

**A Bill
entitled**

AN ACT 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:-

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

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

"Director" means the Director of the 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;

"gender register" is the register established in accordance with article 6;

"interdisciplinary team" refers to the team established by article 17;

"Minister" means the Minister responsible for equality;

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

Cap. 55. "Notary" means a Notary Public of one's choice holding a warrant issued 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 or habitually resident in 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; and

(b) the persons 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.

(3) The gender identity of the individual shall 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.

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, or first name in order to reflect that person's self-determined gender identity. Change of gender identity.

(2) The request shall be made by means of a letter which makes clear reference to the public deed published in accordance with article 5.

(3) The Director shall not require any other evidence other than the public deed published in accordance with article 5.

(4) The Director shall, within fifteen running 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 and enter a note in the Gender Register.

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

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

(b) a clear and unequivocal 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. Cap. 55.

(2) The Notary shall explain to the applicant the legal implications of the change of the assigned gender and shall require the applicant to declare understanding of such implications.

(3) The notarial fee shall be that established in the Notarial Profession and National Archives Act. Cap. 55.

(4) The Notary shall, within fifteen days, register the public deed with the Director, against the prescribed fee.

Gender register.

6. (1) There shall be maintained at the Public Registry Office in Malta and in Gozo a register, to be called the Gender Register, in which shall be made such entries as may be directed to be made therein by the Director following an application by the Notary.

(2) In the Gender Register maintained at the Public Registry Office in Malta there shall be entered the rectified gender relating to any person whose act of birth is registered in that Office or is not registered in any Public Registry Office in these islands, and in the Gender Register maintained at the Public Registry Office in Gozo, there shall be entered the change(s) relating to any person whose act of birth is registered in that Office.

(3) The Director shall cause an index of the Gender Register to be made and kept in the Public Registry Office in Malta and in Gozo; and no-one shall be entitled to search that index.

(4) The Director shall, in addition to the Gender Register and the index thereof, keep such other registers and books, and make such entries therein, as may be necessary to record and make traceable the connection between an entry in the register book of acts of birth which has been marked "rectified gender" pursuant to this Act, and any corresponding entry in the Gender Register; but the registers and books kept under this sub-article as well as the documentation communicated to the Director by virtue of this Act shall not be, nor shall any index thereof be, open to public inspection or search, nor, except under an order of a court, shall the Director furnish any information, books or documentation to any person other than the person who has attained the age of eighteen years and to whom that information, copy or extract relates.

Cap. 16.

(5) The provisions of sub-article (2) of article 238, sub-article (1) of article 245, articles 248, 249, 252, 260, 261 and, subject to the provisions of article 269, article 251 of the Civil Code shall *mutatis mutandis* apply to the Gender Register and entries therein, extracts therefrom and certificates and other documents relating thereto or connected therewith.

Effective date.

7. The entry in the Gender Register shall be effective as from the day when the Director shall make the entry or when the entry in the register book of acts of birth relative to the applicant is marked with the words "rectified gender", whichever occurs first, and from this date the applicant shall be considered, for all purposes of law, as belonging to the gender indicated in the Gender Register.

8. (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. Minors.

(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) in so far as is practicable, 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 sub-article (1), the Court shall order the Director to change the recorded gender and first name of the minor and to enter the name of the minor in the Gender Register.

(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 fourteen, by means of a public deed, declare the gender of the minor. The public deed so published shall be made in accordance with paragraphs (c), (d) and (e) of sub-article (1) of article 5 and the Notary shall register the public deed with the Director in accordance with sub-article (4) of article 5. The Director shall, in accordance with sub-article (4) of article 4, register the gender of the minor.

9. (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. Change of the act of birth.

(2) A change in the act of birth and the entry in the Gender Register 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.

10. (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 recognized in Malta. Foreign decisions.

(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 shall be recognised in Malta.

Changes in
other official
documents.

Cap. 258.

11. (1) The person, in respect of whom an entry has been made in the Gender Register in accordance with this Act, shall, without delay after the date specified in article 7, request the authorized officers in terms of the Identity Card and other Identity Documents Act to cancel 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 entry in the Gender Register.

(2) 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 as entered in the Gender Register.

Entry of persons
in the Gender
Register.

Cap. 16.

12. (1) Upon the coming into force of this Act, the Director shall enter in the Gender Register all those persons in respect of whom, before the date of coming into force of this Act, annotations were made in the act of birth in terms of article 257B of the Civil Code as it was prior to the entry into force of this Act:

Provided that in the case of these persons, the effective date shall be that of the first annotation.

(2) Immediately after making the entry in the Gender Register as prescribed in sub-article (1), the Director shall cause the entries in the register book of acts of birth relative to the afore-mentioned persons to be marked with the words "rectified gender".

Data protection.

Cap. 377.

Cap. 440.

13. (1) 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 the Professional Secrecy Act and the Data Protection Act.

(2) Whosoever shall knowingly expose any person who has availed of the provisions of Act, or shall insult or revile a person, shall, upon conviction, be liable to a fine (*multa*) of not less than one thousand euro (€1000) and not exceeding five thousand euro (€5000).

Anti-
discrimination
and promotion
of equality.

14. (1) Every norm, regulation or procedure shall respect the right to gender identity. No norm or regulation or 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 sexual orientation, gender identity, gender expression and sex characteristics' discrimination and harassment are eliminated, whilst its services must 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 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 day of entry into force of this Act.

15. (1) It shall be not be lawful 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.

Right to bodily integrity and physical autonomy.

(2) In exceptional circumstances treatment may be effected once there is an agreement 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 individual concerned 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 which 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 are the paramount consideration; and

(b) in so far as is practicable, give due weight to the views of the minor having regard to the minor's age and maturity.

Health services. **16.** All persons seeking psychosocial counselling, support and medical interventions relating to sex or gender should be given expert, sensitive and individually tailored support by psychologists and medical practitioners. Such support should extend from the time of diagnosis or self-referral for as long as necessary.

Treatment protocol. **17. (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. **18.** The Minister may make regulations to give better effect to any of the provisions of this Act and generally to regulate gender identity in conformity with the provisions of this Act.

Offences. Cap. 9. **19.** 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.

Deletion of articles 257A to 257D of the Civil Code. Cap. 16. **20.** Articles 257A to 257D of the Civil Code, both inclusive, are hereby repealed.

Amendment of article 278 of the Civil Code. **21.** 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."

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

Amendment to
the Equality for
Men and
Women Act.
Cap. 456.

(a) in sub-article (1) thereof, in the definition of the term "discrimination", for the words "gender identity" there shall be substituted the words "gender identity, gender expression or sex characteristics";

(b) in sub-article (3) thereof, for the words "gender identity" there shall be substituted the words "gender identity, gender expression or sex characteristics";

(c) in paragraph (a) of sub-article (3) thereof, for the words "gender identity" there shall be substituted the words "gender identity, gender expression or sex characteristics";

(d) in paragraph (c) of sub-article (3) thereof, for the words "gender identity" there shall be substituted the words "gender identity, gender expression or sex characteristics"; and

(e) in paragraph (d) of sub-article (3) for the words "gender identity" there shall be substituted the words "gender identity, gender expression or sex characteristics".

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 one's gender. Similarly, the 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.