



Gender Recognition (Jersey) Law 2009

Introduction

The Gender Recognition (Jersey) Law 2009 (“the Law”) is a new Law, which came into effect on 3 February 2009. The purpose of the Law is to provide legal recognition and equality for persons who have changed gender (otherwise known as transsexuals). It is important because it allows transsexuals to effect changes to their birth certificates to reflect their new gender and acquired name, thereby enabling them to marry in their new gender.

A copy of the law may be found at:

http://www.jerseylaw.je/Law/LawsAdopted/Gender_Recognition_Jersey_Law.pdf

Procedure – application for gender recognition certificates

The Law entitles a person of full age who has changed gender to apply to the Royal Court for a gender recognition certificate.

The Royal Court shall grant an application for a gender recognition certificate if:

- (a) the applicant has produced evidence that he/she is of full age and has changed gender in accordance with the law of an approved jurisdiction;
- (b) the applicant has produced a signed declaration stating whether or not he or she is married; and
- (c) the applicant has provided the Court with any other information which it has asked for, as long as the Court has given its reasons for requesting the additional information.

Difference between unmarried and married applicants

If the applicant is unmarried, the Court shall grant what is known as a full certificate. If the applicant is married, the Court will first grant an interim certificate.

The applicant may then seek a full certificate where:

- (a) he/she obtains an annulment of the marriage on the grounds that an interim certificate has been issued. When that annulment has been granted, the Court shall issue a full certificate to the applicant;
- (b) he/she obtains an annulment or divorce other than on the grounds that an interim certificate has been issued in proceedings issued within 6 months of the interim certificate being issued or the applicant’s spouse has died within the same period. In either case, the application may be made within 6 months of the annulment/divorce/death (or such extended period if the Court thinks fit)

and shall include evidence of the annulment/divorce/death. The Court shall grant an application in either case only if it is satisfied that the applicant is not married. It shall then issue a full certificate to the applicant.

Effect of grant of full certificate

The effect of the grant of a full certificate is that the person acquires, for all purposes in Jersey, the gender to which he or she has changed. If the person's acquired gender is the male gender, the person becomes a man. If the person's acquired gender is the female gender, the person becomes a woman. As a result of the Law, transsexuals may now marry in Jersey. For example, a person who was previously of the male gender, but obtains a full certificate in recognition of her new female gender, is free to get married as a woman.

The acquisition of a gender by a person does not affect things done or events occurring before the full certificate is issued but it does operate for the interpretation of enactments, instruments and any other documents, whenever passed or made.

Change to public registers

The grant of a full certificate will also result in the alteration of public registers, so that if the applicant was previously of the male gender and as a result of the full certificate has acquired the female gender, the public registers on which she appears will be corrected to reflect her new gender and acquired name. For example, her birth will be re-registered so as to record her new female gender. If she was adopted, her new gender and acquired name will be recorded in the Adopted Children Register. If the applicant's name was previously recorded in the books of the Public Registry of Contracts (e.g. as a party to a conveyance of property house), this Registry will also be amended accordingly.

Effect on parenthood and succession rights

The Law expressly states that the fact that a person acquires a gender does not affect his/her status as a parent, nor does it affect the disposal or devolution of property under a will made before the commencement of the Law in 2009 or the descent of any peerage or dignity or title of honour (and any property that devolves with such a title). As far as trusts are concerned, a trustee has no obligation to enquire as to whether a potential beneficiary has received a full certificate.

Where the expectations under a will (made after the Law came into effect) of a person who has acquired a gender are defeated because of his/her change in gender, he/she may apply to the Royal Court for an order, e.g., for payment of a lump sum or the transfer, settlement or acquisition of property. The Court may also make supplementary provisions so that the order operates fairly between the applicant and anyone else affected by it.

Sport

The Law permits bodies, which regulate participation in sports, to restrict the participation of a transsexual in a particular event if such restriction is necessary to

secure fair competition or safety. This extends only to so-called 'gender-affected' sports, i.e. those in which 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. Boxing and weightlifting are obvious examples.

Gender-specific offences

The Law also makes provision in respect of gender-specific offences, i.e. offences that involve the accused engaging in sexual activity and which may be committed only by a person of a particular gender and only on or in relation to a person of the other gender. As a result of the Law, the fact that a person has acquired a new gender does not prevent a gender-specific offence being committed or attempted by or against that person.

Foreign gender change and marriage

According to the Law, a person's gender does not change by reason only of the fact that he/she has changed gender in accordance with the law of another country (whether approved or not). A person who has changed gender elsewhere is not regarded as having changed gender for the purposes of Jersey law until he/she has obtained a full certificate.

As a result, the Law states that a person who changed gender overseas and subsequently married overseas will not be regarded as being married under Jersey law, but once that person has obtained a full certificate, Jersey law will treat the marriage as valid.

Prohibition on disclosure of information

The Law goes to considerable lengths to protect the confidentiality of transsexuals and restricts the disclosure of information acquired in an official capacity (e.g. by employers, public officials, police officers, parish officials and/or in connection with the supply of goods or services) about a person's gender recognition application or original gender. There are various exceptions to the offence, e.g. where the transsexual consents to disclosure of the information or it is made in accordance with a court order, etc. A person guilty of unauthorized disclosure is liable to a fine.

All applications under the Law shall be heard privately and dealt with on paper unless the Court believes that an oral hearing is necessary.