

Submission To The Gender Recognition Act Review Group

Submitted by: **Non-Binary Northern Ireland**

1. Arrangements for children aged 16 to 17 years;

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2. Arrangements for children aged under 16 years;

The current processes for children aged 16-17; and under 16 years breach several human rights of children as set out in UNCRC:

Article 2 - children and young people should be protected against all forms of discrimination

Protection from discrimination will only exist when the Irish State stops discriminating against trans and intersex children by refusing to recognise their gender identity through an accessible, self-declaration process that depathologises trans and intersex identities

Article 3 - the best interests of all children and young people should be respected

The best interests of all children and young people will only be protected when the Irish State protects the child's self-declared identity and their right to that identity by recognising their gender legally.

Article 8 – the right to identity – which includes gender identity and sexual orientation within its scope

The right of trans and intersex children to identity is currently prohibited in Ireland as children aged under 16 years currently have no access to legal gender recognition, and children aged 16-17 currently have to 'prove' their identity to 2 medical practitioners and receive a court order before they can proceed, which is a costly, time-consuming and distressing process that places undue burden upon the child to demonstrate to strangers that they are who they say they are.

Article 12 - the right to express views freely and have opinions listened to

The right of trans and intersex children to express views freely and have opinions listened to is currently prohibited in Ireland due to the Irish State's refusal to recognise a child's ability to know themselves, express themselves and be recognised legally as their self-declared gender due to the arduous process places upon children aged 16-17 and the complete lack of recognition for children aged under 16.

Article 13 - the right to freedom of expression

Freedom of expression includes the right to express and be recognised as one's self-declared gender identity. If this is not recognised legally, then this right is being denied. The

Irish State is currently denying this right to all trans and intersex children, as freedom is not defined as “given after being diagnosed by 2 medical practitioners”, but as given freely and with respect to each individual’s internal sense of identity.

Article 16 - the right to privacy

The right to privacy requires having one’s gender identity recognised legally by the State. Currently, the Irish State does not recognise the gender identities of trans and intersex children aged under 16 years, and it pathologises those aged 16-17 years by requiring a medical diagnosis prior to the granting of legal gender recognition. The right to privacy can only truly be upheld when those aspects of one’s identity that are most private are upheld by the State, i.e. gender identity, through legal recognition of that identity.

1. Arrangements for children aged 16 to 17 years;

Current legislation requires a court order and 2 medical certificates to be presented before one can proceed with their application to change their legal gender. This process pathologises trans and intersex people aged 16-17 years, is a time consuming and costly process and places undue burden upon trans and intersex people aged 16-17 years to ‘prove’ their gender identity to medical practitioners and the court.

Gender recognition for trans and intersex young people ages 16-17 years should be brought in line with international best practice by recognising their gender with the same process as those aged 18+. The requirements for a court order and 2 medical certificates should be removed completely. There should be no requirement for parental consent.

2. Arrangements for children aged under 16 years;

Current legislation prohibits legal gender recognition of trans and intersex young people under 16 years. This lack of legal recognition breaches their right to privacy, allows for schools, medical services and all other government and private services to justify refusal to acknowledge a young person’s gender identity and thus exacerbates the poor mental wellbeing of young people, which breaches their right to health.

Gender recognition for trans and intersex young people ages under 16 years should be brought in line with international best practice as demonstrated in Malta and Argentina by allowing children access to the same application process as adults through a self-declaration process that takes into account the child’s understanding of the process based on Gillick competency.

3. Arrangements for persons who identify as neither male nor female (e.g. non-binary)

Current legislation does not explicitly prohibit recognition of non-binary gender identities, however the only application put forward by a non-binary individual to the Irish State

requesting recognition of their gender identity with an X marker was refused, stating incompatibility with current law.

The refusal of the Irish state to recognise non-binary gender identity is a breach of the European Convention on Human Rights Article 8 – the right to privacy. By refusing to recognise non-binary gender identity legally, the Irish State is in breach of the ECHR Article 8 right to privacy.

The law should be changed to recognise non-binary gender in the following way:

- The options for gender markers should extend to include an 'X' gender marker in addition to the current 'F' and 'M' gender markers. This is in line with current gender markers accepted by the International Civil Aviation Authority and is available as a legal gender marker in Malta, Denmark, Australia, Canada, New Zealand, India, Pakistan and Nepal.
- In addition to the X gender marker, people applying for an X gender marker should be given the option to state how they wish their gender identity to be written on their birth certificate. This section should be optional, so applicants can either state their specific identity (e.g. non-binary, gender fluid, etc.) or leave this blank. This will be written per their preference on their birth certificate alongside their X gender marker.
- The Irish State should introduce Mx as a legally recognised title in addition to Mr and Ms/Miss/Mrs. Mx is a gender-neutral alternative to the other titles listed and is a necessity to ensure that those with an X gender marker are not required to choose a gendered title.
- There should be no additional requirements for those requesting to have their gender identity recognised with an X marker, i.e. the requirements should be exactly the same as requirements for men and women requesting legal gender recognition: through self-declaration form.

4. Arrangements for intersex people;

Intersex people should have access to the same rights as dyadic (non-intersex) and trans people, i.e. they should have access to the same self-declaration process to change their gender identity if they so wish. There should be no additional requirements placed upon intersex people.

5. Any other relevant issues, including issues relating to the operation of the current legislative provisions (i.e. the Gender Recognition Act 2015).

- The current legislation and any further changes to this legislation should be extended to Northern Irish citizens through the Good Friday agreement. All Northern Irish citizens with Irish passports should be allowed to access the Irish gender recognition process, with requirement for the UK gender recognition process to recognise the legality of this change of gender identity.

- There should be no requirement for a legal change of name through the high courts. This name change procedure should be included within the current application form to remove the requirement to enrol one's name change in the high courts, which is a costly, time-consuming process and also provides a public list of differently-gendered names that have been changed, which could be used as a way of identifying trans and intersex people thus breaching their right to privacy.
- There should be no differences between birth certificates issued at birth and those issued after legal gender recognition. Currently the register number is missing from newly-issued birth certificates which has caused issues for several individuals and has forced them to 'out' themselves as trans, breaching their right to privacy.
- There should be an option on the GRC application form which gives the option to allow the Irish State to inform all necessary bodies of the change in legal gender marker, name and title. If the applicant opts out of this, then it will be their responsibility to ensure that all statutory bodies are made aware of their gender, name and title change.