



# **Submission to Review of the Gender Recognition Act 2015**

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# Arrangements for children aged 16 to 17 years;

*Sinn Féin recommends that the Gender Recognition Act 2015 should be amended to remove the additional requirements placed on the 16 and 17 year olds.*

We believe that the requirements of going through the Courts Service (with accompanying medical documentation) are unnecessary, onerous and intrusive. We propose that the self-declaration model that is currently in place for those over 18 years of age be extended to those of 16 and 17 years of age.

The current system is an arduous and invasive process where a person needs to justify their own intention to be their preferred gender. From the perspective of a young person, it can be seen that the institutions need to be convinced of a matter that should be entirely treated as personal.

Currently, a person at the age of sixteen is of legal age to:

- Pay tax.
- Drive a car.
- Seek full-time employment.
- Travel Internationally.

While at age 17 can give sexual consent.

It is noted by the Irish Human Rights and Equality Commission that the Gender Recognition Act fails to align with section 23 of the Non-Fatal Offences Against the Person Act, 1997, which recognises that a person over 16 years is capable of consenting to medical treatment and thus, conflicting with one's right to respect for private life under Article 8 of the ECHR.

We would believe that the additional requirements placed upon those of 16 and 17 years of age are a remnant of the Gender Recognition Bill 2014 (as initiated), when those medical requirements were applied to those of 18 years of age and over. Those requirements were later removed by amendment through the legislative process while the medicalisation was not removed for those of 16 and 17 years of age. The Minister of State for Employment, Community and Social Support Kevin Humphries detailed that he wished these additional requirements be reviewed and that was a core tenant of the Department's basis for accepting such a review.<sup>1</sup>

Additionally, Sinn Féin proposed legislation in the Seanad in 2017, namely the Gender Recognition (Amendment) Bill 2017 which aimed to equalise the requirements between those of 16 and 17 years of age with those of 18 years of age and over.<sup>2</sup> This received support from all opposition parties and was unopposed by government.

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1 <https://www.kildarestreet.com/committees/?id=2015-06-17a.1610#g1634>

2 Gender Recognition (Amendment) Bill 2017 Section 3 pg. 3 <https://www.oireachtas.ie/documents/bills28/bills/2017/4317/b4317s.pdf>



# Arrangements for children aged under 16 years

*Sinn Féin recommends that the Gender Recognition Act 2015 should be amended to allow for Gender Recognition for those under 16 years of age.*

According to the research, transgender young people can realise their discordance with gender identities and biological representation as early as 6 years of age, with a mean age of 10.4 years.<sup>3</sup>

There is a concern that the institutional isolation that denies transgender young people gender recognition furthers the social isolation that they feel and prevents them from ‘coming out’ and can contribute to the mental health issues that is well documented in the LGBT Ireland report.<sup>4</sup>

We feel that the daily issues that arise for a transgender young person are troubling. For example, a transgender young person who holds a passport that states a gender that differs from their personal gender representation, they cannot travel in fear of the potential issues that may arise at passport controls. Furthermore, a transgender young person may face difficulties in schools or sports teams that they now do not comply with their gender-specific aspects. In reality, these issues can deny a transgender young person rights to wear a uniform, use a restroom or play with a sports team of their preferred gender. Gender Recognition allows for legal certainty, in this regard and with it, the legal rights to be seen and treated in their preferred gender.

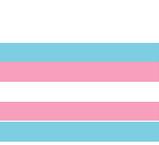
Sinn Féin proposed in the Gender Recognition (Amendment) Bill 2017 that those under 16 years of age would be able to apply for a Gender Recognition Certificate and subsequent change of legal documents given parental or guardian consent. Failing that, a judicial officer may intervene to protect the rights of the young person.<sup>5</sup> In that manner, Sinn Féin would propose the same model. We would strongly assert that the medicalisation aspects (for those of 16 and 17 years of age) should not be extended to those under 16 years of age and that

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3 Grossman, A. H.; D’Augelli, A. R. (2006). "Transgender Youth: Invisible and Vulnerable". *Journal of Homosexuality*. 51 (1): 111–128. doi:10.1300/J082v51n01\_06. PMID 16893828

4 See LGBT Ireland key findings: [http://www.hse.ie/eng/services/list/4/Mental\\_Health\\_Services/NOSP/Research/reports/lbgt-ireland-key-findings.pdf](http://www.hse.ie/eng/services/list/4/Mental_Health_Services/NOSP/Research/reports/lbgt-ireland-key-findings.pdf)

5 Gender Recognition (Amendment) Bill 2017 Section 4 pg. 4 <https://www.oireachtas.ie/documents/bills28/bills/2017/4317/b4317s.pdf>



medicalisation should be removed from the gender recognition process entirely.

Regarding a lower age limit, the Gender Recognition (Amendment) Bill 2017 did not propose a lower age limit. An age requirement under International Gender Recognition is effectively an exception rather than the norm. Numerous countries have enacted provision for Gender Recognition for young people including Argentina, Norway, Germany, New Zealand, Australia with Sweden and Belgium. We do not feel there is any evidence, substantial or anecdotal, that this is open to abuse. Gender Recognition, by definition, is a change in legal recognition i.e. legal documents which must be validated by parents, guards or via court order. Any concern over abuse over forced genderisation against the will of the child falls outside the remit of gender recognition but would be prevented by robust child protection laws.



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

*Sinn Féin propose that non-binary persons should be able to avail of certification (similar to a gender recognition certificate) that allows them to modify their stated gender to a non-specific format, if they so choose.*

When the state enacted the Gender Recognition Act 2015, it became one of the most progressive jurisdictions to be recognised in a person's preferred gender. However, the Act reneged to include the non-binary community. Non-binary instinctively do not abide by an exclusively male or female format so that accommodations can and should be made to reflect that.

Sinn Féin assert that certain accommodations can be made but would recommend that further consultations should be made with the non-binary community and their views should form whatever amendments to the Gender Recognition Act 2015 that are necessary.

Sinn Féin would recommend:

- Non-binary persons should be able to avail of certification (similar to a gender recognition certificate) that allows them to modify their stated gender to a non-specific format. This could take many forms but all forms of legal documents should take this, not just passports. Furthermore, it should encompass non-binary or other.
- We would further recommend that all state application forms or entries which require a stated gender that the options of 'non-binary or other' should be stated as a stated option. Additionally, a gender neutral honorific should be available such as 'Mx'.
- Allowance for non-binary recognition for those under 16 years of age also.
- Finally, the state should seek advice on how the Oireachtas may mitigate gendered language in legislation going forward.

## Arrangements for intersex people;

*Sinn Féin propose that intersex should be able to avail of certification (similar to a gender recognition certificate) that allows them to modify their stated gender to a non-specific format, if they so choose.*

Intersex persons have been facilitated in early Roman law, post-classical Canon law and Common law. Typical binary options of male and female were later formalised. Intersex has been present in law previous to later manifestations of Roman or Common law.

During the debates of the Gender Recognition Act 2015, then Minister for Social Protection Joan Burton TD indicated that the Gender Recognition process would “facilitate applications for gender recognition from people with intersex conditions”.<sup>6</sup> The enacted version did not contain this provision, however. The Gender Recognition process is exclusive to the binary options of male or female.

Again, Sinn Féin would assert that thorough consultation must be done with the intersex community by the review group to ascertain their views as to how the Gender Recognition Act 2015 should be amended.

Sinn Féin would recommend in this instance:

- Intersex persons should be able to avail of certification (similar to a gender recognition certificate) that allows them to modify their stated gender to a non-specific format. This could take many forms but all forms of legal documents should take this, not just passports. Furthermore, it should encompass an ‘other’ option.
- We would further recommend that all state application forms or entries which require a stated gender that the options of ‘other’ should be stated an additional option. Additionally, a gender neutral honorific should be available such as ‘Mx’.
- Allowance for intersex recognition for those under 16 years of age also.
- Finally, the state should seek advice on how the Oireachtas may mitigate gendered language in legislation going forward.

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6 Opening address by Min. Joan Burton TD: Gender Recognition Bill 2014: Second Stage 21/1/15  
<https://www.kildarestreet.com/sendebates/?gid=2015-01-21a.101>



## **Any other relevant issues, including issues relating to the operation of the current legislative provisions**

### *Access to transgender healthcare*

As previously stated, Sinn Féin would support the complete removal of medicalisation from the Gender Recognition processes. We would point out that the current legislation requires those of 16 and 17 years of age to provide a supporting statement from an endocrinologist or psychiatrist. There is currently one psychiatrist (based at St Patrick's Hospital, Dublin) qualified to diagnose Gender Identity Disorder available for all Irish transgender people and one endocrinologist (based in St. Columcille's Hospital, Loughlinstown, Dublin) with expertise in transgender hormone therapy currently serves the needs of all transgender people in the 26 counties. It has been reported that waiting lists of 18 months are now in place for an appointment or initial assessment with an endocrinologist. This stifles effort of those that require medical documents for gender recognition. Sinn Féin would assert that while a medical diagnosis requirement stays in place, in the absence of an amending bill that removes medicalisation, the Department of Health should be encouraged to broaden options for such documentation and overall access to transgender-based healthcare by the review group.





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