EXPLANATORY MEMORANDUM TO THE

GENDER RECOGNITION (APPROVED COUNTRIES AND TERRITORIES) ORDER 2005

2005 No.874

1 This Explanatory Memorandum has been prepared by the Department for Constitutional Affairs and is laid before Parliament by Command of Her Majesty.

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

2 Description

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 Background

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. Section 2(4) of the Act allows the Secretary of State to prescribe countries and territories for this purpose. This instrument prescribes those countries and territories. Section 2(4) will come into force on 4th April 2005 as a result of the Gender Recognition Act 2004 (Commencement) Order 2005. This instrument is made in advance of that commencement date, in reliance on section 13 of the Interpretation Act 1978.

5 Extent

5.1 This instrument applies to all of the United Kingdom.

6 European Convention on Human Rights

6.1 The Parliamentary Under-Secretary of State, Baroness Ashton, has made the following statement regarding Human Rights:

‘’In my view the provisions of The Gender Recognition (Approved Countries and Territories) Order 2005 are compatible with the Convention rights.’’

7 Policy objectives

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 “chartered 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”. “Chartered psychologist” is defined in section 25 of the Act and means “a person for the time being listed in the British Psychological Society’s Register of Chartered 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.

8 Impact

8.1 A Regulatory Impact Assessment has not been prepared for this instrument as it has no impact on business, charities or voluntary bodies.

8.2 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 UK doctors and psychologists will not be asked to provide evidence for applications under section 1(1)(b).

9 Contact

9.1 Ann Holland at the Department for Constitutional Affairs (0207 210 1421 or ann.holland@dca.gsi.gov.uk) can answer any queries regarding the instrument.