

A Bill
entitled

AN ACT to provide for the recognition and registration of the gender of a person and to regulate the effects of such a change, as well as the recognition and protection of the sex characteristics of a person.

BE IT ENACTED by the President, by and with the advice and consent of the House of Representatives, in this present Parliament assembled, and by the authority of the same, as follows: -

Title.

1. The title of this Act is the Gender Identity, Gender Expression and Sex Characteristics Act, 2015.

Definitions.

2. In this Act, unless the context otherwise requires:

“Director” means the Director for Public Registry;

“gender expression” refers to each person's manifestation of their gender identity, and/or the one that is perceived by others;

“gender identity” refers to each person's internal and individual experience of gender, which may or may not correspond with the sex assigned at birth, including the personal sense of the body (which may involve, if freely chosen, modification of bodily appearance and/or functions by medical, surgical or other means) and other expressions of gender, including name, dress, speech and mannerisms;

“gender marker” refers to the identifier which classifies persons within a particular sex category;

“interdisciplinary team” refers to the team established by article 14 of this Act;

“Minister” means the Minister responsible for equality;

“minor” means a person who has not as yet attained the age of eighteen years;

“Notary” means a person holding a warrant to practice as a Notary Public in Malta in accordance with the Notarial Profession and Notarial Archives Act;

“sex characteristics” refers to the chromosomal, gonadal and anatomical features of a person, which include primary characteristics such as reproductive organs and genitalia and/or in chromosomal structures and hormones; and secondary characteristics such as muscle mass, hair distribution, breasts and/or stature.

Right to gender identity.

3. (1) All persons being citizens of Malta have the right to -

- (a) the recognition of their gender identity;
- (b) the free development of their person according to their gender identity;
- (c) be treated according to their gender identity and, particularly, to be identified in that way in the documents providing their identity therein; and
- (d) bodily integrity and physical autonomy.

(2) Without prejudice to any provision of this Act: -

- (a) a person's rights, relationship and obligations arising out of parenthood or marriage shall in no way be affected;
- (b) the person's rights arising out of succession, including but not limited to any testamentary dispositions made in one's favour, and any obligations and/or rights subjected to or acquired prior to the date of change of gender identity shall in no way be affected; and
- (c) any real or personal rights already acquired by third parties or any privileges or hypothecary standing or ranking of any creditor acquired prior to the date of change of gender identity shall in no way be affected.

(3) The gender identity of the person must be respected at all times.

(4) The person shall not be required to provide proof of a surgical procedure for total or partial genital reassignment, hormonal therapies or any other psychiatric, psychological or medical treatment to make use of the right to gender identity.

Change of gender identity.

4. (1) It shall be the right of every person who is a Maltese citizen to request the Director to change the recorded gender and first name and, first name, if the person so wishes to change the first name, in order to reflect that person's self determined gender identity.
- (2) The request shall be made by means of a note of enrolment in accordance with Article 5 (2) of this Act.
- (3) The Director shall not require any other evidence other than the declaratory public deed published in accordance with Article 5 of this Act.
- (4) The Director shall within fifteen days from the filing of the note of enrolment by the Notary at the public registry, enter a note in the act of birth of the applicant.
- (5) The provisions of article 249 of the Civil Code shall *mutatis mutandis* apply.
- (6) (a) The person who made a request in accordance with sub-article (1) of this article shall also be entitled to demand that a full certificate of the act of birth showing the particulars resulting from the annotations be issued to them so however that there shall be indicated on such certificates and annotations have been made upon it by virtue of a decree of a court or in terms of the procedure established under this Act without the details of the said annotations being specified.

(b) A person whose request to the Court of Revision of Notarial Acts, for a correction in the name and gender assigned to them in their act of birth, shall be entitled to demand that a full certificate of their act of birth showing the particulars resulting from the annotations be issued to them so however that there shall be indicated on such certificate that annotations have been made upon it by virtue of a decree of a court without the details of the said annotations being specified.

(c) Within seven days from receipt of a request made for the issue of a birth certificate drawn up in accordance with this article, the Director shall not give any information contained in the register indicating the original act of birth except insofar as provided in this article.

(7) So however that the said information about or copy of the original act of birth may be given:

(a) with the consent of the person to whom the certificate refers; or

(b) when there is no such consent, upon an order of the Court (Voluntary Jurisdiction Section) or of another Court taking cognizance of a cause where the necessity of the presentation of that certificate or information arises, where the Court is satisfied that the issuing of the said certificate or information is necessary to defend or safeguard a right or a legitimate interest of the person making the demand which, after taking into consideration all relevant circumstances, the court considers should prevail over the right to privacy of the person to whom the certificate refers.

(8) A person who was granted international protection in terms of the Refugees Act, and in terms of any other subsidiary legislation issued under the Refugees Act, and who wants to change the recorded gender and first name, if the person so wishes to change the first name, shall make a declaration confirmed on oath before the Commissioner for Refugees declaring the person's self-determined gender and first name. The Commissioner for Refugees shall record such amendment in their asylum application for and protection certificate within fifteen days.

Functions of the Notary.

5. (1) The drawing up of the declaratory public deed shall contain the following elements:

(a) a copy of the act of birth of the applicant;

(b) a clear, unequivocal and informed declaration by the applicant that one's gender identity does not correspond to the assigned sex in the act of birth;

(c) a specification of the gender particulars;

(d) the first name with which the applicant wants to be registered; and

(e) all the prescribed elements required in accordance with the Notarial Profession and Notarial Archives Act.

(2) The Notary shall not request any psychiatric, psychological or medical documents for the purpose of the declaratory public deed.

(3) Every Notary receiving such an act must deliver to the Director a note in accordance with article 50 of the Notarial Profession and Notarial Archives Act.

Effective date.

6. The entry of the note by the Director in accordance with article 4 (4) of this Act shall be reckoned as the date that the applicant, for all purposes at law, is considered to belong to the gender indicated in the note of the Director.

Minors.

7. (1) The persons exercising parental authority over the minor or the tutor of the minor may file an application in the registry of the Civil Court (Voluntary Jurisdiction Section) requesting the Court to change the recorded gender and first name of the minor in order to reflect the minor's gender identity.

(2) Where an application under sub-article (1) is made on behalf of a minor, the Court shall:

(a) ensure that the best interests of the child as expressed in the Convention on the Rights of the Child be the paramount consideration; and

(b) give due weight to the views of the minor having regard to the minor's age and maturity.

(3) If the Court accedes to the request made in accordance with subarticle (1), the Court shall order the Director to change the recorded gender and first name of the minor in the act of birth of the minor.

(4) The persons exercising parental authority over the minor or the tutor of the minor whose gender has not been declared at birth, shall before the minor attains the age of eighteen, file an application in the Registry of the Civil Court (Voluntary Jurisdiction Section) requesting the Court to declare the gender and first name of the minor, if the minor so wishes to change the first name, and following explicit agreement of the minor, taking into account the evolving capacities and best interests of the child. The Court shall order the Director to record the gender and first name of the minor in the act of birth of the minor.

Amendment of the act of birth.

8. (1) Accessibility to the full act of birth shall be limited solely and exclusively to the person who has attained the age of eighteen years and to whom that act of birth relates or by a court order.

(2) An amendment to the act of birth made in terms of this Act by a person who is not at the time a minor, once completed, can only be modified again by a court order.

Foreign decisions.

9. (1) A final decision about a person's gender identity, which has been determined by a competent foreign court or responsible authority acting in accordance with the law of that country shall be recognised in Malta.

(2) A gender marker other than male or female, or the absence thereof, recognised by a competent foreign court or responsible authority acting in accordance with the law of that country is recognised in Malta.

Amendments in other official documents.

10. (1) The person shall, not later than one month from the publication of the declaratory deed, indicate to the Director the acts of civil status, other than the act of birth which need to be amended.

(2) The person, in respect of whom an amendment to the act of birth has been made in accordance with the provisions of this Act shall, within fifteen days from the date specified in article 6, request the authorised officers in terms of the Identity Card and other Identity Documents Act to amend the identity card and other identification documents of the person and to issue a new identity card and other identification documents indicating the gender and the first name of the person reflecting the amendment made in the act of birth of the person.

(3) The person may also, on the payment of such fee as may be prescribed, request any other competent authority, department, employer, educational or other institution to issue any official document or certificate relative to them indicating the gender and first name of the person.

Data Protection.

11. A person who in the course of the discharge of official duties was involved with a matter relating to this Act may not unlawfully disclose such matter in accordance with the Professional Secrecy Act and the Data Protection Act. Any copy of the public deed referred to in article 5 of this Act issued in terms of the Notarial Profession and Notarial Archives Act shall not be deemed to have been issued in contravention of this article.

Offences.

12. (1) Whosoever shall knowingly expose any person who has availed of the provisions of this Act, or shall insult or revile a person, shall upon conviction be liable to a fine (*multa*) of not less than one thousand euro (EUR 1,000) and not exceeding five thousand euro (EUR 5,000).

(2) Saving the provisions of article 83B of the Criminal Code, when an offence is motivated by gender expression and sex characteristics, the punishment shall be that laid down in the said article.

(3) Whosoever shall knowingly violate any of the provisions of this act, shall upon conviction be liable to a fine (*multa*) of not less than five hundred euro (EUR 500) and not exceeding one thousand euro (EUR 1,000).

Anti-discrimination and promotion of equality.

13. (1) Every norm, regulation or procedure must respect the right to gender identity. No norm or regulation of procedure may limit, restrict, or annul the exercise of the right to gender identity, and all norms must always be interpreted and enforced in a manner that favours access to this right.

(2) The public service has the duty to ensure that unlawful discrimination and harassment on the basis of sexual orientation, gender identity, gender expression and sex characteristics are eliminated, whilst its services promote equality of opportunity to all, irrespective of sexual orientation, gender identity, gender expression and sex characteristics.

(3) The provisions of this Act shall apply to the private sector, all public sector and public service departments, agencies and all competent authorities that maintain personal records and/or collect gender information. Such forms, records and/or information shall be assessed and modified to reflect the new standards established by this Act within a maximum of three years from the entry into force of this Act.

Right to bodily integrity and physical autonomy.

14. (1) It shall be unlawful for medical practitioners or other professionals to conduct any sex assignment treatment and/or surgical intervention on the sex characteristics of a minor which treatment and/or intervention can be deferred until the person to be treated can provide informed consent:

Provided that such sex assignment treatment and/or surgical intervention on the sex characteristics of the minor shall be conducted if the minor gives informed consent through the person exercising parental authority or the tutor of the minor.

(2) In exceptional circumstances treatment may be effected once agreement is reached between the Interdisciplinary Team and the persons exercising parental authority or tutor of the minor who is still unable to provide consent:

Provided that medical intervention which is driven by social factors without the consent of the minor, will be in violation of this Act.

(3) The Interdisciplinary Team shall be appointed by the Minister for a period of three years which period may be renewed for another period of three years.

(4) The Interdisciplinary Team shall be composed of those professionals whom the Minister considers as appropriate.

(5) When the decision for treatment is being expressed by a minor with the consent of the persons exercising parental authority or the tutor of the minor, the medical professionals shall:

(a) ensure that the best interests of the child as expressed in the Convention on the Rights of the Child be the paramount consideration; and

(b) give weight to the views of the minor having regard to the minor's age and maturity.

Health services.

15. All persons seeking psychosocial counselling, support and medical interventions relating to sex or gender should include peer counselling and be given expert sensitive and individually tailored support by psychologists and medical practitioners. Such support should extend from the date of diagnosis or self-referral for as long as necessary.

Treatment protocol.

16. (1) The Minister, after consulting the minister responsible for health, shall appoint a working group.

(2) The working group shall consist of a Chairperson and nine members.

(3) The Chairperson shall be a medical doctor with at least twelve years experience.

(4) The members shall be three experts in human rights issues, three psychosocial professionals and three medical experts.

(5) The Minister shall appoint the working group within three months of the entry into force of this Act.

(6) The members of the working group shall review the current medical treatment protocols in line with current medical best practices and human rights standards and shall, within one year from the date of their appointment, issue a report with recommendations for revision of the current medical treatment protocols.

Power to make regulations.

17. The Minister may issue regulations in order to give better effect to any provision of this Act and generally to regulate gender identity in conformity with the provisions of this Act.

Transitory provision.

18. All annotations effected in terms of article 257B of the Civil Code shall remain effective as if done in terms of this Act.

Amendment to the Civil Code.

19. (1) Immediately after sub article (11) of article 4 of the Civil Code, there shall be added the following new sub article (12):

“(12) When applying for the registration of a marriage contracted abroad between partners of the same sex, the partners to the marriage may elect to:

(a) adopt for both of them the surname of one of the partners to the marriage or the surnames of both in the order they choose for both; or

(b) retain their own surname:

Provided that if no choice is expressed in accordance with this sub-article the partners to the marriage shall retain their own surnames.”

(2) Paragraph (c) of article 278 of the Civil Code shall be amended as follows:

(a) for the words “the sex of the child;” there shall be substituted the words “the sex of the child:” and

(b) immediately after the words “the sex of the child:”, there shall be added the following new proviso:

“Provided that the identification of the sex of the minor may not be included until the gender identity of the minor is determined.”.

Amendment to the Equality for Men and Women Act.

20. Article 2 of the Equality for Men and Women Act shall be amended as follows:

(a) in subarticle (1) thereof, in the definition of the term discrimination”, the words “gender identity and includes the treatment of a person in a less favourable manner than another person is, has been or would be treated on these grounds and "discriminate" shall be construed accordingly;” there shall be substituted with the words “gender identity, gender expression or sex characteristics and includes the treatment of a person in a less favourable manner than another person is, has been or would be treated on these grounds and "discriminate" shall be construed accordingly; ”;

(b) in sub-article (3) thereof, the words “or gender identity is:” shall be substituted with the words “or gender identity, gender expression or sex characteristics is:”;

(c) in paragraph (a) of sub-article (3) thereof, the words “or gender identity;” shall be substituted with the words “or gender identity, gender expression or gender characteristics;”;

(d) in paragraph (c) of sub-article (3) thereof, the words “or gender identity;” shall be substituted with the words “or gender identity, gender expression or gender characteristics;”;

(e) in paragraph (d) of sub-article (3) thereof, the words “gender identity, unless that provision, criterion or practice is appropriate and necessary and can be justified by objective factors unrelated to sex.” shall be substituted with the words “gender identity, gender expression or sex characteristics unless that provision, criterion or practice is appropriate and necessary and can be justified by objective factors unrelated to sex.”.

Objects and reasons

The objects of this bill are to provide for the recognition and registration of the gender of a person and to regulate the effects of such a change, and due recognition and protection of the sex characteristics of a person. Gender identity is considered to be an inherent part of a person which may or may not need surgical or hormonal treatment or therapy and the bill provides for a simplified procedure which respects the privacy of the person requesting that one's official documents be changed to reflect the person's gender. Similarly, sex characteristics of a person vary in nature and all persons must be empowered to make their decisions affecting their own bodily integrity and physical autonomy.