

Ad Clerum 3b.7

Gender Recognition Act

The Gender Recognition Act 2004 ('the Act') received the Royal Assent on 1 July 2004. The Act allows transsexual persons full legal recognition of their acquired gender once they have obtained a full gender recognition certificate ('a Certificate') issued by a Gender Recognition Panel. The Act sets out the processes by which applications for a certificate can be made and the consequences for a person of an acquired gender once a full certificate has been issued.

The Act raises a number of significant theological and pastoral issues for clergy and the Church as a whole to grapple with, not least because of the rights given to persons of an acquired gender once they are in receipt of a Certificate.

The primary impact area is that of marriage. Once a person has received a Certificate, they are, generally speaking, entitled to the same rights and benefits as a person of that gender by birth. One of these rights is the right to marry in the parish church. The Act amends the Marriage Act 1949 so that a person of an acquired gender can lawfully marry someone of the same birth gender but who is now in law, as a result of the issue of the Certificate, a member of the opposite gender.

Some clergy may struggle with this and so the Act allows a clergy member who reasonably believes that an individual has an acquired gender under the Act to decline to solemnise that person's marriage.

There is, though, no obligation on a person who has an acquired gender to disclose this information voluntarily, nor is there an obligation to answer truthfully or at all if asked a direct question. All the clergy need is to have a reasonable belief (which will always be a subjective point of view) and they can decline to solemnise a marriage.

The Act also protects the privacy of any person applying for a Certificate or, for those who have been successful, their gender history ('Protected Information') by making any such disclosure, which is not authorised by the holder of the Certificate or otherwise permitted under the Act, a criminal offence.

So far as the clergy are concerned, this could present problems. For example, if one member of the clergy team with a parish or benefice discovers during a marriage preparation course that someone has an acquired gender but that person's marriage is going to be carried out by a colleague, that clergy member cannot disclose the information to the colleague without committing a criminal offence. A further exception has, however, been built into the legislation. In certain circumstances disclosure for 'religious purposes' will not be an offence. The exception applies where one person who has acquired Protected Information in an official capacity (for example as a member of the clergy) discloses that information to any other person acting in a similar capacity. In addition, certain conditions set out in the Act have to be met. Even if the conditions have been met, the Protected Information can only be shared to enable a person to make a decision over certain specified issues. One of these issues is to do with marriage and whether that clergy person would want to officiate or permit the marriage of someone with an acquired gender.

The legislation, therefore, allows clergy to exercise their consciences and to share Protected Information in limited situations without fear of prosecution. It is important to

remember, however, that even if a member of the clergy declines to solemnise a marriage because one of the couple has a full gender recognition certificate, it may not prevent the use of the church building for such marriages.

The above is only a very general note and clergy are asked, before agreeing to solemnise a marriage, when they are aware that one of the couple has an acquired gender, to seek legal advice from the Diocesan Registrar and pastoral advice either from the Bishop of St Albans or the Bishops of Bedford and Hertford. Clergy should remember, however, that save in the pastoral discussions with the diocesan and suffragan bishops, the identities of the persons concerned should not be revealed.

Revised April 2015.