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Equalities, Human Rights and Civil Justice Committee

Wednesday 22 June 2022

Session 6



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**EQUALITIES, HUMAN RIGHTS AND CIVIL JUSTICE COMMITTEE
20th Meeting 2022, Session 6**

CONVENER

*Joe FitzPatrick (Dundee City West) (SNP)

DEPUTY CONVENER

*Maggie Chapman (North East Scotland) (Green)

COMMITTEE MEMBERS

*Karen Adam (Banffshire and Buchan Coast) (SNP)

*Pam Duncan-Glancy (Glasgow) (Lab)

*Pam Gosal (West Scotland) (Con)

*Rachael Hamilton (Etrick, Roxburgh and Berwickshire) (Con)

*Fulton MacGregor (Coatbridge and Chryston) (SNP)

*attended

THE FOLLOWING ALSO PARTICIPATED:

Senator Regina Doherty (Seanad Éireann)

LOCATION

The James Clerk Maxwell Room (CR4)

Scottish Parliament

Equalities, Human Rights and Civil Justice Committee

Wednesday 22 June 2022

[The Convener opened the meeting at 15:00]

Gender Recognition Reform (Scotland) Bill: Stage 1

The Convener (Joe FitzPatrick): Welcome to the 20th meeting in 2022 of the Equalities, Human Rights and Civil Justice Committee. We have received no apologies for this afternoon's meeting.

Our first agenda item is to continue taking evidence on the Gender Recognition Reform (Scotland) Bill. It gives me great pleasure to welcome Senator Regina Doherty, Leader of the Irish Senate. I refer members to paper 1, and invite Senator Doherty to make a short opening statement.

Senator Regina Doherty (Seanad Éireann): Thank you, convener, and thank you to the committee members for inviting me. At the outset, I want to wish you every success with the passage of the legislation that is before you.

We in Ireland are a number of years ahead of you, although not that many. In 2014, our Gender Recognition Bill was published. It started its journey through both houses and debates at second stage, committee stage and fourth stage saw it amended before it was finally signed into law by our President on 22 July 2015.

The act meant a change in law to recognise the change of the gender of a person and it provides for gender recognition certificates that are legally binding. It also amended the Irish Nationality and Citizenship Act 1956, the Civil Registration Act 2004, the Passports Act 2008 and the Adoption Act 2010 to reflect the new law that allowed people to change gender and be recognised as the gender they presented as.

The act went well for a number of years, and we had reports and reviews at the end of every year on the number of people who engaged with it. When I became Minister for Social Protection in 2017, I put together a small review group, because one of the criticisms of the act in 2015 was that it did not do anything for people who are non-binary or recognise people under the age of 18. Obviously, a person does not just wake up at the age of 18 and two weeks and decide to change gender—some of our citizens' journeys start much earlier.

The review group was set up to look at the confines of the legislation. It encompassed all of the non-governmental organisation and advocacy bodies that represented the people whose betterment we were trying to enact the legislation for, and also all of those who had genuine concerns. Those concerns applied, in particular, when we spoke about 16 and 17-year-olds and whether we wanted to extend the conversation further so that the act covered under-16s.

However, an awful lot more people—with an awful lot more concerns—raised their hands to be heard. I established the review group in 2018. The body of the group was incredibly professional. They had a robust debate and the review lasted a lot longer than I expected it to, but by the end of that year the review group came together with a comprehensive report and recommendations for the act. One of the main findings of the review group was that the legislation, as it was enacted, was far too onerous for 16 and 17-year-olds. People aged 16 and 17 who were trying to navigate through the legislation as enacted found it far too cumbersome. However, we proposed a group of measures to reform the process to reflect that legal recognition of a person's gender is distinct from any of the medical interventions that may, or may not, be available in Ireland or any of our neighbouring countries.

We wanted to find a very clear but simple path for children aged 16 and 17 by introducing an arrangement for self-declaration. We felt that parental consent of both parents and the support mechanisms that were to be introduced to support the parents in supporting their children in these decisions were hugely important. Also very importantly, we needed a simple revocation process, should anybody find that they had made a mistake or changed their mind or that they were still navigating the journey of their sexual liberation. In such cases, they could change the process through family mediation—coming together—and changing their mind. Therefore, as simply as it was changed in law through the certificate of recognition, it could be changed back again, if people so wished.

Towards the end of 2019, I put the review's recommendations to the OPLA—the office of parliamentary legal advisers; our parliamentary drafting people—to come back to me with legislation to enact those recommendations from the review. However, very unfortunately from my perspective—and perhaps also for some of the people for whom I was trying to advocate—I lost my seat in the general election of January 2020. The review has sat on a desk since then, unfortunately, and there is no sight of it being revived so far.

To be fair, the enactment of the legislation in 2015 for people aged 18 and older is working incredibly well. It is working seamlessly. Until very recently, it was working in an unassuming way. We never had any of the divisive debates that we have seen in the United Kingdom, America and Canada. We did not have those divisive debates in Ireland during the 2015 enactment or during the review of 2019. However, for some reason—not driven by any changes or proposed changes to the legislation—we are experiencing that divisive debate now. There is a small but growing campaign to repeal the Gender Recognition Act 2015. Therefore, I fear that we might have a summer of discontent ahead of us. However, if we act with the dignity with which we have acted to date and recognise that every human being, regardless of their gender, deserves to be treated with respect, compassion and humanity, we will hold on to the values that we espoused in the legislation of 2015.

The Convener: Thanks, Regina. Karen Adam will begin the questions.

Karen Adam (Banffshire and Buchan Coast) (SNP): Welcome to the committee, Regina. It is lovely to see you here today. Thank you for your opening statement and for helping us to understand the path of that act. I would like to go back to the very beginning of the process and ask about the context for the introduction of the bill in the first place. What case was made for it and was there any opposition to it?

Senator Doherty: The Government at the time was a coalition of the Labour Party and Fine Gael, which is the party that I represent. There had been a small debate—that is the only way that I can describe it—because, as you know, we are talking about a relatively small community, which is probably far smaller in the Republic of Ireland than it is in the United Kingdom. However, there was still an absolute need to recognise that there were citizens, young and old, living a lie in the sense that the state did not recognise the true people who they were living the lives of. Many of the people who came to us to look for advocacy were already living the lives of their new assigned gender, but the state was just making it difficult.

The thing that impassioned me so much was meeting people from one of our LGBT groups in Ireland, BeLonG To Youth Services, which looks after children. I met the parents of some of the children who were experiencing enormous difficulties because of simple things that you and I would take for granted. For example, people were having to go through a passport control office presenting themselves as one thing when their passport said something else. That was causing major difficulties for some of our young people. At the same time it was causing difficulty for some of

our adults who felt that they had been living in the shadow of their true self for so long and that, although they had finally recognised and arrived at the space that they were happy and comfortable with, the state still did not recognise that new person for the life that they were living.

As distinct from the medical journey that people have to go through for changing gender if they want to go through medical interventions, we felt that it was such a small thing in law to allow people in the 21st century to live their lives in the gender that they feel that they are and which they know to be true for themselves. The legal changes that we had to effect were, first, a self-declaration for an adult to go through to change their identification documents. Over here, we have the personal public service—PPS—card, which is a personal identifier that enables people to access state services. Then there are passports. We allow changes so that people can go back to their birth certificates and apply for changes if their journey started much earlier than it did for other people. We just looked at real-life stories, albeit that they came from a small group of people who were telling us that such changes would make an enormous difference because it would mean that the state would be recognising them for who they truly were.

Ireland and Scotland are very similar. We have a lot of centrist politicians, some politicians on the left and a small grouping of politicians to the right of centre. Some people with conservative views expressed the opinion that change was not necessary, and they talked a lot about a theory of gender identity, whereas in fact it is a reality for people who are living with that experience. However, our debate was respectful, which is not what I have seen in other jurisdictions. There is currently a growing debate in Ireland that is not respectful. When I look back at the time when we went through the process of enacting the legislation in 2015, and when I did the review, it really felt as though it went under the radar. There were thorough debates in the Parliament. In both the Seanad and the Dáil we had to go through all the stages that every other piece of legislation does. All our media were watching, so it was not as though we did it on a Sunday evening or whatever. We did all the things that we do with all other legislation. There was not a divisive, negative debate, and there was a humanitarian view that this was such a small thing in legislation but such an enormous one for the people whose lives we were helping to be better.

Karen Adam: That is great. You touched on the state recognition aspect, on which I have done a bit of background reading. A few sources said that the number of people coming forward and coming out increased because they felt more protected and respected by the state, which was incredibly

important for them in relation to the equal marriage and gender recognition legislation. That confirms what you have just said.

The bill that we are currently considering would remove the aspect of requiring a diagnosis of gender dysphoria and also remove the gender recognition panel. I note that you have done those things in Ireland. How has the situation progressed there, now that the process is not connected to there being a medical diagnosis?

Senator Doherty: One of the things that those who opposed our bill were absolutely adamant about was that there needed to be a medical certificate to go along with it. That was so that, for example, I could not just arrive tomorrow and say that I have been struggling and I want to identify as gender X. What I needed to do was go through what is in Ireland—it might not be true of other jurisdictions—a protracted process involving long waiting lists. We have small numbers of professionals in the area—in fact, we have only two in this country. Even though we also have a small community, two professionals are certainly not enough to address the issue.

What the department that gave rise to the legislation was doing had nothing to do with the provision of medical services or the allocation of a medical diagnosis. Some people are what I might call blessed, in that their journey from one gender to another is not as traumatic or as medically intense as it would be for others. Our legislation was simply to give legal recognition—not to assist people with getting up the queue for medical interventions if they needed those in any way. They still had to do all the things that they would have had to do beforehand, and that is still dismaying to lots of us in this country. It was just about changing the legal process to make it easier for people. To our mind, there was no need for an adult—somebody over the age of 18—to have any recognition from any doctor to say, “You’re grand; I can acknowledge that you need to change.” You are an adult and you are entitled and allowed, under this new law, to make that decision for yourself.

15:15

That is why, when we first introduced the legislation, it was easier for us to say that if you were not an adult—if you were 16 or 17—you still needed that medical intervention. That was not because the review was not a better route to go down, with just the consent of parents, because I believe that it is a better route and it would be a lot less cumbersome. Rather, it was an attempt to give solace to the people who were railing against the idea of being able to self-determine in law and change your legal documentation. It gave some connection and some protection, as they saw it,

that children would not be able to do it willy-nilly—that was their argument, as if anybody does anything like this without an enormous journey of thought-provoking change and challenge. We tried to balance being progressive with recognising that there are some concerns there. That is why, in the original legislation, the 16 and 17-year-olds had to go through that medical certificate route. However, that was found not to work, which is why the review about a new path for recognition for 16 and 17-year-olds was so easy. That is why it is such a pity that there has not been any progress on that since 2019.

To come back to the idea that an adult—as in anybody over the age of 18—would require a medical doctor to say, “You are what you are,” when they know that in their heart and soul and they have lived the life and are living the life that they want to live, we did not feel that they needed to have anything to do with a doctor unless a medical intervention journey was required and that was the personal choice of the person.

Karen Adam: That is really helpful. Thank you.

Pam Duncan-Glancy (Glasgow) (Lab): Good afternoon, senator. Thank you for joining us and for the information that you gave us in advance—it is invaluable. The answers so far have also been really helpful.

I want to go straight to one of the areas of contention around the bill; I think that you alluded to it earlier, but I am really keen to hear from you as a legislator about how you navigated it.

You will know that a lot of the contention around the bill as proposed is that it could negatively impact on women’s ability to access single-sex spaces. What is your response to that and can you tell us a little bit about how the legislation in Ireland has interacted with women’s rights and their access to single-sex spaces? Have you seen any abuse of the self-declaration model by bad-faith actors—by men trying to use the self-declaration system in bad faith, basically?

Senator Doherty: You might find this very hard to believe, given the debate that previously happened in Scotland and particularly the debate that started in the United Kingdom and still rages on, but we did not have that in 2015. I genuinely cannot explain to you why we did not have it, because we did all of the pre-legislative scrutiny that was required; all of the advocacy bodies, including for people within the LGBT or trans community or the non-binary community, were all there, living, breathing and praying that the legislation got through. We did not have a huge amount of negativity. Today, however, we do, in light of a piece of employment law legislation that is coming in the next couple of weeks. We are proposing to change one of the terms in the

Maternity Protection Act 1994. I think that the current language in the 1994 act is around pregnant women and we are proposing to change the language to pregnant people to be an all-encompassing terminology, the same way as you would have chairperson as opposed to chairwoman or chairman and nobody would blink an eye at it.

In relation to the debate in Ireland around those safe spaces for women, there is a real fear that is growing; a woman might be fearful of her safety because of the idea that a trans man or a trans woman might invade the space in Zara where she is trying on a new frock. This debate is being separated from the discussion around the fact that all women—and I do not mean this to be disrespectful to any of our male colleagues here today or my own male colleagues—have safety issues with regard to male violence. That is something that we talk about a lot; we talk about domestic violence and coercive control, but all the changes that we have made to legislation over the past years are related to the fact that male violence impacts society, and does not impact only women. It also impacts men and children, and we all recognise that and do our best to try and mitigate that. However, the notion that women now have to fear a man dressing up as a woman and getting a gender identity certificate so that he can threaten women in a dressing room or single-sex toilets—I do not know if you have them in Scotland, but we do not have them over here yet—is fanciful when you recognise that, in the Irish state, women have safety issues because of male violence. A man who wants to be violent towards a woman does not need to go to the extent of changing his gender through a certificate so that he can get access to me in the dressing room of Zara or wherever it happens to be. It is a false argument.

We had a debate a number of months ago about a number of prisoners in Limerick prison, in the south-west of our country, who are in a female prison and who identified as female after they had been arrested and charged. The law is that they can change their gender if that is what they want to do, but any prison warden or officer who is running an institution or a congregated setting has to mitigate all risks, and if a patron of a prisoner facility is a threat or a risk, mitigating circumstances have to be put in place to protect all the other prisoners, regardless of their gender. You do not do that just because a male identified as a female so that he could get access to women. If the authorities think that that person is a risk to other prisoners, they should react and provide safe passage and activities for the other prisoners, regardless of the person's gender.

Again, we are trying to conflate a very small example, which involves perhaps 0.0001 per cent

of society, with the argument that women have to be fearful of male violence. I do not believe that women need to feel diminished in our gender identity just because there are other genders—this issue did not come up in the first iteration of the law or the review of the legislation in 2019, and I hope that we can deal with it if we handle the reform of maternity legislation correctly in the next couple of weeks. I do not think that my womanhood, femininity or role in society as a mother are diminished by the fact that there are trans women, trans men, non-binary people or intersex people. They do not diminish my contribution to society, but we have to have a proper conversation with women who might think, “Hang on a second—being a female is a really important job in society and should not be downgraded,” for want of a better way to put it. Their role is not being downgraded, and we have to have that conversation with women in a way that reassures them.

Generations ago, there were two genders and two sexes. There still are two sexes, but today we probably ha

ve around nine genders, and that does not diminish any other gender in the gender identity set. That is a conversation that we need to have with people, particularly with women. That does not make them more or less at risk, but saying that a trans female cannot access the same spaces as other women certainly does not protect them. If we believe that men were going to go to the extent of dressing up as women and changing their gender to get access to and be violent towards women, we have a far greater problem than the male violence that we have in our cultures and jurisdictions.

Pam Duncan-Glancy: I will ask a final question about data collection. Can you tell us about the impact on data collection of the legislation that you have brought in, particularly in relation to data on the representation of women on boards or anywhere else?

Senator Doherty: It probably had very little impact. Apologies—I tend to go on, so please interrupt me if I am rabbiting on for too long. The data that we collect from the General Register Office, which handles births, death, marriages and all the changes to certificates, shows that, during the past seven years, a very small number of people have presented to change their gender recognition.

If you are asking whether we now have trans women, trans men and non-binary people on any board in the country that is not an advocacy group for LGBTI rights, the answer is, unfortunately, no. We have very few such people, even in the workplace. It is a tiny community of people who,

even though they may have their certificates, come to work in that type of environment.

For a number of years, we were all compassionate. At around the same time as gender recognition, we had marriage equality, which was a huge change in the psyche of Irish people, given that, historically and for many years, we were very Catholic and very conservative. There was a kind of euphoria of recognition that we had finally managed to get our act together and to be normal human beings—to accept people and to apply to them the dignity that we would expect to be applied to ourselves. All of that loving feeling was going around the country. There was very little negativity. Yes, there were people who did not like it, but even their tones were framed in a respectful way.

We have no data other than that which applies to the organisations that I mentioned, such as the Transgender Equality Network Ireland, which is a trans rights advocacy group, and Jigsaw, which is a mental health advocacy group for young people who are going through changes and a journey in their sexuality. All such organisations would have very diverse boards and chairs. Outside of those, I am sad to say, there is not an awful lot of that, so, even if we had a data collection mechanism, there is not a lot of data to collect.

Pam Duncan-Glancy: I am sorry to hear that that is the situation, but thank you for sharing it.

The other part of my question was about whether the move to self-identification has affected data about women.

Senator Doherty: In what way?

Pam Duncan-Glancy: It has been put to the committee that, if we move to a self-declaration model and do not collect data on both sex and gender, we might not necessarily have the information that we need to determine whether we are making progress in certain areas of women's equality. I am keen to know whether you considered that.

I appreciate that some of the questions appear to be coming from slightly left field, as you have described, given the experience that you had in 2015, but I am keen to understand how much of that was explored in what you are seeing now.

Senator Doherty: Ask anything that you want to ask; there is no problem.

It was not. We were changing General Register Office legislation, which was all about legal documentation. Up to that point, someone could be only male or female on legal documentation. The changes allowed them to be trans male, trans female or non-binary. The changes allowed someone to change their gender, as opposed to distinctly changing their sex. However, in a lot of

the legal documentation, that is the same thing. If I was born a female, I was allowed to go back and change my birth certificate to say that I was born a male. In effect, that changed my sex, as opposed to introducing a new gender that was distinctly separate to the sex that I was born.

This is kind of embarrassing, but our only change to data collection was that, for the first time ever—a number of years late, because of Covid—on our census collection form, people were allowed to be male, female or neither of the above. There was a whole debate in Ireland: “Why can't you just ask the questions? There are nine genders, so just put the nine genders in. Stop being afraid of the fact that there are other genders.”

Anyway, it was too late. It was taken up in a small debate. It was not a negative debate but it was irksome: “Given that we have recognised genders, just bloody well use them. Stop being afraid to use something that is legally recognised.” There was an agreement that it was too late, because the census forms had already gone out to our 4 million or however many homes, and that we would make sure that we did it right in five years.

The census is the only time that we have changed the collection of data, to capture somebody who may not see themselves as female or male, but we lost the opportunity to capture how they recognise themselves. The only way that we have of knowing that is through a person going through the gender recognition act and changing their certificate.

Rachael Hamilton (Etrick, Roxburgh and Berwickshire) (Con): Good afternoon, Senator Doherty. In your opening statement, what did you mean when you said that there are attempts to repeal the Irish Gender Recognition Act 2015 and that you might have a summer of discontent?

15:30

Senator Doherty: We are proposing to change the employment legislation in the next number of weeks, and one of the Government amendments—in relation to maternity leave rights—would change the terminology of “pregnant women” to “pregnant people”. In the past few weeks, a number of organisations have developed and a number of women have come together around the question of whether bunching us, as women, into “pregnant people” would disrespect women or diminish our role in society. A whole debate around the narrative that says, “People can't get pregnant; only women can get pregnant,” has developed in the past few weeks.

So far, the Government's response is that we are not diminishing the role of women in society. Instead, we are recognising that other genders in

society absolutely can get pregnant. We are recognising the fact that more than one gender can get pregnant, hence the catch-all term of “pregnant people”. We also propose to extend the legislative services, rights to time off work and social welfare payment to pregnant people, as opposed to just pregnant women. Non-binary people are having babies, but they are excluded from the legislation and state support because they are not listed. The “pregnant people” terminology was decided by our Attorney General as a catch-all phrase, because it has been used before to show that services are for men and women, not just for men or women.

The conversation and debate are going towards the acknowledgment that, instead of saying “pregnant people”, it would be easier for us to define the list of people who can become pregnant and to name them all. That does not diminish our role as women, giving birth to our children, and does not try—to use the word that was used a number of weeks ago—to dilute our contribution—

Rachael Hamilton: I will interrupt you there, since you said that we could.

It is interesting that you said that, because it seems that you regretted the wording in the census. We have been talking about that a lot. How do you think that the different terms that are used in data collection impact on policy development, for example in health and criminal justice?

Senator Doherty: I think that they impact hugely. Even though I am a public representative, I am speaking to you today in a personal capacity, because I am not representing any policy from any particular department. The review of the Gender Recognition Act 2015 was my policy when I was in the Department for Social Welfare. I do not believe that it is the current minister’s policy.

However, I absolutely believe that, if we do not recognise and capture in data sets the identities of the people that we are talking about, we are certainly not going to devise good policy and services for those people. I sometimes think that, when we use catch-all terms so as not to offend and for the provision to be all-encompassing, that dilutes the fact that there are distinct, different genders other than male and female. If we accept that there are those genders and that it is not just a theory, as some people would espouse, we should recognise that, name the genders, collate the data, look at the people who we are serving and the services that those particular genders need, if they are living different and distinctly separate lives to other genders or if their experiences are different.

It is a real shame that we did not capture that data in this year’s census, because we do them

only once in every five years. However, the next time that we do a census, it will include all genders, so that we can capture where they are in the country, who they are and what age they are. We do not have any of that data.

Rachael Hamilton: Okay. I have two more questions.

I noted that, within the Irish Gender Recognition Act 2015, there was a reporting process, which required the Minister for Social Protection

“to prepare a report on the performance of his or her function under the act in the immediately preceding year”.

Unfortunately, I have not had time to look at that report, but is it laid every year? What did it find? Did it find that there were things that you could have done better, which you could recommend for this Parliament to do?

I also want to ask you about prison, so I will do that now. I am sort of looking at the unintended consequences of some of the act.

I wondered about the analysis that you did. We know not to underestimate the number of women who are in prison because they were not able to prove self-defence in domestic abuse. You referred to cases in Ireland of males with gender recognition certificates being sent to prison. Did you do any analysis prior to, or during, the evidence sessions on your bill to work out the impact of housing males with GRCs in female prisons?

Senator Doherty: What we did do at the time was look at other jurisdictions that had passed similar legislation to ours and the lived experience in those countries. Again, probably because we were one of the first countries—Scotland is nearly one of the first—to introduce that kind of legislation, there were not an awful lot of examples to look at, but we did some work.

The prison thing, shared dressing-room spaces and school toilets were the three things that came up in the jurisdictions that we looked at but, again, the number of instances was so minute that we had to balance that against what we really believe. If you can hold in your mind that passing the legislation is a good thing for the people who need it—who need legal recognition to live their lives—you can balance that against not doing it because of the fear that somebody might declare themselves as a female to get access to females—

Rachael Hamilton: Sorry, Senator Doherty. In your answer to Karen Adam’s question, or in your opening statement, you stated that your bill was a great piece of legislation but it was for a very tiny number of people. Now you are arguing the opposite: that it is a tiny number of people who may be affected in a prison setting, for example. It

is not like for like in terms of the argument that you are making.

Senator Doherty: I do not think that I am, so maybe I am not being clear—apologies.

To our minds, changing the legislation to have a massive positive impact on the lives of a very small community was a very good thing for us to do. If we could help those people in that community, whatever gender they are outside male or female, to live a fulfilled life recognised by the state, that was a good thing to do.

What I am suggesting to you is this. Some of the concerns that were raised at the time were about female-only spaces. The example of prisons is used a lot, along with dressing rooms, particularly for children, and the example of toilets in secondary or primary schools. When we balanced that with looking at other jurisdictions to see if those problems or issues had materialised, there was very little evidence to say that they had.

Having said that, in our country, we have two people who were born genetically male and have self-identified as female who are currently in female confinement in a women-only prison in Limerick. The argument is that they did that only to get access to women. My response is that if any prison warden feels that there is a potential risk from any member, whether in a shared prison or a male-only or female-only prison, and regardless of whether or not the person has self-identified, it is up to the prison warden to ensure that all his patrons are safe.

I do not know the reasons behind the journey that the two people who are in the prison in Limerick have undertaken, but I know there is a real suspicion that they are not really the gender that they have assigned themselves today, and that they did what they did only to get into a female prison.

The state obviously needs to be very careful of and very conscious of that. However, if there are any other risks outside gender that someone presents to the patron body of a prison, it is up to the prison warden to make sure that he looks after the safety and welfare of all his prisoners, regardless of how that person identifies gender-wise, if that makes sense.

Rachael Hamilton: Thanks.

The Convener: Thank you very much. We now go to Maggie Chapman.

Maggie Chapman (North East Scotland) (Green): Good afternoon, senator. Thank you very much for being with us today, and for your evidence and your answers so far.

I am interested in exploring unintended consequences and lessons learned, along similar

lines to some of the questions from Pam Duncan-Glancy and Rachael Hamilton.

One area that we have heard evidence on, and heard people's concerns around, is misaligned public services, particularly in health. Rachael Hamilton was talking about prisons, but there are questions around health. In the Irish experience, as far as you are aware, have there been any instances of trans women or trans men not being able to access healthcare provision, for example because of gender marker conflicts on health records?

Senator Doherty: Unfortunately, we have a very long waiting list for access to the two professionals that are available in Ireland to give people who are trans access to the medical services that they would like to incorporate into their lives so that they can complete their journey to fully change from one gender to another.

During the past few years, Ireland has had a scheme called the national treatment purchase fund. The fund is available so that if people cannot get access to public health they can buy access to health services in either the private sector or elsewhere. We—[*Interruption.*—]for trans people in Ireland, so we have used the national health service for the last number of years and, in some instances, we have sent children who under the age of 18 and adults who are over the age of 18 to the NHS to access services in the United Kingdom.

There is no doubt that an awful lot of work needs to be done to improve medical services in Ireland, but if we waited and aligned legal recognition with medical access—which is not part of the journey for everybody—we probably would not have passed our gender recognition legislation for centuries, because the change in health services is so slow in that regard. That is why we kept those things distinctly different and separate.

The legal recognition through documentation and the access to services that arose from that was done with a relatively simple piece of legislation, but changing, improving and enhancing medical access is another day's work for the Department of Health. Although the same advocacy groups advocated for both things, it is a two-stage process.

You asked me about my regrets about the original legislation. The regret that we had, which I would have attempted to resolve with the review legislation, was that the initial enactment for 16 and 17-year-olds being aligned with the medical certification requirement made it so cumbersome and unattainable that the legislation was redundant because it was not workable. When we did the review and made the recommendations to get rid of the two-step process and require the

second process step to be consented to by parents, either both parents were supportive of their child's journey to change gender or they were not. We then made support and mediation services available to them; I will not call what we did "counselling", but you know what I mean when I say that we did anything that was required to help a family unit support a child in whatever journey the child was undergoing.

Maggie Chapman: That is helpful, and we have some of the same issues with waiting times for accessing gender identity clinics, whether a person is going down a medical or surgical route or another route.

There is an issue with healthcare provision beyond that which is directly related to gender reassignment. One of the questions put to the committee was how we can guarantee that trans men will still be on the right registers for cervical screenings and similar tests, and that trans women will still be on the right lists to get prostate tests. Do you have any experience or do you know of processes that we can learn from so that we do not allow trans people to fall through health gaps that are not related to medical interventions for their gender reassignment?

Senator Doherty: I am embarrassed to say that we do not have data on that. We had the opportunity to capture it so that we could provide better services, in the Central Statistics Office survey that we did in April, but we did not capture it. Instead, we captured whether a person is "male", "female" or "other", which is absolutely worthless to anybody. We have a guarantee that we will capture that information in the next census.

It is a double-edged sword that the only database that we have is in the GRO, because it means that if I, Regina Doherty, wanted to change my gender identity and become Reginald Doherty, that data would be collected in the GRO.

However, because of data protection and the general data protection regulation legislation that we all have from the European Union, that data cannot be shared with anyone. Even if we could delve into it to say that, for example, 50 women in Dublin have changed their gender to male, so that that we capture them for cervical screening, breast checks or whatever, we do not have the ability to access that right now. I very much hope that in the next census we will be able to capture all the data and therefore be able to mine it in order to provide better services for our people.

15:45

Maggie Chapman: Those are the questions that we are trying to grapple with. Learning what not to do is as important as learning what to do.

I will ask another question so that we can learn from your experiences on the criminal offence and its relationship to revoking a GRC. Are you aware of any instance of someone who has revoked their GRC having had any hint of criminality in their initial self-declaration, or has that not occurred in the Irish experience?

Senator Doherty: Again, I am not sure that I would be able to answer that question, because the only database that we have of people who have changed their identities is held at the GRO. It is not shared with anyone for any purpose other than the report that is laid before the Houses of the Oireachtas at the end of every year. All that the report tells us is that, under the Gender Recognition Act 2015, for example, 14 people changed their identity this year: seven changed from female to male, or two to non-binary, or whatever. It does not tell us anything other than the numbers and that the act is working in so far as it is accessible.

In hindsight, that is a real shame. If we ever get to do the review, there are other aspects that need to be tackled. There is a long list of issues to be addressed with regard to the language and terminology that we use across the public service and the civil service and to the collation of data so as to inform future policy, and not just on healthcare. Coming from a country that does not even have a register of domestic violence cases, we have a long way to go to learn about working with a lot of our data. Data for people who have changed their identities should definitely be collated and acted upon, but as I have said the only report that we get every year includes just the numbers and the identities that people have changed from and to.

Maggie Chapman: You mentioned that, as part of the review, you would have a discussion about changing aspects around language. Are you in a position to elaborate on that for us?

Senator Doherty: The review and the drafting of legislation was all about putting in a system of gender recognition for children, involving parental consent, which was just an administrative process. I felt that adding third-party support for families and kids was the most important part of the change in legislation that we could do relatively quickly.

However, the review group recommended loads of other things around promoting the use and acceptance of correct pronouns. My children take that absolutely for granted. These days, anyone in their teens or their 20s will have "she/her" or whatever on their social media bios or even their CVs—that is just a given. When I talk to my youngest child, who is 15, if I call one of her friends "her" or "him" because of the sex that they were born into, she corrects me and puts her eyes

up to heaven. It is something that young people take for granted, but it is absolutely and completely alien to people in the civil and public services. All our legislation refers only to men or women. All the documents for accessing services in our public system such as the social protection, welfare or health systems only ever relate to men or women. What I wanted to happen that year—again, it has not happened—was for all our departments to go away and say, “Show me what you can change. Show me how you can improve the forms that people have to access, by acknowledging and accepting that there are genders other than male and female.” All that stuff could have been done without legislation, but unfortunately the Government was not re-elected in January 2020, and so we are where we are.

Maggie Chapman: Thank you, Regina; that is really helpful. Thank you, convener. I will leave it there.

The Convener: We will move to questions from Fulton MacGregor.

Fulton MacGregor (Coatbridge and Chryston) (SNP): Good afternoon, senator. I have really enjoyed the session so far.

I want to ask about some specific provisions in the bill that we are considering. I will start with the requirement to live in the acquired gender for three months and the three-month reflection period. I am aware that the Irish act did not include such time periods. Was there any discussion about time periods, either before or after? Where did those discussions lead to? Was that aspect never even on the table?

Senator Doherty: The evidence that was presented to us was that nobody woke up on a Tuesday and decided that they were going to change their gender. There is, unfortunately, usually a very long, protracted and difficult journey for a person, first of all to self-acceptance and recognition, and then to determine how they will tell family and friends. There is a whole journey, and even the smoothest of journeys, for the luckiest of people—for most people, the journey is not smooth—will take years.

We felt at the time that, if an adult in particular—anybody over 18—came to the state and wanted to change their gender, it was not for us to make sure that they had to dance a particular dance before they would get the legal entitlement that we were putting in the legislation.

As the change was administrative—I would not say that it was effectively only a legal document, but there was no other parallel process to go through; it literally was just changing a legal document—we were adamant that it was going to be as easy as it needed to be for people. In addition, if the reverse became apparent to a

person, in so far as they felt that they had made a mistake or that their journey of recognition was not complete quite yet, they could reverse it and make a change as relatively easily as they did in the first place.

Where we got into different opinions was when we started talking about people under the age of 18. Initially, we felt that, if we tied the change to a medical certificate, we would have some other professional who would be able to say, “Yes, this 16-year-old has gone through a journey and is reliably identifying now as a different gender from the gender that they were born with.” That doctor could give us the okay, and the gender change could proceed. However, we knew that that was just not physically possible—the waiting times for gender identity acknowledgement or acceptance from a doctor were so protracted and the waiting lists were so long that they nearly made that part of the legislation useless. That is why, when we reviewed it, we removed the medical part and inserted the parental consent provision.

We had long discussions about whether consent would be needed from both parents or just one parent. I have to be honest with you: the advocacy groups wanted just one parent, because they felt that a child needed just one advocate. In a lot of cases that they have seen—this is a reality, and I do not doubt their reality for a second—a child will present to change gender and they will have one parent who is very supportive while the other parent is very unaccepting.

To my mind, although that might be true, I felt that it would be easier for us to try to make mediation and support services available for the entire family. Ultimately, I believe that we all love our children. We might find it difficult to accept something that they are presenting to us, but we all love them and want what is best for them. Instead of going down the one-parent consent route, we were planning on confining the process to the two-parents consent route, while giving parents as much support and co-operation as possible to help them on that acceptance journey—I do not know what the proper language is—and to help them to support their child in their journey of gender identity recognition. In that approach, the act would have been changed—it potentially still will be—to introduce third-party support such as counselling or mediation if one parent disagreed with the other to try to bridge the gap, and to support the family unit as opposed to making legislation that could potentially divide it.

That is the route that we took, as opposed to putting in a time period of weeks or months before anything could change legally. That is what we decided to do.

Fulton MacGregor: Thank you for explaining that, senator. My colleague Pam Gosal will ask a wee bit more about the 16 to 18 part.

On the proposal to have no requirement to live in the acquired gender for a given time or to have a period of reflection, is there any anecdotal evidence that that has been a difficulty? From what you have said to my colleagues, I understand that there is an issue with data collection in Ireland, which you have explained well. In the seven years since the act was passed, have you picked up on any information about the absence of such a requirement? Has it been called for, for example?

Senator Doherty: What I have to say is anecdotal—it is based on the stories of the people whom our advocacy groups represent. I am continuously in contact with those groups. In the past few weeks, they have launched an amalgamated campaign for transgender equality because of the rise in discourse in Ireland around some of the fears that you would have expected to have been raised back in 2015, but which genuinely were not. The only thing that I can tell you is that adults have found the legislation to be incredibly easy to use since its enactment. Although we have had a number of reversals, they account for fewer than 1 per cent of people who have changed their identity since 2015.

The one thing that advocacy groups and parents have told us is that, for those under the age of 18, the system simply has not worked and simply still is not working because the law still stands as it was enacted in 2015. Therefore, it is very cumbersome and the waiting time is still required. In fact, what we see is that those young adults who would have been able to change their gender under the age of 18 are having to wait until the day after their 18th birthday in order to apply.

Fulton MacGregor: I want to ask about the provision in the bill to be “ordinarily resident in Scotland”. We have heard concerns that that might lead to people coming from other parts of the United Kingdom—England, Wales or Northern Ireland—to seek a GRC. I know that you have a similar provision in Ireland, although you are possibly planning to expand that. Has that been a concern? You are in a position that is similar to ours in that you share a border with another country. In your case, people would travel from north to south rather than south to north, but has that happened in Ireland, and is it a concern?

Senator Doherty: That is probably easier for us than for you because we have only one legal jurisdiction in the Republic, although we share the island of Ireland with another legal jurisdiction, the general register office for which is your general register office; my general register office is distinctly different. The legislation that we passed

can change only Irish certificates, so it could change an Irish birth certificate, an Irish marriage certificate or an Irish passport. Even if somebody from the north of Ireland had an Irish passport, we would not have the ability to change their birth certificate, because it would have been issued by the General Register Office for the United Kingdom—or the office for Northern Ireland, Scotland or Wales, if you have distinct, different ones.

Our legislation pertains only to Irish documentation. We can change an Irish birth certificate, an Irish passport, an Irish driving licence or an Irish marriage licence. We can change a person’s personal public service number, which is what people use with the revenue services, from identifying someone as “he” to identifying someone as “she”. Therefore, when we say “ordinarily resident”, we mean that, if you were living here tomorrow, you would not be able to apply for our GRC unless you were an Irish citizen. Even then, it would be difficult, because your birth certificate is probably Scottish. Therefore, our legislation can change only Irish legal documents and nothing else.

Fulton MacGregor: Thanks for clarifying that. Perhaps it is not as much of a match as I first thought. I will take that one on the chin.

Pam Gosal (West Scotland) (Con): Good afternoon, Senator Doherty. The committee has covered quite a lot already. I will try to discuss an area that has not been covered, and I will go back to some areas to seek more clarity.

My colleague Rachael Hamilton spoke about data collection in relation to health and justice. I want to talk a bit about data collection on the basis of gender as opposed to sex and the potential impact on equality measures such as the gender pay gap. Did the introduction of a self-identification policy result in similar concerns? Do you share any of those concerns? Are you aware of the policy in Ireland having an effect on any other data collection policies?

I know that you covered justice and health a little when my colleague asked about them. My question is more about the gender pay gap, because some of our witnesses have talked about that. I would like to hear a little about your concerns and your thoughts on how you tackled that area.

16:00

Senator Doherty: Again, embarrassingly, none of those things was identified as an issue around the time of the enactment of the legislation. Because of how the legislation was drafted, there is no data collection other than in the General Register Office, where I would present and change

my gender, and all my legal documents would go from documents with a she to documents with whatever I would identify as. In so far as you are asking about collecting data to feed into justice and employment legislation, that data is not there.

As I mentioned, we are in the process of changing employment law—we are changing the terminology from “pregnant women” to “pregnant people” to reflect the reality that there is more than one gender. However, we could not tell you how many pregnant people there might be in Ireland, because we do not know how many trans women there are, how many trans men there are, how many non-binary people there are, or how many intersex people there are. We have not collected that data.

To my mind, speaking to you here today, that is a glaring gap in policy formation, because policy was enacted to be all-encompassing without knowing how many people it was being enacted for. Either Pam Duncan-Glancy or Maggie Chapman alluded to that earlier on. We have no knowledge of prostate checks, breast checks and cervical checks, for example, for the likes of our public services. None of those things would include any of our new-gendered registered people, and that is a glaring omission. You should learn by our mistakes. I am not even sure that we realised that that was a mistake until you told me about it here today, which is a poor show.

Pam Gosal: Thank you for being so honest about that, Senator Doherty. In looking at our bill now, we have a good opportunity to look at those areas.

I want to go back to what my colleague Pam Duncan-Glancy spoke about in relation to the work that you did with groups around accessing services and single-sex spaces, and to touch on women of faith. You have probably been following our committee’s work. People have raised that issue with me personally, and it has also been brought up in the committee. How did you go about addressing that issue in your 2015 act? Did religious groups and women of faith raise that issue of accessing services and single-sex spaces? Did you come across that in any of the work that you did?

Senator Doherty: Again, to be really honest with you, we had very little acrimony. Concerns were expressed, but they were expressed to us in relatively muted tones.

We still have some very conservative people. We have an enormous faith-based group that would have very distinct and opposing views on that issue, particularly those of the Catholic faith and the Muslim faith—there is a growing Muslim faith base in Ireland.

The way that we tried to handle it at the time was to say, first, that every human being deserves to live with dignity. For me—no life is simple, so I do not say this lightly—I was born female, I am now an adult female woman, I have four beautiful children, and I happen to be very happy in my own boots. Lots of people do not get to be that content. For us as a state, we felt that it was our responsibility to make the transitionary journey and the legal process as easy and as dignified as possible for people who have already walked a difficult path to their own self-determination and acknowledgment to get to where they are now.

We also wanted to reassure people that, just because there were different genders, that did not lessen the genders that we have known for generations—or since time immemorial. Therefore, for people of faith, the fact that the legislation changed did not change their faith or their beliefs, and—I do not mean this sarcastically—they never have to change their faith or allow that in their own life or their own family, if that is what they choose. However, as a nation and as a state, we have to be here to serve all our people, and we had to recognise that there was a small community of Irish people that was not best served by our denying those people the life that they absolutely wanted to live, in the gender that they believe and recognise themselves to be. We tried to handle it in that way. There is no threat to my gender identity from realising that there are other genders.

Pam Gosal: Thank you for that, Senator Doherty. You are absolutely correct that everybody—whether they are a trans person or they come from a religious background—has that right, but how can we impose such things upon people who follow certain religions? You probably heard my example that involved a woman going to a doctor. How does that work? You said that that situation has not come up in Ireland yet, but would you also consider that when you look at gender equality stuff? We will consider those things, and we have heard from witnesses with different views. We need to ensure that we have a fair playing field for everybody to access services and spaces.

Senator Doherty: Excuse me, but I am not aware of the example that you mentioned. If you could explain it, I will tell you how we have responded or reacted to that if it has happened in Ireland.

Pam Gosal: We have talked a little about the example of people using changing spaces, so you are aware of that. I will watch my wording, but another example is that, if a woman of colour—perhaps someone who is Indian—or a Muslim woman goes to a doctor, asks for a smear test, for example, asks for a female doctor and the doctor

is a trans female, the patient would not know, and it is not up to the trans person to tell the patient who they are, because that is their right, which is understandable. It would break the religion of that female if she later found out that the doctor was trans, but she would not have had the opportunity to know, because the trans person has the right to privacy. However, the person with the religious belief also has the right to know who they are being treated by.

It would be good if you could tell us how we can reach a happy medium in which we respect both sides and come out with a balanced view that can help services to be delivered.

Senator Doherty: Apologies—I should have known what you were asking me about. I am sorry that I did not. I actually—[*Inaudible.*]*—*that, maybe because I am in the privileged position of—[*Inaudible.*]*—*being a woman as opposed to being a minority gender.

Currently, there are seven recognised genders—there may even be nine; I may not be as up to date as some younger people are. However, let us go with the seven that are legally recognised in Ireland. A trans man, trans woman, non-binary, intersex or non-gender person should not have a problem telling people about their gender. I do not have any problem with you asking me about my gender. I would tell you that I am a woman, and I am sure that the lads sitting beside you would not have any problem telling you about their gender. Therefore, why would a trans woman, a trans man or an intersex person feel marginalised or put upon by having to say what gender they are?

In the scenario that you described, each person has to be respected and treated with dignity, and the person who has religious beliefs has a right to be treated by a woman if she wants to be treated by a woman. If that patient wanted to pick a non-binary doctor, she might have more difficulty in finding one—I am not being facetious in saying that—but there is nothing wrong with asking to be treated by a female, woman doctor.

There is something distinctly different between a woman and a trans woman. That brings me back to the debate that we are having in Ireland now. Maybe we should not use the words “pregnant people”, and instead, we should use the words “pregnant woman”, “pregnant trans male”, “pregnant non-binary person” or “pregnant intersex person”. That might seem clunky, but it is the reality of what actually exists in life at the moment. Of course a trans man can have a baby if they were born of female sex and have not had any medical interventions to remove those parts of their body. However, a trans woman is distinctly different from a woman, because a trans woman was born physically a man, and I think that any

woman presenting to a doctor in that scenario has the right to know that.

Pam Gosal: Thank you very much, Senator Doherty. I have one last point, on the back of my colleague Fulton MacGregor speaking about age. Perhaps you could elaborate on that.

You know that we are looking at changing the age for a GRC from 18 to 16 years old. We have heard from many people on that—some are for and some are against. On the one hand, there is the fact that, at 16 or 17, someone can go ahead and get married, and they can vote. On the other hand, people have concerns because they feel that those people are not yet adults who are able to make such decisions. At that age, people cannot get a credit card, for example—certain things cannot happen in their life.

What is your view on balance in that regard, if we go down to 16? I know that, in your legislation, that age cohort requires both parental consent and medical evidence in order to be granted the court order that is required. Perhaps you can touch on that a little bit.

Senator Doherty: We are probably not as progressive as Scotland is because, in Ireland, someone cannot get married, drink or get a driving licence—any of those things—until they are 18. It was therefore easy for us to keep the cut-off point for being an adult. I should also say that you cannot vote at 16 in Ireland. You do not become an adult until you are 18 and, when you become 18, you make your own choices.

For those who are below that age, the original legislation, as it stands today, requires a medical certificate, which is cumbersome to get. The hope was to change that requirement so that only parental consent would be required. Again, we would hope that that would be in an environment in which both parents are agreeable because they have seen the life that the child has lived and are accepting and supportive of it.

In cases in which there was a disagreement between parents, we would put in place support mechanisms, such as family support, mediation and counselling services—anything that would help to make that decision easier for them. Of course, they may not make the decision, but we were concentrating on the fact that the consent of both parents was needed, and we wanted to help those parents to arrive on the same page. If they did not, we would respect the fact that both parents were still required.

I have four children. The youngest is 15 and the eldest is 22, so I have done the 16 and 17-year-old thing a couple of times already. They know absolutely everything, and yet—as we all know—we realise when we stop being 16 and 17 just how little we really knew. It is a very precious space in

a person's life. We want to help, but we also need to ensure that everybody is reassured that the state is doing the right thing by young adults. Even though we have not changed the legislation yet, I hope that we are getting the balance right on parental consent, with both parents consenting and with support for the family.

Pam Gosal: Thank you, Senator Doherty.

The Convener: I am mindful of the time, but Maggie Chapman would like to come back in for another question.

Maggie Chapman: Thank you for your time, Regina—I really appreciate it.

I will be quick. One of the proposed reforms that we are looking at is including the option for a “person of interest”—a person who is associated with the person who is applying for a gender recognition certificate—to have a say in the matter, whether that is a spouse or another close family member. I wondered whether you considered at the time of legislating, in 2015, whether the Irish legislation would include some kind of relationship other than parents for 16 and 17-year-olds. Was there consideration of enabling anybody else, in any other capacity, to have a say in whether somebody should or should not be granted a gender recognition certificate?

Senator Doherty: We had a long debate during the review—it took much longer than I thought it would take. The reason for that was that we did consider putting an advocate for the state in the legislation.

There was a belief from some people on the review board that some parents might not act in the best interests of the child. We could therefore potentially have a scenario in which a child changed their gender and the parents were supportive of that without really knowing the impact of it. Some people at the table felt that somebody from the state needed to be at the table, even though we were saying that mam and dad needed to make the decision. They felt that we needed mam and dad, and also the minister for justice—I do not know; you know what I mean.

I have to be honest with you: I railed seriously against that, as did the advocacy groups. To my mind, the family unit is probably one of the most special relationships that exists. The two people who think more of a child, in 99.9 per cent of the cases that I know, are mam and dad. Although we know from experience that that does not mean that mam and dad are always equally accepting, they are certainly the people who love the child the most. Instead of having the state being a big brother, we had the state being the supportive mechanism with mediation and family support.

16:15

What we envisaged was that we would set up mediation and family support units in each county. We probably did not have enough of them in the country to actually establish that, so we would have had to put money behind the policy when the law was passed. We probably would have done that through Tusla, which is our Child and Family Agency in Ireland. Those units would definitely need to be seen as being helpful as opposed to controlling.

Maggie Chapman: Thank you, Regina—that is helpful. What about for adults? Was there any discussion about a spouse, a sibling or anyone like that having a say?

Senator Doherty: No—again, we were mindful that, once someone reaches adulthood, they make their own decisions. There was a discussion about married people in particular. Obviously, if I were to make such a decision independently, it would have a massive impact on my family. However, if I was making that decision, I would be going to do it anyway, so we did not feel that we could hinder it.

We felt that for me to give the power—for want of a better way to put it—over my being able to live my true life to somebody else, who might not be happy about the changes to their life as a result, was unfair. However, there certainly were discussions about that at the time.

Again, we felt that, as with all legislation, an adult Irish person is an adult Irish person, and they get the full extent of the law as an independent adult themselves. That is where we ended up.

Maggie Chapman: Thank you. That is really helpful and clear. It is much appreciated.

The Convener: Thank you very much, Regina. We could go on for the rest of the afternoon, but I know that your diary is pressing, and we have to get back to the chamber. A huge thank you to you for giving us your time.

That concludes the public part of our meeting.

16:16

Meeting continued in private until 16:28.

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