

Ms Regina Doherty
Minister for Employment Affairs and Social Protection
Floor 1
Áras Mhic Dhiarmada
Store Street
Dublin 1

5th February, 2018

Gender Recognition Act, 2015

Gender Recognition Review Process

Dear Madam,

We are a group of peopleⁱ of Ireland who have come together at this time to communicate our concerns about the manner in which the State's obligations under the European Convention of Human Rights (ECHR), EU Directive 2000/78/EC and Directive 2004/113/EC, in so far as they relate to the law on Sex and Gender in Ireland, are being handled by the Irish State.

The current "consultation process" under the Gender Recognition Review Group ("the Review Group") constituted in November 2017, proposes to make recommendations on:

- i) existing law on Sex and Gender;
- ii) radical changes to the law on Sex and Gender implemented under the Gender Recognition Act, 2015;
- iii) changes to Sex and Gender law relating to children; and
- iv) further complex and radical changes to the law on Sex and Gender in this country,

We are gravely concerned at the alarming failures in process and the deliberate suppression of essential information by the Irish state both in relation to:

- i) the consultation process which gave rise to changes to the law on Sex and Gender under the Gender Recognition Act, 2015 (“the 2015 Act”); and
- ii) the consultation process currently being carried out by the Review Group.

For the purpose of this correspondence, given the complexity of the subject matter before the Review Group, and the purported deadline for submissions on these subjects of 5th February, 2018, we shall focus, in so far as is practicable, on the issues of process in the manner in which the Review Group was constituted in November 2017 and the manner in which it has conducted its business since that time.

Part I Background

The Gender Recognition Act, 2015

In 2015 Ireland implemented the Gender Recognition Act, 2015 (the 2015 Act), codifying the right of transgender persons to have their preferred Sex recognised by the legal institutions of the State.

Under the new system set up under the Act, upon the signing of a declaration of intention to live one’s life in their new preferred Sex, an individual is entitled to a Certificate from the Minister for Employment and Social Protection confirming their new Sex and an amended Birth Certificate, recording their new, preferred Sex. The State now holds the amended Birth Certificates of individuals who have elected to change Sex in a separate register. Transgender Equality Network Ireland (TENI) report that 156 people had applied for a new birth certificate under the legislation in the first 18 months after the 2015 Act was introduced.

Introduction of legal self-identification

The 2015 Act provided for the first time in Ireland for the process of self-identification. Under the 2015 Act, men and women wishing to live in a new gender can change their Sex from Male to Female, or from Female to Male, upon the signing of a form stating that they intend to live their lives in their newly chosen gender, often referred to as their “Preferred Gender.”

The 2015 Act provides for zero criteria in order to effect a legal change in Sex. Evidence of hormone treatment or sex-change surgery is not a requirement. Nor is any minimum period of living in a person’s new, preferred gender set out in the 2015 Act. No doctor’s cert confirming a diagnosis of gender dysphoria (the fact of being in conflict with one’s birth Sex) is required. These are all minimum requirements in other legal jurisdictions. No medical opinion recommending an individual proceed with the process for formally changing their Sex is required. No counselling is required.

IRELAND is one of just 5 countries in the world to enshrine in law a right to change Sex & obtain a Birth Certificate altering the Sex of birth upon the signing of a form (“self-identification”). The other four countries are India, Argentina, Malta and Denmark.

In so doing, Ireland went dramatically above and beyond what is required by the EU Directive and the European Convention on Human Rights. It was initially proposed, in keeping in line with most other jurisdictions in the EU, America and Canada, that applicants would be required to provide supporting testimony from endocrinologists & psychiatrists, but that requirement was dropped after fierce opposition from activists.

Criminal law of Ireland does not recognise preferred gender for the purpose of Sex Offences

S23 of the 2015 Act expressly provides that the birth Sex of an individual will take precedence over their new Sex as recognised under the 2015 Act for the purposes of Sex Offences law. The Criminal legal system of this country does not recognise gender self-identification and a Certificate of Change of Gender can be ignored for the purpose of prosecuting a sex offence. Not one person we spoke to was aware of the exclusion in respect of Sex Offences.

Failure to inform the public

The fact of the introduction of the 2015 Act, and the legal and practical implications of the Act for every man, woman and child in Ireland, are matters that have been deliberately withheld from the people of Ireland. At the time of writing, the vast majority of the voting public, including members of the legal profession, are unaware of the fact of the 2015 Act. They have zero knowledge of the radical changes to the law of Sex and Gender introduced in the 2015 Act. They have zero knowledge of the very serious implications of the 2015 Act on all of our lives. The great majority of Irish people have no understanding of what is meant by “gender,” “a transgender person,” “self-identification,” or “transitioning gender.”

Misinformation

The State has engaged in a campaign of misinformation suppressing facts surrounding the changes to the law on Sex and Gender introduced in the 2015 Act. The State has deliberately misled the public inducing people to believe that the 2015 Act does not affect them or their children. The State has deliberately disseminated the deception that the 2015 Act only affects trans people. The State has succeeded in its subterfuge because the great majority of people in Ireland have no knowledge or understanding of the subject matter of the 2015 legislation. The people of Ireland believe that the 2015 Act does not affect them or their children because their government told them so.

Amended Gender Recognition Bill 2017

In 2017 a Bill proposing dramatic and far reaching changes to the law on Sex and Gender was passed unopposed through the Seanad. Some 9 Senators spoke at length in favour of the new legislation. Not one member raised a single question or raised a single objection. One senator went so far as to say the new legislation was “a no-brainer.”

That Bill has now been torn up as poorly drafted, illogical and entirely unsustainable given the existing law of this country and the obligations of the State to promote Equality for all its citizens.

This frankly embarrassing episode illustrates the profound gap between the admirable desire to support and accommodate our trans community, and the knowledge and understanding of both the needs of trans people and the equally important objective of preserving existing protections of workplace equality, Sex Offences legislation, and the great wealth of laws and policies, both traditional and progressive, that currently protect vulnerable groups in society such as children, victims of domestic abuse, prostitutes, victims of child sex crime, victims of sex abuse and rape, and women generally.

Gender Recognition Review Group

In November 2017 the Minister for Employment Affairs and Social Protection announced the appointment of four people to a Gender Recognition Review Group. No terms of reference were communicated to the public at this time.

On 10th January the Terms of Reference were communicated to the public for the first time. On the same date, a Consultation Process was commenced with the public inviting submissions on 4 areas. No information was provided to the public on the complex and wide- reaching matters before the Review Group.

On 10th January 2018 a time limit of 5th February was announced for the submission of opinions, a period of less than 28 days.

A deadline of May 2018 has been announced for the completion of the Review Group. It is proposed that all consultation with individuals and interest groups be carried out, and the Final Report of the Review Group be completed between the 3 month period February to May 2018.

On 10th January, Minister Doherty said:

“This process is a key element of the review and I am keen to have the broadest possible level of consultation. I particularly want to hear the voices of young people on this issue.”

Minister Doherty went on to say,

The Review Group is due to submit its report to the Minister in May this year.

The Terms of Reference of the Review Group, announced on 10th January 2018 were set out on Welfare.ie:

“... on the current operation of the Gender Recognition Act 2015 and in relation to possible future operational and policy considerations. Reflecting the terms of reference of the review group, those wishing to make a submission should do so under the following headings:

- a. Arrangements for children aged 16 to 17 years;
- b. Arrangements for children aged under 16 years;
- c. Arrangements for persons who identify as neither male nor female (e.g. non-binary);
- d. Arrangements for intersex people;
- e. Any other relevant issues, including issues relating to the operation of the current legislative provisions.”

Part II Changes to the Constitutional Rights of all citizens

It is clear that any changes to the laws of this country, which changes propose to fundamentally alter the definition of man and woman, to provide to citizens the right to alter the Sex specified on such basic documents of identification as a birth certificate, a driver’s licence or a passport; to introduce new categories of Sex and Gender; that give rise to radically new Constitutional Rights, are matters which ought properly be placed before the people. Upon the most rudimentary reading of the Terms of Reference before the Review Group, the laws implemented in the 2015 Act, and the new laws now proposed concern matters of national importance and involve the creation of new Constitutional Rights. Of at least equal significance, is the fact that they necessarily involve proposals to alter existing Constitutional Rights. The Constitution of this State provides that the will of the people MUST be ascertained on such matters.

Any process that purports to make crucial decisions on Constitutional Rights of citizens without fully and lawfully consulting with the people is unlawful and must be set aside *ab initio*.

Incompatible with Constitution

The 2015 Act is incompatible with the Constitution. The matters currently before the Review Group are matters that affect the Constitutional rights of citizens and, as such, any proposed changes to the Constitutional Law of this country must be put to the people and voted upon by the people in a referendum.

Incompatible with European Convention on Human Rights

The 2015 Act is incompatible with the ECHR. The 2015 Act is incompatible with European Convention on the Elimination of all Forms of Discrimination Against Women. The 2015 Act is incompatible with the following rights under the ECHR:

Article 5 Right to liberty and security;

Article 8, Right to Private and Family Life. Protects health & morals.

Article 9 Freedom of thought, conscience and religion;

Article 10, Freedom of Expression.

Part III Abuse of Process

Review Group Improperly Constituted

The Review Group has been set up by the Minister under the Department of Employment Affairs and Social Welfare. The Minister and the Department have no mandate from the people to direct, engage in or interfere with, any activities relating to the Constitutional law of this country: Sex and Gender law; the law relating to Equality and Human Rights; the law relating to bodily privacy; the dignity of women; and discrimination against women. It has no mandate to make recommendations in relation to changes to the aforementioned laws or policies.

The Minister for Justice and Equality, The Department of Justice and Equality, and the Irish Human Rights and Equality Commission are charged with protecting and promoting the law in Ireland, including the Constitutional law, on the rights of citizens, the law in relation to bodily privacy, Sex and Gender, Equality and discrimination against women.

It is essential that a comprehensive and democratic Review of the law relating to Sex and Gender and the implications of the 2015 Act is conducted. However, this is not a matter that can be raced through, riding roughshod over the rights and protections currently in place in respect of marginalised groups of women, children, the Constitutional right to bodily privacy, discrimination against women, implications for sex offences legislation and the myriad other areas necessarily affected by changes to the law on Sex and Gender. Such a

Review must be carried out under the Minister for Justice and Equality. The public must be fully and properly informed of the existing government policy on Sex and Gender. The appropriate experts including members of the medical and legal professions, and organisations such as the Rape Crisis Centre, Licenced Vintners Association, and experts in the existing law on Sex and Gender and discrimination against women must be consulted as part of any consultation process.

Breach of established rules on impartiality

The Review Group was set up in November 2017 to carry out an investigation into Equality, Sex and Gender laws, laws that affect every man woman and child in this country, regardless of Sex, colour or creed. Yet the composition of the Group is entirely comprised of individuals who are either members of the Trans Community, known Trans Activists, or heavily steeped in Trans culture and Trans Ideology. No other area of society is represented on the Review Group.

Moninne Griffith, the chair of the Group is an Executive Director of Belong To, an LGBT organisation promoting the interests of Trans People and other members of the LGBT community. Moninne describes herself as an LGBT Activist on her Twitter profile. Moninne supports the #TERFsout Campaign, a Twitter campaign of hate against people who question or challenge the current wave of trans ideology to sweep through Ireland. The #TERFsout Campaign, was initiated by a group of Irish women calling themselves Feminist Ire and tweeting under the twitter handle @feministire in January 2018. **On 22nd January 2018** Feminist Ire issued a letter signed by 200 Irish women and addressed to a group of British Women scheduled to speak on the subject of Sex and Gender at a women's conference in Dublin on 14th February, 2018. The letter called the women Imperialists and told them they were not welcome in Ireland. The letter caused great upset and anger in Ireland & in the UK.

Sara Philips is a Trans Woman. She has been Chair of TENI since 2014 and a member since it's foundation in 2006. Sara has been extremely vocal on her criticisms of the 2015 Act, saying, unbelievably, that it didn't go far enough. Sara is also the father of three children. On 27th January Sara attended a meeting of TENI in Dublin and advised on the preparation & contents of a submission to the Review Group. Sara is on the record as saying,

The 2015 Act is "not perfect", owing to its exclusion of "those under 18, non-binary people and people with an intersex condition." ⁱⁱ

Dr Tanya Ní Mhuirthile, a lecturer in law and government in DCU, drafted the 2015 Act. She is a legal consultant to both Transgender Equality Network Ireland and IntersexUK and advises Transgender Equality Network Ireland, IntersexUK, International Lesbian, Gay, Bisexual, Trans and Intersex-Europe (ILGA-Europe), and Transgender Europe on their policy initiatives.

Seamus Byrne describes himself as “a young trans activist.”ⁱⁱⁱ

All four members of the Review Group are known trans activists. Dr Tanya Ní Mhuirthile drafted the original 2015 Act that she now purports to review.

It is entirely inappropriate that the entire committee of a group set up to examine policy and law affecting all of society are self-declared activists for one small group of society. It is entirely inappropriate that several members of the Group have expressed extreme bias in favour of one small group of society. The Review Group is little more than a mouthpiece for TENI Ireland and as such, all four members must stand down with immediate effect.

Information

There is currently an almost universally held misperception of the changes introduced to the law on Gender and Sex under the 2015 Act. Interest groups and the wider public have been deliberately induced to believe that the changes to the law introduced in 2015 affect just a small number of people in this country; that they affect only people who identify as Transgender; that they relate only to the registration of Birth Certs; that the law on Sex and Gender affects no one outside the Trans Community.

The people of Ireland, in order to engage meaningfully on any discussion of the law on Sex and Gender, must be given the necessary information. Areas which need to be addressed in a clear and comprehensive Consultation Document as part of any lawful Consultation Process must include:

- (i) gender and sex, their definitions under current Irish law, and the differences and overlap between the two under current Irish law;
- (ii) the various categories of gender identification that it is proposed to accommodate under the new legislation;
- (iii) a detailed explanation of the legal and cultural definitions of those categories;
- (iv) a comprehensive list of the many and varied pieces of existing legislation, including statutory criminal law, that will be affected by changes to Irish law on sex and gender;
- (v) details of how existing legislation will be affected by changes to existing Irish law on sex and gender.

Failure to inform the public on the nature & extent of existing Sex and Gender law and the import of the changes introduced by the 2015 Act

Failure to inform the public of the nature & extent of the matters under Review

The proposed reaches of new gender recognition legislation go far beyond the existing knowledge, understanding and imagination of the majority of people of this country. This is understandable given the reach of the proposed changes and the novelty of the ideology behind them, in particular, the fact that people are expected, overnight, to disbelieve the fact that a man has male genitalia and a woman has female genitalia.

The people of Ireland pay tax & elect Government Representatives to act for us in matter such as this. We have a Minister for Justice and Equality, a Department of Justice and Equality, whose purpose it is, to protect & promote the equal rights of the people of Ireland. Protecting and promoting the rights of individuals includes the provision of education and information in relation to those rights and changes to those rights. In 2015 historic changes to the law on gender in this country were made. Yet the matter was sidelined as being one that did not concern the general public. It was an LGBTI matter we were told. It is not one that Joe Average need concern himself with.

Failure to provide basic information to organisations and interest groups

There are a number of government funded organisations charged with protecting and promoting the rights and interests of the people of this country. These organisations have not been briefed in relation to the matters under Review and, when we contacted them, had no knowledge of either the fact of the Review, the fact of the consultation process or the nature and extent of the many and varied subjects of profound legal and practical import before the Review Group. These organisations must be given the basic information necessary to understand the existing law on Sex and Gender, the changes to our national law introduced by the 2015 Act, and the nature and extent of the matters currently under Review.

Unlawful Consultation Process

The Terms of Reference of the Gender Review Group, and basic tenets of the democratic process, require that the Group consults with the public in relation to the important and complex matters before it, matters that affect all of us. Consultation means meaningful consultation. It means the exchange of information and the provision of an opportunity to make submissions, both in writing and orally, and for those views expressed by and on behalf of the public, to be heard.

The Review Group invites comment and input pursuant to the democratic principles upon which the State is founded, on subjects upon which people have no understanding and no information.

“Throughout all human history, throughout the world, we have always known that men have penises and women have vaginas. We are suddenly being told to disbelieve this.”

Failure to engage in meaningful consultation with interest groups affected by the matters before the Review Group

Timescale deliberately construed to subvert the course of justice

It is unthinkable that any meaningful consultation with the people of Ireland might be realistically take place in this short time frame. It is clear that the Review Group has no intention of engaging with the public in any meaningful manner in relation to the complex and far-reaching subject matter under review.

No reasons have been proffered by or on behalf of the Review Group that might suggest any substantive cause for the urgency with which it purports to conduct its business. It is reasonable, therefore, to conclude that the reason for the unprecedented truncated time frame is a deliberate attempt to subvert the democratic process; to prevent the electorate from informing themselves on the proposed changes to our nation's legislation on Sex and Gender; and to prevent any meaningful examination or debate either upon the reality and import of the very radical legislative changes that were introduced by the Gender Recognition Act, 2015 or the further and dramatic changes to the law on Sex and Gender now proposed.

Part IV Conclusions

We call upon the Minister to provide her immediate written and unconditional assurances in the following terms:

1. You will suspend the Review Group permanently with immediate effect;
2. You will step aside from all matters relating to the Gender Recognition Act, 2015, and any review or consultation process on the law relating to Sex and Gender, both now or in the future;
3. You acknowledge that you have acted in error and outside the remit of your Department;
4. You, your servants and agents, shall immediately cease all activities relating to Sex, Gender, the law in Ireland in relation to Sex and Gender; and any proposed changes to that law, with immediate effect;
5. You, your servants and agents, shall cease interfering with the law relating to Sex and Gender in this country, and/ or from influencing or seeking to influence those laws.

We require the above written and unconditional assurances on or before 12 noon on Friday next 9th February, 2018, failing which it is our intention to apply to the High Court for the

appropriate Orders restraining you, your servants and agents, in the above terms, without further notice to you. We shall use this letter to fix you with the costs of such proceedings. We trust that this will not be necessary & we await your written assurances in the terms outlined above.

Yours faithfully

NAMES REMOVED

For & on behalf of a group of 28 concerned citizens

Cc

Minister for Justice and Equality

Gender Recognition Review Group

Irish Human Rights and Equality Commission

National Women's Council of Ireland

President of Ireland

ⁱ Our group includes people ranging in age from 30 to 80, both men and women, parents and grandparents, members of the LGBT community, Irish citizens living abroad, from a variety of religious backgrounds and those who do not identify with any religion.

ⁱⁱ The Journal, 15th July 2015, "A historic moment" - Oireachtas signs off on gender recognition bill

retrieved 30th January 2018

ⁱⁱⁱ Irishlegal.com <http://www.irishlegal.com/9219/solicitor-and-lgbt-organisation-chief-to-review-gender-recognition-act/> retrieved 30 Jan 2018