General Scheme of Gender Recognition Bill 2013
General Scheme of Bill

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Part 1: Preliminary and General

Head 1: Short Title and Commencement

Provide that:

(1) This Act may be cited as the Gender Recognition Act 2013.

(2) The Act shall come into operation on such day or days as the Minister for Social Protection may appoint by order or orders either generally or with reference to any particular purpose or provision and different days may be so appointed for different purposes or different provisions.

Explanatory Note

This Head 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.
Head 2: Interpretation

Provide that:

In this Bill;

“acquired gender” means the gender opposite to that shown on the applicant's birth registration;

“Ard-Chláraitheoir” shall be construed in accordance with section 7 of the Civil Registration Act 2004;

“Department” means the Department of Social Protection;

“gender recognition certificate” means the certificate issued as such under Head 8;

“Minister” means the Minister for Social Protection;

“physician” means a medical practitioner registered by the Medical Council on a Specialist Register under Section 47 of the Medical Practitioners Act 2007;

“the required particulars” means in relation to an entry in the gender recognition register the particulars specified in the First or Second Schedule.

Explanatory Notes

This Head provides a definition of terms used in the Act for the sole purpose of statutory interpretation of the Act.
Head 3: Regulations

Provide that:

The Minister may make regulations –

(a) for any purpose in relation to which regulations are provided for by any of the provisions of this Act,
(b) for prescribing any matter or thing referred to in this Act as prescribed or to be prescribed,
(c) generally for the purpose of giving effect to this Act.

Explanatory Notes

This Head provides that the Minister may make regulations where necessary to give effect to the Act.
Part 2: Gender Recognition

Head 4: The Minister to be the Issuing Authority for Gender Recognition Certificates

Provide that:

(1) The Minister shall be the authority to consider an application from a person for a gender recognition certificate and to make the decision as to whether the application shall be approved or not.

(2) If the application meets all the qualification requirements the Minister shall issue the person concerned with a gender recognition certificate.

(3) If the application does not meet all the qualification requirements the Minister will issue the person concerned with a decision setting out the reason(s) why the application is not being approved and advising them of their right to appeal the decision.

(4) The Minister shall have the authority to obtain specialist medical or other advice to assist in the consideration of an application for a gender recognition certificate, if warranted.

(5) The person applying for a gender recognition certificate shall not be required to pay an application fee to avail of the process but shall be responsible for the costs of preparing and submitting the evidence required.

(6) The Minister shall report annually on the operation of the gender recognition certificate application process.

Explanatory Notes

This Head provides that the Minister for Social Protection shall be the decision making authority in relation to granting approval for gender recognition certificates. The Minister shall issue the certificate once the application meets all the qualification requirements.

The Head also provides that where the application does not meet the qualification requirements, the Minister shall issue the applicant with the reasons why their application was not approved and advise them of their right to appeal. The Head also authorises the Minister to obtain specialist advice to assist in the consideration of the application where warranted.

Subhead 5 confirms that there will be no application fee but that the applicant will have to bear the cost of preparing and submitting the evidence required. Subhead 6 provides for the Minister producing an annual report on the operation of the gender recognition certificate process.
Head 5: Qualification Requirements for a Gender Recognition Certificate

Provide that:

The Minister shall only issue a gender recognition certificate to persons who:

(a) have their birth recorded in the register of births or adopted children register maintained by an tArd-Chláraitheoir or

(b) are registered on the foreign births register maintained by the Minister for Foreign Affairs and Trade or

(c) are ordinarily resident in Ireland

AND

(d) are at least 18 years of age on the date of application

AND

(d) are not in an existing valid marriage or civil partnership

AND

(e) meet the evidence requirements set out in Head 6.

Explanatory Notes

This Head sets out the conditions which a person is required to meet in order to qualify for a gender recognition certificate. The person must meet one of the following three qualifying criteria; their birth is registered in Ireland, they have become an Irish citizen by having their birth registered in the Foreign Births Register maintained by the Minister for Foreign Affairs and Trade or they are ordinarily resident in the State.

They must also be at least 18 years of age on the date of application and they must not be in an existing marriage or civil partnership. In addition, they must meet the evidential requirements set out in Head 6.
Head 6: Evidence to be submitted with applications for a Gender Recognition Certificate

Provide that:

(a) In support of the application for a gender recognition certificate, the applicant shall be required to submit the following evidence:

(i) a certificate from the register of births or the adopted children register maintained by an tArd-Chláraitheoir

or

(ii) a certificate from the foreign birth register maintained by the Minister for Foreign Affairs and Trade

or

(iii) proof of ordinary residency in Ireland, in a form to be prescribed by the Minister

AND

(iv) proof of identity, in a form to be prescribed by the Minister

AND

(v) a statutory declaration by the applicant, in a form to be prescribed by the Minister, stating that he/she is not in a marriage or a civil partnership, he/she has a settled and solemn intention of living in the acquired gender for the rest of his/her life, that he/she understands the implications of the application and that he/she does it of his/her free will and

(vi) a statement by his/her primary treating physician, in a form to be prescribed by the Minister, which confirms that the person has transitioned/is transitioning to their acquired gender and that he/she is satisfied that the person fully understands the consequences of his/her decision to live permanently in the acquired gender

OR

(vii) satisfactory evidence, in a form to be prescribed by the Minister, of having their acquired gender recognised in a foreign jurisdiction.

Explanatory Notes

This Head addresses the evidence which must be supplied by the applicant to prove that he/she meets the qualification requirements. This includes a certificate from the register of births or from the foreign births register, proof of ordinary residence in Ireland and a proof of identity in a form to be prescribed by the Minister.

The evidence must also include a statutory declaration, in a form to be prescribed by the Minister, stating that the person has a settled and solemn intention of living in the acquired gender for the rest of their life and confirming that the person is 18 years of age or older and not in a marriage or in a civil partnership.
This statutory declaration must be accompanied by a statement from his/her primary treating physician, in a form to be prescribed by the Minister, which confirms that the person has transitioned/is transitioning to their acquired gender and that they are satisfied that the person fully understands the consequences of their decision to live permanently in the acquired gender.
Head 7: Foreign Recognition Decisions

Provide that:

(1) Persons who already have had their acquired gender recognised in another jurisdiction may apply to have that decision recognised in the State.

(2) Applicants for recognition of a foreign decision shall be required to meet the residency/Irish birth registration, minimum age and marital/civil partnership status criteria mentioned above.

(3) They shall be required to submit satisfactory evidence, in a form to be prescribed by the Minister, of the foreign recognition decision.

(4) Recognition of the foreign decision will be achieved by the issuing of a gender recognition certificate by the Minister.

Explanatory Notes

This Head deals with applications from persons who have already had their acquired gender recognised in a different jurisdiction. It is not clear how many such applicants there might be. It would seem likely that any non-Irish person who has had their changed gender recognised abroad would have changed their personal documentation e.g. passport, identity card, birth certificate, before coming to live in Ireland. Such persons would have no need to seek a gender recognition decision in Ireland. However, there may be a group of Irish-born people who went abroad some years ago to make the transition to the acquired gender and have had that change recognised in the jurisdiction where they are resident. Such persons may now wish to have their acquired gender recognised in Ireland and obtain an Irish birth certificate reflecting that acquired gender.

In order for the application to be approved satisfactory evidence will have to be provided that the gender recognition process in the other jurisdiction was valid. A decision made in an EU Member State will be recognised but outside of the EU the process for recognition of the decision will be specified in the Regulations.
Head 8: Gender Recognition Certificate

Provide that:

(1) Where the Minister is satisfied that a person complies with all the requirements of Heads 5, 6 (and 7 as appropriate) it shall issue them with a gender recognition certificate.

(2) The date of the gender recognition certificate shall be the date on which the Minister made the decision to issue the certificate.

(3) The gender recognition certificate shall contain the person’s full name, his/her acquired gender and other such information and statements as may be prescribed by the Minister in Regulations.

(4) The issuing of each gender recognition certificate together with the required particulars shall be notified by the Minister to an tArd-Chláraitheoir.

(5) However, the relevant data relating to each certificate may also be transmitted to

   (a) the Client Identity Services function within the Department to facilitate changes to the Public Service Identity (PSI) dataset and promulgation to the wider group of public agencies that are legally authorised to use the PSI data, and

   (b) the Passport Office of the Department of Foreign Affairs and Trade for use in approving and issuing passports.

(6) The gender recognition certificate is a formal statement relating to the person to whom it is issued and for their use only.

(7) The person named in the certificate shall not be required to produce it as proof of gender or identity for official or civil purposes except as required or provided for by law.

(8) The person named in the certificate may, however, use it to support proof of gender in the absence of other suitable documentation, if he or she so chooses.

Explanatory Notes

This Head provides for the issuing of a gender recognition certificate by the Minister for Social Protection. The applicant must first have complied with heads 5 and 6 (and 7 as appropriate). The date of the certificate shall be the date that the decision was made.

The Head states that the gender recognition certificate shall contain the person’s full name, acquired gender and other such information and statements as may be prescribed by the Minister in Regulations.

The Head provides that the Minister shall notify an tArd Chláraitheoir that the certificate has issued and provide him/her with the required particulars.

The Head also provides that the data may be sent to Client Identity Services function within the Department to facilitate changes to the Public Services Identity (PSI) data set for use by those agencies
authorised to use the PSI dataset and also to the Passport Office of the Department of Foreign Affairs for use in approving and issuing passports.

The gender recognition certificate is the key document recognising a person’s acquired gender. It is not considered desirable that a practice should develop of public or private organisations requiring presentation of a gender recognition certificate as proof of identity. For a person whose acquired gender has been recognised, the documents normally accepted as proof of identity should suffice e.g. birth certificate (in the acquired gender), passport, driving licence, public service card etc. The Head confirms that the person named on the certificate shall not be required to produce it as proof of gender (unless in specified circumstances) but can do so if they so wish.
Head 9: Effects of Gender Recognition

Provide that:

(1) Where a gender recognition certificate is issued to a person, the person’s gender shall become, for all purposes, the acquired gender (so that, if the acquired gender is the male gender, the person’s sex becomes that of a man and, if it is the female gender, the person’s sex becomes that of a woman). The person shall be deemed to be of the gender shown on the gender recognition certificate from the date of the certificate which shall be the date on which the Minister made the decision to issue the certificate.

(2) A person issued with a gender recognition certificate may marry a person of the gender opposite to that shown on the gender recognition certificate or contract a civil partnership with a person of the same gender as that shown on the gender recognition certificate.

(3) The issuing of a gender recognition certificate to a person whose birth is registered in Ireland shall entitle him/her to a new birth certificate or (where applicable) a new entry in the foreign birth register maintained by the Minister for Foreign Affairs and Trade.

(4) All rights, responsibilities and consequences of actions by the person in their original gender prior to the date of recognition shall remain unaffected.

Explanatory Notes

This Head 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 acquired gender. 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 acquired gender and the right to a new birth certificate or, if applicable, a new entry in the foreign birth 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 their original gender prior to the date of recognition shall remain unaffected.
Part 3: Gender Recognition Register

Head 10: An tArd-Chláraitheoir to maintain the Gender Recognition Register

Provide that:

(1) An tArd-Chláraitheoir shall establish and maintain, in the General Register Office, a register to be called the gender recognition register, the purpose of which shall be to record the required particulars of births of persons who have been issued with a gender recognition certificate and whose births are recorded on the register of births or on the adopted children register, in accordance with the First or Second Schedule, as appropriate.

(2) In this Part “the gender recognition register” means the register maintained under sub-section (1).

(3) The form in which the gender recognition register is maintained shall be determined by an tArd-Chláraitheoir.

(4) The particulars to be contained in the gender recognition register are set out in the First Schedule and Second Schedule to this Act.

(5) The gender recognition register shall not to be open to public inspection or search.

Explanatory Notes

This Head provides for the establishment and maintenance by an tArd-Chláraitheoir (Registrar General) of a confidential register to be known as the gender recognition register. The register shall not be open to public inspection or search. Its purpose shall be to record the required particulars of the births of persons who have been issued with a gender recognition certificate and whose births are recorded on the register of births or the adopted children register maintained by an tArd-Chláraitheoir. The particulars to be contained in the gender recognition register are analogous to those in the register of births or the adopted children register, as appropriate. This provision and other related ones will require amendments to the Civil Registration Act 2004.
Head 11: Gender Recognition Register and Existing Register of Births and Adopted Children Register Entries

Provide that:

(1) Where there is an entry in the register of births or in the adopted children register in relation to a person to whom a gender recognition certificate is issued, the Minister shall send a copy of the gender recognition certificate together with the required particulars to an tArd-Chláraitheoir.

(2) The Minister shall also provide the applicant’s contact details to an tArd-Chláraitheoir for the purposes of Subhead (1) of Head 12.

(3) An tArd-Chláraitheoir shall not authorise the issue of a certified copy, a copy or a certified extract of the birth register or adopted children register entry of a person issued with a gender recognition certificate, (other than to the person themselves) unless he/she is satisfied that there exists a legitimate requirement for the request.

Explanatory Notes

This Head provides that, in cases where the Minister has issued a gender recognition certificate to a person for whom there is an entry in the register of births or adopted children register, a copy of the certificate and the required particulars for the registration shall be sent to an tArd-Chláraitheoir. This shall be for the purposes of Heads 12 and 13.

An tArd-Chláraitheoir shall not authorise the issue of a certified copy, a copy or a certified extract of the birth register or adopted children register entry of a person issued with a gender recognition certificate, (other than to the person themselves) unless he/she is satisfied that there exists a legitimate requirement for the request, for example if required for a criminal investigation or prosecution or for a civil court case in which the person’s original gender is pertinent.
Head 12: Entries in the Gender Recognition Register

Provide that;

(1) When an tArd-Chláraitheoir receives a copy of a gender recognition certificate issued to a person, he or she shall—

(a) contact the person in order to confirm the exact details of the entry in the gender recognition register and the arrangements for the issue of the new birth certificate,

(b) make an entry in the gender recognition register containing the required particulars as set out in the First Schedule or Second Schedule (as appropriate) to this Act in relation to the person’s birth and other particulars,

(c) create a record to ensure that the connection between the entry in the gender recognition register and the entry in the register of births or adopted children register (as appropriate) is traceable.

(2) Information kept by an tArd-Chláraitheoir for the purposes of paragraph (1)(c) is not to be open to public inspection or search.

(3) Once the entry in the gender recognition register has been made, an tArd-Chláraitheoir shall take all practical steps to ensure that the person’s entry in the register of births or the adopted children register is secured in such a manner as to prevent the issue (except to the person themselves) of any certified copy, copy or certified extract without the approval of an tArd-Chláraitheoir.

Explanatory Notes

This Head provides for the process whereby entries shall be made by tArd-Chláraitheoir in the gender recognition register and a link made between that entry and the corresponding original entry in the register of births or adopted children register. This link shall be maintained in a confidential manner. The provisions of sub-Head 1(a) will involve contact, under the provisions of Subhead (2) of Head 11, between an tArd-Chláraitheoir and the person who has been issued with the gender recognition certificate, in order to confirm the exact details of the entry in the register and the arrangements for the issue of the new birth certificate. Sub-Head (3) reflects the provisions of Head 11 in relation to the need for a legitimate requirement before a request (other than from the person themselves) for the issue of a certified copy, a copy or a certified extract of the birth register or adopted children register entry of a person issued with a gender recognition certificate, can be approved by an tArd-Chláraitheoir.
Head 13: Copies of entries in the Gender Recognition Register

Provide that:

(1) Any fee which would be payable for a certified copy, a copy or a certified extract of the person’s birth register or adopted children register entry is payable for a certified copy, a copy or a certified extract of the entry made in relation to the person in the gender recognition register.

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

(3) A certified copy, a copy or a certified extract of an entry in the gender recognition register shall be issued with the same number of required particulars as the entry in the register of births or the adopted children register.

Explanatory Notes

This Head provides for the arrangements for fees in respect of certified copies, copies or certified extracts from the gender recognition register. It also provides, for reasons of confidentiality, that certified copies, copies or certified extracts of entries in the gender recognition register shall not be identifiable as being from that register, as opposed to being from the register of births or adopted children register.
Head 14: Re-registration of entries in the Gender Recognition Register

Provide that:

It shall be possible to amend entries in the gender recognition register in the same manner such changes can be made, under the provisions of sections 23 and 24 of the Civil Registration Act 2004, in respect of entries in the register of births.

Explanatory Notes

This Head provides for changes (re-registrations) to be made to entries in the gender recognition register for similar reasons such re-registrations can be made in respect of entries in the register of births. These are (a) where 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.
Head 15: Correction of errors in the Gender Recognition Register

Provide that:

(1) If directed to by the Minister, in accordance with Head 18, an tArd-Chláraitheoir shall correct an error in any entry in the gender recognition register arising from a correction to the gender recognition certificate.

(2) If an tArd-Chláraitheoir deems it appropriate to correct an error in any entry in the register of births or the adopted children register and that entry is linked to an entry in the register of births or the adopted children register under the provisions of Subhead 1(c) of Head 12, any necessary correction in the entry in the gender recognition register shall be made.

Explanatory Notes

This Head provides for the situation where an error is made in respect of the content of a gender recognition certificate. Once the Minister is satisfied that the error needs to be corrected it will be done, in accordance with Head 18. The Minister will subsequently notify an tArd-Chláraitheoir to make the necessary correction in the entry in the gender recognition register. The Head also provides for corrections in the gender recognition register entry if an error is corrected in the linked entry in the register of births or adopted children register.
Head 16: Cancellation of entries in the Gender Recognition Register

Provide that:

(1) This Head applies where, after an entry has been made in the gender recognition register in relation to a person, the Minister revokes the decision to issue the person with a gender recognition certificate, in accordance with Head 19.

(2) The Minister shall inform an tArd-Chláraitheoir of the decision made under subsection (1).

(3) Subject to any appeal, an tArd-Chláraitheoir shall cancel the entry in the gender recognition register.

(4) The cancellation of the entry in the gender recognition register shall result in the original entry in the register of births or adopted children register becoming, again, the person’s appropriate birth registration entry.

Explanatory Notes

This Head provides for the cancellation of an entry in the gender recognition register arising from the revocation of a gender recognition certificate by the Minister, in accordance with Head 19. In such circumstances the Minister shall notify an tArd Chláraitheoir of the decision to revoke the gender recognition certificate and, subject to any appeal, an tArd Chláraitheoir shall cancel the entry in the gender recognition register. 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 the person.
Part 4: General

Head 17: Appeal Process

Provide that:

(1) Persons whose applications for a gender recognition certificate are refused by the Minister shall have the right of appeal to the Circuit Court sitting as the Circuit Family Court.

(2) The right of appeal shall be on matters of law and/or fact.

(3) The appeal must be made to the court within 3 months of the date of the refusal to issue a gender recognition certificate.

(4) Where the appeal is successful a gender recognition certificate shall be issued by the Minister. The date of the certificate shall be the date of the original decision of the Minister.

(5) Where the appeal is unsuccessful a repeat application to the Minister for a gender recognition certificate may be made but it shall be a requirement that new or additional material is provided to support the application.

Explanatory Notes:

This Head provides for the right of appeal by a person whose application for a gender recognition certificate has been refused by the Minister. The appeal, for reasons of confidentiality, shall be to the Circuit Family Court. It must be made within 3 months of the refusal decision. If the appeal is successful the Minister shall issue the person with a gender recognition certificate with an applicable date of the original decision. It shall be possible for a person who unsuccessfully appeals a decision to make another application to the Minister for a gender recognition certificate but, in order for it to be considered, new or additional material supporting the application shall be required.
Head 18: Correction Process for Gender Recognition Certificates

Provide that:

(1) The Bill shall provide for a correction process for gender recognition certificates.

(2) Where a gender recognition certificate has been issued to a person, the person or the Minister may make an application for a corrected certificate on the grounds that the certificate issued contains an error.

(3) The Minister shall approve the application if satisfied that the gender recognition certificate contains an error, or otherwise shall reject it.

(4) If the Minister approves the application it shall issue a corrected gender recognition certificate to the applicant and inform an tArd-Chláraitheoir, under the provisions of Head 15, that the entry in the gender recognition register shall be corrected accordingly.

Explanatory Notes

This Head provides for the correction of the content of a gender recognition certificate. An application for the correction of an error can be made by the person to whom the certificate was issued or by the Minister. If the Minister is satisfied that the error needs to be corrected the correction will be made. In accordance with Head 15 the Minister will subsequently notify an tArd Chláraitheoir to make the necessary correction in the entry in the gender recognition register.
Head 19: Revocation of Gender Recognition Certificate

Provide that:

(1) The Minister shall revoke a gender recognition certificate if it is established that, at the date of application, the person did not meet the requirements of Head 5 and Head 6 (or Head 7 as appropriate).

(2) A person whose gender recognition certificate has been revoked may appeal that decision in line with the provisions of Head 17.

(3) The provisions of Head 9 shall cease to apply following the revocation of a gender recognition certificate under sub-Head (1).

(4) The revocation of a gender recognition certificate shall result, in accordance with Head 16, in the cancellation of the relevant entry in the gender recognition register.

Explanatory Notes

This Head provides for the revocation by the Minister of a gender recognition certificate issued to a person if it is established that, at the time of application, the person did not meet the qualification criteria, evidential requirements and, if appropriate, the foreign recognition requirement. A person whose gender recognition certificate has been revoked has the right to appeal that decision in line with the appeal provisions set out in Head 17. The revocation of a gender recognition certificate shall mean that the effects of gender recognition set out in Head 9 shall cease to apply. It will result in the cancellation of the relevant entry in the gender recognition register, in accordance with Head 16.
Head 20: Offence/Penalty

Provide that:

A person who gives to the Minister particulars or information which he or she knows to be false in respect of an application for a gender recognition certificate is guilty of an offence and, shall be liable on summary conviction to a fine or imprisonment.

Explanatory Notes

This Head makes it an offence under the Act to knowingly provide false particulars or information in the application for a gender recognition certificate and states that a person who is found guilty of this offence shall be liable on summary conviction to a fine or imprisonment.
Head 21: Parenthood

Provide that:

The fact that a person’s gender has become the acquired gender under this scheme does not affect the status of the person as the father or mother of a child.

Explanatory Notes

This Head is an avoidance of doubt provision. A change in a person’s recognised gender under the Act should not change the responsibilities of that person as a parent or require any change to be made to a child’s birth certificate. This may also have prospective effect in circumstances where parenthood arises after the gender is acquired, whether by assisted human reproduction using frozen gametes / embryos or otherwise.
Head 22: Succession

Provide that:

The fact that a person’s gender has become the acquired gender under this Act does not affect the disposal or devolution of property under a will or other instrument made before the date the Act comes into effect.

Explanatory Notes

This Head provides that where a person has had their “acquired 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 stated in Head 9(1) 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 acquired gender, that person (subject to Head 24) will inherit as the ‘eldest daughter’.
Head 23: Trustees and personal representatives

Provide that:

(1) A trustee or personal representative shall not be required, in carrying out their responsibilities relating to trusts or the administration of estates, to enquire, before conveying or distributing any property, whether a gender recognition certificate has been issued to any person or revoked (if that fact could affect entitlement to the property).

(2) A trustee or personal representative shall not be liable to any person by reason of a conveyance or distribution of the property made without regard to whether a gender recognition certificate has been issued to any person or revoked if the trustee or personal representative has not received notice of the fact before the conveyance or distribution.

(3) This Head does not prejudice the right of a person to follow the property, or any property representing it, into the hands of another person who has received it unless that person has purchased it for value in good faith and without notice.

Explanatory Notes

A trustee or personal representative is responsible for conveying and distributing property from a trust or estate. This Head 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.
Head 24: Orders where expectations defeated

Provide that:

(1) This Head applies where the disposition or devolution of any property under a will or other instrument (made on or after the day the Act came into effect) is different from what it would be but for the fact that a person’s gender has become the acquired gender under this Act.

(2) A person may apply to the High Court for an order on the ground of being adversely affected by the different disposition or devolution of the property.

(3) The court may, if it is satisfied that it is just to do so, make in relation to any person benefiting from the different disposition or devolution of the property such order as it considers appropriate.

Explanatory Notes:

This Head 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 acquired 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. Subhead 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.
Head 25: Gender-specific offences

Provide that:

Where criminal liability would exist, but for the fact that a person, either the victim or the perpetrator, has become of the acquired gender, that criminal liability will exist regardless of the recognition of the acquired gender.

Explanatory Notes

A number of criminal enactments include offences and penalty provisions which are gender specific. This Head provides that all rights, responsibilities and consequences of actions by the person in their original gender prior to the date of recognition of their acquired gender remain unaffected as otherwise the ability to prosecute for offences committed prior to recognition may be undermined. The head also provides that a person whose acquired gender has been recognised under this Act can be prosecuted for sexual offences specific to their original gender committed post recognition
**Head 26: Sport**

**Provide that:**

A body responsible for regulating the participation of persons as competitors in an event or events involving a gender-affected sport may prohibit or restrict the participation as competitors in the event or events of persons whose gender has become the acquired gender under this Act if the prohibition or restriction is necessary to secure—

(a) fair competition, or

(b) the safety of competitors,

at the event or events.

**Explanatory Notes**

This Head enables a body responsible for regulating participation in competitive gender-affected sporting events to prohibit or restrict the participation in such events of a person whose acquired gender has been recognised under the Act and who is seeking to compete in the acquired gender. The prohibition or restriction can be effected if it is deemed necessary to secure fair competition or the safety of other competitors.
First Schedule

Particulars to be entered in Gender Recognition Register (insofar as the particulars applied to the format and particulars required at the time the original register of births entry was registered).

Particulars to be entered in Register

Date and place of birth.

Time of birth.

Sex of child.

Forename(s) of child.

Surname of child

Personal public service number of child.

Forename(s), surname, birth surname, address and occupation of mother.

Former surname(s) (if any) of mother.

Date of birth of mother.

Civil status of mother.
Personal public service number of mother.

Birth surname of mother’s mother.

Forename(s), surname, birth surname, address and occupation of father.

Former surname(s) (if any) of father.

Date of birth of father.

Civil status of father.

Personal public service number of father.

Birth surname of father’s mother.

Forename(s), surname, qualification, address and signature of informant.

Registration District and Area

Date of registration.

Signature of registrar.
Second Schedule

Particulars to be entered in Gender Recognition Register (insofar as the particulars applied to the format and particulars required at the time the adopted children register entry was registered).

Particulars to be entered in Register

Personal public service number of child.

Date and country of birth of child.

Sex of child.

Forename(s) and surname of child.

Forename(s), surname(s), birth surname(s), address and occupation(s) of adopters.

Former surname(s) of adopters.

Date(s) of birth of adopters.

Civil status of adopter or adopters.

Personal public service number(s) of adopter or adopters.

Date of adoption order.

Date of registration.

Signature of an tArd-Chláraitheoir or an officer of an tArd-Chláraitheoir duly authorised by him or her.

Explanatory Notes

The required particulars to be entered in the gender recognition register shall be the same as the required particulars entered in the register of births or the adopted children register, as the case may be, with the exception of forename, surname and sex. The forename and surname to be entered shall be those chosen by the person to whom the entry in the gender recognition relates and the sex to be recorded shall be that which is indicated in the gender recognition certificate.

ENDS
AN BILLE UM INSCNE A AITHINT 2013

GENDER RECOGNITION BILL 2013

Meabhrán Minitheach

Explanatory Memorandum

Introduction

This Bill provides for legal recognition to the acquired 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 acquired 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 issue of a gender recognition certificate. Therefore, all rights, responsibilities and consequences of actions by the person in their original gender prior to the date of recognition shall remain unaffected.

Main Provisions

Head 1: Short Title and Commencement

Head 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.

Head 2: Interpretation

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

Head 3: Regulations

Head 3 provides that the Minister may make regulations where necessary to give effect to the Act.

Head 4: The Department of Social Protection to be the Issuing Authority for Gender Recognition Certificates

Head 4 provides that the Minister for Social Protection shall be the decision making authority in relation to granting approval for gender recognition certificates. The Minister shall issue the certificate once the application meets all the qualification requirements.
The Head also provides that where the application does not meet the qualification requirements, the Minister shall issue the applicant with the reasons why their application was not approved and advise them of their right to appeal. The Head also authorises the Minister to obtain specialist advice to assist in the consideration of the application where warranted.

Subhead 5 confirms that there will be no application fee but that the applicant will have to bear the cost of preparing and submitting the evidence required. Subhead 6 provides for the Minister producing an annual report on the operation of the gender recognition certificate process.

**Head 5: Qualification Requirements for a Gender Recognition Certificate**

*Head 5* sets out the conditions which a person is required to meet in order to qualify for a gender recognition certificate. The person must meet one of the following three qualifying criteria; their birth is registered in Ireland, they have become an Irish citizen by having their birth registered in the Foreign Births Register maintained by the Department of Foreign Affairs and Trade or they are ordinarily resident in the State.

They must also be at least 18 years of age on the date of application and they must not be in an existing marriage or civil partnership. In addition, they must meet the evidential requirements set out in Head 6.

**Head 6: Evidence to be submitted with applications for a Gender Recognition Certificate**

*Head 6* addresses the evidence which must be supplied by the applicant to prove that he/she meets the qualification requirements. This includes a certificate from the register of births or from the foreign births register, proof of ordinary residence in Ireland and a proof of identity in a form to be prescribed by the Minister.

The evidence must also include a statutory declaration, in a form to be prescribed by the Minister, stating that the person has a settled and solemn intention of living in the acquired gender for the rest of their life and confirming that the person is 18 years of age or older and not in a marriage or in a civil partnership.

This statutory declaration must be accompanied by a statement from his/her primary treating physician, in a form to be prescribed by the Minister, which confirms that the person has transitioned/is transitioning to their acquired gender and that they are satisfied that the person fully understands the consequences of their decision to live permanently in the acquired gender.

**Head 7: Foreign Recognition Decisions**

*Head 7* deals with applications from persons who have already had their acquired gender recognised in a different jurisdiction. It is not clear how many such applicants there might be. It would seem likely that any non-Irish person who has had their changed gender recognised
abroad would have changed their personal documentation e.g. passport, identity card, birth certificate, before coming to live in Ireland. Such persons would have no need to seek a gender recognition decision in Ireland. However, there may be a group of Irish-born people who went abroad some years ago to make the transition to the acquired gender and have had that change recognised in the jurisdiction where they are resident. Such persons may now wish to have their acquired gender recognised in Ireland and obtain an Irish birth certificate reflecting that acquired gender.

In order for the application to be approved satisfactory evidence will have to be provided that the gender recognition process in the other jurisdiction was valid. A decision made in an EU Member State will be recognised but outside of the EU the process for recognition of the decision will be specified in the Regulations.

**Head 8: Gender Recognition Certificate**

*Head 8* provides for the issuing of a gender recognition certificate by the Minister for Social Protection. The applicant must first have complied with heads 5 and 6 (and 7 as appropriate). The date of the certificate shall be the date that the decision was made.

The Head states that the gender recognition certificate shall contain the person’s full name, acquired gender and other such information and statements as may be prescribed by the Minister in Regulations.

The Head provides that the Minister shall notify tArd Chláraitheoir that the certificate has issued and provide him/her with the required particulars.

The Head also provides that the data may be sent to Client Identity Services function within the Department to facilitate changes to the Public Services Identity (PSI) data set for use by those agencies authorised to use the PSI dataset and also to the Passport Office of the Department of Foreign Affairs for use in approving and issuing passports.

The gender recognition certificate is the key document recognising a person’s acquired gender. It is not considered desirable that a practice should develop of public or private organisations requiring presentation of a gender recognition certificate as proof of identity. For a person whose acquired gender has been recognised, the documents normally accepted as proof of identity should suffice e.g. birth certificate (in the acquired gender), passport, driving licence, public service card etc. The Head confirms that the person named on the certificate shall not be required to produce it as proof of gender (unless in specified circumstances) but can do so if they so wish.

**Head 9: Effects of Gender Recognition**

*Head 9* 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 acquired gender.
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 acquired gender and the right to a new birth certificate or, if applicable, a new entry in the foreign birth 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 their original gender prior to the date of recognition shall remain unaffected.

Head 10: An tArd-Chláraitheoir to maintain the Gender Recognition Register

Head 10 provides for the establishment and maintenance by an tArd-Chláraitheoir (Registrar General) of a confidential register to be known as the gender recognition register. The register shall not be open to public inspection or search. Its purpose shall be to record the required particulars of the births of persons who have been issued with a gender recognition certificate and whose births are recorded on the register of births or the adopted children register maintained by an tArd-Chláraitheoir. The particulars to be contained in the gender recognition register are analogous to those in the register of births or the adopted children register, as appropriate. This provision and other related ones will require amendments to the Civil Registration Act 2004.

Head 11: Gender Recognition Register and Existing Birth Register and Adopted Children Register Entries

Head 11 provides that, in cases where the Minister has issued a gender recognition certificate to a person for whom there is an entry in the register of births or adopted children register, a copy of the certificate and the required particulars for the registration shall be sent to an tArd-Chláraitheoir. This shall be for the purposes of Heads 12 and 13.

An tArd-Chláraitheoir shall not authorise the issue of a certified copy, a copy or a certified extract of the birth register or adopted children register entry of a person issued with a gender recognition certificate, (other than to the person themselves) unless he/she is satisfied that there exists a legitimate requirement for the request, for example if required for a criminal investigation or prosecution or for a civil court case in which the person’s original gender is pertinent.

Head 12: Entries in the Gender Recognition Register

Head 12 provides for the process whereby entries shall be made by tArd-Chláraitheoir in the gender recognition register and a link made between that entry and the corresponding original entry in the register of births or adopted children register. This link shall be maintained in a confidential manner. The provisions of sub-Head 1(a) will involve contact, under the provisions of Subhead (2) of Head 11, between an tArd-Chláraitheoir and the person who has been issued
with the gender recognition certificate, in order to confirm the exact details of the entry in the register and the arrangements for the issue of the new birth certificate. Sub-Head (3) reflects the provisions of Head 11 in relation to the need for a legitimate requirement before a request (other than from the person themselves) for the issue of a certified copy, a copy or a certified extract of the birth register or adopted children register entry of a person issued with a gender recognition certificate, can be approved by an tArd-Chláraitheoir.

**Head 13: Copies of entries in the Gender Recognition Register**

*Head 13* provides for the arrangements for fees in respect of certified copies, copies or certified extracts from the gender recognition register. It also provides, for reasons of confidentiality, that certified copies, copies or certified extracts of entries in the gender recognition register shall not be identifiable as being from that register, as opposed to being from the register of births or adopted children register.

**Head 14: Re-registration of entries in the Gender Recognition Register**

*Head 14* provides for changes (re-registrations) to be made to entries in the gender recognition register for similar reasons such re-registrations can be made in respect of entries in the register of births. These are (a) where 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.

**Head 15: Correction of errors in the Gender Recognition Register**

*Head 15* provides for the situation where an error is made in respect of the content of a gender recognition certificate. Once the Minister is satisfied that the error needs to be corrected it will be done, in accordance with Head 18. The Minister will subsequently notify an tArd-Chláraitheoir to make the necessary correction in the entry in the gender recognition register. The Head also provides for corrections in the gender recognition register entry if an error is corrected in the linked entry in the register of births or adopted children register.

**Head 16: Cancellation of entries in the Gender Recognition Register**

*Head 16* provides for the cancellation of an entry in the gender recognition register arising from the revocation of a gender recognition certificate by the Minister, in accordance with Head 19. In such circumstances the Minister shall notify an tArd Chláraitheoir of the decision to revoke the gender recognition certificate and, subject to any appeal, an tArd Chláraitheoir shall cancel the entry in the gender recognition register. 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 the person.
Head 17: Appeal Process

*Head 17* provides for the right of appeal by a person whose application for a gender recognition certificate has been refused by the Minister. The appeal, for reasons of confidentiality, shall be to the Circuit Family Court. It must be made within 3 months of the refusal decision. If the appeal is successful the Minister shall issue the person with a gender recognition certificate with an applicable date of the original decision. It shall be possible for a person who unsuccessfully appeals a decision to make another application to the Minister for a gender recognition certificate but, in order for it to be considered, new or additional material supporting the application shall be required.

Head 18: Correction Process for Gender Recognition Certificates

*Head 18* provides for the correction of the content of a gender recognition certificate. An application for the correction of an error can be made by the person to whom the certificate was issued or by the Minister. If the Minister is satisfied that the error needs to be corrected the correction will be made. In accordance with *Head 15* the Minister will subsequently notify an Ard Chláraitheoir to make the necessary correction in the entry in the gender recognition register.

Head 19: Revocation of Gender Recognition Certificate

*Head 19* provides for the revocation by the Minister of a gender recognition certificate issued to a person if it is established that, at the time of application, the person did not meet the qualification criteria, evidential requirements and, if appropriate, the foreign recognition requirement. A person whose gender recognition certificate has been revoked has the right to appeal that decision in line with the appeal provisions set out in *Head 17*. The revocation of a gender recognition certificate shall mean that the effects of gender recognition set out in *Head 9* shall cease to apply. It will result in the cancellation of the relevant entry in the gender recognition register, in accordance with *Head 16*.

Head 20: Offence/Penalty

*Head 20* makes it an offence under the Act to knowingly provide false particulars or information in the application for a gender recognition certificate and states that a person who is found guilty of this offence shall be liable on summary conviction to a fine or imprisonment.

Head 21: Parenthood

*Head 21* is an avoidance of doubt provision. A change in a person’s recognised gender under the Act should not change the responsibilities of that person as a parent or require any change to be made to a child’s birth certificate. This may also have prospective effect in circumstances where
parenthood arises after the gender is acquired, whether by assisted human reproduction using frozen gametes / embryos or otherwise.

**Head 22: Succession**

*Head 22* provides that where a person has had their “acquired 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 stated in *Head 9 (1)* 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 acquired gender, that person (subject to *Head 24*) will inherit as the ‘eldest daughter’.

**Head 23: Trustees and personal representatives**

A trustee or personal representative is responsible for conveying and distributing property from a trust or estate. *Head 23* 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.

**Head 24: Orders where expectations defeated**

*Head 24* 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 acquired 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. Subhead 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.

**Head 25: Gender-specific offences**

A number of criminal enactments include offences and penalty provisions which are gender specific. *Head 25* provides that all rights, responsibilities and consequences of actions by the person in their original gender prior to the date of recognition of their acquired gender remain unaffected as otherwise the ability to prosecute for offences committed prior to recognition may be undermined. The head also provides that a person whose acquired gender has been recognised under this Act can be prosecuted for sexual offences specific to their original gender committed post recognition.
Head 26: Sport

*Head 26* enables a body responsible for regulating participation in competitive gender-effected sporting events to prohibit or restrict the participation in such events of a person whose acquired gender has been recognised under the Act and who is seeking to compete in the acquired gender. The prohibition or restriction can be effected if it is deemed necessary to secure fair competition or the safety of other competitors.

*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*

*Iúil 2013*