

Green Party

Gender Recognition

Policy



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1. Summary & Key Points

The Green Party supports the amendment of the Gender Recognition Act 2015 to include recognition by self-declaration for non-binary and non-gendered individuals; to make recognition for trans people aged 16 and 17 equal to that already enjoyed by those over 18; and to introduce a system of gender recognition for children under 16.

In addition we support the following changes to other legislation and practice to protect the human rights of transgender and intersex people:

- addition of protection for transgender and intersex people to existing hate crime legislation and its inclusion in any new legislation
- explicit addition of transgender and intersex people to the Equal Status Act and Employment Equality Act
- the introduction of a requirement for provision of gender-neutral public toilet facilities for those who prefer/need to use them (separate from existing accessible toilets for people with disabilities)
- legislation affirming the right to use public toilet facilities appropriate to gender
- the introduction of improved education for young people e.g. in SPHE/RSE in schools, to reduce transphobic bullying both in schools and after leaving school
- increased availability of support and medical services e.g. hormone replacement therapy, gender confirmation surgery, psychological services, and funding for support groups.
- affirmation of the right to bodily integrity for intersex people
- protection for transgender/intersex people when arrested or imprisoned

2. Policy Details

The proposed amendments to the Gender Recognition Act are largely already contained in the Gender Recognition (Amendment) Bill, 2017, co-sponsored by Green Senator Grace O'Sullivan and currently under consideration in the Oireachtas.¹ The 2017 Bill amends the 2015 Gender Recognition Act, which introduced legal gender recognition by self-declaration, making Ireland's laws on gender recognition among the most progressive in the world.

2.1 Recognition for non-binary/non-gendered people: Many of us (some surveys estimate up to about one in three of transgender people) do not identify with one of the two most frequently encountered genders (female and male). Currently it is impossible to apply for most public services (driving licence, benefits, interactions with Revenue, etc) or for an Irish passport without declaring yourself to be either male or female. Most commercial organisations (e.g. banks) also require such information, or use a restricted range of titles that are all gendered. This denial of a person's existence is a very basic infringement of human rights and contravenes our obligations under the Yogyakarta Principles (a set of international legal principles codifying how international human rights law applies to sexual orientation and gender identity, drafted by Irish human rights lawyer Michael O'Flaherty and drawn up at a meeting of international lawyers and human rights experts including former President Mary Robinson).²

A study by the Australian Human Rights Commission³ considered how people whose identity is outside the "gender binary" could be recognised, and this resulted in new government guidelines introduced in 2013. In many cases it was decided to be simply unnecessary to ask or record a person's gender on official documents or records. In cases where a gender marker is required by international conventions, such as passports, gender can now be represented on Australian passports by an X, meaning 'Indeterminate/ Intersex/ Unspecified'. The introduction of this X option is allowed by the International Civil Aviation Organisation, which regulates passport formats, and its introduction in Ireland would allow the inclusion and representation of intersex, non-binary, non-gendered, genderfluid and genderqueer people, as well as people of indeterminate

1 <http://www.oireachtas.ie/documents/bills28/acts/2015/a2515.pdf>,
<http://www.oireachtas.ie/documents/bills/2017/4317/b4317s.pdf>

2 <http://www.yogyakartaprinciples.org>

gender, in Irish law for the first time. As well as Australia, there is precedent for such a legal option in Bangladesh, Denmark, Nepal and New Zealand.

The Gender Recognition (Amendment) Bill proposes that recognition of people whose identity lies outside the gender binary be explicitly included in the forthcoming review of the 2015 Act; we propose (in line with our Green colleagues in the UK) that legal recognition by self-declaration be extended to this important group of people. The practical means to achieve this would most likely be broadly similar to those already implemented in Australia.

2.2 Recognition by self-determination for 16-17 year olds: The Gender Recognition Act 2015 allows for recognition of 16-17 year olds, but only with support of both parents (if alive) and a medical practitioner. In some families, and with some doctors, this may be problematic. We propose, in line with the Gender Recognition (Amendment) Bill, to extend recognition by self-determination to young people of 16 and 17 years old on the same basis as over-18s.

2.3 Recognition for children below 16 years: Currently the 2015 Act offers nothing at all for transgender people under 16, which causes distress to younger people whose gender identity differs from the one assigned at birth. During the passage of the 2015 Act through the Oireachtas, Opposition amendments were proposed with the support of Transgender Equality Network Ireland to provide for an interim recognition which (among other things) would allow a child to attend a school appropriate to the gender they identify with, or to be accepted as and wear the uniform of that gender if at a mixed school (these amendments were opposed by the then Government and therefore unsuccessful). The Gender Recognition (Amendment) Bill proposes to extend the current system offered to 16-17 year olds to children under 16.

2.4 Further Policy Points

In addition to the proposals above, we propose a number of changes to other legislation and practice, as explained below.

3 <https://www.humanrights.gov.au/our-work/sexual-orientation-sex-gender-identity/publications/sex-files-legal-recognition-sex>

Hate crime: Under the Prohibition of Incitement to Hatred Act 1989, the following categories of hate crime are covered: race, colour, nationality, religion, ethnic or national origins, membership of the travelling community or sexual orientation. Our policy calls for hate crime directed at transgender and intersex persons to be added. It should be noted that there have been calls for improvement of Irish hate crime law and a draft bill was prepared – the Criminal Law (Hate Crime) Bill 2015. This bill included “gender expression” and “gender identity” among its categories but did not progress before the 2016 election. The policy thus refers both to existing and any new legislation.

Equality acts: Although the "gender" ground in published guidance on equality legislation does mention transgender (or “transsexual”) people, this term is not referred to in the Acts: its inclusion results only from a decision by the Equality Tribunal in 2011 that the “gender” ground includes transgender people. It would be a simple matter to change the Acts and thus give transgender and intersex people visible legal protection equal to that of other groups who may be subject to discrimination. Suitable amendments were proposed while the Gender Recognition Act was under discussion, but were not passed.

Toilet facilities: The first of these points covers any public place with toilet facilities, e.g. restaurant, pub, as well as public buildings like libraries, universities, schools etc, with a requirement to provide all gender toilets. We propose that these should be separate from existing accessible toilet facilities, to avoid the widespread re-labelling of accessible toilets for people with disabilities to make them also all-gender toilets. This is to avoid the extension of rights to one group of people resulting in the diminution of the rights of others. Clearly this requirement is more easily achievable in new builds, and its inclusion in retro-fit situations would need to be phased in over time.

The second point would explicitly protect a right that already tacitly exists here but has been under threat in other places, particularly in some states in the USA.

Support and medical services: The provision of counselling and support is key to the recognition of transgender and intersex persons. Limited availability of endocrinology services, and of hormone replacement therapy, creates serious problems and risk for some people who have

resorted to online sources to obtain hormones they need, often with harmful results. If a person wants to have gender confirmation surgery, few centres exist that can provide adequate services and people may have to travel to the UK for the services they need. We propose that the government is tasked to work to increase the availability of these services.

Intersex people: Non-interference with bodily integrity (unless chosen by the person) is established in practice but not secured in law. Intersex people used to be assigned as either male or female and had surgery at quite a young age to impose that; this can be very harmful and a "wait and see" approach is better. A legal right not to have surgery until the person can choose it (or not) for themselves would be welcomed by many in the intersex and transgender community.

Prison: This amendment would among other things prevent a person being put at risk by being sent to the prison of the gender assigned to them at birth, e.g. trans women being sent to a men's prison, where they would be in great danger. The Opposition amendment (which was not passed) to the 2015 Act stated this in quite general terms, that the choice of prison should be made with regard to the safety of the prisoner. The motion is also couched in general terms. Possible measures could include a cell alone when under arrest, choice of prison appropriate to gender (with protection) while incarcerated, and protection for the privacy and dignity of the person during admission procedures.

3.0 Appendix

- *Australia "Sex Files" report:* <https://www.humanrights.gov.au/our-work/sexual-orientation-sex-gender-identity/publications/sex-files-legal-recognition-sex>
- *Australian* *guidelines:* <https://www.ag.gov.au/publications/documents/australiangovernmentguidelinesontherecognitionofsexandgender/australiangovernmentguidelinesontherecognitionofsexandgender.pdf>
- *2015* *Gender* *Recognition* *Act:* <http://www.oireachtas.ie/documents/bills28/acts/2015/a2515.pdf>
- *2017* *Gender* *Recognition* *(Amendment)* *Bill:* <http://www.oireachtas.ie/documents/bills28/bills/2017/4317/b4317s.pdf>
- *2015 debate:* <https://www.kildarestreet.com/sendebates/?id=2015-07-15a.134>
- *2017 debate:* <https://www.kildarestreet.com/sendebates/?id=2017-05-10a.237>