



# GENDER & LAW

A GUIDE FOR SCHOOL PRINCIPALS & BOARDS OF MANAGEMENT



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### **Introduction**

As an organisation focused on promoting and facilitating fact-based dialogue and advocacy to safeguard the rights of women and children, The Countess has produced this short guide to the Irish legal framework relating to gender and the rights and obligations that exist in law in this jurisdiction at time of publication. This guide is intended to provide clarity for those working in schools on the legal standards required of them to ensure healthy and effective safeguarding is maintained across the Irish education system.

A growing number of challenges are being experienced in schools across Ireland relating to gender ideology. Schools are put under pressure via external resources authored by trans lobby groups that propose so-called inclusive policies as best practice. Schools have a considerable risk of liability arising from this advice.

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

### **Important to note**

Schools have a duty of care to all students that includes safeguarding and equality. These should not be undermined in an attempt to follow “inclusion” guidelines.

# Definitions

The Countess is concerned with preventing the erosion or erasure of clear, sex-based terms in law, policy, and everyday language. With that in mind, and for the avoidance of doubt, the following are the definitions of those words applied in this guide and in all our work. They are:



## • Woman

'Adult human female'



## • Girl

'Female child or adolescent'



## • Man

'Adult human male'



## • Boy

'Male child or adolescent'



## • Sex

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



## • Gender

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



## • Gender ideology

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



## • Non binary

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



## • Preferred pronouns

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



## • Transgender/Trans

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



## • Transition

A process which can be social or medical/surgical:

## • Social

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

## • Medical

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

## • Surgical

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

## The Gender Recognition Act 2015

The Gender Recognition Act, 2015 ('GRA') is an Act to recognise change of legal gender. The GRA 2015 amends the Irish Nationality and Citizenship Act 1956, the Civil Registration Act 2004, the Passports Act 2008 and the Adoption Act 2010. A gender recognition certificate (GRC) is issued by the Minister for Justice on behalf of the State to officially document and recognise that a person has legally changed their gender.

1.18. (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.

From 2015 to 2024, 1857 GRCs were issued to people aged over 18. Twenty-four people aged 16 and 17 were issued GRCs in the same period. There is an average of three per year to children aged 16 or 17. **Children aged under 16 cannot apply for a GRC.**

### Gender Reassignment vs Gender Identity

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

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

#### Important to note

- A GRC is a shield, not a sword.
- No one can be compelled to believe that someone has changed sex.
- Gender reassignment is a protected characteristic but gender identity or identifying as transgender is not.
- Children under 16 cannot apply for a GRC

## Equal Status Acts 2000–2018

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

Those groups are:

**Age, Race, Gender, Religion, Disability, Family status, Marital status, Sexual orientation, Membership of the Traveller community.**

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Section 3(2) refers to the grounds on which one is allowed to discriminate.  
**s.3(2)(a) defines gender as male or female.**

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

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Section 5 (1) of the ESA outlines how a person must not discriminate in disposing of goods to the public generally or section of the public, except when certain circumstances arise with regard to the gender ground.

*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.*

*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.*

### Important to note

- The Acts define gender as Male and Female.
- It is lawful to separate spaces and sport on the basis of sex.
- The Acts do not include gender identity.

## Educational Establishments and the Acts

It is expressly **allowed** to discriminate on the gender grounds where the presence of the opposite sex would infringe privacy or cause embarrassment. This allows for toilets and changing rooms in schools to be segregated on the basis of sex and not gender identity because the gender grounds is defined as whether a person is male or female.

The responsibility of the school management to facilitate the professed gender of trans-identified staff goes as far as facilitating the use of a third space bathroom. It does not extend to male teaching staff using female toilets.

There is no right in law to use the intimate spaces (toilets and changing rooms) of the opposite sex. Therefore there is no obligation whatsoever to grant these rights to either pupils or members of the teaching staff.

A female student who loses her female-only toilet, changing room or place on a female-only sports team would have grounds for a claim of direct discrimination against the school.

Teachers, staff, and pupils who identify as the opposite sex can be advised to use multi-use single unit toilets and in that way not impinge on the privacy and dignity of those of the opposite sex. This is the lawful and compassionate approach to this issue.

Teachers who are trans-identified have no right in law to compel their colleagues or, in particular, the children in their care, to use their new preferred name or pronoun.

### Important to note

- There is no right in law to have preferred pronouns used by others.
- There is no right in law for a male to be allowed use female toilets or changing rooms.
- Allowing male students into female sport increases risk and is inherently unfair.
- A female student may have grounds for a case if she loses an opportunity to a boy who says he is a girl.

## Article 42 and The Education Act

Principals will be aware of the Constitutional and Statutory rights and obligations in regard to education. The teaching of gender ideology as fact is causing increasing concerns among parents. Schools should vet all materials including textbooks, worksheets, and online material and ensure a balanced view is given. Children should not be chastised or punished for expressing disagreement with gender ideology, in the same way as they should be able to debate other social issues with their classmates. An atmosphere of tolerance includes dissenting viewpoints.

### Article 42 of the Irish Constitution

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

## Education Act 1998

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

### Important to note

- Parents are entitled to withdraw their children from any teaching that goes against their beliefs, and this includes gender ideology (e.g. in the SPHE curriculum or 'inclusion' workshops etc.).
- Schools should inform parents of any disclosure by a child of transgender identity or feelings of gender dysphoria. Schools keeping this information secret are in breach of their statutory obligations.

## Transition in School

Declaring a trans identity is not the same as “coming out” as gay, lesbian or bisexual. Being LGB requires nothing of anyone else and does not pose a safeguarding risk in and of itself. However, declaring oneself to be “trans” comes with a host of impacts, both on the child and on others in the school community.

### Reminder

Transition is a process which can be social or medical/surgical.

Children transitioning in school usually start with social transition with, or sometimes without, their parents’ permission. This can include asking teachers and other students to call them by a different name, asking for records such as first names to be altered, and asking to use the facilities of the opposite sex.

### Reminder

There is no right in law to have preferred pronouns used by others.

There is no right in law for a male to be allowed use female toilets or changing rooms.

Although social transition is presented as benign or neutral, it is far from it. Social transition is the first step on a pathway that can lead to medical and surgical interventions. As children and adolescents are in a stage of identity development, concretizing the belief that they are “born in the wrong body” or are transgender can have serious long-term consequences. The rise in the number of “detransitioners” demonstrates that transgender identity is not fixed and can change over time.

### Important to note

- Social transition is not a neutral act. Teachers and schools are not qualified or entitled to transition a child without parental/medical input.

## Child Welfare and Transitioning

Trans-identifying children often have co-morbidities that may go unaddressed and which can deteriorate under the “trans” smokescreen. It is important to address each child’s needs in a holistic way so as not to breach your duty of care. It is also important that teachers and schools do not overstep their professional boundaries such as by hiding a social transition from parents/guardians.

Medical and surgical transition is rare in Ireland in young people, but some children may be given puberty-blockers and/or cross-sex hormones. These are serious medical interventions but again, they do not confer additional rights on the trans-identified child.

Transition also impacts on other students and their rights to privacy, freedom of expression, and fair sport should not be undermined. Normal safeguarding standards must be adhered to.

## Transition in Schools and The Law

Schools are advised to use sex as the determinant of what spaces and sports a child can enter, and not to go along with the social transition of any child. As gender recognition certificates cannot be obtained by under-16s, and are rare in 17- and 18-year-olds, there is no breach of law here.

Staff transitioning, or staff who have undergone a transition prior to joining the team, should be made aware of the limitations of your obligations as their employer.

### Resources

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

A guide for Parents, educators and those working with young people: <https://thecountess.ie/empowering-parents/>

## **Children First Act 2015 & Safeguarding**

Schools owe a duty of care to each child individually, as outlined in the Children First Act (2015). The standard of duty is the same for every child. The trans-identified child does not attract a higher standard of care due to their professed identity.

The rights of female students to single-sex toilets, changing rooms and sports should not be eroded at the behest of any trans-identified male, i.e. a boy who identifies as a girl. Under s.5 (2)(g) of the ESA 2010, these intimate spaces are divided on the basis of biological sex not identity.

Students who declare a trans identity in school are at risk of harm through practices like “binding” and “tucking”, and often have underlying co-morbidities. Schools should inform parents of all important disclosures and should not act outside their remit by hiding this information in the name of confidentiality or not “outing” a student.

## **Personal and Corporate Liability**

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

### **Important to note**

- Safeguarding and legal obligations are not changed when person declares themselves to be transgender.
- Whether student, staff, or teacher, normal safeguarding procedures should be followed.



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## Summary

- The Gender Recognition Act 2015 allows for legal change of gender from male to female or vice versa. It applies to adults only, except in rare cases where 16- and 17-year-olds have obtained a certificate with parental consent.
- Equal Status Acts 2000–2018 ('the Acts') allows for the provision of single-sex spaces.
- Children First 2015 outlines how schools have an equal duty of care to all children, and Boards of Management could be liable should they fail to follow proper safeguarding procedures.
- There is no obligation under Irish law to use someone else's preferred pronouns.
- Non-binary identity is not recognised in Irish law.
- Social transition is not a neutral act and schools should be cautious in going along with it, especially in the absence of explicit parental consent.
- Girls could claim direct discrimination if their access to female-only toilets and changing rooms is removed or they lose a place in a sport, because schools have adopted a policy of allowing male students to identify as female.
- The Countess is available to provide guidance to schools who are concerned about these issues.



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## About The Countess

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

### Our Work

Though we have a broad focus on women's rights, child protection and supporting families, The Countess was initially established in 2019 to focus attention on the conflict of rights and child safeguarding issues emerging from the Gender Recognition Act 2015. This Act allows legal self-identification of a 'preferred gender', meaning a man can be legally recognised as a woman and vice versa, with no caveats, checks, or restrictions. This is referred to as 'self-ID'. We promote constructive, respectful, and rights-focused dialogue on this issue, and wish to see a balanced approach to gender recognition that will:

- Vindicate the rights of women and restore single-sex provision,
- Achieve best practice in safeguarding for children and young people, and
- Defend the hard-won rights of same-sex attracted people to love who they love.

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.



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