SCOTTISH STATUTORY INSTRUMENTS

2023 No. 364

GENDER RECOGNITION

The Gender Recognition (Disclosure of Information) (Scotland) Order 2023

Made - - - -	*30th November 2023*
Laid before the Scottish Parliament	*5th December 2023*
Coming into force - -	*26th February 2024*

The Scottish Ministers make the following Order in exercise of the powers conferred on them by section 22(5) and (6) of the Gender Recognition Act 2004(**a**) and all other powers enabling them to do so.

Citation and commencement

1. This Order may be cited as the Gender Recognition (Disclosure of Information) (Scotland) Order 2023 and comes into force on 26 February 2024.

Disclosure for the purposes of managing offenders and accused persons

2.—(1) It is not an offence under section 22 of the Gender Recognition Act 2004 to disclose protected information if the disclosure is necessary for a purpose set out in paragraph (2).

(2) The purposes are—

(a) supervising, managing or providing advice, guidance and assistance to, or in relation to, a person who is required to be under supervision—

(i) by order of a court made in exercise of its criminal jurisdiction,

(ii) having been charged with an offence and being granted bail subject to a condition of supervision, or

(iii) following their release from prison, under any enactment or by the terms of an order or licence of the Scottish Ministers, or of a condition or requirement imposed in pursuance of any enactment,

(b) the exercise of the functions of the Scottish Ministers, a relevant contractor or the Parole Board for Scotland in relation to prisons, prisoners or former prisoners,

(c) any other purpose connected with or related to the management of any person because they are, or have been,—

(i) officially accused of committing an offence,

(ii) the accused in criminal proceedings, or

(iii) found guilty in criminal proceedings.

(**a**) 2004 c. 7.

(3) In this article—

(a) "the 1994 Act" means the Criminal Justice and Public Order Act 1994(**a**),

(b) "officially accused" has the meaning given in section 63 of the Criminal Justice (Scotland) Act 2016(**b**),

(c) "relevant contractor" means a person—

(i) performing the functions listed at section 102(2) of the 1994 Act(**c**), or

(ii) providing or running any prison or part of a prison in Scotland under a contract entered into under section 106(1) of the 1994 Act(**d**),

(d) any reference to—

(i) a prison is to be construed as including a young offenders institution,

(ii) a prisoner is to be construed as any person who is required to be kept in a prison.

ANGELA CONSTANCE
A member of the Scottish Government

St Andrew's House,
Edinburgh
30th November 2023

(**a**) 1994 c. 33.
(**b**) 2016 asp. 1.
(**c**) Section 102(2) was amended by the Coronavirus (Recovery and Reform) (Scotland) Act 2022, section 40(2)(a).
(**d**) Section 106(1) was amended by S.I. 1999/1820, schedule 2, part 1, paragraph 115(3).

EXPLANATORY NOTE

(This note is not part of the Order)

Section 22 of the Gender Recognition Act 2004 ("the Act") provides that it is an offence for a person who has acquired protected information in an official capacity to disclose the information to any other person. "Protected information" is defined in section 22(2) as information relating to a person who has applied for a gender recognition certificate under the Act, and which concerns that application (or a subsequent application by them), or their gender prior to being granted a full gender recognition certificate. Section 22(3) defines where a person acquires protected information in an official capacity.

Section 22(4) sets out certain circumstances where disclosure of protected information does not constitute an offence (for example, where the person to whom it relates is not identifiable or has agreed to the disclosure). This Order prescribes additional circumstances in which the disclosure of protected information does not constitute an offence. These concern disclosure of protected information for the purposes related to management of persons in prison and in the community who are accused or found guilty of offences.

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