



GENDER & LAW

A GUIDE FOR SCHOOL PRINCIPALS & BOARDS OF MANAGEMENT



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Introduction

As a human rights advocacy organisation, The Countess is concerned about the implications of new and emerging employment and workplace policies that aim to incorporate gender ideology into the rules and governance of working environments. We are particularly concerned about any such policy shift within educational environments where children and young people (and their parents and guardians) have a legitimate right to expect that appropriate and lawful standards of safeguarding are established and enforced.

As an organisation focused on promoting and facilitating fact-based dialogue and advocacy to safeguard the rights of women and children, The Countess has produced this short guide to the Irish legal framework relating to gender and the rights and obligations that exist in law in this jurisdiction at time of publication.

This guide is intended to provide clarity for those working in schools on the legal standards required of them to ensure healthy and effective safeguarding is maintained across the Irish education system.



Laoise De Brún BL

CEO & Founder of The Countess

This guide was produced by Laoise de Brún BL, Founder and CEO of the Countess and Barrister at Law, who has developed a specific specialism in gender identity and the law in Ireland.

Definitions

The Countess is concerned with preventing the erosion or erasure of clear, sex-based terms in law, policy, and everyday language.

With that in mind, and for the avoidance of doubt, the following are the interpretations of those words applied in this guide and in all our work.

They are:



• Woman

'Adult human female'



• Girl

'Female child or adolescent'



• Man

'Adult human male'



• Boy

'Male child or adolescent'



• Sex

'Either of the two categories (male and female) into which humans and most other living things are divided on the basis of their reproductive functions.'



• Gender

A term sometimes used to describe sex, now also used to refer to the characteristics that can be adopted by someone who wishes to be seen as the opposite sex.



• Gender ideology

The belief system that describes gender as a subjective mode of expression separate from sex.



• Non-binary

A term used to describe a person who feels they are neither man/woman but somewhere in between, often requesting people use they/them pronouns instead of he/him or she/her. Not recognised in Irish law.



• Preferred pronouns

This refers to the person asking others to use pronouns other than those commonly used for their sex, e.g., a girl saying 'my preferred pronouns are he/him'. Not legally enforceable.



• Transgender/trans

A term used to describe a person who wishes to be or believes themselves to be to be the opposite sex.



• Transition

A process which can be social or medical/surgical:

Social

Dressing in clothes, choosing a hairstyle, or taking a name more typical of the opposite sex.

Medical

Use of medications that suppress one's own sex hormones (puberty blockers) and/or taking of opposite sex hormones in order to emulate the secondary sex characteristics of the opposite sex (e.g. a woman on synthesised testosterone will develop a deep voice; a man on synthesised oestrogen will have fatty deposits and some breast tissue). Usually irreversible, often results in infertility or sterility.

Surgical

Undergoing surgery to make the body look more like that of the opposite sex. Always irreversible. Genital/reproductive tract surgery renders a person sterile.

A growing number of challenges are being experienced in schools across Ireland relating to gender ideology. There is no evidence that this trend will dissipate in the short-term; indeed, all indications are that it is set to continue as a live issue for the foreseeable future. Schools have a considerable risk of liability arising from these issues.

This guide will allow those working within the Irish education system to make informed decisions on how to strike a balance between the rights of those wishing to express their belief in gender ideology and other members of the school community, who may be left vulnerable due to changes in school policies that move away from established safeguarding practices or who do not believe that humans can change their gender.

If a person does not have a Gender Recognition Certificate, there is no obligation to treat them as the opposite sex. If a person does have a Gender Recognition Certificate, then their legal gender has changed and you may be obliged to treat them as such in certain circumstances. There are allowable exceptions to this, as outlined in the Equal Status Acts.

[1] A GRC is a certificate issued by the Minister for Justice on behalf of the State to officially document and recognise that a person has legally changed their gender.

[2] The GRA 2015 amends the Irish Nationality and Citizenship Act 1956, the Civil Registration Act 2004, the Passports Act 2008 and the Adoption Act 2010.

The Gender Recognition Act 2015

The Gender Recognition Act, 2015 ('GRA') is an Act to:

- Recognise change of gender.
- Introduce and govern how gender recognition certificates are issued (GRC).[1]
- Amend other legislation to allow for the legal change of gender to be recognised on formal documentation.[2]

How it Works

- A person of 18 years or older can apply for a GRC by simply applying. Details of the process can be found at: <https://www.gov.ie/en/service/b55abf-gender-recognition-certificate/>.
- A person aged 16 or 17 years must apply for a Court Order to be allowed to apply for a GRC.
- A person under 16 years is not eligible to apply for a GRC.
- The Act also allows for the reversal of a GRC if the applicant wishes to change their mind.

How Common are Gender Recognition Certificates?

From 2015 to 2022, eighteen gender recognition certificates were granted to people aged under 18.





Equal Status Acts 2000–2018 ('the Acts')

The Equal Status Acts 2000–2018 ('the Acts') make it unlawful to discriminate against people when providing goods and services, accommodation, or education if that discrimination is based on their belonging to one of nine specific social groups.

Those groups are:

- 1 • Gender
- 2 • Marital status
- 3 • Family status
- 4 • Age
- 5 • Disability
- 6 • Sexual orientation
- 7 • Race
- 8 • Religion
- 9 • Membership of the Traveller community.

Section 3(2) of the ESA further sets out that it is expressly allowed to discriminate on the gender grounds where the presence of the opposite sex would infringe privacy or cause embarrassment. This allows for the provision of female-only toilets and for changing rooms and sleeping areas to be segregated on the basis of sex and not gender identity.

Section 3(2) As between any two persons, the discriminatory grounds are [this refers to the grounds on which one is allowed to discriminate] (a) that one is male and the other is female (the 'gender ground').

Section 5 (1) a person shall not discriminate in disposing of goods to the public generally or section of public.

but

(c) Differences in the treatment of persons on the gender ground in relation to services of an aesthetic, cosmetic or similar nature, where the services require physical contact between the service provider and the recipient.

(g) Differences in the treatment of persons on the gender ground where embarrassment or infringement of privacy can reasonably be expected to result from the presence of a person of another gender.

Educational Establishments and the Acts

s.7(2) An educational establishment shall not discriminate in relation to –

- (a) the admission or the terms or conditions of admission of a person as a student to the
- (b) the access of a student to any course, facility, or benefit provided by the establishment.
- (c) any other term or condition of participation in the establishment by the student.
- (d) the expulsion of a student from the establishment or any other sanction against the student.

Therefore one is expressly allowed to discriminate on the gender grounds where the presence of the opposite sex would infringe privacy or cause embarrassment. This provision provides for the provision of female-only toilets and changing rooms in schools to be segregated on the basis of sex and not gender identity.

There is no right in law to use the intimate spaces (toilets and changing rooms) of the opposite sex. Therefore there is no obligation whatsoever to grant these rights to either pupils or members of the teaching staff. Teachers and pupils who identify as the opposite sex can be advised to use multi-use single unit toilets and in that way not impinge on the privacy and dignity of those of the opposite sex. In addition, there is no right in law to have preferred pronouns used by others.

Gender Reassignment is a protected characteristic under European law but gender identity or identifying as transgender is not. According to EU case law this means a person cannot be harassed or fired for transitioning but these rights are a shield not a sword; they cannot be invoked to demand that others refer to them as they/them or with a new name or as the opposite sex.

The 'gender' grounds does not include being trans-identified. Under our current equality legislation 'gender' refers to whether a person is male or female. It does not include gender expression or identity. This is the law, notwithstanding lobby groups or institutions claiming otherwise.

The responsibility of the school management to facilitate the professed gender of trans-identified staff goes as far as facilitating the use of a third space bathroom. It does not extend to male teaching staff using female toilets. Teachers who are trans-identified have no right in law to compel their colleagues or, in particular, the children in their care, to use their new preferred name or pronoun.



Article 42 and The Education Act

Principals will be aware of the Constitutional and Statutory rights and obligations in regard to education.

Article 42 of the Constitution:

The State acknowledges that the primary and natural educator of the child is the Family and guarantees to respect the inalienable right and duty of parents to provide, according to their means for the religious and moral, intellectual, physical and social education of their children.

Education Act 1998

s.9(d) school should promote the moral, spiritual, social and personal development of students and provide health education for them, in consultation with their parents, having regard to the characteristic spirit of the school.

Important to note

Parents are entitled to withdraw their children from any teaching that goes against their beliefs and this includes gender ideology (e.g. in the SPHE curriculum or 'inclusion' workshops etc).

Students Transitioning in School

Schools are strongly advised not to facilitate social transition of any child or adolescent in their care, especially without the express instruction of the parents/guardian. There is mounting evidence of the safeguarding risk to the child in question. Schools are therefore leaving themselves open to liability in the future.

According to the NHS, proclaiming oneself to be trans in adolescence is a passing phase and therefore it should not be concretised because this can encourage the young person to go down the medical/surgical pathway, when they may otherwise desist in their trans identity. Research shows that gender dysphoria resolves in 80 to 90 percent of young people as they reach adulthood. In addition, mental health co-morbidities tend not to be explored clinically and these can deteriorate under the 'trans' smokescreen. Social transition is far from harmless. It is a powerful intervention that should be supervised by a psychotherapist or other suitably qualified professional.

Dr Paul Moran, consultant psychiatrist at the National Gender Service in Ireland which treats over-sixteens, said that 'Irish schools should not be taking the lead in the social transitioning of children. The Department of Health should reconsider some of the overly affirmative educational and training materials it is sending to schools and the prominent role it has given to activist organisations in policy development and teacher training.'

The Cass report, which evaluated Gender Identity services, in the NHS emphasised a caution approach towards medical interventions for those under eighteen. It highlighted the low quality and limited evidence supporting the use of puberty blockers and cross-sex hormones which as a result will now be limited to formal clinical trials and under extreme caution. Dr Cass emphasised that social transition is not a neutral act and can have significant psychosocial implications by solidifying a young person's gender identity in ways that could make later exploration and potential desistance more difficult.

The school and students should not be co-opted into the delusion and dissociation of the unhappy 'trans' child.





Children First Act 2015 & Safeguarding

Groups owe a duty of care to each child individually, as outlined in the Children First Act (2015). The standard of duty is the same for every child. The trans-identified child does not attract a higher standard of care due to their professed identity. The rights of female students to single-sex toilets, changing rooms and sports should not be eroded at the behest of any trans-identified male, i.e. a boy who identifies as a girl. Under s.5 (2)(g) of the ESA 2010, these intimate spaces are divided on the basis of biological sex not identity.

Boards of Management and principals should carefully consider their own liability in the event of them sanctioning a student or teacher using the toilets or changing areas designated for the opposite sex. In particular, in schools where the toilets are not segregated by age, schools should be aware that allowing adult males to use facilities designed for girls, where under-age girls are present, is a clear child safeguarding breach.

Personal & Corporate Liability

Boards of Management, staff, volunteers, and anyone misapplying the law, even if directed by other organisations (e.g. certain NGOs who produce 'inclusion guides') cannot rely on that misdirection as an excuse to avoid prosecution or legal recourse from a person injured by those decisions.

Resources

Independent review of gender identity services for children and young people:
<https://cass.independent-review.uk/home/publications/final-report/>

Summary

- The Gender Recognition Act 2015 allows for legal change of gender from male to female or vice versa. It applies to adults only, except in rare cases where 16- and 17-year-olds have obtained a certificate with parental consent.
- The Equal Status Acts 2000–2018 ('the Acts') allows for the provision of single-sex spaces.
- Children First 2015 outlines that groups have an equal duty of care to all children, and groups could be liable should they fail to follow proper safeguarding procedures.
- There is no obligation under Irish law to use someone else's preferred pronouns. Non-binary identity is not recognised in Irish law.
- Social transition is not a neutral act and groups should be cautious in going along with it, especially in the absence of explicit parental consent.



ABOUT THE COUNTESS



The Countess is a non-profit, volunteer-led organisation formed to promote the rights and interests of women and children in Ireland. Inspired by her significant contribution to Irish public life, we take our lead and our name from Countess Constance Georgine Markiewicz who, as Minister for Labour in the First Dáil, was the first female cabinet minister in all of Europe. A fundamental part of the Irish revolution championed by Markiewicz, and her contemporaries, was achieving equality for women and affording adequate social and economic protection to all children. Sadly, though Ireland's statehood was eventually won, the rights of women and safeguarding of children has remained elusive for much of our first century as an independent State. The Countess was formed to address this through campaigning, awareness raising, policy development, advocacy, and constructive dialogue.

Membership

Our membership is a diverse cross-section of people concerned by the conflict of rights and child safeguarding issues arising out of gender self-ID. It is made up of a wide spectrum of professions including doctors, lawyers, writers, IT specialists, students, carers, full-time parents, and anyone willing to contribute their time and skills to further our mission. We are volunteer-led, self-funded, and not affiliated with any political party or religion.

Our Work

Though we have a broad interest in women's rights and child safeguarding, The Countess was initially established in 2019 to focus attention on the conflict of rights and child safeguarding issues emerging from the Gender Recognition Act 2015. This Act allows legal self-identification of a 'preferred gender', meaning a man can be legally recognised and a woman and vice versa, with no caveats, checks, or restrictions.

This is referred to as 'self-ID'.

We promote constructive, respectful, and rights-focused dialogue on this issue, and wish to see a balanced approach to gender recognition that will:

- Vindicate the rights of women,
- Achieve best practice in safeguarding for children and young people,
- Defend the hard-won rights of same-sex attracted people to love who they love, and
- Ensure those with gender questioning identities are treated equally to all others in society.
- At our core is the belief that by virtue of our common humanity, all groups in society must be afforded the ability to live with dignity, respect, and safety.



THE COUNTESS

Empowering the Next Generation

