LAW 200

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Jersey

DRAFT GENDER RECOGNITION (JERSEY) LAW 200

A LAW to make provision for, and in connection with, change in gender

Adopted by the States [date to be inserted]

Sanctioned by Order of Her Majesty in Council [date to be inserted]

Registered by the Royal Court [date to be inserted]

THE STATES, subject to the sanction of Her Most Excellent Majesty in Council, have adopted the following Law –

PART 1

INTERPRETATION

1 Interpretation

(1) In this Law, unless the context otherwise requires –

“2001 Law” means the Marriage and Civil Status (Jersey) Law 2001^[1];

“applicant” means a person who makes, or has made, an application for a gender recognition certificate;

“approved jurisdiction” means any country or territory that is prescribed;

“Court” means the Royal Court;

“full certificate” means a full gender recognition certificate issued under Article 3(2)(a), 4 or 5;

“gender recognition certificate” means a certificate issued under this Law;

“interim certificate” means an interim gender recognition certificate issued under Article 3(2)(b);

“Minister” means the Chief Minister;

“prescribed” means prescribed by Order of the Minister;

“Superintendent Registrar” means the person appointed as such under Article 41 of the 2001 Law.

(2) In this Law, any reference to a person acquiring a gender, or having an acquired gender, shall be construed in accordance with Article 8(1) and (2).

PART 2

ISSUE OF GENDER RECOGNITION CERTIFICATE

2 Application for gender recognition certificate

- (1) A person of full age who has changed gender in accordance with the law of an approved jurisdiction may apply to the Court for a gender recognition certificate.
- (2) An application for a gender recognition certificate shall be in a form approved by the Court and shall include –
 - (a) such evidence as may be prescribed of the matters described in paragraph (1);
 - (b) a declaration signed by the applicant stating whether or not he or she is married; and
 - (c) any other information or evidence required by the Court, if the Court gives reasons for so requiring it.

3 Grant of application for gender recognition certificate

- (1) The Court shall grant an application for a gender recognition certificate if and only if it is satisfied that the application complies with the requirements of Article 2.
- (2) Upon granting an application the Court shall issue to the applicant –
 - (a) if the applicant is unmarried, a full certificate;
 - (b) if the applicant is married, an interim certificate.
- (2) Subject to the requirements of this Law, the content and form of a full certificate and an interim certificate shall be specified in rules of court.

4 Issue of full certificate following annulment of marriage on ground of issue of interim certificate

Where the Court grants a decree of nullity in respect of an applicant's marriage under Article 18(1)(g) of the Matrimonial Causes (Jersey) Law 1949^[2] on the grounds that an interim certificate has been issued to the applicant, the Court shall issue a full certificate to the applicant.

5 Issue of full certificate once applicant no longer married – other cases

- (1) An applicant may apply to the Court for a full certificate where an interim certificate has been issued to the applicant and –
 - (a) the applicant's marriage has been dissolved or annulled (other than on the grounds mentioned in Article 4) in proceedings instituted within 6 months of the interim certificate being issued or
 - (b) the applicant's spouse has died within such period.
- (2) An application under paragraph (1)–
 - (a) may be made within 6 months of the dissolution or annulment of the marriage or of the death of the applicant's spouse, as the case may be, unless the applicant has married again during that period; and
 - (b) shall include evidence, as the case requires, of –
 - (i) the dissolution or annulment of the marriage and the date on which the relevant proceedings were instituted, or
 - (ii) the death of the spouse and the date on which it occurred.
- (3) The Court may if it thinks fit –
 - (a) allow an application under paragraph (1), notwithstanding that the proceedings there mentioned were instituted more than 6 months after the issue of the interim certificate or, as the case may

be, the applicant's spouse died more than 6 months after the issue of the interim certificate; or

(b) extend the period described in paragraph (2)(a).

- (4) The Court shall grant an application under paragraph (1) if and only if it is satisfied that the applicant is not married.
- (5) Where the Court has granted the application it shall issue a full certificate to the applicant.

6 Correction of error in certificate

- (1) Where the applicant or the Attorney General considers that a gender recognition certificate has been issued containing an error, either of them may apply to the Court, in a form approved by the Court, for a corrected certificate.
- (2) The Court shall grant an application under paragraph (1) if and only if it is satisfied that the gender recognition certificate contains an error.
- (3) Where the Court has granted the application it shall issue a corrected certificate to the applicant.

7 Reference to Court in case of fraud

- (1) If the Attorney General considers that the grant of an application made under Article 2, 5 or 6 was secured by fraud, he or she may refer the case to the Court.
- (2) On a reference under paragraph (1) the Court shall either quash or confirm the decision to grant the application.
- (3) If it quashes the decision the Court shall revoke the certificate issued on the grant of the application and may make any order which it considers appropriate in consequence of, or otherwise in connection with, doing so.

PART 3

CONSEQUENCES OF ISSUE OF FULL CERTIFICATE

8 General rule for acquisition of gender

- (1) Upon the issue of a full certificate to a person, the person acquires, for all purposes in Jersey, the gender to which he or she has changed.
- (2) Accordingly –
 - (a) if the person's acquired gender is the male gender, the person's gender becomes that of a man;
 - (b) if the person's acquired gender is the female gender, the person's gender becomes that of a woman.
- (3) The acquisition of a gender by a person –
 - (a) does not affect things done, or events occurring, before the full certificate is issued;
 - (b) does operate for the interpretation of enactments, instruments and any other documents, whenever passed or made.
- (4) This Article is subject to the following provisions of this Part and to any other enactment.

9 Alteration of registers

- (1) Schedule 1 has effect to provide for the alteration of public registers consequentially upon the issue, correction or revocation of a full certificate, and for connected purposes.

- (2) The States may by Regulations amend Schedule 1.

10 Parenthood

The fact that a person acquires a gender does not affect the status of the person as the father or mother of a child.

11 Succession

The fact that a person acquires a gender does not affect the disposal or devolution of property under a will or other instrument made before the commencement of this Law.

12 Titles

The fact that a person acquires a gender –

- (a) does not affect the descent of any peerage or dignity or title of honour; and
- (b) 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.

13 Trustees, executors or administrators

- (1) A trustee, executor or administrator is not under a duty, by virtue of the law relating to trusts or the administration of estates, to enquire, before transferring or distributing any property, whether a full certificate has been issued to a person or revoked (if that fact could affect entitlement to the property).
- (2) A trustee, executor or administrator is not liable to any person by reason of a transfer or distribution of the property made without regard to whether a full certificate has been issued to a person or revoked if the trustee, executor or administrator has not received notice of the fact before the transfer or distribution.
- (3) This Article 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 other person has purchased it for value in good faith and without notice.

14 Orders where expectations defeated

- (1) Where the disposition or devolution of any property under a will or other instrument (made after the commencement of this Law) is different from what it would be but for the fact that a person has acquired a gender, a person may apply to the Court for an order on the ground of being adversely affected by the different disposition or devolution of the property.
- (2) 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.
- (3) The order may, in particular, make provision for –
 - (a) the payment of a lump sum to the person who applied under paragraph (1);
 - (b) the transfer of property to the person who applied under paragraph (1);
 - (c) the settlement of property for the benefit of the person who applied under paragraph (1); or
 - (d) the acquisition of property and either its transfer to the person who applied under paragraph (1), or its settlement for the benefit of that person.

- (4) The order may contain consequential or supplementary provisions for giving effect to the order or for ensuring that it operates fairly as between the person who applied under paragraph (1) and the other person or persons affected by it.
- (5) Without prejudice to the generality of paragraph (4) the order may confer powers on trustees.

15 Sport

- (1) A body responsible for regulating the participation of persons as competitors in an event or events involving a gender-affected sport may prohibit or restrict the participation as a competitor in the event or events of any person who has acquired a gender if the prohibition or restriction is necessary to secure, at the event or events –
 - (a) fair competition; or
 - (b) the safety of competitors.
- (2) In this Article “gender-affected sport” means a sport, game or other activity of a competitive nature where 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 activity.

16 Gender-specific offences

- (1) Where 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 gender thereby acquired, the fact that the person’s gender has become that acquired gender does not prevent the offence being committed or attempted.
- (2) In this Article “relevant gender-specific offence” means an offence that involves the accused engaging in sexual activity and in respect of which either or both of the conditions in paragraph (3) are satisfied.
- (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.

17 Foreign gender change and marriage

- (1) A person’s gender is not to be regarded as having changed by reason only that the person has changed gender in accordance with the law of a country or territory outside Jersey (whether or not an approved jurisdiction).
- (2) Accordingly, a person is not to be regarded as being married by reason of having entered into a foreign post-recognition marriage.
- (3) Notwithstanding paragraph (2), on and from the issue of a full certificate to a person who has entered into a foreign post-recognition marriage, 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) Paragraph (3) does not apply to a foreign postrecognition 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 Article 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 Jersey;

- (b) before the marriage was entered into the person changed his or her gender in accordance with the law of that or any other country or territory outside Jersey;
- (c) the gender of the other party to the marriage was the same as that of the person, before the person changed gender; and
- (d) by virtue of paragraph (1) the person's gender was not regarded as having changed.

PART 4

SUPPLEMENTARY

18 Prohibition on disclosure of information

- (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 that relates to any applicant that –
 - (a) concerns any application under this Law by the applicant; or
 - (b) if the applicant's application under Article 2(1) is granted, otherwise concerns his or her gender before it becomes the acquired gender.
- (3) A person acquires protected information in an official capacity if he or she acquires it –
 - (a) in connection with the person's functions as an employee of the States of Jersey, a member of a parish authority, a police officer or the holder of any other public office or honorary office or in connection with the functions of a parish or public authority or of a voluntary organization;
 - (b) as an employer, or prospective employer, of an applicant 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) However it is not an offence under this Article to disclose protected information relating to an applicant if –
 - (a) the information does not enable the applicant to be identified;
 - (b) the applicant has agreed to the disclosure of the information;
 - (c) the information is protected information by virtue of paragraph (2)(b) and the person by whom the disclosure is made does not know or believe that a full 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 Superintendent Registrar or the Judicial Greffier for the purposes described in Schedule 1;
 - (h) the disclosure is made for the purposes of the social security system or a pension scheme;
 - (i) the disclosure is in accordance with provision made by an Order under paragraph (6); or
 - (j) the disclosure is in accordance with any provision of, or made by virtue of, an enactment other than this Article.
- (5) A person shall not be taken to have disclosed protected information by reason only that another person infers, from any entry, record or marking made in accordance with Schedule 1, that the entry record or marking is made as a consequence of the issue of a full certificate.

- (6) The Minister may by Order prescribe circumstances in which the disclosure of protected information does not constitute an offence under this Article.
- (7) An Order under paragraph (6) may permit–
 - (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.
- (8) A person guilty of an offence under this Article is liable to a fine of level 4 on the standard scale.

19 Procedure and rules of court

- (1) The Court shall –
 - (a) determine applications under this Law in private;
 - (b) determine applications on the papers unless it considers that an oral hearing is necessary.
- (2) The power to make rules of court under Article 13 of the Royal Court (Jersey) Law 1948^[3] shall include the power to make rules for the purposes of this Law, and shall include the power to specify any matter that, under this Law, shall or may be specified by the Court.

20 Orders

The Minister may by Order prescribe anything that shall or may be prescribed under this Law.

21 Consequential amendments

- (1) Schedule 2 has effect to amend enactments.
- (2) The States may by Regulations amend any enactment or modify any enactment in relation to –
 - (a) persons of an acquired gender; or
 - (b) any description of such persons.

22 Supplementary powers

Any power under this Law of the States to make Regulations or of the Minister to make Orders includes power to make incidental, supplementary, consequential or transitional provision or savings.

23 Citation and commencement

This Law may be cited as the Gender Recognition (Jersey) Law 200- and shall come into force on such day as the States may by Act appoint.

SCHEDULE 1

(Article 9)

ALTERATION OF REGISTERS

1 Re-registration of birth

- (1) This paragraph applies where the birth of a person to whom a full certificate is issued was registered in Jersey.
- (2) The Court shall send a copy of the full certificate to the Superintendent Registrar.
- (3) The Superintendent Registrar shall furnish the registrar with the following particulars, contained in the full certificate –
 - (a) the person's acquired gender; and
 - (b) the person's acquired name.
- (4) The registrar shall –
 - (a) re-register the birth so as to record the particulars furnished;
 - (b) mark the person's original birth entry "re-registered by the Superintendent Registrar";
 - (c) make such other entries as may be necessary to record and make traceable the connection between the original birth entry and the re-registered entry; and
 - (d) amend accordingly any index of birth entries that he or she keeps.
- (5) The entries and marking required by sub-paragraph (4) shall be such that the reason for re-registration would not be disclosed –
 - (a) to a person searching the register or any index; or
 - (b) in a certified copy of the person's birth certificate.
- (6) Where, pursuant to Article 6, there is a correction of a full certificate that affects the person's acquired name –
 - (a) the Court shall send a copy of the corrected full certificate to the Superintendent Registrar;
 - (b) the Superintendent Registrar shall furnish the registrar with the corrected acquired name; and
 - (c) the registrar shall amend the entries made under sub-paragraph (4) accordingly.
- (7) Where, pursuant to Article 7, a full certificate is revoked–
 - (a) the Court shall send a copy of its order revoking the certificate to the Superintendent Registrar; and
 - (b) the registrar shall, at the direction of the Superintendent Registrar, cancel any entries and marking made under sub-paragraph (4).
- (8) The Superintendent Registrar is the informant, for the purposes of Article 72 of the 2001 Law, of any re-registration or correction under this paragraph.
- (9) In this paragraph, a reference to the "registrar", in relation to a person, means the person appointed under Article 42 of the 2001 Law who keeps the register in which the person's birth was registered.

2 Adopted Children Register

- (1) This paragraph applies where the adoption of a person to whom a full certificate is issued is entered in the Adopted Children Register.
- (2) The Court shall send a copy of the full certificate to the Superintendent Registrar.

- (3) The Superintendent Registrar shall cause the entry for the person in the Adopted Children Register to be amended so as to record –
 - (a) the person’s acquired gender; and
 - (b) the person’s acquired name,and shall amend accordingly the index to the Adopted Children Register.
- (4) The entries and marking required by sub-paragraph (3) shall be such that the reason for reregistration would not be disclosed –
 - (a) to a person searching the index; or
 - (b) in a certified copy of the entry in the Adopted Children Register.
- (5) Where, pursuant to Article 6, there is a correction of a full certificate that affects the person’s acquired name –
 - (a) the Court shall send a copy of the corrected full certificate to the Superintendent Registrar; and
 - (b) the Superintendent Registrar shall cause the amended entry made under sub-paragraph (3) to be corrected accordingly.
- (6) Where, pursuant to Article 7, a full certificate is revoked–
 - (a) the Court shall send a copy of its order revoking the certificate to the Superintendent Registrar; and
 - (b) the Superintendent Registrar shall cancel any entries and marking made under sub-paragraph (3).
- (7) In this paragraph, “Adopted Children Register” has the same meaning as in the Adoption (Jersey) Law 1961^[4].

3 Public Registry of Contracts, Register of Procurations and Register of Obligations

- (1) This paragraph applies where, before the issue of a full certificate to a person, the person’s name was recorded in the books of the Public Registry of Contracts, the Register of Procurations or the Register of Obligations.
- (2) The Court shall direct the Judicial Greffier to –
 - (a) record the person’s acquired name and, if appropriate, the person’s acquired gender, in each of those Registers in which it appears; and
 - (b) make such other entries as may be necessary to make traceable the connection between the person’s name as it originally appeared and the person’s acquired name.
- (3) Where, pursuant to Article 6, there is a correction of a full certificate that affects the person’s acquired name the Court shall direct the Judicial Greffier to correct any record or other entry made under sub-paragraph (2) accordingly.
- (4) Where, pursuant to Article 7, a full certificate is revoked, the Court shall direct the Judicial Greffier to cancel any record or other entry made under sub-paragraph (2).

SCHEDULE 2

(Article 21(1))

CONSEQUENTIAL AMENDMENTS

1 Matrimonial Causes (Jersey) Law 1949

- (1) In Article 18 of the Matrimonial Causes (Jersey) Law 1949^[5] –
- (a) in paragraph (1)–
 - (i) in sub-paragraph (f), for the colon at the end of the sub-paragraph there shall be substituted a semi colon,
 - (ii) after sub-paragraph (f) there shall be added the following sub-paragraphs –
 - “(g) that an interim certificate has, after the time of the marriage, been issued to either party to the marriage;
 - (h) that either party to the marriage satisfies such conditions and has taken such steps, in an approved jurisdiction, for the recognition of his or her change of gender by that jurisdiction as –
 - (i) are prescribed, in respect of that jurisdiction, by Order made by the Chief Minister, or
 - (ii) if no conditions and steps are prescribed under clause (i) in respect of that jurisdiction, satisfy the Court that, but for the fact that the parties are still married, the change of gender would be recognized by that jurisdiction;
 - (i) that the respondent is a person whose gender at the time of the marriage had become the acquired gender:”;
 - (iii) in the proviso, for the words “sub-paragraphs (d), (e) or (f)” there shall be substituted the words “sub-paragraphs (d), (e), (f) or (g)”;
 - (b) in paragraph (2) for the words “or (f)” there shall be substituted the words “, (f), (g) or (h)”;
 - (c) after paragraph (2) there shall be inserted the following paragraph–

“(2A) Without prejudice to paragraph (1), the court shall not grant a decree of nullity under Article 18(1) on the ground mentioned in sub-paragraph (g) of that paragraph unless it is satisfied that proceedings were instituted within 6 months of the date of issue of the interim certificate.”;
 - (d) in paragraph (3) after the words “sexual capacity” there shall be inserted the words “or gender”;
 - (e) after paragraph (3) there shall be added the following paragraph–

“(4) In this Article ‘approved jurisdiction’, ‘interim certificate’ and a reference to a person’s acquired gender have the same respective meanings as in Article 1 of the Gender Recognition (Jersey) Law 200-.”.
- (2) In the proviso to Article 20(1) of the Matrimonial Causes (Jersey) Law 1949 after the words “proper to do so” there shall be inserted the words “and, in the case of a decree under Article 18(1)(g) or (h) the decree shall be absolute on pronouncement”.

2 Stamp Duties and Fees (Jersey) Law 1998

In Part 1 of the Schedule to the Stamp Duties and Fees (Jersey) Law 1998^[6] after item 48 there shall be added the following item –

"49.	APPLICATION FOR GENDER RECOGNITION CERTIFICATE			
	For an application under Article 2 of the Gender Recognition (Jersey) Law 200-	£50	Application	Greffier".

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- [1] <http://www.echr.coe.int/NR/ronlyres/D5CC24A7-DC13-4318-B457-5C9014916D7A/0/EnglishAnglais.pdf>
- [2] Judgment of the Grand Chamber – 11th July 2002 (Application No. 28957/95)– (2002) 35 E.H.R.R. 18, 447
<http://cmiskp.echr.coe.int/tkp197/view.asp?item=2&portal=hbkm&action=html&highlight=GOODWIN&sessionid=12236450&skin=hudoc-en>
- [3] Judgment of the Grand Chamber – 11th July 2002 (Application No. 25680/94)– (2002) 35 E.H.R.R. 18, 967
<http://cmiskp.echr.coe.int/tkp197/view.asp?item=1&portal=hbkm&action=html&highlight=25680/94&sessionid=12236317&skin=hudoc-en>
- [4] http://www.jerseylegalinfo.je/Law/display.aspx?url=lawsinforce%5cconsolidated%5c15%5c15.350_HumanRightsLaw2000_RevisedEdition_1January2007.htm
- [5] <http://www.gov.je/NR/ronlyres/7D462750-EFD8-446E-A0E6-E024EEA59DE5/0/StatesStrategicPlan2006to2011.pdf>
- [6] www.dca.gov.uk/constitution/transsex/policy.htm
- [7] www.dca.gov.uk/constitution/transsex/policy.htm
- [8] <http://www.statutelaw.gov.uk/legResults.aspx?LegType=All+Legislation&title=Gender&searchEnacted=0&extentMatchOnly=0&confersPower=0&blanketAmendment=0&>
- [9] Schedule 2, 1(1) of the Law
- [10] Schedule 2, 1(2) of the Law
- [11] UK Statutory Instrument 2005 No. 874 The Gender Recognition (Approved Countries and Territories) Order 2005 (<http://www.opsi.gov.uk/si/si2005/20050874.htm>)
- [12] Paragraph 15 of the Explanatory Notes to the UK Act:
http://www.opsi.gov.uk/acts/acts2004/en/ukpgaen_20040007_en_1
- [13] Article 2 of the Law
- [14] Article 19 of the Law
- [15] Article 3(1) of the Law
- [16] Article 3(2) of the Law
- [17] Article 18(1)(g) of the Matrimonial Causes (Jersey) Law 1949 as amended by Schedule 2 of the Law
- [18] Article 4 of the Law
- [19] Article 5 of the Law
- [20] Article 8 of the Law
- [21] Article 9 and Schedule 1, 1(1) of the Law
- [22] Schedule 1, 1(2) of the Law
- [23] Schedule 1, 1(3) to (5) of the Law
- [24] See, for example, Representation of Nigel Rodney Ford applying to register a deed poll – 2001/128 JRC
http://www.jerseylaw.je/Judgments/UnreportedJudgments/Documents/Display.aspx?url=01-06-06_Representation_Ford_128.htm
- [25] Royal Court Practice Direction 05/26 – Directions concerning applications for registration of deeds poll:
<http://www.jerseylaw.je/Courts/PracticeDirections/Display.aspx?url=RC-05-26.htm>
- [26] Schedule 1, 3 of the Law
- [27] Article 8(1) of the Law
- [28] Article 8(2) of the Law

- [29] Article 8(3)(a) of the Law
[30] Article 8(3)(b) of the Law
[31] Article 8(4) of the Law
[32] Article 10 of the Law
[33] Article 11 of the Law
[34] Article 12 of the Law
[35] Article 13 of the Law
[36] Article 14 of the Law
[37] Article 15 of the Law
[38] Article 16 of the Law
[39] Article 17 of the Law
[40] Article 18(1) of the Law
[41] Article 18(2) and (3) of the Law
[42] Article 18(4), (5), (6) and (7) of the Law

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- [1] *chapter 12.600*
[2] *chapter 12.650*
[3] *chapter 07.770*
[4] *chapter 12.050*
[5] *chapter 12.650*
[6] *chapter 24.960*