



THE COUNTESS

The Erosion of Sex-based Language in
Irish Legislation and Public Discourse



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“The words male and female have a very clear biological meaning, not up for postmodern deconstruction. They do not refer to social categories, but to human anatomy.”

Dr Emma Hilton, Evolutionary Biologist.

Introduction

- Irish women are witnessing an erosion of our sex-based rights as official legislation is amended in favour of gender-neutral language. The word “woman” is being replaced with “person,” “people with a cervix,” “employee who breastfeeds,” “student who menstruates,” “adopter,” “pregnant employee.”
- Women’s place in Irish society is under threat as “men who identify as women” are recognised as women by politicians, state bodies, media – including broadcast and print – and NGOs, while women are being relegated to descriptions of body parts and functions.
- How can women advocate for equality when the very language we require is deleted?

Objectives

This paper will explore how the tension between the Gender Recognition Act 2015 and the Equality Acts and the setting aside of international human rights laws for women’s sex-based protections, exacerbated by policy capture in government, academia, and mainstream media, have led to the erosion of female sex-based language in Irish laws and ultimately to the erosion of women’s sex-based rights.

Methodology

Section 1: sets out the sex-based protections afforded by the Irish Equality Acts, the European Court of Human Rights, and the UN Convention on the Elimination of Discrimination against Women (CEDAW).

Section 2: sets out the causes of the tension between the Equality Acts and the Gender Recognition Act, which affects women’s sex-based rights due to the conflation of sex and gender.

It also sets out the role that government policies play in removing recognition for women and girls, by prioritising the needs of the LGBTQ+ community. In a drive to promote “inclusivity” and the “visibility” of this community, they have effectively excluded women and girls.

Section 3: lists the Acts that were amended, or where attempts were made to amend or to remove sex-specific terms from key legislation, including the Maternity Protection Act, the Family Leave & Misc. Act, the Adoptive Leave Act, the Parental Leave Act, and a range of other Acts affecting parental rights.

Section 4: discusses “Policy Capture” and demonstrates that Ireland is at risk of moving away from democratic values and trust in government, due to the influence of certain non-governmental organisations (NGOs), by failing to engage with stakeholders with diverging interests. This has created a policy echo chamber that acts against the best interests of women and girls. Academia has also been captured by gender ideology, following the compulsory adoption of Athena Swan accreditation and/or participation.

About Us

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 de Markievicz who, as Minister for Labour in the First Dáil, was the first female cabinet minister in all of Europe.

Countess Markievicz blazed a trail for women’s rights at a time when they were severely restricted. She was at the vanguard of a social revolution that envisioned an Ireland that cherished all her children equally, irrespective of socio-economic status, religion, sex, or other social markers used to limit life choices and chances.

A fundamental part of the Irish revolution championed by Markievicz 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 have 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.

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 self-ID approach to gender recognition introduced through the Gender Recognition Act 2015.

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 whom they love, and
- Ensure that 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.



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.

Definitions

As an organisation, The Countess is concerned with preventing the erosion or erasure of clear, sex-based terms that are important to how most people describe and think of themselves to enact their own meaning. With that in mind, and for the avoidance of doubt, the following are the interpretations of those words applied in this submission and in all our work that have become contested within debates around gender and sex. They are:

- Woman: “Adult Human Female”
- Man: “Adult Human Male”
- Girl: “Female child or adolescent”
- 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”

To use any other interpretation of the terms listed above, in our view, would make it impossible to guarantee enduring clarity and consistency in the use and interpretation of the language used to craft law or state policy. The discussion in this paper, therefore, applies these meanings to these words.



The Meaning of “Sex” and “Gender” in Law.

“Sex once had a settled ordinary meaning. Now it is contested at the level of both ordinary meaning and technical legal meaning. But if sex is to ground distinct legal rights and duties, which it does, there must be a way for legal actors to know who bears those rights and duties. There was little ambiguity over the meaning of sex when the norm was not equal treatment between men and women. The law had a conception of women and men, unarticulated because uncontested, when it denied women the vote or prevented them from standing to be an MP. The history of the law relating to sex is marked by the gradual dismantling of legal frameworks designed to create and maintain a hierarchy of legal rights, followed by the protection and retention of sex-based rights where sex matters.”¹

Michael Foran, Lecturer in Public Law, School of Law, Glasgow University

Is Biological Sex Defined in Irish Law?

“Gender” in the Equality Acts is defined as meaning a man or a woman. It is used as a synonym for biological sex, which until very recently was commonly understood to mean the two sexes of man or woman.

Equality Acts

Under Irish Equality Laws women have enjoyed privacy and dignity based on our sex-based rights, including protection against discrimination and harassment related to the protected characteristic of “gender” meaning “sex”.

In fact, Irish law and international and EU laws protect women on the basis of our **sex**.

“Law starts from the proposition that male and female human beings are physically different. Sex is defined on the basis of reproductive function, and ‘woman’ has always been understood in English law by reference to female biology.”²

The Corbett Principle was laid down by the courts in the United Kingdom in 1970 in the case of Corbett wherein it stated that the biological sexual constitution of an individual is fixed at birth and cannot be changed either by the natural development of organs of the opposite sex or by medical or surgical means.³

Central to those rights and privileges was the common understanding of what was meant when we referred to,

Sex: “the different biological and physiological characteristics of males and females, such as reproductive organs, chromosomes, hormones, etc., and,

Gender: “the socially constructed characteristics of women and men – such as norms, roles and relationships of and between groups of women and men.”⁴

¹ https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4553987

² (Sex & Gender, A Contemporary Reader, edited by Prof Alice Sullivan and Prof Selina Todd. Page 129)

³ Corbett v Corbett [1970]2 ALL ER 33

⁴ <https://www.coe.int/en/web/gender-matters/sex-and-gender#:~:text=Sex refers to “the different groups of women and men.>



What has Changed?

The threat to women's rights has come about due to a number of factors:

- 1) The tension between two pieces of legislation: the Equality Acts⁵ and the Gender Recognition Act 2015 (GRA)⁶. The GRA introduced the legal fiction that people can “change sex” once a Gender Recognition Certificate (GRC) is issued.
- 2) Government's failure to honour, or choosing to ignore, the sex-based rights of women and girls enshrined in international human rights law.⁷
- 3) Policy Capture⁸ in government due to the interplay between certain activist-led publicly funded NGOs and elected officials. Some of these NGOs are also funded from sources arising outside of Ireland and this funding is often conditional on incorporating the funder's liberal LGBTQ+ agenda as part of the NGO's lobbying activity.
- 4) Government's embedding of LGBTQ+ policies into Irish political, social, and work life, schools and universities, through the two national LGBTI+ strategy documents. These strategies prioritise the needs of the LGBTI+ community over the needs of women and girls.⁹
- 5) These policies also feed into academia, with the launch of the Athena Swan Charter¹⁰ in 2015 and the requirement that all higher education institutions comply with the Charter.
- 6) Third-level institutions have developed “inclusive” policies for the LGBTQ+ community while misinterpreting the Equality Acts. Universities are encouraging “preferred pronoun” usage, as well as facilitating men (who identify as women) to use female- only spaces.
- 7) They are also incorrectly advising faculty and students that it is “unlawful discrimination” to misgender a trans person.
- 8) The erasure, and attempted erasure, of sex-based language in legislation in favour of gender-neutral language.¹¹

All of these factors have led to the erasure of sex categories from language, public policy and discourse, and brought about the move towards gender-neutral language, primarily around the erasure of female-specific language.

⁵ See Section 1 of this paper

⁶ See Section 2 of this paper

⁷ See Section 1(2) of this paper

⁸ See Section 4 of this paper

⁹ See Section 2(3) of this paper

¹⁰ See Section 4(4) of this paper

¹¹ See Section 3 of this paper



Why does this Matter to Women?

Sex-specific language is vital, particularly in public policies that impact on women's safety, representation in public life, and health. The use of "gender-neutral" language hides the differences between the sexes and covers up the unique disadvantages faced by women and girls compared to men.

Women are adult human females. There is a material, biological reality to women; we are a species that form part of nature, and this should be recognised in law.

"Transwomen" or "transmen" on the other hand are social constructs. These terms are part of invented idea that deals with a minority of people who may have a "gender identity" that is in conflict with their biological sex.

Since the tension between the GRA and the Equality Acts has arisen, women are becoming alienated from our own experiences and from female-specific language necessary for describing and recognising ourselves.

If women and girls are to be visible, we need to be empowered to talk about ourselves, our unique experiences and health concerns, without feeling that the language we have used for millennia is "non-inclusive" and may offend a small number of trans-identifying people.

Under postmodernism/poststructuralism, words have two different meanings, an activist's meaning, and their regular meaning.

Sex, gender, and sexuality according to Queer Theory, as espoused by Judith Butler, hold that not only is gender socially constructed, but sex is as well. If sex is socially constructed, then males can be women.

Through this obfuscation of language, attempts are being made to force women to accept that "woman" has two categories – women and transwomen. Natal women are being pressured to accept the term "cis" to describe women as a subset of our own sex class, thereby paving the way for trans-identifying males to claim they are "real women" with access to all female areas. And government policies that seek to erase our language are facilitating this.

Conditions for a Gender Recognition Certificate (GRC)¹²

It is worth noting that one of the conditions for qualifying for a GRC is that the declarant, "*has a settled and solemn intention of living in the preferred gender for the rest of his or her life.*"

Has the above condition been satisfied, if a woman who was issued with a GRC after self-identifying as a man becomes pregnant? Or should the pregnancy result in the revocation of the GRC due to breaching the conditions?

Is the government willing to accept that "women can be men," simply through the queering of language, and therefore, "men can get pregnant?" Was this the intention of the legislators who voted to pass the GRA?

If not, then why were attempts made to erase the word "woman" from the Maternity Protection Act? Pregnancy is an exclusively female aspect of mammalian reproduction.

¹² <https://www.oireachtas.ie/en/debates/debate/seanad/2022-12-14/14/>

Is the Erasure of Sex-specific Language a Proportionate Action by Government?

There are 2.6 million women and girls recorded in the 2022 Irish census.¹³

Compare this with the statistics reported for Gender Recognition Certificates (GRC) to legally change the “gender” of the applicant. As of 31 December 2022, a total of 612 GRCs have been issued to men who identify as women, and 591 GRCs have been issued to women who identify as men.¹⁴

Should women lose their right to single-sex spaces and sex-specific language to cater to this tiny minority? Is there a more equitable way to achieve rights for both groups without erasing women’s rights?

Were Women’s Rights under International Human Rights Laws Considered when the GRA was Introduced?

The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) defines discrimination against women on the **grounds of sex**.¹⁵ Ireland ratified the Convention in 1985, committing itself to achieving equality between men and women.

The European Court of Human Rights protects people from the State and safeguards our fundamental rights.¹⁶ Ireland formally ratified the Convention in 1953, making it legally binding on the State.

Yet, women’s rights were never mentioned during any of the debates prior to the passing of the GRA. Neither was any women’s organisation asked to consider whether there was any possibility of a conflict of rights.

This also applies to the launch of the two National LGBTI+ Strategies. There is nothing in either strategy that suggests that women’s rights were considered when these strategies were compiled, despite the incursion into women’s lives as a result of a number of the action plans proposed therein.¹⁷

These strategies were influenced by the non-binding Yogyakarta Principles, which seek to make “sex” a defunct legal category, replacing it with the ambiguous category of “gender.”¹⁸

What Role does Policy Capture Play?¹⁹

It has become evident that non-governmental organisations (NGOs) have gained disproportionate influence over Government decisions.

The Irish Government funds these NGOs at a cost to the taxpayer of six billion euro per annum. Some NGOs provide legitimate services on behalf of the State, but others are activist-led and receive funding on the condition that they advance Government policies in accordance with the Programme for Government. These policies are often agreed with, or proposed by, the NGOs in the first place.

These are not independent organisations providing a plurality of views to Government. It would appear that Government and certain NGOs are in a symbiotic relationship where both parties have their needs met to the exclusion of society.

¹³ Source CSO

¹⁴ Source Gender Recognition Act Annual Report for 2022, Dept of Social Protection

¹⁵ See Section 2(2) of this paper

¹⁶ See Section 2(1) of this paper

¹⁷ See Section 2(3) of this paper

¹⁸ See Section 2(4) of this paper

¹⁹ See Section 4 of this paper



There is also evidence that external philanthropists have influenced social engineering through generous donations, conditional on propagating certain ideologies.

Some politicians, both serving and retired, have confirmed that mid-ranking officials in NGOs have more influence in Government than some elected politicians. This has also been reported in a leading Irish newspaper.

Has Academia Fallen Prey to Policy Capture?

In 2015, the Athena Swan Charter was launched in Ireland.²⁰ The Higher Education Authority (HEA), which itself is funded by the Exchequer, funds this UK-based charity in Ireland.

Originally dedicated to increasing women's participation in STEM subjects in higher education institutions (HEIs), its mission soon became subverted by gender identity activists.

Participation in the Charter became mandatory and a condition for receipt of Government funding.

Irish HEIs soon abandoned their own ethos in favour of being awarded a Gold, Silver, or Bronze accreditation from this UK charity, on condition that they progress gender identity ideology in Universities. Many HEIs developed policies based on incorrect interpretations of Equality legislation.

Ireland can boast that 54% of the Irish population hold a 3rd level qualification. In 2023, it was reported that 59% of Leaving Cert students received their first preference degree course from the CAO.²¹ This cohort will be exposed to the ideologies propagated by activists, where "preferred pronouns" and availing of what were previously single-sex facilities, based on one's "gender identity," become normalised due to these policies. This normalisation will in turn be brought into the workforce and these new recruits will expect the existing workers to change their customs and practices to accommodate their incorrect beliefs.

Conclusions

The case has been made that sex-erasure is happening in Ireland. This paper outlines the amendments to sex-specific language in legislation, and the embedding of gender ideology into Irish social life following the launch of the National LGBTQ strategies. This most notably affects areas dealing with female-specific issues: safeguarding, sport, health, and reproduction.

The Government is clearly showing signs of "groupthink." The vote in favour of Marriage Equality opened the door to far more radical ideologies. Buoyed by the success of the campaign, the Oireachtas passed the Gender Recognition Act in 2015 "under the radar" and without a public debate, having been heavily lobbied by LGBTQ activists for a liberal form of gender self-identification. These activists, having secured a direct line to senior Government Ministers and officials pushed forward with their agenda. The Yogyakarta Principles, although not binding on the State, were always their guiding force.

The overreliance on NGOs, who only represent the interests of their narrow constituency, and the failure by Government to consider other stakeholders, exemplify the process of policy capture. This disadvantages the public interest in general and women's rights in particular.

²⁰ [https://hea.ie/policy/gender/athena-swan/#:~:text=The charter launched in Ireland, and medicine \(STEMM\) employment](https://hea.ie/policy/gender/athena-swan/#:~:text=The charter launched in Ireland, and medicine (STEMM) employment)

²¹ <https://www.irishexaminer.com/news/arid-41215711.html>



The confusion of “sex” and “gender identity” has impacted on the sex-based rights of women and girls. This confusion suits the gender identity movement, which seeks to overwrite the recognition of biological sex with gender identity in all areas of law, public policy, and social life.

As Irish academic feminists and NGOs (who are supposed to represent women’s rights) embraced gender ideology, women with a “belief in biology” were not recognised as stakeholders. These women who do not adhere to gender ideology have a right to campaign for sex-based protections in line with existing Irish and international laws.

List of abbreviations

GRA	Gender Recognition Act, 2015
CEDAW	Convention on the Elimination of all Forms of Discrimination against Women
ECHR	European Convention on Human Rights
ESA	Equal Status Act 2000



A Review of Sex-based Rights in Irish Equality Acts and International Laws, as Currently Drafted

1. What does the protected characteristic of “gender” mean in the Equality Acts?

The Equal Status Act (ESA) 2000²²

1(a) Currently the “gender ground” in the ESA is defined as “*that one is male and the other is female,*” (“gender” is used as a synonym for “biological sex”.)

Although the discriminatory grounds do not expressly include gender reassignment, the gender ground has been interpreted (giving effect to the judgment of the European Court of Justice in *P v S and Cornwall County Council* [1996] ICR 795) to provide protection from discrimination on grounds of gender reassignment.

1(b) What do the Equality Acts set out to achieve?

They seek to promote equality by forbidding discrimination in employment, vocational training, advertising, collective agreements and the provision of goods and services.

People who provide services to the public (e.g., recreational services, transport or travel services, banking services, etc.) cannot discriminate based on the protected characteristics of gender, marital status, family status, age, disability, sexual orientation, race, religion, or membership of the Traveller community.

1(c) What are the exemptions in the Equality Acts?

The Acts provide that people can be treated differently in certain circumstances. It is not discrimination under the Acts to treat a person differently on the gender ground when providing aesthetic, cosmetic, or similar services, which require physical contact between provider and recipient. This also includes any situation where a person could face embarrassment due to lack of privacy, such as public toilets, hospital wards, changing rooms or prisons.

Single-sex schools are also permissible under the Acts.

Clubs and Sport

It is **not** discrimination if a club:

- is for a particular group of people – for example, a gay club, a club for people with disabilities, a club for members of the Traveller community, and so on.
- sometimes only admits certain club members. In this case, the club must offer the same or a similar benefit or privilege to its other members. For example, a tennis club can run a men-only tournament, but it must at some stage offer a similar event to its women members.
- makes a genuine effort to include people of a particular gender who may have been excluded in the past. For example, a golf club may offer special rates for full membership for women; or

²² <https://www.irishstatutebook.ie/eli/2000/act/8/enacted/en/html>

- treats members of a particular gender, age, disability, nationality, or national origin differently with regard to sporting facilities or events. For example, a sports club can organise different competitions for different age groups.

1(d) What do the Equality Acts state about discrimination based on gender?

Section 3 of the ESA defines discrimination in terms very similar, though not quite identical to section 6 of the Employment Equality Act (EEA). Unlike the EEA, it contains at S.3(1)(c) a general definition of indirect discrimination:

where an apparently neutral provision would put a person referred to in any paragraph of section 3(2) at a particular disadvantage compared with other persons, unless the provision is objectively justified by a legitimate aim and the means of achieving that aim are appropriate and necessary.

Section 5(1) of the ESA then prohibits discrimination in the provision of goods and services; and the subparagraphs of section 5(2) exclude the effect of that prohibition in various specific contexts.

Section 5(2) provides,

... [S]ubsection (1) shall not apply in respect of—

(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,

(f) differences in the treatment of persons on the gender... in relation to the provision or organisation of a sporting facility or sporting event to the extent that the differences are reasonably necessary having regard to the nature of the facility or event and are relevant to the purpose of the facility or event,

(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...

Currently the “gender ground” in the ESA is defined as

(a) that one is male and the other is female,...

Although the discriminatory grounds do not expressly include gender reassignment, the gender ground has been interpreted (giving effect to the judgment of the European Court of Justice in *P v S and Cornwall County Council* [1996] ICR 795) to provide protection from discrimination on grounds of gender reassignment.

2. International Law and Human Rights

2(1) European Convention on Human Rights (ECHR)

The ECHR is the European Convention on Human Rights. It was drafted in the aftermath of the Second World War and the Holocaust in an attempt to protect the people from the State, make sure the atrocities committed would never be repeated, and safeguard fundamental rights.

Ireland formally ratified the Convention in 1953, making it legally binding on the State.

2(1)(a) How does the convention protect women's sex-based rights?

Article 3: No one should be subjected to torture or to inhuman or degrading treatment or punishment.

Treatment is considered to be “degrading” when it humiliates or debases an individual, showing a lack of respect for, or diminishing, his or her human dignity, or arouses feelings of fear, anguish or inferiority capable of breaking an individual's moral and physical resistance. It may suffice that the victim is humiliated in his or her own eyes, even if not in the eyes of others i.e., being made to undress in front of members of the opposite sex in changing rooms, hospital wards, prisons etc.

Article 8 protects your right to respect for private and family life, your home and correspondence.

What is meant by private life?

Private life has a broad meaning. It means you have the right to live your life with privacy and without interference by the state. It covers things like:

- your sexuality.
- your right to control who sees and touches your body.
- personal identity and how you look and dress.
- forming and maintaining relationships with other people.
- how your personal information is held and protected.

Article 9: Freedom of thought, conscience, and religion, including the right to believe that sex is binary and immutable.

Article 10: Freedom of Expression

The underlying premise of Article 10 ECHR is to ensure that citizens have the right to express their thoughts freely without interference from public authorities or fear of persecution. Nevertheless, it is important to acknowledge that this right is not absolute and that certain restrictions can be imposed, as long as they are clearly defined by law and are necessary to achieve a legitimate aim.

Article 11: Freedom of assembly and association

The right to freedom of peaceful assembly guarantees the capacity of all persons to join with others to collectively express, promote, pursue, and defend their interests. This right enables people to express their political opinions, join trade unions, engage in religious observances, engage in artistic pursuits, and elect their representatives and hold them accountable.

Article 12: The right to have a family

It protects the right of men and women of marriageable age to marry and to start a family.

Article 14: Prohibition of discrimination

You have these rights regardless of your skin colour, sex, language, political or religious beliefs, or origins.

2(2) UN Convention on the Elimination of all Forms of Discrimination against Women (CEDAW)²³

The Convention (CEDAW) is an international treaty on the human rights of women and girls, which defines discrimination against women and lists what states need to do to end discrimination.

2(2)(a) Has Ireland ratified the Convention and what does it mean?

Ireland signed and ratified CEDAW in 1985. In so doing, Ireland committed itself to achieving equality between men and women in Ireland, including in the areas of political and public life, health, education, and employment. Ireland also committed to having its record under the Convention reviewed periodically by the UN's CEDAW Committee.

2(2)(b) What does the Convention set out to achieve?

It provides a complete definition of sex-based discrimination, described as any exclusion, restriction, or distinction on **the grounds of sex**, which intentionally or unintentionally impairs or nullifies the recognition, enjoyment and exercise of women's social, cultural, political and economic rights.

In its preamble, the Convention recognises that "extensive discrimination against women continues to exist [and creates] an obstacle to the participation of women, on equal terms with men, in the political, social, economic, and cultural life of their countries."

Article 1

Definition of discrimination against women: any distinction, exclusion, or restriction, **made on the basis of sex**, with the purpose or effect of impairing the enjoyment of women of political, economic, social, cultural, or civil human rights on equal footing with men.

Article 3

States Parties shall take in all fields, in particular in the political, social, economic and cultural fields, all appropriate measures, including legislation, to ensure the full development and advancement of women, for the purpose of guaranteeing them the exercise and enjoyment of human rights and fundamental freedoms on a basis of equality with men.

Article 5

States Parties shall take all appropriate measures:

(a) To modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of **either of the sexes** or on stereotyped roles for men and women;

(b) To ensure that family education includes **a proper understanding of maternity** as a social function and the recognition of the common responsibility of men and women in the upbringing and development of their children, it being understood that the interest of the children is the primordial consideration in all cases."

²³ <https://www.un.org/womenwatch/daw/cedaw/text/econvention.htm>



What is Driving this Change towards the Erosion of Sex-based Language and Replacing it with “Gender-neutral” Language?

2.(1) Gender Recognition Act, 2015²⁴

2(1)(a) The Gender Recognition Act (GRA) became law in 2015 and allows any man or woman to not only change their “gender identity”, but it also introduces a legal fiction whereby they change “sex”.

18. (1) Where a gender recognition certificate is issued to a person the person’s gender shall from the date of that issue become for all purposes the preferred gender so that if the preferred 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 Act provides for the fundamental principle of the legislation, which is that, once a gender recognition certificate is issued to a person, the person’s preferred gender becomes their gender for all purposes, including dealings with the State, public bodies, and civil and commercial society. It includes the right to marry or enter a civil partnership in the preferred gender and the right to a new birth certificate or, if applicable, a new entry in the Foreign Births Register.

2(1)(b) Statistics on Gender Recognition Certificates

The Annual Report on Gender Recognition for the year ending on 31 December 2022 states that the following number of Gender Recognition Certificates were issued:

Total	Male to Female	Female to Male	Revocations
1,203	612	591	5

2(1)(c) What percentage of the Irish population does this represent?

This cohort represents 0.02335% of the Irish population based on the latest census figure of 5,149,139.

2(1)(d) The interaction between the GRA and the ESA.

The protected characteristic in the ESA of “gender” is defined as “a man or a woman” and it extends, through case law, to people who have undergone gender reassignment. Under the ESA as currently enacted, it is not discrimination to provide single-sex services.

2(2) Marriage Act, 2015²⁵

Since 16 November 2015, same-sex couples get can legally get married in Ireland. They have the same rights and obligations towards each other as opposite-sex married couples.

This legislation led to a number of legislative amendments, which resulted in sex-based language being replaced by gender-neutral language. These amendments are set out in Section 3 of this paper.

2(3) The 2 National LGBTQI+ Strategy Policies.

²⁴ <https://www.irishstatutebook.ie/eli/2015/act/25/enacted/en/html>

²⁵ <https://www.irishstatutebook.ie/eli/2015/act/35/enacted/en/html>

The broader impacts of self ID and marriage equality began to emerge with the publication of the 1st LGBTI+ National Youth Strategy 2018 – 2020,²⁶ and continued with the publication of the 2nd National LGBTI+ Inclusion Strategy 2019 – 2021.²⁷

Arising out of these legislative changes, the strategies sought to “*address gaps in infrastructure, supports, resources, training and funding to make this progress a reality for LGBTI+ young people across the country.*”

Since then, there have been attempts to force new words into our lexicon, such as cis-gender to indicate someone who “identifies” with their sex “assigned at birth.” The use of “cis” relegates women and girls to a subset of our own sex class. The dictionary definition of a woman as an adult human female is now viewed as “non-inclusive” because it is alleged that it “excludes men who identify as women.”

1st National LGBTIQ+ Strategy Document 2018 - 2020

The Government launched its first LGBTI+ National Youth Strategy for 2018 – 2020 under the stewardship of the then Minister for Children and Youth Affairs Dr Katherine Zappone. It set a number of strategic goals, under the “values” of Inclusiveness, Equality, Rights, Empowerment, Respect, Positivity and Acceptance.

These goals included

- An action plan for schools;
- Amendment to the Equality Acts;
- Prohibition of Conversion Therapy;
- Gender recognition for non-binary people;
- Commissioning a review of “international and Irish best practice study on appropriate language and ways to ask about gender identity.”

2nd National LGBTI+ Inclusion Strategy 2019 – 2021

This strategy framework was launched by then Minister for Justice and Equality, Charles Flanagan TD.

Its “strategic thematic pillars” are Visibility; Equal Treatment; Health; Safety and Support, and include the actions:

- Develop and implement further actions to support the positive portrayal and representation of LGBTI+ identities in broadcast media.
- Explore opportunities for the appropriate inclusion of LBGTI+ lives in the curriculum as part of the curriculum review at both primary and senior-cycle levels.
- Take account of the needs and interests of LGBTI+ people in libraries’ collections...
- Take practical measures to increase the availability of non-gendered toilets in public buildings.
- Review the Employment Equality and Equal Status Act to ensure that transgender, non-conforming and intersex people have explicit protection within the equality grounds.

²⁶ <https://www.gov.ie/en/press-release/507ac0-minister-zappone-launches-year-1-report-on-the-implementation-forum/>

²⁷ <https://www.gov.ie/en/press-release/6b2ad0-launch-of-irelands-national-lgbti-inclusion-strategy-2019-2021/?referrer=http://www.justice.ie/en/JELR/Pages/PR19000288>

2(4) Yogyakarta Principles²⁸

- The “Yogyakarta Principles” are a set of “Principles” that claim to be the “application of international human rights law in relation to sexual orientation and gender identity”. They were adopted by representatives from various non-governmental organisations and United Nations treaty monitoring committee members following a November 2006 conference held in Yogyakarta, Indonesia
- The Principles have been touted as establishing a “universal guide to human rights which affirm binding international legal standards with which all States must comply.”
- Notwithstanding such ambitions, the Principles reflect only the views of a narrow group of self-identified “experts” and are not binding in international law.

Irish Government’s views

- Asked whether the Yogyakarta Principles (and the YP +10) are binding on the Irish Government and if not, what standing they have in international law and what relevance they have to domestic legislation, the Department of Foreign Affairs said:

“The Yogyakarta Principles are a set of principles elaborated by experts; they are not an international treaty or otherwise binding on States. They were not intended to be formally endorsed by States. Ireland actively adheres to core international and European human rights treaties.”

The YP+10 principles were signed by just 33 people.

- They are often quoted misleadingly by politicians and trans lobby groups as though they had been adopted by UN resolution; and
- Their full implementation, both in law and within state organisations, would effectively make “sex” a defunct legal category, replacing with by the ambiguous category of “gender”.

It is within this framework that we examine the “gender neutralizing” of sex-based language in law and policy by the Irish Government, media, and health care system, and how this disproportionately affects women and girls.

²⁸ <https://yogyakartaprinciples.org/>



An Analysis of Amendments to Legislation, or Where Attempts Have Been Made to Amend Laws to Remove Female Sex-based Language.

3(1) Work Life Balance and Miscellaneous Provisions Act 2023

This Act provided for amendments to sex-specific language in a number of Acts.

3(1)(a) Section 34 of the Act provides for a number of amendments to the Maternity Protection Act 1994:

S.7(2) was deleted – it originally stated that “references in this Part to an employee are references to a female employee only.”

There was an attempt by the Minister to amend S.16(1) and replace the word “woman” with “person.”

The Minister did not proceed with this erasure, opting instead for “woman or other person,” following a campaign by The Countess to save the word “woman” in an Act that relates specifically to female reproduction.

3(2) Family Leave and Miscellaneous Act, 2021

The stated purpose of this Act was to provide for adoptive leave for **male same-sex couples** and provides for a number of amendments to the following Acts.

3(2)(a) Adoptive Leave Act 1995

The words “mother and father” are substituted by “qualifying adopter”.

3(2)(b) Parental Leave Act 1998

No changes as neither the words “mother or father” were used in the original Act.

3(2)(c) Social Welfare Act 2005

In certain instances, “adoptive mother” and “sole male adopter” were substituted by “qualifying adopter”.

3(2)(d) Child & Family Agency Act 2013

No language amendments.

3(2)(e) Workplace Relations Consolidation Act 2015

“Adopting father” and “adopting mother” are substituted by “qualifying adopter”.

3(2)(f) Paternity Leave & Benefit Act 2016

“Adopting mother” is substituted by “qualifying adopter”. The word “father” was not cited in the original or amended Act.

3(2)(g) Parent’s Leave & Benefit Act 2019

“Adopting mother” and “adopting father” are substituted by “qualifying adopter”

3(3) Organisation of Working Time (Reproductive Health Related Leave) Bill 2021 does not mention the word “woman” at all.

3(4) Period Products (Free Provision) Bill 2021 does not mention “woman or girl” at all.

3(5) Free Provision of Period Products Bill 2021 does not mention “woman or girl” at all.

3(6) Census 2022

The census of population was conducted in 2022. Question 4 related to “sex” and gave two options: male and female. This is in accordance with EU legislation.

However, the Irish Times reported that²⁹

“People who choose not to declare themselves as male or female in this year’s census will have a biological sex assigned to them on a random basis, the Central Statistics Office (CSO) has said.

People who are uncomfortable about ticking one of these options may signal this by marking both of them, according to the CSO website.

“However, for statistical analysis purposes all entries will be assigned a sex. Where this is not clearly indicated on a census form it will be assigned at random.”

The website says the CSO “recognises the importance of accounting for gender identity as distinct from sex”, and that work is actively under way to introduce a question on gender identity for the next census.”

²⁹ <https://www.irishtimes.com/news/social-affairs/census-to-assign-biological-sex-randomly-for-those-who-do-not-declare-as-male-or-female-1.4825848>



Section 4

Policy Capture

4(1) In 2017, the Organisation for Economic Co-operation and Development (OECD), released a document as part of its 'Public Governance Reviews' entitled *Preventing Policy Capture: Integrity in Public Decision Making*. Public policy, OECD note, is "at the centre of the relationship between citizens and governments," and has a substantive impact on "the quality of citizens' daily lives." The report exposes how "policy capture", where public decisions over policies are consistently or repeatedly directed away from the public interest towards a specific interest, can exacerbate inequalities and undermine democratic values, economic growth and trust in the government. It maps out the different mechanisms and risks of policy capture and provides guidance for policy makers on how to mitigate these risks through four complementary strategies: engaging stakeholders with diverging interests; ensuring transparency and access to information; promoting accountability; and identifying and mitigating the risk of capture through organisational integrity policies.³⁰

In its Executive Summary it states:

"The capture of public decisions can be achieved through a wide variety of illegal instruments, such as bribery, but also through legal channels, such as lobbying and financial support to political parties and election campaigns. Undue influence can also be exercised without the direct involvement or knowledge of public decision makers, by manipulating the information provided to them, or establishing close social or emotional ties with them."

Deputy Charles Flanagan, shortly after announcing his intention not to contest the next election, said in an Irish Times interview on 30th September 2023,³¹

"There is a dangerous intolerance of any view that is not being pushed by vociferous, well-financed and well-funded non-government organisations... I would have more influence on Government policy if I was a middle-ranking official with an NGO than a Government backbencher."

Of All-Party Committees, he stated,

"The all-party committee is handpicked. It holds hearings. The hearings are preordained. The hearings are often one-sided. The report can be written before the committee actually sits..."

Eilis O'Hanlon, writing in The Sunday Independent on 1st October 2023, states,³²

"This is what former Fianna Fail minister Éamon Ó Cuív was talking about last month when, addressing the 33rd Desmond Greaves summer school, he observed the "quite staggering" rate at which "decision-making powers formerly exercised by the Oireachtas and the Government are now devolved to a web of agencies and external bodies"."

³⁰ <https://www.oecd.org/gov/ethics/preventing-policy-capture-9789264065239-en.htm>

³¹ <https://www.irishtimes.com/politics/2023/09/30/charlie-flanagan-the-liberal-agenda-has-accelerated-in-recent-years-in-a-way-that-causes-me-discomfort/>

³² <https://archive.ph/2023.10.01-070616/https://www.independent.ie/opinion/comment/eilis-ohanlon-irelands-quango-quandary-who-is-really-running-the-country/a141736255.html>

In October 2023, Minister Paschal Donoghue, and Minister Joe O'Brien both admitted that the government only funds NGOs who run campaigns "consistent with the Programme for Government."³³

4(2) The Atlantic Philanthropies

"I am approaching my subject by stealth, and I do so in order to imitate methods by which the Atlantic Foundation has for years been doing its own legendary work of philanthropy."

Seamus Heaney, at a dinner for Chuck Feeney, Dublin, 1997

€1.1BN of funding was channeled to Ireland from Atlantic over a 30-year period. This led to an exponential growth in the NGO sector.

\$4.7 million was granted to GLEN (Gay & Lesbian Network) from Atlantic, with Kieran Rose of GLEN acknowledging that same sex marriage "would not have happened so quickly" without the Atlantic input.³⁴

GLEN closed due to financial irregularities in 2017.

4(3) State Funded NGOs with access to high-level politicians through lobbying

4(3)(1) National Women's Council of Ireland

"The National Women's Council is the leading national representative organisation for women and women's groups in Ireland, founded in 1973. We have over 190 member groups and a large and growing community of individual supporters."

By 'woman' we refer to any person who identifies as a woman."

NWCI elected a trans-identified male onto the Board of NWCI in 2020, clearly a conflict of interest.

Year	State Funding €	U.S. Funding
2021	1,012,680	72,694*
2022	966,000	57,607*

*Nova Tides Foundation & Reproductive Rights U.S.³⁵

NWCI lobbied government 321 times since 2016 and there is no evidence to suggest that they lobbied on behalf of preserving women's sex-based rights or to preserve sex-based language in law for women.

³³ <https://x.com/griptmedia/status/1709212818875023571?s=51&t=aBhhMJTmYfRTgha2zG6eCw>

³⁴ https://en.wikipedia.org/wiki/Gay_and_Lesbian_Equality_Network

³⁵ <https://womensspaceireland.ie/articles/why-was-an-unrepresentative-survey-carried-out-by-the-national-lgbt-federation-2/>

<https://www.tides.org/priority-issues/equality-human-rights/gender-justice/abortion-is-health-care-support-these-organizations-fighting-for-reproductive-justice/#:~:text=To help provide critical resources,for no-cost expedited grantmaking.>



4(3)(2) BelongTo

Our Vision

BeLonGTo's vision is a world where LGBTI+ young people are equal, safe, and valued in the diversity of their identities and experiences.

Our Mission

BeLonGTo's mission is to support LGBTI+ young people as equals to achieve our vision through youth work, changing attitudes, and research.

Our Values

Promoting human rights, social justice, solidarity, and intersectionality. Collaboration and youth participation. Welcoming, inclusive, supportive, safe, and fun. Integrity, honesty, openness, and respect.

Year	State Funding €	Corporate Funding	Trusts & Foundations
2021	838,527	320,123	184,570
2022	811,285	225,142	342,446

BelongTo has lobbied the Irish government 107 times since 2016 and appears to enjoy very high-level access to Ministers and the Taoiseach.

4(3)(3) LGBT Support & Advocacy Network Irl. clg

"LGBT Ireland is a national charitable organisation providing support services to LGBTQI+ people."

Year	State Funding €
2021	285,416
2022	361,794

LGBT Irl. has lobbied the Irish Government 50 times since 2020. When campaigning on the proposed amendment to Articles 40 and 41 of the Irish Constitution, they stated the following:

"The elevation of sex above all other equality grounds in the proposed wording is problematic and fails to recognise the intersectional nature of discrimination and oppression."³⁶

4(3)(4) Transgender Equality Network Ireland (TENI)

Year	State Funding €
2019	362,138
2020	290,833
2021	367,447
2022	209,646

TENI has lobbied the Irish government 78 times since 2016 on such matters as trans-inclusive language in legislation, as well as provision for transgender prisoners.

³⁶ <https://lgbt.ie/wp-content/uploads/2023/05/LGBT-Ireland-Submission-re-Referendums-on-Family-Care-and-Equality.pdf>

4 (4) Academia

4(4) (1) Athena Swan Charter

In February 2015, Minister for Education and Skills, Jan O'Sullivan TD, launched the Athena SWAN Charter in Ireland. This Charter has financial implications for any higher-level institution which does not engage with the Charter.

Access to funding can be denied or restricted for failing to do so, thereby making it compulsory. In September 2021, 19 institutions were recognised with Athena Swan “awards.”

Athena Swan has therefore provided the perfect vehicle for Policy Capture in Irish Academia, as will be evidenced in the small sample selected in this paper.

Writing in “The Critic” Alice Sullivan, Professor of Sociology, *UCL Social Research Institute*, and Dr John Armstrong, Reader in Financial Mathematics, Probability and Statistics, *King’s College London*, had this to say about Athena Swan,³⁷

“With the best intentions, our educational establishments are handing control of their policies and curricula to unaccountable private bodies. Membership of these schemes has encouraged universities to accept advice which encourages legally dubious actions, including misrepresenting the Equality Act 2010, failing to collect equalities data, and failing in their duties to ensure both freedom of belief and academic freedom. They have been willing to flout the law, and all in the hope of winning a gold star.”

In November 2021, Irish Academic, Colette Colfer, stated the following in her article published in *Broadsheet.ie* ³⁸

“Signing up to this charter is a requirement of all HEIs in the country. Even research funding in Ireland is now directly linked to accreditation with Athena Swan.”

She also stated the following,

*“The Athena Swan Ireland Charter is run by a UK-based charity named Advance HE. Since the charter was launched in Ireland in 2015 its remit **has stretched from an initial focus of advancing women’s careers in science, technology, engineering, maths, and medicine to now cover all disciplines as well as staff in roles across the sector including those in maintenance.***

*It also involves consideration of the experiences of trans staff and students and the under-representation of men in certain disciplines. **Involvement with the charter has financial implications as well as implications for academic freedom.***”

*“The Athena Swan award system is divided into **Bronze, Silver, and Gold levels**. In order to attain an award, participants must submit an application and draw up an action plan in line with Athena Swan Ireland Charter Principles.”*

³⁷ <https://thecritic.co.uk/the-subversion-of-athena-swian/#:~:text=The case of Athena Swan,safe option, should think again>

³⁸ <https://www.broadsheet.ie/2021/11/18/stifling-academic-freedom/>



The Glossary Section attached to the Charter states.

“The definition for the term gender, for example, states that it is ‘a spectrum of masculine and feminine characteristics that are socially constructed’. There is no mention of biology and no acknowledgement that the term gender is one which has been contested for decades and means different things to different people.”

4(4)(2) Irish Research Council “Gender Strategy Review 2022” (Active Members of Athena Swan Charter) ³⁹

We use the terms ‘male’ and ‘female’ throughout this report, reflecting their use by the IRC at the time we conducted our review. Survey respondents were asked to self-identify using the categories in Table 1. While this review was being completed, the IRC adopted a new classification using the terms ‘woman’, ‘man’, ‘gender non-binary’, ‘other’ and ‘prefer not to say’.

4(4)(3) Trinity College Dublin, Strategic Plan 2020-2025 (Silver Athena Award holder)

Embedded within the above document lies the “Gender Identity & Expression Policy” ⁴⁰

Students are encouraged to use preferred pronouns. The toilet policy is that transgender students should use the toilet that corresponds with their gender identity. “Sex assigned at birth” is used in the document also.

4(4)(4) University College Dublin “Gender Identity & Expression Policy”. (Silver Athena Award holder)⁴¹

This document includes the language of gender ideology, with expressions such as “designation of a sex at birth” and would appear to question the binary nature of sex. Furthermore, it incorrectly interprets the Equal Status Act, claiming that gender identity and gender expression are protected characteristics when they clearly are not.

4(4)(5) South East Technological University, Waterford. (Athena Swan Participant)⁴²

The University claims that misgendering is “unlawful discrimination.” They also claim that “outing” someone by “revealing the gender identity of a person to others” is “unlawful discrimination” which is an incorrect interpretation of the law.

Through these measures, the University is attempting to impose compelled speech on the faculty and students, in direct contravention of their Irish and international human right to free speech, belief and conscience.

³⁹ <https://research.ie/assets/uploads/2022/03/IRCGenderPlan-s.pdf>

⁴⁰ <https://www.tcd.ie/equality/policy/other-policies/#genderid>

⁴¹ <https://www.ucd.ie/equality/support/lgbtisupports/#:~:text=Gender Identity and Expression Policy,diverse gender identities and expression.>

⁴² https://www.wit.ie/images/uploads/About_PDF/SETU_GIE_Policy_Final_March23.pdf



4(4)(6) Royal College of Surgeons (Bronze Athena Swan Award)

In their Gender Identity & Expression Policy Document, they state, ⁴³

“Everyone has a ... Sex assigned at birth, Gender identity, Gender expression, Sexual orientation.

A person whose sex assigned at birth was male but who identifies as female is a transgender woman. Some people described by this definition do not consider themselves transgender – they may use other words, or may identify simply as a man or woman.”

The document provides incorrect legal information,

“Some indicative examples of unlawful discrimination because of a person’s gender identity or gender expression include:

- *Making offensive comments about a person’s gender identity or gender expression.*
- *Verbally or physically threatening someone or spreading malicious gossip.*
- *Refusing to address a person by their correct gender pronoun or new name;”*

There is no legal requirement in Irish law to mandate for compelled speech.

5 The Civil Service ⁴⁴

On 3rd August 2023 the Irish Times reported that a “number of government departments have held workshops about the use of pronouns as part of moves to support gender identity across the Civil Service. This includes the option of specifying preferred pronouns in email signatures and other official correspondence.”

⁴³ <https://www.rcsi.com/equality-diversity-and-inclusion/policies-and-publications>

⁴⁴ <https://www.irishtimes.com/politics/2023/08/03/government-departments-hold-pronouns-workshops-to-support-colleagues-gender-identity/>



6. Media

6(1) Sunday World ⁴⁵

30th October 2022, when referring to a Brazilian man who had been caught with “thousands of depraved child abuse images”, the reporter referred to the transgender male offender as “she” throughout.

6(2) Irish Examiner ⁴⁶

9th May 2022, the reporter referred to violent male offender “Barbie Kardashian” as “she” and “her”.

6(3) Irish Independent ⁴⁷

24th September 2020, the newspaper reported that “Garda have issued a nationwide bulletin about a homicidal teenage girl who is due to be released into the community today.”

The homicidal teenager was referred to, as “she” and “her,” throughout the article, despite the reporter being in the full knowledge that the person in question was a violent young man.

6(4) Irish Times

19th February 2021, “transgender woman to be sentenced for assaulting three men”.⁴⁸

Despite the fact that Kavanagh attacked the men while clearly a man (who only claimed to be transgender following conviction for assault), the pronouns “she” and “her” were used. Mitigation was sought because Kavanagh was deemed vulnerable, and the Barrister stated that it would be “difficult for her to serve a prison sentence.”

1st March 2021, “woman jailed for assaulting a friend who was trying to break up a fight” ⁴⁹

Throughout this report, Kavanagh was referred to as a woman and “she”. Kavanagh was sentenced to two years in prison, but the final twelve months were suspended. The judge in this case said that Kavanagh should serve the sentence in a women’s prison.

⁴⁵ <https://www.sundayworld.com/crime/irish-crime/transgender-child-perv-back-on-streets-despite-being-told-she-would-be-deported/1777263222.html>

⁴⁶ <https://archive.ph/vJmiZ>

⁴⁷ <https://archive.ph/D9LSo>

⁴⁸ <https://www.irishtimes.com/news/crime-and-law/courts/criminal-court/woman-jailed-for-assaulting-a-family-friend-who-was-trying-to-break-up-a-fight-1.4498193>

⁴⁹ <https://www.irishtimes.com/news/crime-and-law/courts/circuit-court/transgender-woman-to-be-sentenced-for-assaulting-three-men-1.4489730>





THE COUNTESS