



Jersey

## GENDER RECOGNITION (JERSEY) LAW 2010

### Arrangement

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Jersey

## **GENDER RECOGNITION (JERSEY) LAW 2010**

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

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*Adopted by the States* 3rd February 2009

*Sanctioned by Order of Her Majesty in Council* 9th December 2009

*Registered by the Royal Court* 8th January 2010

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

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### **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<sup>1</sup>;

“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<sup>2</sup> 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 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 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 –
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- (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<sup>3</sup> 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 2010 and shall come into force on such day as the States may by Act appoint.

**A.H. HARRIS**

*Deputy Greffier of the States*

**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 re-registration 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<sup>4</sup>.

## **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).

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**SCHEDULE 2**

(Article 21(1))

**CONSEQUENTIAL AMENDMENTS****1 Matrimonial Causes (Jersey) Law 1949**

- (1) In Article 18 of the Matrimonial Causes (Jersey) Law 1949<sup>5</sup> –
- (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 2010.”.

(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<sup>6</sup> after item 48 there shall be added the following item –

<b>“49.</b>	<b>APPLICATION FOR GENDER RECOGNITION CERTIFICATE</b>			
	For an application under Article 2 of the Gender Recognition (Jersey) Law 2010	£50	Application	Greffier”.

## 3 Marriage and Civil Status (Jersey) Law 2001

In Part 3 of the Marriage and Civil Status (Jersey) Law 2001, after Article 40 there shall be inserted the following Article –

### **“40A Solemnization of marriage of person of the acquired gender**

A clergyman is not obliged to solemnize the marriage of a person if the clergyman reasonably believes that the person is of an acquired gender, within the meaning of Article 1(2) of the Gender Recognition (Jersey) Law 2010.’.”

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- <sup>1</sup> *chapter 12.600*
  - <sup>2</sup> *chapter 12.650*
  - <sup>3</sup> *chapter 07.770*
  - <sup>4</sup> *chapter 12.050*
  - <sup>5</sup> *chapter 12.650*
  - <sup>6</sup> *chapter 24.960*