



## **Policy Submission**

# **Review of the Gender Recognition Act**

*SpunOut.ie is Ireland's youth information website created by young people, for young people.*

*Over 1 million people in Ireland accessed information on SpunOut.ie in 2017. Established in 2005, our vision is to create an Ireland where young people aged between 16-25 are empowered with the information they need to live active, happy, and healthy lives.*

### **Summary**

SpunOut.ie recommends the Gender Recognition Act be amended to ensure:

- Young people aged 16-17 may apply for a gender recognition certificate through self-declaration, in line with the rights of those over 18
- Young people and children under the age of 16 are afforded a clear legal path to gender recognition
- Intersex and non-binary individuals may, if they so wish, have their gender identity recognised as distinct from, and equal to, the binary categories of 'female' and 'male'

SpunOut.ie further recommends that the Gender Recognition Act continues to be reviewed at regular intervals to ensure Ireland can continually strive to be a global leader in the rights of transgender, intersex and non-binary citizens.

## **Background**

The Gender Recognition Act, 2015 is a landmark piece of legislation that has dramatically improved the lives of Ireland's transgender citizens. When the act was signed into law, it placed Ireland in the vanguard of the world's most progressive nations on this issue and, along with the both the Marriage Act and the Children and Family Relationships Act, marked 2015 as an historic breakthrough year in Irish social history.

The first year of the Act's operation alone saw more than 150 people avail of the opportunity to have their gender identity recognised by the state. This represents not only a recognition of the dignity and agency of these specific individuals, but sends a powerful signal of acknowledgement and acceptance to transgender people of all ages.

Unfortunately, despite the great strides made by the Gender Recognition Act, it was not a perfect piece of legislation and has failed to deliver for some of our most vulnerable citizens, in particular transgender youth. As an organisation primarily concerned with representing the needs and views of young people, SpunOut.ie welcomes the chance to feed in to the review of the Gender Recognition Act to ensure it meets its full potential in line with global best practice.

## Arrangements for children aged 16-17 years

One of the most progressive and impactful features of the Gender Recognition Act is its reliance on self-declaration by transgender adults as the sole basis for legal recognition of their gender identity.

By removing the need for medical confirmation of a person's gender identity, the Irish system has stood on the side of de-stigmatizing the process of transition for adult citizens. By trusting individuals to understand and articulate their own identities, Ireland has placed itself among world leaders in the rights of trans\* citizens. However, the Act does not extend this trust to people under the age of 18. As a consequence, transition for those aged 16-17 is still medicalised, requiring two doctors' opinions and a court order in addition to parental consent before a gender recognition certificate will be granted.

SpunOut.ie firmly believes that it is in the interest of trans\* youth that they be afforded the same rights to self-declare their gender identity as those over 18. The present requirements on transgender youth are costly, onerous and serve no ultimate purpose beyond compounding a social stigma that equates being transgender with having a medical condition. Furthermore, the current regime fails to recognise that declaring one's gender represents affirmation of an existing, permanent identity; one which will not be affected by the passage of time, beyond the negative impacts on an individual's mental health which may be expected from a failure to have their gender identity adequately recognised.

In this, the current restrictions and burdens placed on 16-17 year olds represent a throwback to an understanding of transgender experiences which is less sophisticated and less compassionate than that underlying the rest of the Gender Recognition Act. By requiring medical confirmation of young people's expressed identities, the state is adding to the difficulties faced by one of the most vulnerable groups in our society.

The findings of the LGBTIreland Report 2016 indicated that a third of transgender people in Ireland had seen their mental health worsen in the preceding five years, with more than half of all transgender people suffering from some form of depression and 87% reporting feelings of depression at some stage of their life. Transgender people are more likely to be physically or verbally attacked in public, and one in five have experienced sexual violence. Most alarmingly of all, transgender people are significantly more likely to self-harm, experience suicidal thoughts, and seriously attempt suicide than their cisgender peers<sup>1</sup>.

These stark figures offer some insight into the difficulties faced by young people whose gender identity is at variance with that assigned to them at birth. The state has already accepted the principle that a person's word, informed by their own experiences, is sufficient to extend full legal recognition of their gender. Additionally, it accepts the basic legitimacy of the need for people aged 16-17 to require a gender recognition certificate. By continuing to place so many obstacles in the paths of older teenagers seeking gender recognition, it runs the unacceptable and undeniable risk of worsening the lived experiences of individuals whose basic right to live with dignity and recognition it has, in principle at least, long since accepted.

SpunOut.ie believes that it is therefore vital the review of the Gender Recognition Act equalizes the rights of 16-17 year olds to a gender recognition certificate with those of people over 18. To do otherwise would be to deny the real experience of young people as they are well able to articulate, and to rob some of our most vulnerable young people of the chance to fully live as themselves in advance of their formal legal adulthood.

---

<sup>1</sup> LGBTIreland Report available here: [http://www.belongto.org/attachments/250\\_Full-LGBTIrelandreport.pdf](http://www.belongto.org/attachments/250_Full-LGBTIrelandreport.pdf)

## Arrangements for children aged under 16 years

In addition to the severe restrictions placed on the legal ability of 16-17 year olds to self-identity, the Gender Recognition Act is also deficient in its recognition of transgender people under the age of 16. These children and young people have no legal route to recognition of their declared gender whatsoever, even with the consent of their parents or guardians.

The existence and legitimacy of trans\* children is a fact of life which cannot be denied. Whilst the experiences of the transgender community are diverse and there is obviously no standard personal narrative of gender identity, the fact remains that there are young people of every age who are fully cognisant of both their gender identity and the harsh reality that that self-knowledge is not only not recognised, but in fact actively denied by the society in which they live.

The status quo presents numerous practical difficulties for young trans\* people and trans\* children, along with the obvious pressures it adds on their mental health and personal resilience. People under 16 exist in a world in which so much is beyond their control, and where their ability to choose how they present themselves to others is often seriously curtailed. The ability to self-express in their true gender in school, clubs and many other venues of social life is hampered by the reality that such young people must, in a legal sense, continue to live under the label of the gender assigned to them at birth, without exception. In a society which still divides children by binary gender in so many aspects of their lives, this can put an intolerable strain on individuals who are already at risk of social and mental health difficulties. Even the reality that a young person's passport or other identification may not match their expressed self can create serious difficulties which cisgender children would never have to consider or experience.

It is important to recognise the vast differences in personal development covered by an age group that includes everyone under 16, and the difficulties that go with crafting legislative solutions that will accommodate such a varied group. According to recent reporting, the number of children seeking medical help over gender identity issues has significantly increased in recent years. However, research suggests that the age at which young people seek such help correlates strongly with their ultimate gender expression, with those who seek help during puberty as much as four times more likely to have gender confirmation surgery as those who present before adolescence<sup>2</sup>.

It is vital, then, that we have a system in place which caters both for those young people who face issues around their gender identity but ultimately self-identify with their assigned gender, and those who reach a firm realization of trans\* identity. SpunOut.ie is of the belief that, in order to meet the needs of both groups, funding for specialist transgender medical services will have to be increased. However, within the context of the terms of reference of this review, we believe that the terms of the Gender Recognition Act must be amended to provide a means by which transgender youth can have their gender identities recognised by the state.

It certainly seems impossible to justify, in circumstances where people under 16 wish to self-declare their gender with parental consent, the state being unable or unwilling to fully accommodate these young people with the legal recognition they need and deserve.

---

<sup>2</sup> Figures reported by Claire O'Sullivan in the Irish Examiner: <https://www.irishexaminer.com/ireland/transgender-youth-hit-by-lack-of-services-438247.html>

## **Arrangements for persons who identify as neither male nor female; and arrangements for intersex people**

Just as the existence and value of young trans\* people cannot be up for debate, so too must we recognise the real lived experiences of our non-binary<sup>3</sup> and intersex citizens.

These terms are of course quite distinct, and represent a very wide variety of individual experiences and larger communities. Nonetheless, both represent forms of identity which cannot properly be accommodated within a mutually-exclusive binary framework of gender. This is not to say that there are not many such individuals, particularly intersex people, who for one reason or another are most comfortable identifying as either 'female' or 'male' exclusively for the purposes of the law. It is, however, a fact that those who wish to be recognised by the state as possessing a gender identity beyond that binary are not yet adequately catered for. SpunOut.ie believes that this is an issue which can and should be dealt with under the current review of the Gender Recognition Act.

Just as with legal self-declaration of gender, amending our laws to ensure proper representation and acknowledgment of non-binary and intersex citizens is a chance for Ireland to be on the cutting edge of progress in this area. Recent years have seen increasing understanding of the need to respect individuals outside of the gender binary, and countries around the world have responded by affording legal recognition of people who identify as neither 'female' nor 'male'. For instance, non-binary individuals can be issued 'third gender' markers on passports and other official documentation in Malta, Denmark, Australia, New Zealand, Canada, India, Pakistan and Nepal, with the Scottish government and Germany constitutional court also pushing for similar action.

Access to such official recognition is just as important to non-binary and intersex people as to individuals who legally transition from male to female or vice-versa. Travelling or otherwise relying on inaccurate documentation which assumes a gender identity different to that expressed by the individual opens a person up to serious inconvenience, potential danger and the basic indignity of non-recognition by the system under which one lives.

Introducing a third marker on official documentation is one clear step the Irish state could take towards recognising the distinctive value of all its citizens. The decision of whether or not to opt in to this should be a decision for each individual themselves, based on self-declaration in line with the current position of legal adults under the Gender Recognition Act. Furthermore, any extension of the right to self-declare to younger persons should include the right to self-declare as neither female nor male, and we believe our previous arguments in favour of extending the right of self-declaration to younger people holds in all cases just as much for those who wish to self-declare in this way. To all intents and purposes, people opting to be legally recognised as neither female nor male should of course, in all respects, have their gender identity treated with exactly the same degree of validity under the law as those identifying as female or male.

---

<sup>3</sup> We use 'non-binary' here as an umbrella term, intended to represent those who actively identify as non-binary as well as those who use other terms outside of the female-male binary, e.g. 'genderqueer', 'genderfluid', 'non-conforming', etc.

## **Conclusion**

In summary, SpunOut.ie welcomes the opportunity to feed into the work of the Gender Recognition Act Review process and encourages the amendment of the Act to improve our system of gender recognition for young, non-binary and intersex individuals in particular.

We strongly recommend that young people aged 16-17 be afforded the same rights to self-declaration of their gender identity as their older peers, and that in particular the onerous requirement that these people seek multiple medical confirmations of their expressed identity be removed.

We also call for serious and detailed consideration to be given to the rights of young people under the age of 16, who are currently unable to have their gender identity recognised under the law in any circumstances. We believe these people deserve a clear legal path to gender recognition rather than being required to wait until their 16th or 18th birthday to affirm who they are.

We further suggest that the review process should take this opportunity to introduce formal recognition for people identifying outside of the female/male binary gender identities. We believe that any additional gender options on official documentation should be treated as equal to the designations of female and male, and should be subject to the same rules around self-declaration.

Finally, SpunOut.ie encourages continued regular review of the workings of the Gender Recognition Act, to ensure it is serving its purposes in meeting the needs of our transgender, non-binary and intersex citizens, and to keep Ireland on the cutting edge of gender identity rights for many years to come.

Prepared by Jack Eustace  
Governance & Policy Officer, SpunOut.ie, 48 Fleet Street, Dublin 2  
[jack.eustace@spunout.ie](mailto:jack.eustace@spunout.ie) / 01 675 3554