EXPLANATORY MEMORANDUM TO

THE GENDER RECOGNITION (DISCLOSURE OF INFORMATION) (ENGLAND) ORDER 2026

2026 No. 173

1. Introduction

1.1 This Explanatory Memorandum has been prepared by the Department of Health and Social Care and is laid before Parliament by Command of His Majesty.

2. Declaration

2.1 The Rt. Hon Wes Streeting MP, Secretary of State for Health and Social Care at the Department of Health and Social Care, confirms that this Explanatory Memorandum meets the required standard.

2.2 Jennifer Benjamin, Deputy Director at the Department of Health and Social Care confirms that this Explanatory Memorandum meets the required standard.

3. Contact

3.1 Jennifer Benjamin at the Department of Health and Social Care can be contacted by email at the following address with any queries regarding the instrument: LGBThealth@dhsc.gov.uk. Alternatively, the department can be contacted by telephone: 0300 790 4007.

Part One: Explanation, and context, of the Instrument

4. Overview of the Instrument

What does the legislation do?

4.1 The Gender Recognition Act 2004 ("the GRA 2004") enables adults to change their legally recognised gender, as shown on their original birth certificate and on official documentation (such as a marriage or death certificate), by obtaining a Gender Recognition Certificate ("GRC"). This allows for someone to apply for a new birth certificate and other official documentation, so that the gender on these new documents matches their gender identity.

4.2 Section 22(1) of the GRA 2004 states that it is an offence to disclose certain protected information acquired in an official capacity. "Protected information" for the purposes of the GRA 2004 is information about a person's application for a GRC, or if their application is successful, about their gender before it became the acquired gender. Section 22(4) of the GRA 2004 sets out certain circumstances where disclosure of protected information does not constitute an offence. Section 22(5) of the GRA 2004 states that the Secretary of State may, by order, make provision prescribing circumstances in which the disclosure of this protected information is not to constitute an offence under this section.

4.3 The purpose of this instrument, The Gender Recognition (Disclosure of information) (England) Order 2026 ("the 2026 Order") is to prescribe an additional circumstance where the disclosure of protected information does not constitute an offence under section 22(1) of the GRA 2004. This circumstance is where disclosure of protected information is between the authorised persons named in the instrument because it is necessary for the purposes of undertaking, assisting or facilitating research to support

the "data linkage study". For the exception to apply, both the authorised person disclosing the information and the authorised person receiving it must be in England.

4.4 The 2026 Order revokes "The Gender Recognition (Disclosure of Information) (England) Order 2022" ("the 2022 Order"), which prescribed similar circumstances where disclosure of protected information, for the purposes of a data linkage study, planned to be undertaken as part of the Cass Review, should not constitute an offence. Primarily, the 2026 Order is required because the 2022 Order defines the "*relevant research*", in part, as research requested "*for the purposes of the Cass Review*" (officially named "the independent review into gender identity services for children and young people") ("the Cass Review") which has since concluded and the Final Report of the Cass Review has now been published. The 2026 Order also updates the authorised persons who will be entitled to share protected information without committing an offence. There is a risk that those involved in the delivery of the data linkage study – now no longer being completed "for the purposes of the Cass Review" - may commit an offence under the GRA 2004 without a new Order.

Where does the legislation extend to, and apply?

4.5 The extent of this instrument (that is, the jurisdiction(s) in which the instrument forms part of the law) is England and Wales.

4.6 The territorial application of this instrument (that is, where the instrument produces a practical effect) is England only.

5. Policy Context

What is being done and why?

5.1 In 2020, NHS England ("NHSE") commissioned the Cass Review, chaired by Dr Hilary Cass. The Cass Review was commissioned to make recommendations about the services provided by the NHS to children and young people who are questioning their gender identity or experiencing gender incongruence[1].

5.2 A strand of research commissioned by the Cass Review was a data linkage study. The "data linkage study" is a study involving the linkage of healthcare data relating to a cohort of individuals who were referred to the former Gender Identity Development Service "GIDS", operated by the Tavistock and Portman NHS Foundation Trust from 2009 onwards. The data linkage study is intended to describe the demographic and clinical characteristics of that cohort, the healthcare received, and intermediate outcomes observable within routinely collected healthcare data.

5.3 An Interim Report of the Cass Review was published in 2022, followed by the Final Report in April 2024. The data linkage study was intended to take place during the lifetime of the Cass Review. It was not completed, however, and in January 2024 NHSE wrote to Dr Cass acknowledging that due to several factors, set out in appendix 4 of the final Cass Review, the data linkage study could not be progressed. The Final Report of the Cass Review recommended that the data linkage study should still be carried out (recommendation 5). The government and NHSE are committed to implementing the recommendations of the Cass Review in full.

[1] [ARCHIVED CONTENT] Terms of Reference Cass Review
https://webarchive.nationalarchives.gov.uk/ukgwa/20250310143822/https:/cass.independent-review.uk/about-the-review/terms-of-reference/

5.4 NHSE has now taken ownership of the delivery of the data linkage study as part of a wider children and young people's research programme, also recommended by Dr Cass (recommendation 6).

5.5 The data linkage study is observational, retrospective and based on an analysis of available routine healthcare data already collected for a cohort of adults who, as children, were referred to the now-decommissioned GIDS. The data linkage study will link basic data for the study cohort firstly to available national datasets (such as hospital admission data, and prescribing data), and secondly to adult gender clinic data. Through this data linkage, the data linkage study aims to learn more about the needs of individuals referred to GIDS, their healthcare experience, and associations identifiable in the data which may tell us more about the intermediate outcomes for this cohort. The data linkage study contributes to the wider ambition of building a stronger evidence base to inform current and future NHS gender service provision.

5.6 The data linkage study, by comparison to the currently paused PATHWAYS clinical trial aims to build a better understanding of the patient characteristics, healthcare provision and intermediate outcomes observable within available routine health records of a previous cohort of patients referred into the former model of NHS gender care offered by the now-decommissioned GIDS at the Tavistock and Portman NHS Foundation Trust. The retrospective data linkage study will not provide the kind of comparative evidence that will help us to understand cause and effect in relation to any individual treatment, nor contemporaneous data relating to the new model of gender care now in place.

5.7 This instrument will be in place for a period of three years, from 20 March 2026 to 20 March 2029. The three-year order length has been drafted to ensure the length of the order is proportionate and ensures sufficient time is allowed for the data linkage study, including seeking necessary study approvals, to be completed. The transfer of data to enable the data linkage study to begin can only occur once both the 2026 Order is in place and refreshed study approvals have been secured from the Health Research Authority.

What was the previous policy, how is this different?

5.8 In 2022, then Secretary of State, the Rt. Hon Sajid Javid MP, made the 2022 Order. This was considered necessary to facilitate the data linkage study and protect those involved in sharing the data necessary for the data linkage study to be delivered. At the time, it was considered whether the research could be conducted without the risk of processing and disclosing protected information. It was concluded that it could not because the researchers would need to have removed significant elements of the available data, which may, when considered together, infer or identify an individual's change in gender identity, and which in turn would have compromised the subsequent linkage and therefore value of the data linkage study.

5.9 The 2022 Order, which will be revoked by the 2026 Order, prescribed that it is not an offence to disclose protected information where that is made to and by an authorised person in England and is *"necessary for the purposes of facilitating, assisting or undertaking relevant research."* For the purposes of the 2022 Order, *"Relevant research*" meant *"research requested by NHS England i) for the purposes of the Cass Review, and ii) in respect of a person who - (aa) has been referred to Tavistock and Portman NHS Foundation Trust's Gender Identity Development Service for assessment or treatment, and (bb) was under the age of 18 years at the date of their referral."* The 2022 Order was drafted this way to ensure that the data could not be

shared more widely than intended, noting that it was originally anticipated that the data linkage study would have been completed in the lifetime of the Cass Review.

5.10 The Cass Review has been completed and published its Final Report in April 2024. As a matter of statutory interpretation, any research undertaken now, including the data linkage study, may not be interpreted as being for the "purposes" of the Cass Review.

5.11 It is, therefore, the government's view that relying on the Order made in 2022, to conduct to the data linkage study as planned, puts individuals and organisations potentially disclosing protected information as part of the study at risk of committing an offence. The government and NHSE also remain of the view that, to facilitate the aims and objectives of the data linkage study and achieve the best evidence, some disclosure of protected information is likely to occur and is required to ensure the data linkage study can complete linkage and analysis activities that will be meaningful and valuable in the context of informing current and future gender care.

5.12 As such, the 2026 Order is a new Order to correctly describe the data linkage study as it is now rather than by reference to the purposes of the Cass Review. This instrument defines the "data linkage study" as the specific circumstance in which protected information can be disclosed, as follows; *"data linkage study" means the observational study, originally commissioned for the purposes of the independent review into gender identity services for children and young people. The study links and analyses GIDS data, adult gender clinic data and other nationally available healthcare data relating to any individual who was (i) referred to the GIDS, and (ii) below the age of 18 at the time of their referral." GIDS means the Gender Identity Development Service formerly operated by the Tavistock and Portman NHS Foundation Trust.*

5.13 The 2026 Order describes authorised persons who will be entitled to share protected information without committing an offence under section 22 of the GRA 2004. The 2026 Order reflects that responsibility for the data linkage study now rests with NHS England, whereas the research covered by the 2022 Order would have been led by the University of York. There are a number of organisations included within the schedule to ensure those that have been identified as holding data relevant to the data linkage study (including commissioned providers of adult gender clinics) are captured, alongside changes to the names of organisations where appropriate.

5.14 Since taking over the direct delivery of the data linkage study, NHSE has taken time to re-engage with stakeholders to better understand concerns previously raised regarding sharing of data and identify potential design improvements that respond positively to stakeholder feedback and reduce delivery risks. As a result of this engagement, important changes have been proposed to the data linkage study protocol, which will be subject to Health Research Authority review and approval ahead of the data linkage study's commencement.

6. Legislative and Legal Context

How has the law changed?

6.1 Section 22 of the GRA 2004 makes it an offence for anyone who has acquired protected information in an official capacity to disclose it to any other person. Section 22(2) of the Act defines protected information as information about the previous legally recognised gender of someone with a GRC, or their application for one.

"Protected information" therefore means information revealing that they have changed or are in the process of changing how the law recognises their legal gender.

6.2 Section 22(4) of the GRA 2004 sets out certain circumstances where disclosure of protected information does not constitute an offence. Section 22(5) enables the Secretary of State to make an Order setting out further circumstances in which sharing protected information is not treated as an offence.

6.3 The 2026 Order provides for an additional circumstance where the disclosure of protected information does not constitute an offence. Article 2(1) provides that this is where protected information is disclosed between authorised persons for the purposes of facilitating, assisting with or undertaking the data linkage study. To benefit from the exception the authorised person who makes or receives such disclosure must be in England when they do so. Article 2(2) provides the necessary definitions of authorised person, the data linkage study and relevant research.

6.4 Article 3 revokes the Gender Recognition (Disclosure of Information) (England) Order 2022.

6.5 The 2026 Order applies in relation to England only.

6.6 The 2022 Order originally intended to cover research "for the purposes of the Cass Review." As the Cass Review ended without the research being completed, it is necessary to make a new Order to cover the research as it is now proposed. The making of the 2026 Order, as opposed to amending the 2022 Order, provides greater clarity in terms of the legal protections intended for those sharing data for the purposes of the study.

6.7 As set out above, disclosure of protected information relating to the application or granting of a GRC is an offence under section 22 of the GRA 2004. There are various circumstances where disclosure will not amount to an offence, one of which is where the disclosure is in accordance with a provision under an Order.

Why was this approach taken to change the law?

6.8 This is the only possible approach available to provide appropriate legal protections to individuals and organisations sharing protected information for the purposes of the data linkage study.

6.9 The government recognises the importance of ensuring that any new Order and legal amendments are proportionate, and that circumstances defined for the sharing of protected information are narrowly defined as only for the purposes of delivering the data linkage study.

6.10 As a result, the 2026 Order is drafted to ensure it does not go further than necessary to enable the data linkage study to be completed. Consideration has been given to the elements of the 2026 Order, including authorised persons, the description of the purposes, and the length of time that the order has effect, to ensure that the temporary lifting of the prohibition on the disclosure of protected information under the GRA 2004 is reasonable and proportionate.

7. Consultation

Summary of consultation outcome and methodology

7.1 There is no statutory obligation to consult on this instrument and, as the subject matter of the instrument is operational in nature, no discretionary public consultation has been carried out. As a separate exercise unrelated to this instrument, the Cass Review

previously conducted extensive engagement and consultation with stakeholders interested in their review and the outcomes of this research project.

7.2 The power under which this instrument is made does not require consultation with the devolved administrations. This instrument applies in relation to England only.

8. Applicable Guidance

8.1 Guidance covering the legislative requirements of this statutory instrument have been developed in partnership with NHSE, who will be undertaking this research, ensuring a clear understanding of the instrument's effect. NHSE will be publishing the study protocol, as well as wider patient information, once study approvals have been secured.

Part Two: Impact and the Better Regulation Framework

9. Impact Assessment

9.1 A full Impact Assessment has not been prepared for this instrument because of low impact on the public sector.

9.2 An Equality Impact Assessment has been prepared for this instrument and has been published alongside this Explanatory Memorandum on Legislation.gov.uk.

Impact on businesses, charities and voluntary bodies

9.3 There is no, or no significant, impact on business, charities or voluntary bodies because the data linkage study is being conducted by NHSE in collaboration with other organisations commissioned (or previously commissioned) to provide NHS gender services.

9.4 The legislation does not impact small or micro businesses.

9.5 There is no, or no significant, impact on the public sector specific to the 2026 Order. The 2026 Order will enable the research to be carried out without committing an offence.

9.6 The 2026 Order only affects public sector organisations and other organisations commissioned, or previously commissioned, by NHSE to provide NHS gender services.

10. Monitoring and review

What is the approach to monitoring and reviewing this legislation?

10.1 The approach to monitoring this legislation is nominal as the order is time limited, so it is in force for a period of three years only. It will cease to have effect at the end of 20 March 2029. This will allow it to remain in force for the extent of the research project and any subsequent steps to enable publication of the research, but no longer.

10.2 The instrument does not include a statutory review clause.

Part Three: Statements and Matters of Particular Interest to Parliament

11. Matters of special interest to Parliament

11.1 None.

12. European Convention on Human Rights

12.1 As the instrument is subject to negative procedure and does not amend primary legislation, no statement is required.

13. The Relevant European Union Acts

13.1 This instrument is not made under the European Union (Withdrawal) Act 2018, the European Union (Future Relationship) Act 2020 or the Retained EU Law (Revocation and Reform) Act 2023 (“relevant European Union Acts”).