EXPLANATORY MEMORANDUM TO

THE GENDER RECOGNITION (APPROVED COUNTRIES AND TERRITORIES) ORDER 2011

2011 No. XXXX

1. 1.1 This explanatory memorandum has been prepared by the Ministry of Justice and is laid before Parliament by Command of Her Majesty.

1.2 This memorandum contains information for the Joint Committee on Statutory Instruments and the Joint Merits Committee.

2. Purpose of the instrument

2.1 This instrument prescribes a list of countries and territories that have been approved by the Secretary of State for the purposes of applications under section 1(1)(b) of the Gender Recognition Act 2004 ("the Act").

3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None

4. Legislative Context

4.1 Transsexual people may apply to change their gender in law under the Act. Applicants under section 1(1)(b) are required to provide evidence that they have changed gender under the law of an approved country or territory outside the United Kingdom. This instrument prescribes those countries and territories.

4.2 The Gender Recognition (Approved Countries and Territories) Order 2005 ("the 2005 Order") prescribed the approved countries and territories for the purposes of the Act. This Order revokes and re-makes the 2005 Order, with amendments adding nine new approved countries and territories to the list, and removing two.

5. Territorial Extent and Application

5.1 This instrument applies to all of the United Kingdom.

6. European Convention on Human Rights

6.1 The Minister of State, Lord McNally, has made the following statement regarding Human Rights:

In my view the provisions of the Gender Recognition (Approved Countries and Territories) Order 2011 are compatible with the Convention rights.

7. Policy background

- ***What is being done and why***

7.1 Applicants under section 1(1)(b) are required to provide evidence that they have changed gender under the law of an approved country or territory outside the United Kingdom under section 3(5) of the Act. They need not meet the evidentiary requirements in sections 3(1) to 3(4), which apply to applications under section 1(1)(a) of the Act.

7.2 The evidentiary requirements in sections 3(1) to 3(4) include one or more medical reports from a "registered medical practitioner" and/or a "registered psychologist." "Registered medical practitioner" is defined in the Interpretation Act 1978 and means "a fully registered person within the meaning of the Medical Act 1983 who holds a licence to practise under that Act". "Registered psychologist" is defined in section 25 of the Act and means "a person registered in the part of the register maintained under the Health Professions Order 2001 which relates to practitioner psychologists".

7.3 The policy behind section 1(1)(b) is to reduce the evidentiary burden on transsexual people who have already met comparable requirements elsewhere. It also means that UK doctors and psychologists will not be asked to provide evidence for these applications.

7.4 The countries and territories on this list all make provision for a change of gender to be recognised in law, and apply rigorous criteria for recognition. By far the majority of these countries and territories require transsexual people to have had gender reassignment surgery before their change of sex is recognised in law. In the few that do not require surgery, the recognition criteria require some form of accredited medical evidence to be provided or a court order to be obtained. Gender reassignment surgery is not a requirement under the Act.

7.5 It is felt necessary to repeal and replace the 2005 Order because some countries and territories have introduced new systems for legal recognition of a gender change since 2005, and in the case of some countries and territories it has been possible to obtain more information about their systems. It was also necessary to no longer prescribe Latvia, or Serbia and Montenegro, as approved countries for the purposes of the Act. Latvia no longer has suitably rigorous criteria for legal recognition of a gender change, following a 2008 court decision. Legislative reforms are underway, but the proposals are yet to be approved by the Latvian Parliament at the time of laying this Order. Serbia and Montenegro no longer exists as a unified state, although Serbia has been added to the list as it continues to maintain a system of Gender Recognition broadly equivalent to the Act.

- ***Consolidation***

7.6 The Order revokes and re-makes the 2005 Order, with amendments.

8. Consultation outcome

8.1 Updating the list of approved countries and territories is a periodic administrative task that does not require formal public consultation. The UK Government, the Scottish Government and the Northern Irish Executive informally sought the views of some stakeholder groups, none of whom suggested any amendments to the Order. The Act does require consultation with the Scottish Ministers and the Department of Finance and Personnel in Northern Ireland. Both have been consulted about this Order and have made no objections.

9. Guidance

9.1 The Gender Recognition Panel will publish details of the revised list of approved countries and territories.

10. Impact

10.1 There is no impact on business, charities or voluntary bodies.

10.2 The impact on the public sector is negligible. There may be very small savings to the Health Service as a result of the fact that applicants from a greater number of countries and territories will be eligible to apply for a gender recognition certificate under section 1(1)(b) of the Act. UK doctors and psychologists will not be asked to provide evidence for such applications.

10.3 An Impact Assessment has not been prepared for this instrument.

11. Regulating small business

11.1 The legislation does not apply to small business.

12. Monitoring & review

12.1 The Ministry of Justice keeps changes to international gender recognition systems under continual review and expects it will be necessary to explore updating the list of approved countries and territories within the next 5 years.

13. Contact

13.1 Alice Ashworth at the Ministry of Justice Tel: 020 3334 5436 or email: alice.ashworth@justice.gsi.gov.uk can answer any queries regarding the instrument.