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**AN BILLE UM INSCNE A AITHINT, 2014  
GENDER RECOGNITION BILL 2014**

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**MEABHRÁN MÍNITHEACH AGUS AIRGEADAIS  
EXPLANATORY AND FINANCIAL MEMORANDUM**

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***Introduction***

This Bill provides for legal recognition of the preferred gender of transgender persons. This formal legal recognition is for all purposes, including dealings with the State, public bodies and civil and commercial society. It includes the right to marry or enter a civil partnership in the preferred gender and the right to a new birth certificate. The effect of the legal recognition is not retrospective but shall be only from the date legal recognition is provided by means of the issuing of a gender recognition certificate. Therefore, all rights, responsibilities and consequences of actions by the person in his/her original gender prior to the date of recognition shall remain unaffected.

***Main Provisions***

**Section 1: Short Title and commencement**

*Section 1* establishes the short title of the Act. It further stipulates that the Act may come into force on such day or days as the Minister for Social Protection, by commencement order, may determine.

**Section 2: Interpretation**

*Section 2* provides a definition of terms used in the Act for the sole purpose of statutory interpretation of the Act.

**Section 3: Regulations**

*Section 3* provides that the Minister may make regulations, where necessary, to give effect to the Act.

**Section 4: Expenses of Minister**

*Section 4* provides that the costs associated with administering the Act will be met from monies provided by the Oireachtas.

**Section 5: Service of Documents**

*Section 5* sets out how notices or documents which are produced under the provisions of the Act are to be issued.

**Section 6: Records and annual report**

*Section 6* provides that records of the decisions made by the Minister under the Act will be maintained and that an annual report on the operation of the Act shall be laid before each House of the Oireachtas.

## **Section 7: Application for a gender recognition certificate**

*Section 7* provides that the Minister for Social Protection shall be the decision making authority in relation to the issue of a gender recognition certificate. The Minister shall issue the certificate once the application meets all the qualification requirements.

The Section also provides that, where the application does not meet the qualification requirements, the Minister shall issue the applicant with the reasons why his/her application was not approved and advise him/her of the right to appeal (under Section 16). The Section also enables the Minister to obtain specialist advice to assist in the consideration of the application where warranted.

Sub-section (2) confirms that there will be no application fee.

## **Section 8: Persons who may apply for a gender recognition certificate**

*Section 8* sets out the conditions which a person is required to meet in order to be eligible to apply for a gender recognition certificate. The person must meet one of the following qualifying criteria; his/her birth is registered on the register of births or the adopted children register maintained by an tArd-Chláraitheoir (Registrar General); he/she has become an Irish citizen by having his/her birth registered in the Foreign Births Register maintained by the Department of Foreign Affairs and Trade; his/her birth is registered on the register of intercountry adoptions maintained by the Adoption Authority of Ireland; or he/she is ordinarily resident in the State.

An applicant must also be at least 18 years of age on the date of application (unless he/she meets the requirements of Section 11) and he/she must not be in an existing marriage or civil partnership. In addition, he/she must meet the evidential requirements set out in Section 9.

## **Section 9: Requirements on application for a gender recognition certificate**

*Section 9* addresses the evidence which must be supplied by the applicant to prove that he/she meets the qualification requirements. This includes proof of identity and either a certificate from the relevant register of births (set out in Section 8) or proof of ordinary residence in Ireland.

The evidence must also include a statutory declaration stating that the person is not in a marriage or in a civil partnership, has a settled and solemn intention of living in the preferred gender for the rest of his/her life, understands the consequences of the application and makes the application of his/her own free will.

The application must also be accompanied by a statement from the applicant's primary treating medical practitioner (defined in Section 2) which confirms that the applicant has transitioned or is transitioning to his/her preferred gender and that he/she is satisfied that the applicant fully understands the consequences of his/her decision to live permanently in the preferred gender.

## **Section 10: Requirements on application where recognition in another jurisdiction**

*Section 10* deals with applications from persons who have already had their preferred gender recognised in another jurisdiction. In order for such an application to be approved, the applicant will have to show to the satisfaction of the Minister that the requirements which led to his/her preferred gender being recognised in the other jurisdiction are at least equivalent to those set out in this Act.

A person applying under this Section will, as in any other case, have to satisfy the standard conditions as regards age, civil status, proof of identity and provide either a certificate from the relevant register of births (set out in Section 8) or proof of ordinary residence in Ireland.

### **Section 11: Application to court for exemption**

*Section 11* addresses applications for a gender recognition certificate by persons aged 16 and 17 years.

In any such case, it will be necessary to secure a Court order exempting the applicant from the standard minimum age for gender recognition of 18 years. The Court will have to satisfy itself that the child's parents or guardian consent to the application, or in the event that such consent is not forthcoming, that the Court is satisfied that it is in the child's best interest that he or she be allowed to proceed with the application.

Before granting an exemption, the Court must also receive written confirmation from the child's treating medical practitioner that the person has attained a sufficient degree of maturity to make the decision to apply for gender recognition and is aware of and has considered all the consequences of that decision. The physician must also be satisfied that the application was freely made without the undue influence of any other person. This must be accompanied by confirmation from an independent physician (registered endocrinologist or psychiatrist) that he/she concurs with the views of the treating practitioner.

This Section also sets out the parallel conditions which must be satisfied in the event that a person aged 16 to 18 seeks (under Section 14) to revoke the issue of a gender recognition certificate.

The Section provides that, for reasons of confidentiality, applications made under this Section will be made to the Circuit Family Court.

### **Section 12: Gender recognition certificate**

*Section 12* provides that the gender recognition certificate shall contain the person's forename and surname as specified by the applicant in his/her application, his/her date of birth and the preferred gender. It stipulates that the date of the certificate shall be the date that the decision to issue it was made.

This Section also provides that the Minister shall notify an tArd-Chláraitheoir (Registrar General) or the Adoption Authority of Ireland, as appropriate, that the certificate has issued and will provide them with a copy of the gender recognition certificate, a copy of the person's birth certificate and his/her name and contact details.

### **Section 13. Revocation by Minister**

*Section 13* provides for the revocation by the Minister of a gender recognition certificate if information or facts come to his/her notice that would have led to a refusal of the application.

It provides that where the Minister proposes to revoke a certificate, the person concerned may make representations in the matter within a period of 30 days. If the Minister proposes to proceed with the revocation following consideration of any representations received, the person concerned will be informed of his/her right to appeal that decision under the provisions of Section 16.

Where a gender recognition certificate is revoked under this section, the certificate must be surrendered and it is deemed always to have been void and of no effect.

The Section also provides that the Minister will notify an tArd-Chláraitheoir (Registrar General), the Department of Foreign Affairs and Trade or the Adoption Authority of Ireland, as appropriate, of any revocations made under this Section of the Act.

#### **Section 14: Application to Minister to revoke a gender recognition certificate**

*Section 14* provides for the revocation by the Minister of a gender recognition certificate in the event that a person applies to revert to his/her original gender and provides satisfactory evidence to support that application. In any such case, appropriate documentary evidence (including a statement from the person's treating medical practitioner) accompanied by a further statutory declaration from the person concerned will be required. The gender recognition certificate must also be surrendered.

If the Minister proposes to decline the application to revoke the certificate under this Section, the person concerned will be informed of his/her right to appeal that decision under the provisions of Section 16.

This Section also provides that where a person has married or entered a civil partnership after the issue of a gender recognition certificate, they will not be entitled to apply to revoke that certificate.

Where a gender recognition certificate is revoked under this Section the rights and liabilities of the person in his/her preferred gender prior to the date of revocation are not affected.

The Section also provides that the Minister will notify an tArd-Chláraitheoir (Registrar General) or the Adoption Authority of Ireland, as appropriate, of any revocations made under this Section of the Act.

#### **Section 15: Error in a gender recognition certificate**

*Section 15* provides for the situation where a person applies to the Minister seeking to have a clerical error or an error of fact in the content of a gender recognition certificate corrected. Once the Minister is satisfied that an error exists, a corrected gender recognition certificate will be issued to the person concerned, and the Minister will notify an tArd-Chláraitheoir (Registrar General) or the Adoption Authority of Ireland, as appropriate.

The Section also provides that where the Minister does not accept that there is an error to be corrected the person concerned will be informed of his/her right to appeal that decision under the provisions of Section 16.

#### **Section 16: Appeal**

*Section 16* provides for the right of appeal by a person whose application for a gender recognition certificate has been refused by the Minister (Section 7); by a person whose gender recognition certificate has been revoked by the Minister (Section 13); by a person whose application to revoke his/her gender recognition certificate has been refused by the Minister (Section 14); or by a person whose application to correct an error in the gender recognition certificate has been refused by the Minister (Section 15). The appeal, for reasons of confidentiality, shall be to the Circuit Family Court. It

must be made within 90 days of the decision concerned. The Minister will comply with the direction of the Court.

### **Section 17: Effects of gender recognition certificate generally**

*Section 17* provides for the fundamental principle of the legislation which is that, once a gender recognition certificate is issued to a person, the person's gender becomes the preferred gender for all purposes, including dealings with the State, public bodies and civil and commercial society. It includes the right to marry or enter a civil partnership in the preferred gender and the right to a new birth certificate or, if applicable, a new entry in the Foreign Births Register. The effect of the legal recognition is not retrospective but shall be only from the date on the gender recognition certificate. Therefore, all rights, responsibilities and consequences of actions by the person in his/her original gender prior to the date of recognition shall remain unaffected.

The gender recognition certificate is the key document recognising a person's preferred gender. This Section provides that, unless expressly required by law or if the person concerned so wishes, the person named on the certificate shall not be required to produce it as proof of gender.

### **Section 18: Parenthood**

*Section 18* is an avoidance of doubt provision. It provides that a change in a person's recognised gender under the Act will not affect the responsibilities of that person as a parent of a child born prior to the issue of a gender recognition certificate.

### **Section 19: Disposal or devolution of property**

*Section 19* provides that where a person has had his/her preferred gender recognised, it does not affect the distribution of property under a will or other instrument made before the day on which the Act comes into force. For wills or other instruments made after that day, the general principle of the Bill will apply e.g. if a will refers to the 'eldest daughter', and a person who was previously a son becomes the 'eldest daughter' following recognition in the preferred gender, that person will inherit as the 'eldest daughter'.

### **Section 20: Personal representatives and trustees**

A trustee or personal representative is responsible for conveying and distributing property from a trust or estate. *Section 20* relieves a trustee or personal representative from any fiduciary duty to inquire whether a gender recognition certificate has been issued to any person or revoked, even if that fact could affect entitlement to property which he or she is responsible for distributing. The beneficiary will nevertheless retain his or her claim to the property and may enforce this claim, e.g. by following the property into the hands of another person who has received it instead.

### **Section 21: Orders where expectations defeated**

*Section 21* makes provision for any situation where the disposition or devolution of property under a will or other instrument is different from what it would be but for the fact that a person is regarded as being of the preferred gender. If, for example, an instrument governs succession by reference to the 'eldest daughter' of the settlor, and there is an older brother whose gender becomes female under the Act, then the person who was previously the 'eldest daughter' may cease to enjoy that position. Sub-Section (2) allows a person who is adversely affected by the different disposition or devolution of the property to make an application to the High Court. The Court, if it

is satisfied that it is just to do so, may make such order as it considers appropriate in relation to the person benefiting from the different disposition of the property.

#### **Section 22: Gender-specific offences**

A number of sexual offences in this jurisdiction are gender specific. For example, the common law offence of rape can only be committed by a man. The offence is committed by a man against a woman who does not consent to it. Other offences can only be committed against or in relation to a person of a particular gender.

*Section 22* provides that where criminal liability would arise, but for the fact that a person, either the victim or perpetrator, has been issued with a gender recognition certificate, such liability will exist notwithstanding the gender change. A person whose preferred gender has been recognised may still be physically capable of committing a sexual offence, or being the victim of a sexual offence, associated with the opposite gender.

#### **Section 23: Amendment of section 2 of Act of 2004**

*Section 23* amends Section 2 (Definitions) of the Civil Registration Act 2004 to take account of the provisions of the Gender Recognition Act, 2015.

#### **Section 24: Amendment of section 8 of Act of 2004**

*Section 24* provides for the establishment and maintenance by an tArd-Chláráitheoir (Registrar General) of a confidential register to be known as the register of gender recognition.

#### **Section 25: Amendment of section 13 of Act of 2004**

*Section 25* adds the register of gender recognition to the list of registers maintained by an tArd-Chláráitheoir (Registrar General).

#### **Section 26: Part 3A of Civil Registration Act 2004**

*Section 26* inserts a new Part 3A into the Civil Registration Act, 2004 to provide for registration requirements arising from the provisions of the Gender Recognition Act, 2015.

The new provisions of Part 3A of the Civil Registration Act are explained beneath:

##### ***Section 30A — Definitions***

This Section provides a definition of terms used in the Act for the sole purpose of statutory interpretation of this part of the 2004 Act.

##### ***Section 30B — Entry in Register***

*Section 30B* provides that a person to whom the Minister has issued a gender recognition certificate and for whom there is an entry in the register of births or the adopted children register may apply to an tArd-Chláráitheoir (Registrar General) to be entered on the register of gender recognition. Section 30B (2) provides that the entry will list the person's name and surname and preferred gender as stated on the gender recognition certificate, together with the other particulars contained in the person's original entry in the register of births or the adopted children register, as appropriate.

##### ***Section 30C — Index to register and privacy***

*Section 30C* provides that an tArd-Chláráitheoir will keep an index to the register which will not be open to public inspection

or search, save by the person to whom the gender recognition certificate has been issued or, if that person is deceased, surviving next of kin. This Section also provides for the arrangements for fees in respect of certified copies, copies or certified extracts from the gender recognition register.

***Section 30D — Separate index of connections between register of gender recognition and register of births***

*Section 30D* provides for the process whereby an tArd-Chláraitheoir (Registrar General) shall also maintain a confidential index which will link the entry in the gender recognition register with the corresponding original entry in the register of births or adopted children register.

***Section 30E — Cancellation or amendment of entry in register***

*Section 30E* provides that where the Minister has notified an tArd-Chláraitheoir (Registrar General) that a gender recognition certificate has been revoked under Section 13 or 14, an tArd-Chláraitheoir will, in turn, cancel the relevant entry in the register of gender recognition. As a result, the person's original entry in the register of births or adopted children register shall again become the appropriate birth registration for that person.

*Section 30E* also provides that where changes are made to an entry in the register of births for which there is a corresponding entry in the register of gender recognition, then the latter will also be changed accordingly. Such changes may arise where there is a correction to an error in the original birth entry or a re-registration of that entry where (a) the parents of a child who are not married to each other wish to have the father's details included where these details were not registered initially or (b) where the parents of a child marry each other after the birth of their child.

**Section 27: Amendment of section 61 of Act of 2004**

*Section 27* provides that the register of gender recognition is not subject to the provisions of section 61 of the Civil Registration Act. The effect of this provision is to effectively exclude all persons other than the holder of the gender recognition certificate from being able to draw a certificate from the register of gender recognition.

**Section 28: Amendment of section 63 of Act of 2004**

*Section 28* amends section 63 of the Civil Registration Act which sets out the procedures to be followed in order to amend a clerical error or error of fact in the registers of births and deaths. The register of gender recognition will now be subject to these arrangements.

**Section 29: Amendment of First Schedule to Act of 2004**

*Section 29* amends the First Schedule to the Civil Registration Act 2004 to set out the particulars which an tArd-Chláraitheoir (Registrar General) will enter in respect of each entry in the register of gender recognition, where the person concerned has a corresponding entry in either the register of births or the register of adopted children.

**Section 30: Amendment of section 27 of Irish Nationality and Citizenship Act 1956**

*Section 30* provides for amendments to the Irish Nationality and Citizenship Act 1956 which will allow for the establishment of a

register of gender recognition of foreign births by the Department of Foreign Affairs and Trade.

The Section provides that the Minister of Foreign Affairs and Trade may introduce regulations to provide for the establishment of arrangements in relation to this new register which mirror those which will apply in the case of the register of gender recognition maintained by an tArd-Chláraitheoir (Registrar General) as regards, for instance, the maintenance of confidentiality, ensuring that a traceable connection is kept between entries in the register of foreign births and the corresponding entry in the new register of gender recognition of foreign births, and how entries are to be amended or cancelled.

### **Section 31: Amendment of Section 3 of Act of 2010**

*Section 31* provides a definition of terms used in the Adoption Act 2010 relating to gender recognition for the sole purpose of statutory interpretation of the Act.

### **Section 32: Amendment of Chapter 2 of Part 10 of Adoption Act 2010**

*Section 32* provides for amendments to the Adoption Act 2010 which will allow the Adoption Authority of Ireland to establish a register of gender recognition of intercountry adoptions and a confidential index to ensure that a traceable connection is kept between entries in the register of intercountry adoptions and the corresponding entry in the new register of gender recognition of intercountry adoptions (Section 91A); to provide that the only person entitled to draw a certificate from the register will be the person to whom the gender recognition certificate has been issued (or, if deceased, his or her next of kin) (Section 91B); to provide that an entry in the new register can be made on foot of a gender recognition certificate (Section 91C) and to provide for arrangements to amend or correct the register (Section 91D).

### **Section 33: Regulations relating to register of gender recognition of intercountry adoptions**

*Section 33* amends the Adoption Act 2010 to provide the Minister for Children and Youth Affairs with the powers to introduce regulations to prescribe what particulars should be recorded in entries in the register of gender recognition of intercountry adoptions.

### **Section 34: Amendment of section 96 of Act of 2010**

*Section 34* amends the Adoption Act 2010 to formally provide that the Adoption Authority of Ireland will be responsible for maintaining the register of gender recognition of intercountry adoptions.

### **Section 35: Offences and Penalties**

*Section 35* makes it an offence under the Act to knowingly provide false information in an application for a gender recognition certificate or to fail to surrender a gender recognition certificate which has been revoked by the Minister under Section 13 of the Act.

Sub-section (2) provides that a person who is found guilty of such an offence shall be liable on summary conviction to a fine or imprisonment of up to six months or both.

### **Section 36: Circuit Family Court**

*Section 36* provides that cases relating to applications from a 16 or 17 year old for a gender recognition certificate (under Section 11) or

appeals against decisions by the Minister (under Section 16) may be heard by a judge of the circuit in which the applicant concerned ordinarily resides.

### **Section 37: Amendment of Passports Act 2008**

*Section 37* provides for an amendment to the Passports Act 2008 which has the effect of providing that where a transgender person is applying for a passport in his/her preferred gender, the gender recognition certificate will be recognised for this purpose by the Minister for Foreign Affairs and Trade. The Passports Act 2008 will continue to provide for the issue of passports to transgender persons who are unable to apply for a gender recognition certificate on the grounds that they are not single.

### **Financial Implications**

Additional costs to the Exchequer will be for administration in relation to the processing of applications. It is not expected that a high volume of applications will be made and any costs that arise will not be significant.

*An Roinn Coimirce Sóisialaí,*  
Nollaig, 2014.