

Gender Recognition Act 2015

Annual Report for 2017

prepared in accordance with section 6
of the Act



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

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1. Introduction

The Gender Recognition Act 2015 (“the Act”) was enacted on 22 July 2015 and commenced on 4 September 2015. This Annual Report is drafted in accordance with section 6 of the Act. In particular it reports on applications made for a gender recognition certificate, applications where an applicant already has recognition in another jurisdiction, revocations of gender recognition certificates by the Minister, applications to revoke a gender recognition certificate by the holder and correction to a gender recognition certificate.

This is the third report to be published under the Act and covers the period 1 January 2017 to 31 December 2017. Annual reports from previous years are available at <http://www.welfare.ie/en/Pages/Gender-Recognition.aspx>

2. Background

The need to introduce legislation in this area stemmed from a High Court Order in March 2008. The Order declared that certain sections of the Civil Registration Act 2004 were incompatible with the obligations of the State under the European Convention on Human Rights by not providing for a gender recognition process. The Act addresses this by providing that a person’s preferred gender is fully recognised by the State for all purposes. This is achieved through the issuing of a gender recognition certificate by the Department of Employment Affairs and Social Protection. More specifically section 18 of the Act states:

'Where a gender recognition certificate is issued to a person the person’s gender shall from the date of that issue become for all purposes the preferred gender so that if the preferred gender is the male gender the person’s sex becomes that of a man, and if it is the female gender the person’s sex becomes that of a woman.'

Other key effects of the legislation for those wishing to have their gender recognised include:

- The person whose preferred gender is recognised can obtain a new birth certificate from the General Register Office which shows the preferred gender and new names (if names are also changed) where their birth is registered in Ireland.
- All rights, responsibilities and consequences of actions by the person in their original gender prior to the date of recognition are unaffected.

The principal features of the Act include provisions for:

- A self-declaration model for transgender people aged 18 or over;
- The use of the term 'preferred gender' in the wording of the Act;
- A route to recognition for 16 to 18 year olds;
- A formal review of the operation of the Act to be started no later than two years after its commencement; and
- Alignment of legislation in relation to the issuing of passports to transgender people.

3. Amendments

The Act initially provided that an applicant for a gender recognition certificate must be unmarried (this was necessary pending the outcome of legal challenges to the Marriage Equality Referendum). Following the dismissal of the legal challenges, an amendment to the Act was made in the Marriage Act 2015 which removed the requirement for an applicant to be unmarried.

4. Client Identity Services

Applications for gender recognition certificates are processed by the Client Identity Services division in the Department of Employment Affairs and Social Protection. The division has responsibility for establishing and authenticating customer identity as well as supporting the development of an identity policy framework for the governance and delivery of identity management services.

One of the key functional areas of Client Identity Services is the Data Quality Management area. Since July 2015, a small team of three people from that area have had responsibility for the operation of the Act, which includes processing of applications for a gender recognition certificate. The system that applications are processed through can only be accessed by the gender recognition certificate team in the Data Quality Management area. Confidentiality is a vital component of the gender recognition certificate application process. Once the application is processed the records are updated to reflect the new gender. Generally, a gender recognition certificate is issued to the client in 2-3 working days of the decision to grant being made.

5. General Register Office

The General Register Office is the central civil repository for records relating to births, stillbirths, deaths, marriages, civil partnerships and adoptions in Ireland. It operates under the aegis of the Department of Employment Affairs and Social Protection and has responsibility for the administration of the Civil Registration Service in Ireland.

The Registrar General is responsible for managing and controlling the system of registration in Ireland while the Health Service Executive is responsible for the day to day delivery of the Civil Registration Service through a network of local civil registration service offices across the State.

The Gender Recognition Act 2015 amended the Civil Registration Act 2004 by requiring the Registrar General to establish and operate a register of gender recognition. When a person has received a gender recognition certificate they may apply to be included in this register. This will allow a birth certificate showing the new gender of the person to be issued from the register. As privacy is a crucial element of the gender recognition process, the register of gender recognition and the link to the original birth registration are confidential. To further ensure confidentiality the birth certificates showing the new gender can only be obtained from the General Register Office, by the person the birth certificate relates to or, if they are deceased, the surviving family.

6. Statistics – Gender Recognition Act 2015

Applications for a Gender Recognition Certificate

The total number of applications for a gender recognition certificate received in 2017 was 99. **Table 1** details the total number of gender recognition certificate applications processed, by age:

Table 1 - Gender Recognition Certificates

Year	Applications Received			Applications Granted			Applications Refused		
	Age 16/17	Age 18+	Total	Age 16/17	Age 18+	Total	Age 16/17	Age 18+	Total
2017	3	96	99	2	97	99¹	Nil	1	1
2016	6	104	110	6	103	109²	Nil	Nil	Nil
2015³	2	87	89	2	87	89	Nil	Nil	Nil
Totals	11	287	298	10	287	297	Nil	1	1

¹ Two applications on hands on 31 December 2017 – These fall to be processed in 2018

² One application on hands on 31 December 2016 – Processed in 2017

³ From Commencement of Act on 4 September 2015 to 31 December 2015

Under section 8(3) of the Act, the Minister can decide to issue a gender recognition certificate or refuse to issue a gender recognition certificate. Where a decision is made to refuse an application the Minister must, under section 8(5), inform the applicant of the reasons for the decision and inform the applicant of their right to appeal to the Circuit Family Court within 90 days of the date of notice. Possible reasons for refusal include the applicant not being a person who may apply for a gender recognition certificate (as provided for section 9 of the Act); the person's preferred gender being other than that of male or female which is not covered by the provisions of the Act; or the application being in respect of 16 or 17 year old but without the court exemption required under section 12.

Registrations on the Register of Gender Recognition

Table 2 outlines the total number of registrations on the Register of Gender Registration by age. A total of 60 registrations were made on the Register of Gender Recognition during 2017.

Table 2 - Registrations on the Register of Gender Recognition by age

Year	Age 16/17	Age 18+	Total
2017	0	60	60
2016	6	71	77
2015⁴	2	54	56
Totals	8	185	193

⁴ From Commencement of Act on 4 September 2015 to 31 December 2015

Non-Irish born residents

Under section 9(1)(b) of the Act a non-Irish born resident of the State may apply for a gender recognition certificate. Of the 99 gender recognition certificates issued in 2017, 26 were to non-Irish born residents of the State. All of the applicants were aged 18 years or over. A total of 55 gender recognition certificates have been issued under this section since the commencement of the Act.

Recognition in another jurisdiction

Section 11(2) of the Act allows a person who has changed gender in another jurisdiction to apply for a gender recognition certificate. No applications were received under this section during 2017. Since the commencement of the Act a total of 4 certificates have been issued under this provision.

Revocations

Under section 14 of the Act the Minister can revoke a gender recognition certificate where information is received that would have led to the refusal of the certificate, had it been received prior to its issue. No gender recognition certificates were revoked by the Minister in 2017 under this section.

Where the holder of a gender recognition certificate wants to revert to their original gender, section 15 of the Act allows them to apply to the Minister to revoke the certificate. Two applications to revoke a gender recognition certificate under this section were received, and granted, in 2017. These are the only revocations made since commencement of the Act.

Amendments to gender recognition certificates

Under section 16 of the Act a gender recognition certificate holder can apply to the Minister to have the certificate amended if there is a clerical error or an error of fact in the content of the certificate. Two applications to amend a Gender Recognition Certificate were received and processed during 2017. These are the only corrections made since commencement of the Act.

7. Other Statistics

Passport Act 2008

Section 38 of the Act amends the Passports Act 2008 so that a holder of a gender recognition certificate may apply to the Minister for Foreign Affairs and Trade and request a passport to be issued in the name and gender specified on the gender recognition certificate.

The Department of Foreign Affairs and Trade has issued 25 passports to gender recognition certificate holders during 2017 – none of these were issued to individuals aged less than 18 years. Since the commencement of the Act, 50 passports have been issued to gender recognition certificate holders, 5 of whom were aged less than 18 years

Irish Nationality and Citizenship Act 1956

In order to allow a person on the foreign birth register to have their preferred gender recognised, section 31 of the Act amended the Irish Nationality and Citizenship Act 1956 to provide for the establishment and maintenance of a register of gender recognition of foreign births by the Department of Foreign Affairs and Trade. It was not possible to apply under this provision prior to 1 December 2017 when regulations giving effect to this section came into operation⁵. There were no applications in December 2017.

Adoption Act 2010

Section 33 of the Gender Recognition Act 2015 amends the Adoption Act 2010 to allow the Adoption Authority of Ireland to establish a “register of gender recognition of intercountry adoptions”. Two registrations were entered on the register of gender recognition of intercountry adoptions during 2017. A total of 4 applications were received under this provision since commencement of the Act.

⁵ S.I. No. 539/2017 Gender Recognition of Foreign Births Regulations 2017 refers. It is available here: <http://www.irishstatutebook.ie/eli/2017/si/539/made/en/print>

8. Review of the operation of the Act

Section 7 of the Act provides that the Minister shall commence a review of the Act within 2 years of it coming into operation.

The Minister for Employment Affairs and Social Protection, Regina Doherty, T.D. appointed a Review Group chaired by Moline Griffith (Belong To) that is comprised of representatives from support and advocacy organisations and Government Departments with an interest in this area. The Review Group is comprised of the following:

Moninne Griffith (Belong To)⁶ (Chair),
Sara Philips (TENI)⁷
Tanya Ní Mhuirthile (Dublin City University),
Joanne Byrne (Dept. of Children and Youth Affairs),
Seamus Byrne (Individuality)⁸,
Michele Clarke (Chief Social Worker, Dept. of Children and Youth Affairs),
Anne O'Donnell (Hub na nÓg)⁹,
Adam Egan (Dept. of Justice and Equality),
Olive McGovern (Dept. of Children and Youth Affairs),
Gráinne Morrissey (Dept. of Education and Skills),
Nuala Ní Mhuircheartaigh (Dept. of Foreign Affairs and Trade),
Dearbháil Nic Giolla Mhicí (Dept. of Employment Affairs and Social Protection),
Diane Nurse (Health Service Executive),
Tracy O'Keeffe (Dept. of Justice and Equality),
Gavan O'Leary (Dept. of Education and Skills),

⁶ BeLonG To is the national organisation supporting lesbian, gay, bisexual, transgender, and intersex (LGBTI+) young people in Ireland aged between 14 and 23 years.

⁷ Transgender Equality Network Ireland (TENI) is the national organisation that seeks to improve conditions and advance the rights and equality of trans people and their families.

⁸ BeLonG To's youth group for Transgender young people in Dublin

⁹ An organisation which supports Government Departments, State agencies and non-government organisations to give children and young people a voice in decision-making on issues that affect their lives.

The secretariat is provided by the Department of Employment Affairs and Social Protection.

The Review Group commenced its work in November 2017.

A report on the findings of the review, and the conclusions drawn from the findings, must be presented by the Minister to each House of the Oireachtas not later than 12 months after the start of the review.

The Terms of Reference of the Review are:

1. To report to the Minister for Employment Affairs and Social Protection on the operation of the Gender Recognition Act 2015 since its commencement.
2. To review the current arrangements under the Gender Recognition Act 2015 including, but not confined to, the following:
 - a) (i) Children aged 16 to 17 years,
 - (ii) Children aged less than 16 years,
 - b) Persons who identify as neither male nor female (e.g. non-binary), and
 - c) Any other issues such as intersex conditions.
3. To look at the arrangements in other countries.
4. To consult widely with relevant stakeholders, including those who were consulted in the preparation of the Gender Recognition Act 2015 and to report to the Minister on the consultation process.
5. To make any recommendations to the Minister, which arise as a result of the Group's review of the Gender Recognition Act 2015 in relation to the operation of the Act.
6. The report of the review group should be completed and presented to the Minister for Employment Affairs and Social Protection, ideally by end May 2018.