



An Roinn Gnóthaí Fostaíochta
agus Coimirce Sóisialaí
Department of Employment Affairs
and Social Protection

Gender Recognition Act 2015: Report to the Oireachtas under Section 7 of the Act.

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Foreword

In proceeding with my own report I would first like to acknowledge the contribution of the Review Group, chaired by Moninne Griffith, and thank them for the work that went into preparing their report and its recommendations. They have prepared a very comprehensive report that seeks to improve the position of people who wish to legally change gender.

I was particularly pleased to appoint representatives from support and advocacy organisations to the Review Group. It was very important to me that the group composition included people that this review will most affect. In my view this was an appropriate approach to take and is in line with the Government's participative approach on rights based issues, such as those considered in the report of the group.

Regarding the operation of the review itself, I'm particularly pleased with the level of public engagement that attracted a total of 92 written submissions, many of which were from children and young people. I think it is very important that we hear more of the voice of young people in public policy making and the report is a good example of this in practice.

I would also like to thank those who made themselves available to the group for consultations. I know Dr. Geoffrey Shannon was of great assistance to the Review Group in teasing out some very complex legal issues but I'm also very appreciative of the input from all involved. This included members of the transgender community, medical practitioners, and legal experts; but especially I would like to thank young people and parents who participated in the process.

I would also like to express my appreciation for the work of my own officials in the General Register Office and those working in Client Identity Services, who have been to the forefront of delivery of gender recognition services since the coming into operation of the Act, and who have been commended for their professionalism and sensitivity in processing applications for certificates.

I am glad to be publishing this report and I am confident that the measures set out in my report will have a positive impact throughout society in general and also for those persons directly affected by the provisions of the Gender Recognition Act.

Regina Doherty T.D.
Minister for Employment Affairs and Social Protection

Background

In November 2017 the group to carry out a review of the operation of the Gender Recognition Act 2015 was established (as provided for in section 7 of the Act). The Review Group was chaired by Moninne Griffith (Executive Director, BeLonG To) and included representation from the Transgender Equality Network of Ireland (TENI), other independent experts in the field, and Government Departments/bodies with an interest in this area (Employment Affairs and Social Protection, Children and Youth Affairs, Justice and Equality, Education and Science, Foreign Affairs and Trade, and the HSE). A full list of the Review Group participants is at Appendix 1.

Consultation

Central to the review was a consultation process in which contributors were invited to make submissions under the following headings:

- a. Arrangements for children aged 16 to 17 years;
- b. Arrangements for children aged under 16 years;
- c. Arrangements for persons who identify as neither male nor female (e.g. non-binary);
- d. Arrangements for intersex people;
- e. Any other relevant issues, including issues relating to the operation of the current legislative provisions.

The call for submissions was publicised on the gender recognition webpage of the Department of Employment Affairs and Social Protection, on social media via the Department's social media channels, and by advertising in the main national daily newspapers. Members of the group highlighted the call for submissions on the websites and social media accounts of their own organisations, to raise awareness, and to call for submissions from representative groups and individuals in their networks. The consultation process was also brought to the attention of Members of both Houses of the Oireachtas as well as a range of organisations that were invited to make submissions (e.g. medical and legal representative bodies, school patron bodies, teacher representative bodies, Comhairle na nÓg, the Ombudsman for Children, Tusla, FLAC, ICTU, sporting, and other youth

participation organisations). In order to ensure that the consultation process was visible to young people, the Review Group contacted, amongst other young peoples' representative groups, the Irish Second Level Student's Union (ISSU) – the national umbrella body for second-level student councils.

A total of 92 written submissions were received and are available on the gender recognition webpage at the following link:

<http://www.welfare.ie/en/Pages/Review-of-the-Gender-Recognition-Act-2015.aspx>

The Review Group also held follow-up consultation meetings with members of the transgender community, medical practitioners, and legal experts. The Review Group heard first hand experiences of transgender young people and their parents.

Report

The report of the Review Group was submitted on 15 June 2018 and was published on 18 July 2018. It made a number of recommendations, which are set out as follows:

Recommendation 1:

A system of gender recognition should be introduced for children of any age, subject to the following key principles:

- *Parental consent required (with an appropriate legal process to address cases where there is not consent from both parents or it is not possible or safe to obtain same),*
- *Process would be administrative,*
- *Straightforward revocation process,*
- *Third party support for the child and family involved.*

Recommendation 2A:

Legal gender recognition should be made available to people who are non-binary.

Recommendation 2B:

As part of cross Government departmental review of proposed legislative amendments an impact assessment may be considered.

Recommendation 2C:

In the immediate term, Government Departments and other public bodies should take any positive steps they can take to improve the position of people who are non-binary.

Recommendation 3:

All measures taken to improve access to gender recognition, both with regard to age and gender identity (either binary or non-binary), should also provide access for intersex individuals.

Recommendation 4:

That the Department of Employment Affairs and Social Protection, with the General Register Office, introduce a numbering system which looks identical to that used for birth certificates where the information is taken from the birth registers.

This should apply to new certificates and the option of a replacement certificate should be made available to people who already have a certificate with no reference number (and the fee for issuing a replacement waived).

Recommendation 5:

Section 10 of the Act should be used (either as currently enacted or by way of legislative amendment) to enable a legal change of name as part of the gender recognition process.

Recommendation 6A:

That arrangements be put in place to allow Irish citizens born in Northern Ireland and living outside the State, to apply for a gender recognition certificate.

Recommendation 6B:

That the issue of revised birth certificates be raised at official level with UK authorities.

Recommendation 7:

That departments and agencies examine ways of streamlining application processes; improving interconnection between Departments; and reducing costs for replacement of official documents such as birth certificates and passport.

Recommendation 8:

That each relevant Department/Government body examine how administrative processes, once a Gender Recognition Certificate is obtained, can be streamlined while maintaining a person's privacy.

Recommendation 9:

That a review of the Act and any impact assessment in relation to the introduction of legislation to provide legal gender recognition for non-binary people should be completed within five years of commencement of the provisions of any enacted amending legislation arising from this review. That review would cover any new provisions contained in any amending legislation.

Recommendation 10A:

That the Department of Employment Affairs and Social Protection publish an easy to read booklet setting out the steps involved in obtaining a Gender Recognition Certificate and an entry in the register of gender recognition. This should also include advice regarding next steps to be taken, listing other Government departments and State bodies that may need to be contacted to update personal records.

Recommendation 10B:

The group also recommends that a booklet be prepared for Government Departments, other State bodies, and private sector organisations, setting out how the Act applies to them

A copy of the report is also available here on the Department's website:

http://www.welfare.ie/en/downloads/GRA_Review_Report.pdf

Response to the Recommendations

A response to each of the recommendations is set out below:

Recommendation 1

“A system of gender recognition should be introduced for children of any age, subject to the following key principles:

- *Parental consent required (with an appropriate legal process to address cases where there is not consent from both parents or it is not possible or safe to obtain same),*
- *Process would be administrative,*
- *Straightforward revocation process,*
- *Third party support for the child and family involved.”*

Response

Children aged 16 and 17 years currently have a path to gender recognition that involves a court process and certification by medical practitioners. The Government proposes to introduce legislation to make it less onerous on these children to obtain a gender recognition certificate. The process will be administrative, along the lines of the self-declaration model that is currently in place for adults, but will also require the consent of both parents.

There will be recourse to third party mediation on a voluntary basis where both parents do not consent. It is proposed, in such cases, to make available the services of the Family Mediation Service of the Legal Aid Board. The purpose of this measure is to allow the Legal Aid Board to engage in resolution among family members on the issue of an application for legal gender recognition. This is not intended as a counselling or support service to guide a young person through transition but is to focus solely on the issue of application for a gender recognition certificate.

The existing court procedure will be maintained to dispense with parental consent in situations where a parent cannot be identified or found, or is failing or neglecting to respond to a request for consent, or consent should not be obtained

because the nature of the relationship between the child concerned and the person shows that it would not be in the interest of the safety or welfare of the child to contact the person.

The decision of a 16 or 17 year old supported by the consent of both parents, affords a sufficient level of protection to children in this age cohort. In particular, there have been significant developments since the decision to apply the current provisions was made:

- The decision to apply for a gender recognition certificate is revocable;
- The report of the Review Group highlights difficulties this age group are experiencing under the current arrangements;
- The report of the Review Group recommends a less arduous route to legal gender recognition for children.

In certain circumstances children of this age are afforded the presumption of capacity to make important decisions that may have significant life altering implications. For example, children over 16 years are able to consent to medical procedures, on the advice of a medical professional, without the consent of parents. Children aged between 14 and 18 years, who wish to change their name, can execute a Deed Poll with the consent of both parents. Children over 16 years are permitted to leave home with parental consent, work up to 40 hours per week, drive a range of lower power motor vehicles and engage in certain forms of gambling.

It is now considered appropriate to allow 16 and 17 year olds to make a decision in relation to their gender identity, particularly as the process will be easily revocable and will require the consent of both parents. This proposal applies sufficiently robust safeguards for a cohort of children that is approaching adulthood and that can be presumed to have acquired an appropriate level of competence to make a decision of this nature.

The proposals outlined above relate solely to applications for legal gender recognition. Other aspects of transitioning such as social transitioning, medical intervention, or surgical procedures, are separate from this process and should

not be confused with the process of legal recognition. Decisions relating to medical or surgical procedures require the input of medical professionals. The purpose of legal recognition is for the State to affirm a person's gender identity and to provide documentation that is consistent with the person's preferred gender.

Arrangements for children under 16 years are more complex and will involve balancing the rights of children, the rights and responsibilities of their parents, and the role of the State in protecting vulnerable children. Consideration would need to be given to a child's capacity to make a decision of this nature and what third party supports may be appropriate for such children and their families. There are no current plans to change the arrangements for children under 16 years.

Recommendation 2

“Recommendation 2A

Legal gender recognition should be made available to people who are non-binary.

Recommendation 2B

As part of cross Government departmental review of proposed legislative amendments an impact assessment may be considered.

Recommendation 2C

In the immediate term, Government Departments and other public bodies should take any positive steps they can take to improve the position of people who are non-binary.”

Response

Implementation of Recommendation 2B will involve, in the first instance, a review by Government Departments of their existing legislation to determine how this may be impacted by a third gender category. It would also involve a review across all Departments and State bodies of how the introduction of a third gender category could be accommodated from a policy and operational perspective.

An initial scoping exercise has been carried out by the Department of Employment affairs and social Protection who have consulted with all other Departments (and

bodies under their aegis). The aim of this exercise is to get an initial picture of the implications of non-binary recognition on existing legislation, policy, and operations, as well as broader societal considerations. Based on replies received, this will need to be followed-through with a deeper level of impact assessment.

An interdepartmental group of officials from Government Departments has been established to progress this issue. The group aims to complete its work by the end of 2020.

A decision on Recommendation 2A is dependent on the outcome of the work to be undertaken in response to Recommendation 2B.

In the meantime, and in response to Recommendation 2C, Government Departments and other public bodies have been tasked by Government with considering and taking positive steps to improve the position of people who are non-binary.

Recommendation 3

“All measures taken to improve access to gender recognition, both with regard to age and gender identity (either binary or non-binary), should also provide access for intersex individuals.”

Response

The report of the Review Group uses the following to describe intersex: *“Intersex refers to individuals who are born with sex characteristics (such as chromosomes, genitals, and/or hormonal structure) that do not belong strictly to male or female categories, or that belong to both at the same time. Consequently, intersex is a term associated with the physical body of a person and does not necessarily imply any questioning of gender identity. A person with intersex variations, also known as variations of sex characteristics or VSC, may identify as a man, as a woman or may identify outside the accepted gender binary.”*

In a very small number of cases the sex of a child who displays these characteristics may have been classified by a medical professional as “indeterminate” on the birth notification form. These births are usually registered

by their parents as either male or female but in some cases they are registered as indeterminate. They may remain registered as indeterminate until such time as a sex can be medically determined.

This issue particularly affects intersex people whose physical development may be at variance from their sex registered at birth. In such cases the Civil Registration Service, under the current civil registration legislation, will continue its practice to amend the sex particulars on a person's birth registration, regardless of age, if there is sufficient medical evidence to support the case for this. This would only apply in cases where the person's sex on the birth notification form is entered as indeterminate. It would involve a re-examination of the correctness of the original entry in the register of births under the required particular "sex of child", which is a physical characteristic.

A correction of the facts, based on submission of medical evidence, can be made from male to female or from female to male, as well as from indeterminate to either male or female. This is provided for in legislation under section 63 of the Civil Registration Act 2004. A gender appropriate first name can also be registered as part of this process. The General Register Office will operate this from a dedicated unit in its central office, and will provide appropriate guidelines to staff which will set out the procedures to be followed in these circumstances.

There should be no need for an intersex person (classified as such on their birth registration form) to apply for legal gender recognition from their registered sex to either male or female. This can be addressed, at any age, directly through the civil registration system, with supporting medical evidence.

Recommendation 4

“That the Department of Employment Affairs and Social Protection, with the General Register Office, introduce a numbering system which looks identical to that used for birth certificates where the information is taken from the birth registers. This should apply to new certificates and the option of a replacement certificate should be made available to people who already have a certificate with no reference number (and the fee for issuing a replacement waived).”

Response

The General Register Office (GRO) have made the necessary enhancements to revised birth certificates to make them consistent with standard birth certificates. These enhancements have been implemented and revised birth certificates are available on application, free of charge, including to people who already have a certificate with no reference number.

Recommendation 5

“Section 10 of the Act should be used (either as currently enacted or by way of legislative amendment) to enable a legal change of name as part of the gender recognition process.”

Response

The Government proposes to introduce legislation to allow that the person to whom a gender recognition certificate is issued may produce it to provide proof of change of name, if he or she so chooses. This will sit alongside, and be complementary to, the provision that a person may produce a gender recognition certificate to provide proof of gender or identity, if he or she so chooses.

Recommendation 6

“Recommendation 6A

That arrangements be put in place to allow Irish citizens born in Northern Ireland and living outside the State, to apply for a gender recognition certificate.

Recommendation 6B

That the issue of revised birth certificates be raised at official level with UK authorities.”

Response

The Government proposes to introduce legislation to provide that an application may be made by any person entitled to be an Irish citizen under section 6 or section 7 of the Irish Nationality and Citizenship Act, 1956 (as amended). This includes Irish citizens born in Northern Ireland and living outside the State and, also includes Irish citizens born abroad whose parents are Irish.

The issue of revised birth certificates has been raised at senior official level with the relevant UK authorities.

Recommendation 7

“That departments and agencies examine ways of streamlining application processes; improving interconnection between Departments; and reducing costs for replacement of official documents such as birth certificates and passport.”

Response

This has been incorporated into the National LGBTI Inclusion Strategy, which is being coordinated by the Department of Justice and Equality.

Recommendation 8

“That each relevant Department/Government body examine how administrative processes, once a Gender Recognition Certificate is obtained, can be streamlined while maintaining a person’s privacy.”

Response

This has been incorporated into the National LGBTI Inclusion Strategy, which is being coordinated by the Department of Justice and Equality.

Recommendation 9

“That a review of the Act and any impact assessment in relation to the introduction of legislation to provide legal gender recognition for non-binary people should be completed within five years of commencement of the provisions of any enacted amending legislation arising from this review. That review would cover any new provisions contained in any amending legislation.”

Response

The Government agrees to review the legislation within five years of commencement of the provisions of any enacted amending legislation arising from this review.

Recommendation 10

“Recommendation 10A

That the Department of Employment Affairs and Social Protection publish an easy to read booklet setting out the steps involved in obtaining a Gender Recognition Certificate and an entry in the register of gender recognition. This should also include advice regarding next steps to be taken, listing other Government departments and State bodies that may need to be contacted to update personal records.

Recommendation 10B

The group also recommends that a booklet be prepared for Government Departments, other State bodies, and private sector organisations, setting out how the Act applies to them.”

Response

Recommendation 10A: An information booklet is being prepared by the General Register Office and officials from the Department of Employment Affairs and Social Protection. This will be published initially on the Department’s website, with a printed version to be made available at a later date.

Recommendation 10B: Department of Employment Affairs and Social Protection will coordinate with other Departments to progress implementation of this recommendation.

ENDS

Appendix 1

Review Group Membership

The original membership of the group following the launch by Minister Doherty is as follows:

- Moninne Griffith, BeLonG To (Chair);
- Sara R Phillips, Transgender Equality Network Ireland (TENI);
- Séamus Byrne, IndividualiTy;
- Dr. Tanya Ní Mhuirthile, Dublin City University;
- Anne O'Donnell, Manager, Hub na nÓg - Young Voices in Decision-making;
- Michele Clarke, Chief Social Worker, Department of Children & Youth Affairs;
- Dearbháil Nic Giolla Mhicíl, Department of Employment Affairs & Social Protection;
- Olive McGovern, Department of Children and Youth Affairs;
- Gráinne Morrissey, Department of Education and Skills;
- Nuala Ní Mhuircheartaigh, Department of Foreign Affairs and Trade;
- Tracy O'Keeffe, Department of Justice and Equality (Civil Law Reform Division);
- Adam Egan, Department of Justice and Equality (Equality Division);
- Diane Nurse, Health Service Executive.

The following also represented their Departments at meetings over the course of the review: Caroline Mellows, Rachel Dunn (Department of Justice and Equality); Joanne King, Teresa McHugh, Sarah Keating (Department of Foreign Affairs and Trade); Joanne Byrne, Linda O'Sullivan (Department of Children and Youth Affairs); Neville Kenny, Anne Murray, Margaret McCarthy (Department of Education and Skills).

Secretariat:

- Conor O'Reilly, Department of Employment Affairs & Social Protection
- Déaglán Ó Ceallaigh, Department of Employment Affairs & Social Protection