



Houses of the  
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**An Comhchoiste um Oideachas agus Coimirce Shóisialach**

**Tuarascáil ar Scéim Ghinearálta Bille um Inscne a Aithint, 2013**

**Eanáir 2014**

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**Houses of the Oireachtas**

**Joint Committee on Education and Social Protection**

**Report on the General Scheme of a Gender Recognition Bill 2013**

**January 2014**

**ESP31011**



## Table of Contents

<b>FOREWORD BY THE CHAIR OF THE JOINT OIREACHTAS COMMITTEE ON EDUCATION AND SOCIAL PROTECTION, JOANNA TUFFY, T.D.</b>	<b>4</b>
<b>GLOSSARY OF TERMS</b>	<b>7</b>
<b>1. OVERVIEW</b>	<b>8</b>
<b>2. THE GENERAL SCHEME OF THE BILL</b>	<b>10</b>
<b>3. CURRENT GENDER RECOGNITION LAW AND POLICY</b>	<b>13</b>
<b>4. KEY ASPECTS OF THE NEW PROPOSALS</b>	<b>14</b>
<b>5. KEY THEMES IN THE SUBMISSIONS TO THE COMMITTEE AND RAISED DURING THE HEARINGS</b>	<b>23</b>
<i>5.1 Terminology</i>	<b>23</b>
<i>5.2 Age criterion</i>	<b>23</b>
<i>5.3 Single criterion</i>	<b>26</b>
<i>5.4 Evidence of transition</i>	<b>30</b>
<i>5.5 Use of facilities</i>	<b>32</b>
<i>5.6 Participation in sport</i>	<b>33</b>
<i>5.7 Amendment to Equality Acts and the Prohibition of Incitement to Hatred Act 1989</i>	<b>34</b>
<b>6. COMMITTEE RECOMMENDATIONS</b>	<b>37</b>
<b>APPENDIX 1: GROUPS AND INDIVIDUALS WHO MADE WRITTEN SUBMISSIONS, AND/OR PARTICIPATED IN THE PUBLIC HEARINGS OF THE COMMITTEE</b>	<b>39</b>
<b>APPENDIX 2: PREPARATION OF LEGISLATION</b>	<b>40</b>
<b>APPENDIX 3: RIGHTS OF TRANSGENDER PERSONS IN EU MEMBER STATES</b>	<b>41</b>

**APPENDIX 4: MEMBERSHIP OF THE JOINT COMMITTEE ON EDUCATION  
AND SOCIAL PROTECTION 43**

**APPENDIX 5: ORDERS OF REFERENCE OF THE JOINT COMMITTEE 44**

## **Foreword by the Chair of the Joint Oireachtas Committee on Education and Social Protection, Joanna Tuffy, T.D.**

The issue of making legal provision for the recognition of transgender people is important from a number of perspectives. The General Scheme of the Gender Recognition Bill 2013 was brought forward by the Government in response to a ruling of the High Court that the State was in contravention of its obligations under the European Convention on Human Rights by not having a process to legally recognise the acquired gender of transgender persons. The commitment of the Government to address the issue is reflected in its inclusion in the Programme for Government 2011.

After the General Scheme was published by the Minister for Social Protection, the Committee undertook a process of public consultation that generated submissions from 13 groups and individuals. To improve its understanding of the complex issues involved, the Committee organised public hearings over two days in October 2013. The lengthy discussions that took place at these hearings highlighted the complex constitutional, legal and medical issues that need to be considered. They also confirmed for the Committee the sensitivity of the issue, particularly for the individuals concerned and their families.

The General Scheme does not meet all of the wishes of the Groups and individuals advocating change in this area. On the other hand, some of the issues raised by the General Scheme were of particular concern to certain Members of the Committee, and there was a divergence of views, especially in relation to making provision for transgender persons under the age of 18 years, and for persons who are married or in a civil partnership. The legislation will, on balance, represent very significant progress in this difficult area.

I would like to express my thanks to all of those who took part in this process for the assistance that they gave to the Committee. The fact that the Committee has completed its consideration of the matter in an open and constructive manner is evidence of the progress that has been made in Ireland in recent years in relation to a number of gender-related issues.

I hope that the report of the Committee and its recommendations will be of assistance to the Minister for Social Protection in finalising her legislative proposals in relation to this issue. The Committee will follow the progress in this regard, and looks forward to giving further consideration to the Bill when it is presented to the Houses of the Oireachtas.

I would also like to express my appreciation to the Members of the Committee for their engagement on this complex issue, as well as to the Oireachtas Library & Research Service, which assisted the Committee in its consideration of this matter and in the preparation of the Report.

## Notes

- 1 Submissions made to the Joint Committee are shown on the Oireachtas website:

[http://www.oireachtas.ie/parliament/oireachtasbusiness/committees\\_list/educationandsocialprotection/presentations/](http://www.oireachtas.ie/parliament/oireachtasbusiness/committees_list/educationandsocialprotection/presentations/)

- 2 Transcripts of the public hearings of the Joint Committee are also shown on the Oireachtas website; click on the relevant public hearing date:

[23 October 2013](#)

<http://oireachtasdebates.oireachtas.ie/Debates%20Authoring/DebatesWebPack.nsf/committeetakes/EDJ2013102300003?opendocument#C00100>, or

[24 October 2013](#)

<http://oireachtasdebates.oireachtas.ie/Debates%20Authoring/DebatesWebPack.nsf/committeetakes/EDJ2013102400001?opendocument>

- 3 The General Scheme of the Gender Recognition Bill 2013 is available on the website of the Department of Social Protection; click [here](#) to view.

## **Glossary of terms**

This glossary of terms is based on a list prepared by the Gender Equity Resource Centre, which is a University of California Berkeley campus community centre which describes itself as being committed to fostering an inclusive experience for all.<sup>1</sup> It is the campus location where students, faculty, staff and alumni of the university connect for resources, services, education and programmes related to gender and sexuality.

### **Cisgender**

A person who by nature or by choice conforms to gender/sex based expectations of society (also referred to as “Gender-straight” or “Gender Normative”).

### **Gender**

A system of classification that ascribes qualities of masculinity and femininity.

### **Gender Identity Disorder (GID)**

The medical diagnosis in the American Psychiatric Association’s Diagnostics and Statistics Manual IV (DSM4) used to describe a person who experiences significant gender dysphoria (lack of identification with one’s sex and/or gender assigned at birth).

### **Intersex**

A set of medical conditions that feature congenital anomaly of the reproductive and sexual system. That is, intersex people are born with ‘sex chromosomes’, external genitalia, or internal reproductive systems that are not considered ‘standard’ for either male or female.

### **Transgender**

Transgender people are those whose view of their psychological self (their ‘gender identity’) differs from the social expectations for the physical sex they were born with.

For example, a female with a masculine gender identity or who identifies as a man.

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<sup>1</sup> [http://geneq.berkeley.edu/lgbt\\_resources\\_definiton\\_of\\_terms#cisgender](http://geneq.berkeley.edu/lgbt_resources_definiton_of_terms#cisgender)

## 1. Overview

In 2008, the High Court ruled that the State was in breach of its obligations under the European Convention on Human Rights because it did not have a mechanism to legally recognise the acquired gender of transgender individuals. The Report of the Council of Europe Commissioner for Human Rights identified Ireland as one of three EU member states (in addition to Lithuania and Luxemburg) without a legal mechanism to recognise the preferred gender identity of individuals who wish to be recognised in a gender other than that recorded at birth. On foot of this, the Government decided to introduce legislation to address this situation.

To this end, the Gender Recognition Advisory Group (GRAG) was set up in May 2010, with the following terms of reference:

“To advise the Minister for Social Protection on the legislation required to provide for legal recognition of the acquired gender of transsexuals. In particular to propose the heads of a bill to provide for:

- the establishment of a process for legal recognition of the acquired gender of transsexual persons who have made the transition from one gender to another;
- the establishment of a gender recognition register;
- the granting of entitlement to marry in the legally recognised reassigned gender; and
- any other provisions as may be deemed necessary consequent on the main provisions of the Bill.”

### **Public consultation and 2011 Gender Recognition Advisory Group (GRAG) report**

As part of its work, the GRAG issued a public consultation document<sup>2</sup> in August, 2010 and received submissions from 14 groups and 26 individuals. The GRAG report was published in July 2011.<sup>3</sup> As well as a summary of the points raised by stakeholders, the report includes a review of schemes and legislation from other countries.

The following key issues were identified by stakeholders in the report:

<sup>2</sup>[http://www.google.com/url?sa=t&rct=j&q=&esrc=s&frm=1&source=web&cd=1&ved=0CCoQFjAA&url=http%3A%2F%2Fwww.ihrc.ie%2Fdownload%2Fdoc%2Fgender\\_recognition\\_public\\_consultation\\_notice.doc&ei=I1xNUrfplYjNhAf8hoCgCA&usq=AFQjCNGUiW2Y\\_2SvlNjqG3NyyWJq2PeS5A&bvm=bv.53537100,d.G4](http://www.google.com/url?sa=t&rct=j&q=&esrc=s&frm=1&source=web&cd=1&ved=0CCoQFjAA&url=http%3A%2F%2Fwww.ihrc.ie%2Fdownload%2Fdoc%2Fgender_recognition_public_consultation_notice.doc&ei=I1xNUrfplYjNhAf8hoCgCA&usq=AFQjCNGUiW2Y_2SvlNjqG3NyyWJq2PeS5A&bvm=bv.53537100,d.G4)

<sup>3</sup><http://www.welfare.ie/en/downloads/Report-of-the-Gender-Recognition-Advisory-Group.pdf>

- Most submissions accepted the general outline of the proposed scheme, as well as its guiding principles but felt that a ‘principle of inclusion’ should also be included that would cater for a wider transgender community.
- Several stakeholders proposed that the scheme would cater for intersex persons who are living in a gender which is not the one assigned at birth.
- There was general agreement to the proposed minimum age of 18 for applying for a Gender Recognition Certificate but some stakeholders felt there should be some provision for teenagers dealing with gender issues.
- Residency requirements – most stakeholders agreed that the provisions of the Bill should be restricted to those who are ‘ordinarily resident’ in Ireland. However, several stakeholders recommended that asylum seekers and other migrants should be included.
- The most contentious issue was the exclusion of those who are in existing valid marriages from the scheme.
- The majority of submissions argued that it should not be necessary for someone to have undergone surgery in order to be included in the scheme.
- There was some objection to the term ‘transsexual’, as it emphasized sexual preferences rather than gender identity.
- There was general agreement that an applicant must demonstrate an intention to live in the preferred gender for the rest of his/her life.
- There was general agreement that the decision-making body should be an independent panel set up under the new legislation.
- Most submissions to GRAG recommended that the new birth certificate would supersede the original and that the original be hidden from general view.

### **How the Heads of the Bill differ from the GRAG report**

The Iona Institute noted that the published General Scheme differed in some “key respects” from the recommendations of the GRAG report, such as:<sup>4</sup>

- The GRAG report recommended that applicants be required to have lived with their preferred gender for at least two years.
- It also recommended that an independent three member ‘Gender Recognition’ Panel be established to assess applications.

Speaking to the Committee on the 23rd of October 2013, a Department of Social Protection official said that instead of an expert panel as recommended by the GRAG, there will be a “declaration and validation process administered by the Department of Social Protection.” This will be accompanied by validation from a medical practitioner practising in the field. The Department believe that, unlike the expert panel recommended by GRAG, this will accommodate intersex persons.

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<sup>4</sup> <http://www.ionainstitute.ie/index.php?id=3061>

## 2. The General Scheme of the Bill

### 2.1 General points

In examining what has been published to date, it is important to draw the distinction between the General Scheme of the Bill and the Bill as will be presented at first stage in the parliamentary legislative process (which is known as “initiation”, i.e. publication). Most Government departments have their legislation drafted by the Office of the Parliamentary Counsel (OPC)<sup>5</sup> by supplying Heads of a Bill which broadly set out policy objectives. Typically, a General Scheme can be considered to be in draft format and as such is still subject to the legal advice of the Office of the Attorney General. It may include an explanatory note to accompany each Head unless the Heads are self-explanatory (see Appendix 2 for further details on the preparation of legislation).

It is important to note that **the General Scheme has no legal effect** and the proposals it contains may well evolve over time as the legislative process progresses.

However, the publication of the General Scheme presents an important opportunity for interested stakeholders to comment on the general principles and themes at an early stage in the Bill’s development. In this case, the Joint Committee have formally invited written submissions in relation to the General Scheme of the Bill.

Finally, it should be noted that this process allows the Committee, through their report to the Minister, the opportunity to have a discernible impact on the shaping of the proposed legislation. The Bill, when published, could be compared by the Members of the Committee with their report to evaluate whether or not their comments or recommendations have been taken into account.

The draft legislation which follows a General Scheme of a Bill can potentially vary, to a greater or lesser extent, from the General Scheme as issues are further refined during the drafting process.

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<sup>5</sup> The Office of Parliamentary Counsel to the Government is one of three offices that make up the Office of the Attorney General. The OPC comprises the Parliamentary Counsel who draft legislation and have responsibilities in the area of statute law revision.

Conscious that the General Scheme is at a very preliminary stage of the legislative process, this paper conducts a summary and analysis, as far as is possible, of some of the key themes which emerged during the consultation process with stakeholders.

## **2.2 The scheme of the Gender Recognition Bill**

After the publication of the GRAG report (2011), the Department of Social Protection began working on draft Heads of a Gender Recognition Bill, seeking advice from the Office of the Attorney General, which in turn sought the legal opinion of external counsel.<sup>6</sup>

The General Scheme of the Gender Recognition Bill 2013 was published in July 2013 and is available [here](#).<sup>7</sup> The General Scheme consists of 26 Heads and provides for the recognition of the acquired gender of transgender people aged 18 and over and who are not married or in a civil partnership. This recognition will allow relevant persons to marry or enter into a civil partnership under the acquired gender and receive a new birth certificate. Legal recognition will not be retrospective but will only apply from the date a gender recognition certificate is issued.<sup>8</sup>

Upon publication of the General Scheme of the Bill, the Iona Institute described the policy context and concluded that, in its view, “The proposed Irish law will be modeled on the UK law which is among the most liberal in Europe.”<sup>9</sup>

Dr. Fergus Ryan reflected this view when, speaking to the Committee on 24<sup>th</sup> October 2013, he acknowledged and welcomed that the General Scheme was:

“...significantly more progressive in some respects – than equivalent legislation in many other European countries.”

It should be noted however that Dr. Ryan found other aspects of the scheme too restrictive.

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<sup>6</sup> <http://www.kildarestreet.com/wrans/?id=2013-04-23a.776>

<sup>7</sup> <http://www.welfare.ie/en/Pages/Gender-Recognition-Bill-2013.aspx>

<sup>8</sup> <http://www.welfare.ie/en/Pages/Gender-Recognition-Bill-2013.aspx>

<sup>9</sup> See article dated 18<sup>th</sup> July 2013 on the Iona Institute website, “Government publishes ‘transgender legislation.’ Accessed on 17<sup>th</sup> October at <http://www.ionainstitute.ie/index.php?id=3061>

In fact, as detailed in the body of this paper, many of the organisations that made submissions to the Committee have reservations that various aspects of the proposed regulatory regime are too restrictive.

Upon publication of the Scheme of the Bill, Minister Burton said:<sup>10</sup>

“I am delighted to publish this General Scheme of the Bill and I welcome the agreement of my Cabinet colleagues on these hugely important proposals. Since becoming Minister, I have engaged with the groups representing transgender people and I am very aware that the longstanding lack of legal recognition has caused on-going hurt as well as real practical difficulties. I believe that this Bill will go a long way towards addressing those concerns.”

On 29<sup>th</sup> August 2013, the Joint Committee on Education and Social Protection issued a press release to invite interested individuals and groups to send written submissions on the Scheme of the Bill. Joanna Tuffy TD, Chair of the Committee said:

“This important piece of legislation will address the position of transgender people aged 18 and over and who are not married or in a civil partnership. In order to assist the Committee to carefully and thoroughly consider this proposed legislation, the Committee is seeking the views of interested individuals and organisations. As legislators with the responsibility in this area, it is important that we engage with people and organisations on the potential merits and flaws within the legislation. The Committee may decide to invite one or more individuals or groups to a public hearing to discuss particular submissions in detail. On foot of this public process, the Committee will publish a report on the legislation, and the issues raised in the report may also be relevant in the context of the future consideration of the Bill by the Dáil and Seanad.”

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<sup>10</sup> <http://www.merrionstreet.ie/index.php/2013/07/minister-for-social-protection-publishes-general-scheme-of-the-gender-recognition-bill-2013/>

### 3. Current gender recognition law and policy

In 2007, as a result of a case taken by Dr. Lydia Foy who had undergone gender realignment surgery and was seeking to change her name and sex on her birth certificate, the Irish High Court taking into account the 2002 *Goodwin v UK*<sup>11</sup> ruled that the State is in breach of Article 8 of the European Convention on Human Rights (ECHR). Each of the Member States of the EU is a contracting party to the ECHR.

The 2011 Programme for Government<sup>12</sup> contains a commitment that the Government will:

“...ensure that trans-gender people will have legal recognition and extend the protections of the equality legislation to them.”

While in Ireland it is relatively easy to change one's name for use on official documentation such as passports, driver's licenses etc., the legal framework in existence for the recognition of a gender other than that recorded at one's birth is limited. The only legislative provision in relation to gender reassignment is section 11 of the *Passport Act 2008*, which allows an applicant who “has undergone, or is undergoing, treatment or procedures or both to alter the applicant's sexual characteristics and physical appearance to those of the opposite sex” to apply to the Minister to have a passport issued in the “new sex”. Such treatment must be evidenced by a registered medical practitioner.

In their presentation to the Committee on the 24<sup>th</sup> October 2013, FLAC noted that Dr. Foy's litigation has been on-going for 17 years and she still does not have a gender recognition certificate.

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<sup>11</sup> (2002) 35 EHRR 447

<sup>12</sup> <http://www.socialjustice.ie/sites/default/files/file/Government%20Docs%20etc/2011-03-06%20-%20Programme%20for%20Government%202011-2016.pdf>

## **4. Key aspects of the new proposals**

The Department of Social Protection has provided an overview of the main provisions of the scheme as follows:

### **Main provisions of the General Scheme of the Bill.**

#### **Head 1: Short Title and Commencement**

*Head 1* establishes the short title of the Act. It further stipulates that the Act may come into force on such day or days as the Minister for Social Protection, by commencement order, may determine.

#### **Head 2: Interpretation**

*Head 2* provides a definition of terms used in the Act for the sole purpose of statutory interpretation of the Act.

#### **Head 3: Regulations**

*Head 3* provides that the Minister may make regulations where necessary to give effect to the Act.

#### **Head 4: The Department of Social Protection to be the Issuing Authority for Gender Recognition Certificates**

*Head 4* provides that the Minister for Social Protection shall be the decision making authority in relation to granting approval for gender recognition certificates. The Minister shall issue the certificate once the application meets all the qualification requirements.

The Head also provides that where the application does not meet the qualification requirements, the Minister shall issue the applicant with the reasons why their application was not approved and advise them of their right to appeal. The Head also authorises the Minister to obtain specialist advice to assist in the consideration of the application where warranted.

Subhead (5) confirms that there will be no application fee but that the applicant will have to bear the cost of preparing and submitting the evidence required. Subhead (6) provides for the Minister producing an annual report on the operation of the gender recognition certificate process.

#### **Head 5: Qualification Requirements for a Gender Recognition Certificate**

*Head 5* sets out the conditions which a person is required to meet in order to qualify for a gender recognition certificate. The person must meet one of the following three qualifying criteria; their birth is registered in Ireland, they have become an Irish citizen by having their birth registered in the Foreign Births Register maintained by the Department of Foreign Affairs and Trade or they are ordinarily resident in the State.

They must also be at least 18 years of age on the date of application and they must not be in an existing marriage or civil partnership. In addition, they must meet the evidential requirements set out in Head 6.

#### **Head 6: Evidence to be submitted with applications for a Gender Recognition Certificate**

*Head 6* addresses the evidence which must be supplied by the applicant to prove that he/she meets the qualification requirements. This includes a certificate from the register of births or from the foreign births register, proof of ordinary residence in Ireland and a proof of identity in a form to be prescribed by the Minister.

The evidence must also include a statutory declaration, in a form to be prescribed by the Minister, stating that the person has a settled and solemn intention of living in the acquired gender for the rest of their life and confirming that the person is 18 years of age or older and not in a marriage or in a civil partnership.

This statutory declaration must be accompanied by a statement from his/her primary treating physician, in a form to be prescribed by the Minister, which confirms that the person has transitioned/is transitioning to their acquired gender and that they are satisfied that the person fully understands the consequences of their decision to live permanently in the acquired gender.

## **Head 7: Foreign Recognition Decisions**

*Head 7* deals with applications from persons who have already had their acquired gender recognised in a different jurisdiction. It is not clear how many such applicants there might be. It would seem likely that any non-Irish person who has had their changed gender recognised abroad would have changed their personal documentation e.g. passport, identity card, birth certificate, before coming to live in Ireland. Such persons would have no need to seek a gender recognition decision in Ireland. However, there may be a group of Irish-born people who went abroad some years ago to make the transition to the acquired gender and have had that change recognised in the jurisdiction where they are resident. Such persons may now wish to have their acquired gender recognised in Ireland and obtain an Irish birth certificate reflecting that acquired gender.

In order for the application to be approved, satisfactory evidence will have to be provided that the gender recognition process in the other jurisdiction was valid. A decision made in an EU Member State will be recognised but outside of the EU the process for recognition of the decision will be specified in the Regulations.

## **Head 8: Gender Recognition Certificate**

*Head 8* provides for the issuing of a gender recognition certificate by the Minister for Social Protection. The applicant must first have complied with Heads 5 and 6 (and 7 as appropriate). The date of the certificate shall be the date that the decision was made.

The Head states that the gender recognition certificate shall contain the person's full name, acquired gender and other such information and statements as may be prescribed by the Minister in Regulations.

The Head provides that the Minister shall notify An tArd Chláraitheoir that the certificate has issued and provide him/her with the required particulars.

The Head also provides that the data may be sent to Client Identity Services function within the Department to facilitate changes to the Public Services Identity (PSI) data set for use by those agencies authorised to use the PSI dataset and also to the

Passport Office of the Department of Foreign Affairs for use in approving and issuing passports.

The gender recognition certificate is the key document recognising a person's acquired gender. It is not considered desirable that a practice should develop of public or private organisations requiring presentation of a gender recognition certificate as proof of identity. For a person whose acquired gender has been recognised, the documents normally accepted as proof of identity should suffice e.g. birth certificate (in the acquired gender), passport, driving licence, public service card etc. The Head confirms that the person named on the certificate shall not be required to produce it as proof of gender (unless in specified circumstances) but can do so if they so wish.

### **Head 9: Effects of Gender Recognition**

*Head 9* provides for the fundamental principle of the legislation which is that, once a gender recognition certificate is issued to a person, the person's gender becomes the acquired gender. This formal legal recognition is for all purposes, including dealings with the State, public bodies and civil and commercial society. It includes the right to marry or enter a civil partnership in the acquired gender and the right to a new birth certificate or, if applicable, a new entry in the foreign birth register. The effect of the legal recognition is not retrospective but shall be only from the date on the gender recognition certificate. Therefore, all rights, responsibilities and consequences of actions by the person in their original gender prior to the date of recognition shall remain unaffected.

### **Head 10: An tArd-Chláráitheoir to maintain the Gender Recognition Register**

*Head 10* provides for the establishment and maintenance by An tArd-Chláráitheoir (Registrar General) of a confidential register to be known as the gender recognition register. The register shall not be open to public inspection or search. Its purpose shall be to record the required particulars of the births of persons who have been issued with a gender recognition certificate and whose births are recorded on the register of births or the adopted children register maintained by An tArd-Chláráitheoir. The particulars to be contained in the gender recognition register are analogous to those in the register of births or the adopted children register, as appropriate. This provision and other related ones will require amendments to the Civil Registration Act 2004.

## **Head 11: Gender Recognition Register and Existing Birth Register and Adopted Children Register Entries**

*Head 11* provides that, in cases where the Minister has issued a gender recognition certificate to a person for whom there is an entry in the register of births or adopted children register, a copy of the certificate and the required particulars for the registration shall be sent to An tArd-Chláraitheoir. This shall be for the purposes of Heads 12 and 13.

An tArd-Chláraitheoir shall not authorise the issue of a certified copy, a copy or a certified extract of the birth register or adopted children register entry of a person issued with a gender recognition certificate (other than to the person themselves) unless he/she is satisfied that there exists a legitimate requirement for the request, for example if required for a criminal investigation or prosecution or for a civil court case in which the person's original gender is pertinent.

## **Head 12: Entries in the Gender Recognition Register**

*Head 12* provides for the process whereby entries shall be made by An tArd-Chláraitheoir in the gender recognition register and a link made between that entry and the corresponding original entry in the register of births or adopted children register. This link shall be maintained in a confidential manner. The provisions of Subhead (1) (a) will involve contact, under the provisions of Subhead (2) of Head 11, between An tArd-Chláraitheoir and the person who has been issued with the gender recognition certificate, in order to confirm the exact details of the entry in the register and the arrangements for the issue of the new birth certificate. Subhead (3) reflects the provisions of Head 11 in relation to the need for a legitimate requirement before a request (other than from the person themselves) for the issue of a certified copy, a copy or a certified extract of the birth register or adopted children register entry of a person issued with a gender recognition certificate, can be approved by An tArd-Chláraitheoir.

## **Head 13: Copies of entries in the Gender Recognition Register**

*Head 13* provides for the arrangements for fees in respect of certified copies, copies or certified extracts from the gender recognition register. It also provides, for reasons of

confidentiality, that certified copies, copies or certified extracts of entries in the gender recognition register shall not be identifiable as being from that register, as opposed to being from the register of births or adopted children register.

#### **Head 14: Re-registration of entries in the Gender Recognition Register**

*Head 14* provides for changes (re-registrations) to be made to entries in the gender recognition register for similar reasons. Such re-registrations can be made in respect of entries in the register of births. These are (a) where the parents of a child who are not married to each other wish to have the father's details included where these details were not registered initially or (b) where the parents of a child marry each other after the birth of their child.

#### **Head 15: Correction of errors in the Gender Recognition Register**

*Head 15* provides for the situation where an error is made in respect of the content of a gender recognition certificate. Once the Minister is satisfied that the error needs to be corrected it will be done, in accordance with Head 18. The Minister will subsequently notify An tArd-Chláraitheoir to make the necessary correction in the entry in the gender recognition register. The Head also provides for corrections in the gender recognition register entry if an error is corrected in the linked entry in the register of births or adopted children register.

#### **Head 16: Cancellation of entries in the Gender Recognition Register**

*Head 16* provides for the cancellation of an entry in the gender recognition register arising from the revocation of a gender recognition certificate by the Minister, in accordance with Head 19. In such circumstances the Minister shall notify An tArd Chláraitheoir of the decision to revoke the gender recognition certificate and, subject to any appeal, An tArd Chláraitheoir shall cancel the entry in the gender recognition register. As a result, the person's original entry in the register of births or adopted children register shall again become the appropriate birth registration for the person.

#### **Head 17: Appeal Process**

*Head 17* provides for the right of appeal by a person whose application for a gender recognition certificate has been refused by the Minister. The appeal, for reasons of

confidentiality, shall be to the Circuit Family Court. It must be made within 3 months of the refusal decision. If the appeal is successful the Minister shall issue the person with a gender recognition certificate with an applicable date of the original decision. It shall be possible for a person who unsuccessfully appeals a decision to make another application to the Minister for a gender recognition certificate but, in order for it to be considered, new or additional material supporting the application shall be required.

### **Head 18: Correction Process for Gender Recognition Certificates**

*Head 18* provides for the correction of the content of a gender recognition certificate. An application for the correction of an error can be made by the person to whom the certificate was issued or by the Minister. If the Minister is satisfied that the error needs to be corrected the correction will be made. In accordance with Head 15 the Minister will subsequently notify An tArd Chláraitheoir to make the necessary correction in the entry in the gender recognition register.

### **Head 19: Revocation of Gender Recognition Certificate**

*Head 19* provides for the revocation by the Minister of a gender recognition certificate issued to a person if it is established that, at the time of application, the person did not meet the qualification criteria, evidential requirements and, if appropriate, the foreign recognition requirement. A person whose gender recognition certificate has been revoked has the right to appeal that decision in line with the appeal provisions set out in Head 17. The revocation of a gender recognition certificate shall mean that the effects of gender recognition set out in Head 9 shall cease to apply. It will result in the cancellation of the relevant entry in the gender recognition register, in accordance with Head 16.

### **Head 20: Offence/Penalty**

Head 20 makes it an offence under the Act to knowingly provide false particulars or information in the application for a gender recognition certificate and states that a person who is found guilty of this offence shall be liable on summary conviction to a fine or imprisonment.

## **Head 21: Parenthood**

*Head 21* is an avoidance of doubt provision. A change in a person's recognised gender under the Act should not change the responsibilities of that person as a parent or require any change to be made to a child's birth certificate. This may also have prospective effect in circumstances where parenthood arises after the gender is acquired, whether by assisted human reproduction using frozen gametes / embryos or otherwise.

## **Head 22: Succession**

*Head 22* provides that where a person has had their "acquired gender" recognised it does not affect the distribution of property under a will or other instrument made before the day on which the Act comes into force. For wills or other instruments made after that day the general principle stated in Head 9 (1) will apply e.g. if a will refers to the 'eldest daughter', and a person who was previously a son becomes the 'eldest daughter' following recognition in the acquired gender, that person (subject to Head 24) will inherit as the 'eldest daughter'.

## **Head 23: Trustees and personal representatives**

A trustee or personal representative is responsible for conveying and distributing property from a trust or estate. *Head 23* relieves a trustee or personal representative from any fiduciary duty to inquire whether a gender recognition certificate has been issued to any person or revoked, even if that fact could affect entitlement to property which he or she is responsible for distributing. The beneficiary will nevertheless retain his or her claim to the property and may enforce this claim, e.g. by following the property into the hands of another person who has received it instead.

## **Head 24: Orders where expectations defeated**

*Head 24* makes provision for any situation where the disposition or devolution of property under a will or other instrument is different from what it would be but for the fact that a person is regarded as being of the acquired gender. If, for example, an instrument governs succession by reference to the 'eldest daughter' of the settlor, and there is an older brother whose gender becomes female under the Act, then the person

who was previously the 'eldest daughter' may cease to enjoy that position. Subhead (2) allows a person who is adversely affected by the different disposition or devolution of the property to make an application to the High Court. The court, if it is satisfied that it is just to do so, may make such order as it considers appropriate in relation to the person benefiting from the different disposition of the property.

### **Head 25: Gender-specific offences**

A number of criminal enactments include offences and penalty provisions which are gender specific. *Head 25* provides that all rights, responsibilities and consequences of actions by the person in their original gender prior to the date of recognition of their acquired gender remain unaffected as otherwise the ability to prosecute for offences committed prior to recognition may be undermined. The Head also provides that a person whose acquired gender has been recognised under this Act can be prosecuted for sexual offences specific to their original gender committed post recognition.

### **Head 26: Sport**

*Head 26* enables a body responsible for regulating participation in competitive gender-affected sporting events to prohibit or restrict the participation in such events of a person whose acquired gender has been recognised under the Act and who is seeking to compete in the acquired gender. The prohibition or restriction can be effected if it is deemed necessary to secure fair competition or the safety of other competitors.

### *Financial Implications*

Additional costs to the Exchequer will be for administration in relation to the processing of applications. It is not expected that a high volume of applications will be made and any costs that arise will not be significant.

## **5. Key themes in the submissions to the Committee and raised during the hearings**

The Committee received eight written submissions from groups and three written submissions from individuals. The following themes have been identified as the most commonly discussed.

### **5.1 Terminology**

Some stakeholders expressed their view that ‘preferred gender’ should replace the term ‘acquired gender.’ Transgender Equality Network Ireland (TENI) argue that:

“While the usage of ‘acquired gender’ is derived from European case law, it has the connotation of proving the authenticity of trans identity. ‘Preferred gender’ suggests an individual’s right to self-determine their own gender.”

LGBT Noise also recommend that ‘preferred gender’ or ‘gender identity’ be used in place of ‘acquired identity’. Furthermore they argue that ‘former gender identity’ be used instead of ‘original gender.’

### **5.2 Age criterion**

The Heads of the Bill provides that a person must be at least 18 years old to receive a Gender Recognition Certificate. This approach was recommended by the GRAG on advice from mental health professionals who told the group that minors who want a gender change often change their minds as they reach adulthood.

This provision proved to be one of the most contentious in the Committee’s hearings and several of the submissions put forward the view that there should be some provision for younger people. For instance, TransparenCI (an organisation representing parents) argues that parents should be allowed to apply for gender recognition for their children regardless of their age. They argue that issues facing transgender people arise much younger than 18 and that this age criteria will exacerbate the isolation some experience. The group write:

“...Without legal recognition, young people feel they are not going to be protected and supported by State services if they reveal their identity.”

In their presentation to the Committee on 23<sup>rd</sup> October 2013, TransparenCI maintained that while the Government may be trying to safeguard those who are under the age of 18, the legislation underestimated the parents of such children:

“I cannot imagine that any parent would consider changing the gender of their child’s birth certificate without having explored every other avenue first.”

BeLonG To Youth Services also raise this issue and argue that young people in Ireland may independently consent to medical treatment at 16 years of age. The group highlights the importance of not creating a “contradictory situation” whereby an individual could have a medical transition but not be recognised by the State. They argue that the Head as currently drafted “may have serious child-protection consequences”.

Transgender Equality Network Ireland (TENI) also recommend that the minimum age of 18 be removed and claim that it fails to recognise the existence of trans- and inter-sex youth. Neither, the group contends, does it acknowledge the rights of children and young people. The group recommend that the set age for applying independently for gender recognition be 16 years or older and that parents or guardians be allowed to apply on behalf of those who are younger.

Speaking to the Committee on 23<sup>rd</sup> October 2013, Professor Donal O’Shea, an endocrinologist, said that from a medical point of view the most important age is puberty and the debate on whether the minimum age should be 16 or 18 is “a facile constitutional argument”.

Dr Fergus Ryan, speaking to the Committee on the 24<sup>th</sup> of October 2013, said that he could not see any reason why, where parents believe recognition of the acquired gender is in the child’s interests, that this should not be accommodated at a younger age.

The Minister for Social Protection, Ms Joan Burton, T.D., has indicated that this aspect of the legislation will be kept under review. The Minister also sought the views of the Ombudsman for Children’s Office (OCO) on the issue of making provision for people

under the age of 18 to be included in the scope of the legislation. Looking at the issue, the Ombudsman for Children's Office (OCO):

“...understands that the motivation for excluding those under the age of 18 from the legislation...is...to safeguard them from the potentially negative consequences of having their preferred gender recognised when they have not formed a stable view in relation to their gender identity.”

Nevertheless the OCO recommends that a gender recognition mechanism for those aged under 18 years of age be put in place. The OCO's submission to the Committee goes into great detail on the international human rights obligations and relevant legal cases, giving particular attention to the United Nations Convention on the Rights of the Child and the European Convention on Human Rights. Looking at Article 8.1 of the ECHR, the OCO write:

“...it seems clear that if an adult has a right to gender recognition under Article 8 of the Convention, a child is equally entitled to respect for his or her right to gender recognition.”

Looking at domestic legislation, the OCO point out that Section 23 of the *Non-Fatal Offences against the Person Act 1997* allows young people aged 16 or more to consent to medical procedures.

The OCO's principal concern with the exclusion of children younger than 18 is the impact this would have on those with intersex conditions, younger transgender children whose parents support their transition, and older teenagers who are in a position to consent to medical treatment. The OCO concede that it is common for other jurisdictions not to include children under the age of 18 within gender recognition legislation (with the exception of Argentina). The OCO write that if the Oireachtas does decide to include those under the age of 18, the Argentine legislation would be a useful reference point.

Speaking to the Committee on 23<sup>rd</sup> October, a Department of Social Protection official said that to the best of her knowledge, no other member state has similar legislation with a minimum age of under 18, though the Netherlands is examining a minimum age of 16.

### **5.3 Single criterion**

Under Head 5 of the General Scheme of the Bill, applicants for a gender recognition certificate cannot be in an existing marriage or civil partnership. So for example, a transgender married person, seeking recognition of their preferred gender would have to either divorce or have their marriage annulled. This criterion received considerable attention during the Committee hearings and was referred to in most written submissions to the Committee.

LGBT Noise argue that this provision forces transgender people to choose between their family and their identity and will mean the provisions of the Bill will be outside the reach of those who wish to remain married.

The Equality Authority argue that this requirement will impose hardship on a significant number of families and argue that it is not legally necessary as the legal validity of a marriage is determined solely by factors present on the date of the marriage. Furthermore the Equality Authority argue that the constitutionally mandated requirements for divorce in Ireland, which involve living separately for four of the previous five years and having no prospect of reconciling, would preclude those who are in a committed relationship. Similarly, those in a civil partnership would be required to live apart for two of the previous three years.

The Equality Authority references a former Council of Europe Commissioner for Human Rights, Thomas Hammarberg, who recommends that Convention states should permit those who have obtained legal gender recognition to remain in their existing marriage. The submission also argues that this approach has been taken in Austria and Germany.

TENI claim that human rights discourse “affirms that divorce should not play a role in the legal recognition of gender identity”. TENI also argue that the provision establishes a “dangerous precedent” which compromises the constitutional protection of the marital family. The group also questions how such a provision would be in keeping with Article 41 of the Constitution, which they argue is meant to safeguard the family.

In an article in the Irish Times, Dr. Fergus Ryan also wrote that:<sup>13</sup>

“It remains an open question whether requiring couples to divorce to gain a particular benefit amounts to an attack on marriage, contrary to article 41 of the Constitution.”

Dr. Fergus Ryan questions whether any change to the Constitution is even required, in the case of a transgender person staying in a marriage or civil partnership while applying for their acquired gender to be legally recognised. Dr. Ryan considers whether:

“If formal gender recognition is prospective in effect only – operating from the date of certification of the new gender and no earlier – then any pre-existing marriage should theoretically be unaffected.”

The Equality Authority re-iterated this point when they spoke to the Committee on the 24<sup>th</sup> October, saying:

“It is the gender of each party at the date of marriage that counts in determining the validity of the marriage...As such, the concern that gender recognition would convert a heterosexual marriage into a marriage between parties of the same sex is legally unfounded.”

Free Legal Advice Centres (FLAC) note in their submission that in their view the Human Rights Court would consider the “compulsory divorce” condition to be in breach of the Convention on Human Rights.

Presenting to the Committee on 24<sup>th</sup> October 2013, Amnesty International Ireland said:

“...the current legal inequality regarding marriage should not be used to justify the curtailment of the rights of transgender and intersex people, by forcing them to choose between legal recognition of their gender identities and their existing marriages or civil partnerships.”

Minister Burton said:

“I understand that this will be disappointing for the small number of transgender persons concerned who are already married and wish to remain married while having their changed gender recognised. **The Constitutional prohibition on same-sex marriage represents a significant difficulty in this regard, however. I believe it is more sensible at this point to await the Government response on the Constitutional Convention recommendations, as a referendum on same-sex marriage, if approved by the public, would remove**

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<sup>13</sup> Irish Times. (2013). Divorce link to transgender recognition is questionable, *February 22<sup>nd</sup>, 2013*.

**this obstacle and the legislation could be widened to include married people.** (Emphasis added). Prior to such a referendum, there is no simple legislative solution to this issue that can be guaranteed to be constitutionally robust, and I want to legislate now for the majority of the people affected, who are single.”<sup>14</sup>

On the 24<sup>th</sup> October 2013, speaking to the Committee Dr. Ryan said:

“A strong argument has been made by many academics that the Oireachtas is perfectly entitled to enact equal marriage legislation and the courts would defer to the Oireachtas.”

Senator Katherine Zappone has raised a similar point:

“There is also some support from additional case-law for the suggestion that, if the Oireachtas were to provide for same sex marriage, the Courts would most likely defer to that legislative choice rather than reach the conclusion that the Constitution prohibited such marriages.”

Senator Zappone argued that because the likelihood of a constitutional challenge was high whether the Government makes a ‘Single Status Requirement’ or not, on balance dispensing with a ‘Single Status Requirement’ is preferable to incorporating one.

During the Committee debate on October the 23<sup>rd</sup>, some Members asked the relevant Department official if they had received advice from the Attorney General on this issue and if so, to share this advice with the Committee. The Department official replied that she was unable to divulge the advice given by the Attorney General and that any discussion regarding same-sex marriage and the Constitution is a matter for the Department of Justice and Equality. In a letter written on the 4<sup>th</sup> of November 2013, the Department of Social Protection re-iterated that the advice given to the Government by the Attorney General was privileged, but did confirm that the advice of the Attorney General indicated that such advice has consistently indicated that there is a constitutional impediment to legislation which would give rise to same-sex marriage.

The European Parliament (2010) policy paper *Transgender Persons’ Rights in the EU Member States*<sup>15</sup> examined the consequences of gender reassignment for family life and found that of all the EU Member States it is only possible to stay married after

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<sup>14</sup> <http://www.merrionstreet.ie/index.php/2013/07/minister-for-social-protection-publishes-general-scheme-of-the-gender-recognition-bill-2013/>

<sup>15</sup> <http://www.lgbt-ep.eu/wp-content/uploads/2010/07/NOTE-20100601-PE425.621-Transgender-Persons-Rights-in-the-EU-Member-States.pdf>

change of legal gender in Lithuania and in the Netherlands (see Appendix 3).<sup>16</sup> The authors note that this is despite the UN Yogyakarta Principle number 3, which states that:

"No status, such as marriage or parenthood, may be invoked as such to prevent the legal recognition of a person's gender identity".

The Parliament's 2010 paper cautions that forced divorce may be in breach of Articles 7 and 9 of the Charter of Fundamental Rights (Respect for private and family life and Right to marry and Right to found a family).

The authors note that the Austrian Constitutional Court has granted a transsexual woman the right to change her sex to female while remaining married to her wife. The German Constitutional Court has made a similar ruling.<sup>17</sup>

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<sup>16</sup> *Neither Austria or Germany recognises same-sex marriage and their gender recognition legislation prohibited a person who had changed their gender status to remain in their existing marriage. However, the requirement to divorce was struck down in the Constitutional Courts of both countries in 2006 (Austria) and 2008 (Germany). As a result a number of transgender persons have remained married.*

<sup>17</sup> *Ibid.*

## **5.4 Evidence of transition**

Most stakeholders objected to the notion of a transgender or intersex person being required to provide evidence of a transition as set out in Head 6 of the scheme of the Bill. The Head requires that a physician provide confirmation that:

“...the person has transitioned/is transitioning to their acquired gender and that they are satisfied that the person fully understands the consequences of their decision to live permanently in the acquired gender.”

Addressing the Committee on 24<sup>th</sup> October 2013, Amnesty International expressed the view that international human rights standards call for procedures providing legal gender recognition which respect the dignity and privacy of the person concerned. Amnesty International recommended that “...the eventual legislation should provide clear guidance with regard to what will or will not be required.”

FLAC write that this puts an undue emphasis on medical treatment and is taken by some transgender persons as implying that they suffer from a medical or psychiatric disorder. FLAC recommend that instead of requiring a supporting statement from the applicant’s “primary treating physician”, and “if a statement or statements are required” that these would be provided by medical practitioners, counsellors, social workers, teachers etc. This would also allow for the inclusion of medical evidence where relevant.

TENI argue that the language used in this Head excludes those who are intersex. The group objects to what they see as the inference that medical treatment or surgery is a pre-requisite for gender recognition. TENI call for an “uncoupling of health and legal rights”. They recommend that the State respect and legally recognise the self-defined identity gender of the individual and that the existing model of declaration, the affidavit, should be used for this purpose.

Likewise, LGBT Noise contend that the individual should be the only source of proof of their gender identity, i.e. they should be entitled to self-determine, therefore no statement from a physician should be required. In addition LGBT Noise recommend that the word ‘transitioning’ be removed as it refers to a medically based model of gender recognition.

The Equality Authority also argue that this Head potentially excludes those who are intersex and some transgender people, particularly if the term 'transition' is taken to mean a medical transition. The Equality Authority do, however, welcome that there is no requirement to provide a diagnosis of Gender Identity Disorder (GID) as a requirement for gender recognition.

Professor Donal O'Shea, speaking at a Committee meeting on 23<sup>rd</sup> October, was of the view that the intersex group would be "catered for within the legislation as drafted". The Department of Social protection also believes that this is the case.

The number of medical experts who would be capable of working in this area was questioned by a number of the witnesses at the Committee's debate on the 23<sup>rd</sup> of October. At this debate, Ms Sara Phillips of TENI, asked:

"There are not many experts in this area in Ireland, which puts this process in the hands of a few practitioners and, hence, creates a panel."

Professor Donal O'Shea, speaking at the Committee meeting on October 23<sup>rd</sup>, said that when specialists are:

"...being identified, they should be regulated, subject to Irish Medical Council sanction if they are involved in exploiting someone or if they are seen to be vested in their interests."

## **5.5 Use of facilities**

Issues faced by transgender youth within the school system were raised by some stakeholders.

BeLonG To Youth Services cited three main issues: name or identity, use of toilet and school uniforms. BeLonG To write: "...in some cases, students are required to continue using the toilets of their old assigned gender." The group argues that other countries have gender-neutral toilets in schools, but this is seldom the case in Ireland. School dress codes were also mentioned as presenting a difficulty for transgender youth, i.e. school uniforms that stipulate the wearing of skirts and/or trousers. Hair length was also mentioned in the BeLonG To Youth Services submission.

The Equality Authority recommended that:

"Transgender people should be allowed full access to the facilities and services available exclusively to persons of their preferred gender."

At a Committee meeting on 23<sup>rd</sup> October 2013, Ms Catherine Cross of TransparenCI said:

"...schools are not obliged to provide suitable changing facilities for our transgender students. They often simply do not know what to do about it. Without proper legislation in this area, schools have no guidelines."

Presenting to the Committee on the 24<sup>th</sup> October 2013 the Equality Authority said:

"It is vital, for instance, that transgender and intersex people be entitled to use changing facilities and toilet facilities of the preferred gender."

## **5.6 Participation in sport**

An aspect of the scheme of the Bill which received a lot of comment in the submissions was the provision dealing with access to sports. This relates mainly to Head 26, which

“...enables a body responsible for regulating participation in competitive gender-effected sporting events to prohibit or restrict the participation in such events of a person whose acquired gender has been recognised under the Act and who is seeking to compete in the acquired gender. The prohibition or restriction can be effected if it is deemed necessary to secure fair competition or the safety of other competitors.”

TransparenCI argues that:

“...sport is a human right and is a vital outlet for transgender children in particular to get exercise and learn social skills among their peers.”

TransparenCI make the point that sport is never completely fair as someone always has a natural advantage such as height, or other attributes.

TENI contend that Head 26 is in conflict with the EU Council of Ministers Recommendation (2010) no. 5<sup>18</sup> which was adopted in 2010. This instrument states that sports activities and facilities should be open to all, without discrimination based on sexual orientation or gender identity.<sup>19</sup> TENI recommends that Head 26 be rewritten to support transgender people and combat discrimination in sport.

LGBT Noise argued that Head 26 introduces a new discrimination which has not existed before and recommend its removal.

The Equality Authority argued that the provision should be carefully considered so that transgender and intersex people are not excluded from sporting activities. Speaking to the Committee on the 24<sup>th</sup> October 2013, the Equality Authority suggested that a more nuanced approach be taken with a focus on factors such as the level of hormones in the body, rather than being transgender or intersex.

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<sup>18</sup> Recommendation CM/Rec(2010)5 of the Committee of Ministers to member states on measures to combat discrimination on grounds of sexual orientation or gender identity

<sup>19</sup> <https://wcd.coe.int/ViewDoc.jsp?id=1606669>

Speaking to the Committee on the 24<sup>th</sup> October, Dr Tanya Ní Mhuirthile referenced the International Olympic Committee's (IOC) guidelines on how to deal with questions of gender and gender identity in sport.

In 2012 the IOC decided to use hormones as the determining factor when reaching decisions regarding gender identity. The organisation's guidelines involve a test which will decide whether a woman's natural testosterone levels fall within the normal range of a man's.<sup>20</sup>

Speaking to the Committee on 23<sup>rd</sup> October 2013, Professor Donal O'Shea said that:

“All sporting organisations must take a position on this.”

### ***5.7 Amendment to Equality Acts and the Prohibition of Incitement to Hatred Act 1989***

Speaking to the Committee on the 24<sup>th</sup> of October 2013, Dr Fergus Ryan said that while there is protection for transgender people under the equality legislation, the Bill offered the opportunity to make discrimination on the basis of gender identity explicitly unlawful and to amend the *Prohibition of Incitement to Hatred Act 1989* to include gender identity and gender as grounds for discrimination.

FLAC also recommend that the Equality Acts<sup>21</sup> be amended to include Gender Identity among the discriminatory grounds listed at Section 6 of the *Employment Equality Act, 1998* as amended. FLAC write that while this was proposed in the current programme for Government it was rejected by the GRAG on the grounds that the Equality Tribunal previously upheld a complaint by a transgender woman in 2011 under the 'Gender Ground'<sup>22</sup> – *Hannon v First Direct Logistics Ltd* (DEC E 2011 066).

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<sup>20</sup> [http://www.nytimes.com/2012/06/24/sports/olympics/ioc-adopts-policy-for-deciding-whether-athletes-can-compete-as-women.html?\\_r=0](http://www.nytimes.com/2012/06/24/sports/olympics/ioc-adopts-policy-for-deciding-whether-athletes-can-compete-as-women.html?_r=0)

<sup>21</sup> [http://www.citizensinformation.ie/en/employment/equality\\_in\\_work/equality\\_authority.html](http://www.citizensinformation.ie/en/employment/equality_in_work/equality_authority.html)

<sup>22</sup> **The Gender ground:** You are entitled to equal treatment at work whether you are a man, a woman or a transgender person. Special protection is provided for pregnant employees and in relation to maternity leave (The Equality Authority, 2011).

However, FLAC anticipate that there may be problems in any reliance on the 'Gender Ground', as it may not be suitable where a complainant is in the early stages of transition and has not been recognised in their preferred gender. FLAC also argue that including gender identity among the discriminatory grounds would raise awareness and deter verbal and physical abuse against transgender people.

The Equality Authority note that although gender identity is not recognised as a ground for discrimination in the Equality Acts, discrimination against those who have transitioned, or are transitioning, is treated as gender discrimination for the purpose of Equality Law. They reference the decision of the Court of Justice of the European Union in *P v S and Cornwall County Council*.

Speaking at a Committee meeting on 23<sup>rd</sup> October, a Department of Social protection official said:

“The general scheme of the Bill does not include specific provisions relating to equality for transgender persons as discrimination on the basis of transgender is already prohibited on the gender ground under existing legislation.”

In 2012 the European Commission published a thematic report on discrimination of trans- and inter-sex people on the grounds of sex, gender identity and gender expression authored by Silvan Agius and Christa Tobler.<sup>23</sup> The report noted a United Nations Human Rights Council (HRC) resolution on *Human rights, sexual orientation and gender identity*, which expresses concern about acts of violence and discrimination against individuals because of their sexual orientation and gender identity. The resolution is described as the first of its kind and calls on the UN High Commissioner for Human Rights to commission a global study that would examine discrimination and violence on the grounds of sexual orientation and gender identity.<sup>24</sup>

On the 30<sup>th</sup> of November 2010, in the admissibility decision on the case of *P.V. v. Spain* (European Court of Human Rights (ECtHR), Application no. 35159/09), the ECtHR recognised trans-sexuality as a protected stand-alone ground under Art. 14 ECHR.<sup>25</sup>

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<sup>23</sup> [http://ec.europa.eu/justice/discrimination/files/trans\\_and\\_intersex\\_people\\_web3\\_en.pdf](http://ec.europa.eu/justice/discrimination/files/trans_and_intersex_people_web3_en.pdf)

<sup>24</sup> Ibid.

<sup>25</sup> Ibid.

In 2013 Australia passed an anti-discrimination law that protects "inter-sex status" alongside established grounds such as "sex" and "race."<sup>26</sup>

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<sup>26</sup> <http://www.spiegel.de/international/europe/third-gender-option-in-germany-a-small-step-for-intersex-recognition-a-917650.html>

## **6. Committee Recommendations**

The recommendations of the Committee in relation to the General Scheme of Gender Recognition Bill 2013 are as follows:

### **Terminology** (Para 5.1 of the Report)

Having regard to practices in other jurisdictions as well as to legislative constraints, consideration should be given to whether the term “preferred gender” should replace the term “acquired gender” in the Bill.

### **Age Criterion** (Para 5.2)

The age at which a person is entitled to apply for a Gender Recognition Certificate should be reduced from 18 years to 16 years. Measures should also be put-in-place to address the day-to-day concerns of transgender people under the age of 16 years.

### **Single Criterion** (Para 5.3)

The Committee acknowledges that there is a difference of opinion between the Attorney General and others on the legal issues regarding gender recognition for persons who are married or in a civil partnership. However, the Committee believes that the fact that a person is in an existing marriage or a civil partnership should not prevent him or her from qualifying for a Gender Recognition Certificate, and urges the Minister to revisit this issue.

### **Evidence of Transition** (Para 5.4)

The Committee recommends that the current wording in the Bill with respect to evidence of transition should be reconsidered to address the concerns raised at the hearings that people not be stigmatised as a result of the requirements in this regard.

### **Guidelines for Schools** (Para 5.5)

Guidelines on supporting the inclusion of transgender young people in schools should be developed in consultation with relevant stakeholders.

**Participation in Sport** (Para 5.6)

The provisions in Head 26 should be reconsidered in consultation with stakeholders. Irish sporting regulatory bodies receiving public funding should develop comprehensive policies in relation to the participation of transgender people.

**Equality Acts** (Para 5.7)

Consideration should be given to amending Equality legislation to add “gender identity” to the existing nine grounds under which discrimination is illegal.

<p><b>Appendix 1: Groups and individuals who made written submissions, and/or participated in the public hearings of the Committee</b></p>
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**Groups who made written submissions**

No	From
1	Transgender Equality Network Ireland (TENI)
2	TransParenCI
3	BeLonG To Youth Services
4	LGBT Noise
5	FLAC
6	Amnesty International
7	Equality Authority
8	Ombudsman for Children's Office

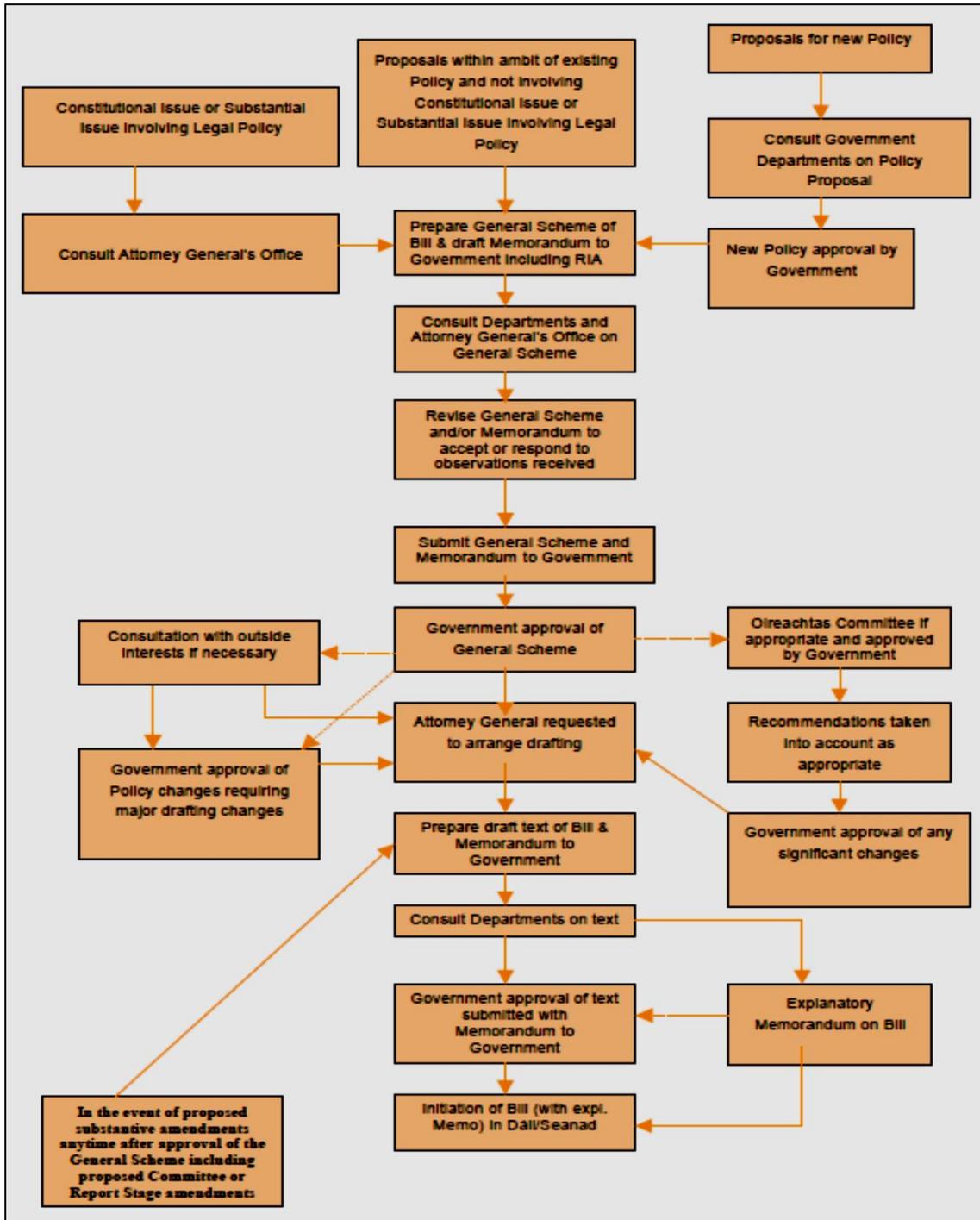
**Individuals who made written submissions**

9	Deirdre O'Byrne
10	Ben Power
11	Adrienne Smith

**Individuals who participated in the Committee Hearings**

12	Dr Donal O'Shea
13	Dr Fergus Ryan
14	Dr Tanya Ní Mhuirthile
15	Dr Philip Crowley

## Appendix 2: Preparation of legislation



**Source:** Department of the Taoiseach Cabinet Handbook. Available at [http://www.taoiseach.gov.ie/eng/Publications/Publications\\_Archive/Publications\\_2007/CABINET\\_HANDBOOK2007.pdf](http://www.taoiseach.gov.ie/eng/Publications/Publications_Archive/Publications_2007/CABINET_HANDBOOK2007.pdf)

## Appendix 3: Rights of transgender persons in EU Member States

### ANNEX 1: GENERAL TABLE

	Discrimination law	Gender reassignment requirements	Possibility to Change name in case of gender reassignment	Possibility to change Birth Certificate	Possibility to marry in new gender	Obligation to divorce to get a new gender
BE	sex discrimination	hormonal treatment and/or surgery	Easy, without medical evaluation	Yes, after gender recognition certificate (including Mental Health evaluation, hormonal treatment and sterility required)	yes	yes
BG	no law	hormonal treatment and/or surgery	no law	no law	no law	no law
CZ	no law	hormonal treatment and/or surgery	After medical evaluation and/or surgery	Yes, but Mental Health evaluation, hormonal treatment, secondary sex characteristics surgery required	no law	yes
DK	sex discrimination	hormonal treatment and/or surgery	After medical evaluation and/or surgery	Yes, but Mental Health evaluation, hormonal treatment and sterility required	yes	no
DE	sexual orientation discrimination	hormonal treatment and/or surgery	After medical evaluation and/or surgery	Yes, but Mental Health evaluation, hormonal treatment, secondary sex characteristics surgery required	yes	yes
EE	no law	hormonal treatment and/or surgery	Easy, without medical evaluation	Yes	yes	yes
IE	no law	no provision	no law	no	no	no law
EL	no law	no provision	After medical evaluation and/or surgery	Amended, but Mental Health evaluation, hormonal treatment and secondary sex characteristics surgery required	yes	no law
ES	sex discrimination	no hormonal and/or surgery requirements	After medical evaluation and/or surgery	No	yes	yes
FR	sex discrimination	hormonal treatment and/or surgery	After medical evaluation and/or surgery	Amended, but Mental Health evaluation, hormonal treatment and sterility required	yes	yes
IT	sex discrimination	hormonal treatment and/or surgery	After medical evaluation and/or surgery	no	yes	yes
CY	sexual orientation discrimination	no provision	no law	no law	no law	yes

Source: The European Parliament (2010): Transgender Persons' Rights in the EU Member States

<b>LV</b>	sex discrimination	no provision	After medical evaluation and/or surgery	no law	yes	no law
<b>LT</b>	no law	no provision	Easy, without medical evaluation <sup>32</sup>	Yes, but Mental Health evaluation, hormonal treatment and sterility required and after genital surgery	yes	no
<b>LU</b>	no law	no provision	Easy, without medical evaluation <sup>1</sup>	no law	yes	no law
<b>HU</b>	sex discrimination	no hormonal and/or surgery requirements	After medical evaluation and/or surgery	yes	no law	yes
<b>MT</b>	no law	no provision	Easy, without medical evaluation	no law	no law	no law
<b>NL</b>	sex discrimination	hormonal treatment and/or surgery	After medical evaluation and/or surgery	yes	yes	no
<b>AT</b>	sex discrimination	hormonal treatment and/or surgery	After medical evaluation and/or surgery	Yes, but Mental Health evaluation, hormonal treatment and sterility required	yes	yes
<b>PL</b>	sex discrimination	hormonal treatment and/or surgery	no law	no law	no law	yes
<b>PT</b>	no law	hormonal treatment and/or surgery	After medical evaluation and/or surgery	no	non	yes
<b>RO</b>	no law	no provision	no law	no law	no law	no law
<b>SI</b>	no law	no provision	Easy, without medical evaluation	no law	no law	no law
<b>SK</b>	sex discrimination	no provision	Easy, without medical evaluation	no law	yes	no law
<b>FI</b>	sex discrimination	no hormonal and/or surgery requirements	After medical evaluation and/or surgery	Yes, but Mental Health evaluation, hormonal treatment and sterility requirement	yes	yes
<b>SE</b>	sex discrimination	no provision	After medical evaluation and/or surgery	no, but under review	yes	yes
<b>UK</b>	sex discrimination	no hormonal and/or surgery requirements	Easy, without medical evaluation	Yes, but gender recognition certificate (including Mental Health evaluation, and real life experience required)	yes	yes

**Source: The European Parliament (2010): Transgender Persons' Rights in the EU Member States**

<b>Appendix 4: Membership of the Joint Committee on Education and Social Protection</b>
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Chair	Joanna Tuffy (Lab)
Deputies	James Bannon (FG) Ray Butler (FG) Joan Collins (PBPA) Clare Daly (IND) Brendan Griffin (FG) Jim Daly (FG) Derek Keating (FG) Charlie McConalogue (FF) Nicky McFadden (FG) Jonathan O'Brien (SF) Willie O'Dea (FF) Aodhán Ó Riordáin (Lab) Aengus Ó Snodaigh (SF) Brendan Ryan (Lab)
Senators	Terry Brennan (FG) Jim D'Arcy (FG) Marie Moloney (Lab) Mary Moran (Lab) Marie-Louise O'Donnell (IND) Averil Power (FF)

## **Appendix 5: Orders of Reference of the Joint Committee**

### **a. Functions of the Committee – derived from Standing Orders [DSO 82A; SSO 70A]**

- (1) The Select Committee shall consider and report to the Dáil on—
  - (a) such aspects of the expenditure, administration and policy of the relevant Government Department or Departments and associated public bodies as the Committee may select, and
  - (b) European Union matters within the remit of the relevant Department or Departments.
- (2) The Select Committee may be joined with a Select Committee appointed by Seanad Éireann to form a Joint Committee for the purposes of the functions set out below, other than at paragraph (3), and to report thereon to both Houses of the Oireachtas.
- (3) Without prejudice to the generality of paragraph (1), the Select Committee shall consider, in respect of the relevant Department or Departments, such—
  - (a) Bills,
  - (b) proposals contained in any motion, including any motion within the meaning of Standing Order 164,
  - (c) Estimates for Public Services, and
  - (d) other mattersas shall be referred to the Select Committee by the Dáil, and
  - (e) Annual Output Statements, and
  - (f) such Value for Money and Policy Reviews as the Select Committee may select.
- (4) The Joint Committee may consider the following matters in respect of the relevant Department or Departments and associated public bodies, and report thereon to both Houses of the Oireachtas:
  - (a) matters of policy for which the Minister is officially responsible,
  - (b) public affairs administered by the Department,
  - (c) policy issues arising from Value for Money and Policy Reviews conducted or commissioned by the Department,
  - (d) Government policy in respect of bodies under the aegis of the Department,
  - (e) policy issues concerning bodies which are partly or wholly funded by the State or which are established or appointed by a member of the Government or the Oireachtas,
  - (f) the general scheme or draft heads of any Bill published by the Minister,

- (g) statutory instruments, including those laid or laid in draft before either House or both Houses and those made under the European Communities Acts 1972 to 2009,
  - (h) strategy statements laid before either or both Houses of the Oireachtas pursuant to the Public Service Management Act 1997,
  - (i) annual reports or annual reports and accounts, required by law, and laid before either or both Houses of the Oireachtas, of the Department or bodies referred to in paragraph (4)(d) and (e) and the overall operational results, statements of strategy and corporate plans of such bodies, and
  - (j) such other matters as may be referred to it by the Dáil and/or Seanad from time to time.
- (5) Without prejudice to the generality of paragraph (1), the Joint Committee shall consider, in respect of the relevant Department or Departments—
- (a) EU draft legislative acts standing referred to the Select Committee under Standing Order 105, including the compliance of such acts with the principle of subsidiarity,
  - (b) other proposals for EU legislation and related policy issues, including programmes and guidelines prepared by the European Commission as a basis of possible legislative action,
  - (c) non-legislative documents published by any EU institution in relation to EU policy matters, and
  - (d) matters listed for consideration on the agenda for meetings of the relevant EU Council of Ministers and the outcome of such meetings.
- (6) A sub-Committee stands established in respect of each Department within the remit of the Select Committee to consider the matters outlined in paragraph (3), and the following arrangements apply to such sub-Committees:
- (a) the matters outlined in paragraph (3) which require referral to the Select Committee by the Dáil may be referred directly to such sub-Committees, and
  - (b) each such sub-Committee has the powers defined in Standing Order 83(1) and (2) and may report directly to the Dáil, including by way of Message under Standing Order 87.
- (7) The Chairman of the Joint Committee, who shall be a member of Dáil Éireann, shall also be the Chairman of the Select Committee and of any sub-Committee or Committees standing established in respect of the Select Committee.
- (8) The following may attend meetings of the Select or Joint Committee, for the purposes of the functions set out in paragraph (5) and may take part in proceedings without having a right to vote or to move motions and amendments:
- (a) Members of the European Parliament elected from constituencies in Ireland, including Northern Ireland,
  - (b) Members of the Irish delegation to the Parliamentary Assembly of the Council of Europe, and

- (c) at the invitation of the Committee, other Members of the European Parliament.

**b. Scope and Context of Activities of Committees (as derived from Standing Orders [DSO 82; SSO 70]**

- (1) The Joint Committee may only consider such matters, engage in such activities, exercise such powers and discharge such functions as are specifically authorised under its orders of reference and under Standing Orders.
- (2) Such matters, activities, powers and functions shall be relevant to, and shall arise only in the context of, the preparation of a report to the Dáil and/or Seanad.
- (3) It shall be an instruction to all Select Committees to which Bills are referred that they shall ensure that not more than two Select Committees shall meet to consider a Bill on any given day, unless the Dáil, after due notice given by the Chairman of the Select Committee, waives this instruction on motion made by the Taoiseach pursuant to Dáil Standing Order 26. The Chairmen of Select Committees shall have responsibility for compliance with this instruction.
- (4) The Joint Committee shall not consider any matter which is being considered, or of which notice has been given of a proposal to consider, by the Committee of Public Accounts pursuant to Dáil Standing Order 163 and/or the Comptroller and Auditor General (Amendment) Act 1993.
- (5) The Joint Committee shall refrain from inquiring into in public session or publishing confidential information regarding any matter if so requested, for stated reasons given in writing, by—
  - (a) a member of the Government or a Minister of State, or
  - (b) the principal office-holder of a body under the aegis of a Department or which is partly or wholly funded by the State or established or appointed by a member of the Government or by the Oireachtas:

Provided that the Chairman may appeal any such request made to the Ceann Comhairle / Cathaoirleach whose decision shall be final.

