



An Bille um Inscne a Aithint (Leasú), 2017
Gender Recognition (Amendment) Bill 2017

Meabhrán Míitheach agus Airgeadais
Explanatory and Financial Memorandum



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GENDER RECOGNITION (AMENDMENT) BILL 2017**

EXPLANATORY AND FINANCIAL MEMORANDUM

Introduction

In this Explanatory and Financial Memorandum the Gender Recognition (Amendment) Bill 2017 is referred to as “the GRB 2017”. The Gender Recognition Act 2015 is referred to as the “Principal Act”.

Section 2

The status of non-binary persons in the review of operation of Act

Section 2 of the GRB 2017 requires the Minister to specifically consider, in addition to the topics and questions that the Minister chooses to look at during the two-year review of the operation of the Principal Act, the possibility of providing a Gender Recognition Certificate to persons who do not identify as male/man or female/woman.

Section 3

Right to self-determination for persons who have reached the age of 16 years

Section 3 of the GRB 2017 introduces a right of self-determination for persons who have reached the age of 16 years. Under the Principal Act, persons who have reached the age of 16 years are entitled to obtain a Gender Recognition Certificate. However, those under 18 years are subjected to a specialized application procedure which, according to section 12 of the Principal Act, involves a court order, parental consent and the intervention of medical professionals. *Section 3* of the GRB 2017 ensures that persons who have reached the age of 16 years can access a Gender Recognition Certificate on the same terms as currently apply to persons who are 18 years or older under the Principal Act.

Section 3 of the GRB 2017 does not amend the conditions which persons, who have reached the age of 18 years (and those who, after the commencement of the GRB 2017, have reached the age of 16 years) have to fulfil in order to obtain a Gender Recognition Certificate. Following the commencement of *section 3* of the GRB 2017, all those who have reached the age of 16 years will still be required to satisfy the criteria which are currently set out in section 10 or section 11 of the Principal Act.

Section 4

Legal gender recognition for persons under the age of 16 years

Section 4(1) and *(2)* of the GRB 2017 ensure that the Circuit Family Court is no longer prohibited from making an exemption order under section 12 of the Principal Act for the sole reason that the child has not reached the age of 16 years. The effect of *section 4(1)* and *(2)* of the GRB 2017 is that the Principal Act no longer enforces a minimum age for a child under which the next friend of that child cannot apply for a Gender

Recognition Certificate. *Section 4(6)* of the GRB 2017 (which inserts a new subsection (8) in section 12 of the Principal Act) explicitly reiterates that nothing in the Principal Act (as amended by the GRB 2017) should be interpreted as imposing a minimum age under which the Court cannot make an exemption order under section 12.

Section 4(3) of the GRB 2017 removes the requirement, currently enforced under subsections (4)(b) and (4)(c) of section 12 of the Principal Act, that a Court cannot make an order under section 12 without an affirmative certificate from the child's primary treating medical practitioner and a corroborating certificate from either an independent endocrinologist or an independent psychiatrist. *Section 4(3)* of the GRB 2017 (which substitutes a new subsection (4) for the original in section 12 of the Principal Act) recognises that, while medical practitioners can play an important role in transitioning processes for transgender and gender-variant children and their families, legal gender recognition for persons under 16 years should not be conditional upon medical assent. However, subject to the terms of the new subsection (5A) of the Principal Act (as inserted by *section 4(4)* of the GRB 2017), the GRB 2017 recognises and reaffirms the role of parental consent in the application for obtaining a Gender Recognition Certificate for persons under the age of 16 years.

Section 4(4) of the GRB 2017 inserts a new subsection (5A) into section 12 of the Principal Act. *Section 4(4)* of the GRB 2017 ensures that, in considering whether it would not be appropriate to require that one or both parents or guardians consent to the Court making an order under section 12 of the Principal Act, the Court must have regard to the fact that parents or guardians may withhold consent for the making of an order in circumstances where their refusal is inconsistent with the best interest of the child. In such circumstances, subsection (5A), read in conjunction with subsection (5) of section 12 of the Principal Act, would permit the Court to dispense with the requirement of parental or guardian consent if such dispensation promotes the best interest of the child.

Section 4(5) of the GRB 2017 deletes and substitutes a new subsection (6) for the original in section 12 of the Principal Act. *Section 4(5)* affirms that, in considering whether to make an exemption order under section 12 of the Principal Act, the Court must be guided by the best interest of the child. The new subsection (6) of section 12 of the Principal Act applies to all of the Court's actions and considerations under section 12. In determining whether to make an order under section 12, the Court should consider whether granting or refusing the order best serves the interests of the child. In appraising what course of action best serves the interest of a given child, the Court should ensure, as far as practicable, that where a child is capable of forming his or her own views, the views of the child shall be ascertained and given due weight having regard to the age, maturity and evolving capacities of the child.

Section 5

Consequential amendments

Section 5 of the GRB 2017 amends section 15(8)(b) of the Principal Act to reflect, and create consistency with, the reduction in the age requirement affected by *section 3* of the GRB 2017 (amending subsection (2)(a) in section 9 of the Principal Act).

Senator Fintan Warfield
Márta, 2017.