



SEANAD ÉIREANN

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

**LEASUITHE COISTE
COMMITTEE AMENDMENTS**

SEANAD ÉIREANN

AN BILLE UM INSCNE A AITHINT, 2014 —AN COISTE

GENDER RECOGNITION BILL 2014 —COMMITTEE STAGE

Leasuithe Amendments

**Government amendments are denoted by an asterisk*

SECTION 1

1. In page 5, between lines 16 and 17, to insert the following:

“(3) The Minister shall, not later than 2 years after the date on which the Act is enacted, and again not later than 5 years after that date, carry out a review of the operation of this Act assessing, in particular, its consistency with international best practice in the field of gender recognition and its compliance with national, regional and international equality and human rights standards, and shall make a report to each House of the Oireachtas of his or her findings and conclusions resulting from the review.”.

—*Senators Averil Power, Paschal Mooney, Katherine Zappone, Jillian van Turnhout, David Norris, Gerard Craughwell.*

SECTION 2

2. In page 5, between lines 21 and 22, to insert the following:

“ “child” means a person under the age of 18 years;”.

—*Senators Jillian van Turnhout, Fiach Mac Conghail, Katherine Zappone.*

3. In page 5, line 25, to delete “Circuit” and substitute “District”.

—*Senators David Cullinane, Trevor Ó Clochartaigh, Kathryn Reilly.*

4. In page 6, between lines 2 and 3, to insert the following:

“ “general medical practitioner” means a medical practitioner who is registered in the Specialist Division of the register of medical practitioners under the medical speciality of “General Practice” or in the General Division of the register of medical practitioners;”.

—*Senators Averil Power, Paschal Mooney, Katherine Zappone, Jillian van Turnhout, David Norris, Gerard Craughwell.*

5. In page 6, line 14, after “treating” where it secondly occurs to insert “general medical practitioner or”.

—*Senators Averil Power, Paschal Mooney, Katherine Zappone, Jillian van Turnhout, David Norris, Gerard Craughwell.*

[SECTION 7]

SECTION 7

6. In page 8, between lines 15 and 16, to insert the following:

“(8) Notwithstanding the provisions of this Act, and in particular notwithstanding *section 9(1)(g)*, *section 11(4)(b)*, *section 11(4)(c)* and *section 14(8)(d)(iii)*, a person who makes an application under *section 8*, *section 10*, *section 11* or *section 14* shall not be required to provide any evidence or proof of a surgical procedure for total or partial genital reassignment, hormonal therapies or any other psychiatric, psychological or medical treatment as a precondition to obtaining the certificate referred to in *section 9(1)(g)*, *section 11(4)(b)*, *section 11(4)(c)* or *section 14(8)(d)(iii)*, or as a precondition to obtaining a gender recognition certificate.”.

—*Senators Averil Power, Paschal Mooney, Katherine Zappone, Jillian van Turnhout, David Norris, Gerard Craughwell.*

SECTION 8

- *7. In page 8, line 19, to delete “not” where it secondly occurs.

8. In page 9, line 8, to delete “18 years” and substitute “16 years”.

—*Senators Averil Power, Paschal Mooney, Katherine Zappone, Jillian van Turnhout, David Norris, Gerard Craughwell.*

9. In page 9, to delete line 10.

—*Senator Mary M. White, Averil Power, Paschal Mooney, Katherine Zappone, Jillian van Turnhout, David Norris, Gerard Craughwell, David Cullinane, Trevor Ó Clochartaigh, Kathryn Reilly.*

SECTION 9

10. In page 9, to delete line 27.

—*Senator David Norris, Mary M. White, Averil Power, Paschal Mooney, Katherine Zappone, Jillian van Turnhout, Gerard Craughwell, David Cullinane, Trevor Ó Clochartaigh, Kathryn Reilly.*

11. In page 9, to delete lines 28 and 29.

—*Senator David Norris.*

12. In page 9, to delete lines 32 to 37, and in page 10, to delete lines 1 to 3.

—*Senator David Norris, Averil Power, Paschal Mooney, David Cullinane, Trevor Ó Clochartaigh, Kathryn Reilly.*

13. In page 9, lines 34 and 35, to delete “based on a medical evaluation of the applicant”.

—*Senator Marie Moloney.*

SECTION 10

14. In page 10, to delete line 12.

—*Senator Mary M. White, Averil Power, Paschal Mooney, Katherine Zappone, Jillian van Turnhout, David Norris, Gerard Craughwell, David Cullinane, Trevor Ó Clochartaigh, Kathryn Reilly.*

[SECTION 11]

SECTION 11

15. In page 10, line 33, to delete “who has attained the age of 16 but not 18 years”.

—*Senators Jillian van Turnhout, Fiach Mac Conghail, Katherine Zappone, Averil Power, Paschal Mooney, David Norris, Gerard Craughwell.*

16. In page 10, line 33, to delete “has attained the age of 16 but not 18 years” and substitute “is under 18 years”.

—*Senators David Cullinane, Trevor Ó Clochartaigh, Kathryn Reilly.*

17. In page 10, lines 35 and 36, to delete “who has attained the age of 16 but not 18 years”.

—*Senators Jillian van Turnhout, Fiach Mac Conghail, Katherine Zappone, Averil Power, Paschal Mooney, David Norris, Gerard Craughwell.*

18. In page 10, lines 35 and 36, to delete “has attained the age of 16 but not 18 years” and substitute “is under 18 years”.

—*Senators David Cullinane, Trevor Ó Clochartaigh, Kathryn Reilly.*

19. In page 11, to delete lines 8 to 38, and in page 12, to delete lines 1 to 4 and substitute the following:

“(b) in relation to an application for a gender recognition certificate under *section 7 or 10* where the Court is satisfied that—

- (i) the child has attained a sufficient degree of maturity to make the decision to apply for gender recognition,
- (ii) the child is aware of, has considered and fully understands the consequences of the decision, and
- (iii) the child’s decision is freely and independently made without duress or influence from another person.”.

—*Senators David Cullinane, Trevor Ó Clochartaigh, Kathryn Reilly.*

20. In page 11, to delete lines 22 to 24.

—*Senators Averil Power, Paschal Mooney, Katherine Zappone, Jillian van Turnhout, David Norris, Gerard Craughwell.*

21. In page 11, line 38, to delete “person,” and in page 12, to delete lines 1 to 4 and substitute “person.”.

—*Senators David Norris, Averil Power, Paschal Mooney, Katherine Zappone, Jillian van Turnhout, Gerard Craughwell.*

22. In page 12, to delete lines 5 to 11 and substitute the following:

“(5) The court may make an order dispensing with the requirement of the consent of a person referred to in *subsection (4)(a)* to the making of an order under this section where satisfied that—

- (a) it is in the best interests of the child to do so,

[SECTION 11]

- (b) the person from whom consent is sought—
 - (i) cannot after reasonable efforts, be identified or found, or
 - (ii) is failing or neglecting to respond to a request for consent,
- (c) consent should not be sought because the nature of the relationship between the child concerned and the person is too remote,
- (d) it would not be in the interest of the safety or welfare of the child to contact the person, or
- (e) one person who is qualified to give consent under *subsection (4)(a)* has already done so.”.

—*Senators Jillian van Turnhout, Fiach Mac Conghail, Katherine Zappone.*

23. In page 12, line 8, after “consent” to insert “or refuses to give their consent”.

—*Senators David Cullinane, Trevor Ó Clochartaigh, Kathryn Reilly.*

24. In page 12, between lines 13 and 14, to insert the following:

“(7) Notwithstanding the provisions in *subsection (4)(b)* or *subsection (4)(c)* the court may make an order under this section in exceptional circumstances where to do so is in the best interests of the child.”.

—*Senators Jillian van Turnhout, Fiach Mac Conghail, Katherine Zappone.*

25. In page 12, between lines 19 and 20, to insert the following:

“(8) Where a court order has been made pursuant to this section, the Minister shall make the decision regarding the issuing of a gender recognition certificate known to the applicant within 8 weeks.”.

—*Senators Jillian van Turnhout, Fiach Mac Conghail, Katherine Zappone.*

SECTION 12

26. In page 12, to delete line 25 and substitute the following:

“(c) an indication of the person’s gender using the abbreviations M (male), F (female) or X (indeterminate/unspecified/intersex).”.

—*Senators David Cullinane, Trevor Ó Clochartaigh, Kathryn Reilly.*

SECTION 14

27. In page 15, to delete line 11.

—*Senator Mary M. White, Averil Power, Paschal Mooney, Katherine Zappone, Jillian van Turnhout, David Norris, Gerard Craughwell.*

28. In page 15, to delete line 15.

—*Senator Mary M. White, Averil Power, Paschal Mooney, Katherine Zappone, Jillian van Turnhout, David Norris, Gerard Craughwell, David Cullinane, Trevor Ó Clochartaigh, Kathryn Reilly.*

[SECTION 14]

29. In page 15, to delete lines 20 to 28.

—*Senators David Cullinane, Trevor Ó Clochartaigh, Kathryn Reilly.*

SECTION 17

30. In page 18, lines 28 to 30, to delete all words from and including “so” in line 28 down to and including “woman” in line 30.

—*Senators David Cullinane, Trevor Ó Clochartaigh, Kathryn Reilly.*

31. In page 18, to delete line 35, and in page 19, to delete lines 1 to 7.

—*Senators David Cullinane, Trevor Ó Clochartaigh, Kathryn Reilly.*

SECTION 18

32. In page 19, line 20, to delete “the father or mother” and substitute “parent”.

—*Senators David Cullinane, Trevor Ó Clochartaigh, Kathryn Reilly.*

SECTION 26

33. In page 23, between lines 7 and 8, to insert the following:

“(6) A certified copy, a copy or a certified extract of an entry in the register of gender recognition shall not disclose the fact that the entry is contained in the register of gender recognition.”.

—*Senator Gerard Craughwell.*

SECTION 36

34. In page 29, between lines 5 and 6, to insert the following:

“Offence of disclosing information contained in a Gender Recognition Certificate

36. (1) It shall be an offence for a person who has acquired protected information concerning a person’s gender in an official capacity to disclose the information to any other person.
- (2) “Protected information” means information which relates to a person who has had their recorded sex changed, or made an application to have it changed and concerns either that application or the information changed or concerns the person’s previous recorded sex.
- (3) A person acquires protected information in an official capacity if the person acquires it—
- (a) in connection with the person’s functions as a member of the civil service, a member of An Garda Síochána or the holder of any other public office or in connection with the functions of a local authority, or statutory body, or of a voluntary organisation,
- (b) as an employer, or prospective employer, of the person to whom the information relates or as a person employed by such an employer or prospective employer, or
- (c) in the course of, or otherwise in connection with, the conduct of business or the supply of professional services.

[SECTION 36]

- (4) It shall not be an offence under this section to disclose protected information relating to a person if—
- (a) the information does not enable that person to be identified,
 - (b) that person has agreed to the disclosure of the information,
 - (c) the information is protected information by virtue of *subsection (2)* and the person by whom the disclosure is made does not know or believe that a full gender recognition certificate has been issued,
 - (d) the disclosure is in accordance with an order of a court,
 - (e) the disclosure is for the purpose of instituting, or otherwise for the purposes of, proceedings before a court,
 - (f) the disclosure is for the purpose of preventing or investigating crime, or to the National Vetting Bureau,
 - (g) the disclosure is made to the Registrar General,
 - (h) the disclosure is made for the purposes of the operation of payments administered by the Department of Social Protection,
 - (i) the disclosure is required by law.”.

—*Senators David Cullinane, Trevor Ó Clochartaigh, Kathryn Reilly.*

NEW SECTION

35. In page 29, after line 28, to insert the following:

“Use of public bathroom facilities

38. (1) Without prejudice to the generality of *section 17* or to the provisions of the Equal Status Acts 2000 to 2011, where public bathroom facilities are assigned based on gender, a person to whom this section applies may use the public bathroom facilities allocated to the gender that is the same as his or her preferred gender.

(2) In this section—

“public bathroom facilities” means a toilet, bathroom or similar facility that is made available for use by members of the public, or that is located in a place that is open to the public, whether for a fee or otherwise;

“a person to whom this section applies” means a person whose preferred gender is different from the gender assigned to the person at birth, whether or not the person is a person to whom a gender recognition certificate has been issued.”.

—*Senators Averil Power, Paschal Mooney, Katherine Zappone, Jillian van Turnhout, David Norris, Gerard Craughwell.*

[NEW SECTION]

36. In page 29, after line 28, to insert the following:

“Amendment of Education Act 1998

38. The Education Act 1998 is amended by the insertion of the following after section 37:

“37A. (1) In this section ‘a person to whom this section applies’ means a person whose preferred gender is different from the gender assigned to the person at birth, whether or not the person is a person to whom a gender recognition certificate has been issued.

(2) Without prejudice to sections 22 and 23 and the provisions of the Equal Status Acts 2000 to 2011, the Principal and staff of a recognised school shall ensure, in so far as it is practicable to do so, that a person to whom this section applies who is attending a recognised school—

(a) shall be addressed in and entitled to use his or her preferred name and their preferred gender,

(b) shall be permitted on the premises of the school to wear the uniform or clothing appropriate to their preferred gender, and

(c) shall be entitled to use the facilities appropriate to his or her preferred gender.

(3) Without prejudice to sections 22 and 23 and the provisions of the Equal Status Acts 2000 to 2011, the Principal and staff of a recognised school shall take such steps as are reasonable to ensure that the safety and welfare of a person to whom this section applies is not compromised or diminished by the conduct of the school, its employees or by any person who is likely to use the facilities of the school or be in attendance on the school premises.”.

—*Senators Averil Power, Paschal Mooney.*

37. In page 29, after line 28, to insert the following:

“Amendment of the Prohibition of Incitement to Hatred Act 1989

38. The Prohibition of Incitement to Hatred Act 1989 is amended in section 1(1) by substituting the following for the definition of “hatred”:

“ ‘gender expression’ means the set of behaviours, attitudes and other characteristics normally associated with a particular gender whether that is the same as or different in any way from the gender expression normally associated with the gender assigned to a person at birth;

‘gender identity’ means the gender with which a person identifies whether that gender is the same as or different in any way from the gender assigned to a person at birth, and shall include transgender identity, intersex identity and any gender identity that is not standard male or female gender identity;

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‘hatred’ means hatred against a group of persons in the State or elsewhere on account of their race, colour, nationality, religion, ethnic or national origins, membership of the travelling community, sexual orientation, gender identity or gender expression;”.

—*Senator Gerard Craughwell.*

38. In page 29, after line 28, to insert the following:

“Amendment of the Employment Equality Act 1998

38. The Employment Equality Act 1998 shall be amended as follows—

(a) by inserting the following section after section 2:

“2A. (1) For the purpose of this Act—

‘gender’ shall include gender expression and gender identity;

‘gender expression’ means the set of behaviours, attitudes and other characteristics normally associated with a particular gender whether that is the same as or different in any way from the gender expression normally associated with the gender assigned to a person at birth, and ‘expressing gender’ shall be interpreted in like manner;

‘gender identity’ means the gender with which a person identifies whether that gender is the same as or different in any way from the gender assigned to a person at birth, and shall include transgender identity, intersex identity and any gender identity that is not standard male or female gender identity;

‘transgender’ means having a gender identity that differs in any way from the gender assigned to a person at birth or expressing gender in a manner that is in any way different from the gender expression normally associated with the gender assigned to a person at birth.

(2) For the purpose of this Act, where it is alleged that there has been discrimination on the basis of gender identity, ‘A’ and ‘B’ represent 2 persons with differing gender identity so that—

(a) where A is a person who is transgender, B is a person who is not transgender but who is of the same gender as the gender with which A identifies,

(b) where A is a person who is intersex, B is a person who is not intersex but who is of the same gender as the gender with which A identifies, and

(c) where A is a person who has a gender identity that is not standard male or female gender identity, B is a person that has a standard male or female gender identity.

(3) For the purpose of this Act, where it is alleged that there has been discrimination on the basis of gender expression, ‘A’ and ‘B’ represent

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2 persons who express their gender differently so that where A is a person whose gender expression does not (in whole or in part) conform with the gender expression normally associated with the gender assigned to A at birth, B is a person whose gender expression conforms with the gender expression normally associated with the gender assigned to B at birth.”,

(b) by substituting the following for section 6(2)(a)—

“(a) that—

- (i) one is a woman and the other is a man,
- (ii) that while the two persons identify themselves as being of the same gender, one is transgender and one is not,
- (iii) that while the two persons identify themselves as being of the same gender, one has a different gender expression from the other, or
- (iv) one has a gender identity that is not standard male or female gender identity, and the other person that has a standard male or female gender identity, (in this Act referred to as ‘the gender ground’),”.

—*Senator Gerard Craughwell.*

39. In page 29, after line 28, to insert the following:

“Amendment of the Equal Status Act 2000

38. The Equal Status Act 2000 is amended as follows—

(a) by inserting the following section after section 2:

“2A. For the purpose of this Act—

‘gender’ shall include gender expression and gender identity;

‘gender expression’ means the set of behaviours, attitudes and other characteristics normally associated with a particular gender whether that is the same as or different in any way from the gender expression normally associated with the gender assigned to a person at birth, and ‘expressing gender’ shall be interpreted in like manner;

‘gender identity’ means the gender with which a person identifies whether that gender is the same as or different in any way from the gender assigned to a person at birth, and shall include transgender identity, intersex identity and any gender identity that is not standard male or female gender identity;

‘transgender’ means having a gender identity that differs in any way from the gender assigned to the person at birth or expressing gender in a manner that is in any way different from the gender expression normally

[NEW SECTION]

associated with the gender assigned to a person at birth.”,

(b) by substituting the following for section 3(2)(a)—

“(a) that—

- (i) one is a woman and the other is a man,
- (ii) that while the two persons identify themselves as being of the same gender, one is transgender and one is not,
- (iii) that while the two persons identify themselves as being of the same gender, one has a different gender expression from the other, or
- (iv) one has a gender identity that is not standard male or female gender identity, and the other person that has a standard male or female gender identity, (in this Act referred to as ‘the gender ground’),”.

—*Senator Gerard Craughwell.*