

GENDER UPDATE

Revisiting gender-neutral policy from a trans perspective: a look at Northern Ireland

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Key messages

- Gender-neutral policy can depoliticise gender and marginalise trans people.
- Intersectional and gender-aware politics resists reproducing the gender binary when promoting gender equality.

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Although the name suggests the contrary, there is nothing neutral for women and gender minorities about the introduction of a gender-neutral policy. In our case study of civil society organisations working in the women's sector in Northern Ireland (NI), we consider the limitations and pitfalls of gender-neutral policy. We illustrate that, too often, claims of gender neutrality lead to a doubling down on the enforcement of the gender binary, with a detrimental impact of members of the lesbian, gay, bisexual, transgender and queer (LGBTQ) community, especially trans women. As a way forward, we prioritise insights from the trans community regarding the value of intersectional, coalitional approaches to gender-aware policymaking.

Gender-neutral policy is often presented in European politics as a non-sexist or gender-blind approach that is more inclusive to those previously marginalised. However, when civil servants introduce gender-neutral policy in initiatives to ensure gender equality without a feminist understanding of power, privilege and patriarchy, it can have damaging consequences. Many lesbian, gay and bisexual (LGB), feminist, and trans advocates are generally sceptical of gender-neutral policy as reducing gender to male/female categories while explicitly denying the inclusion of trans and non-binary people. In many instances, gender-neutral approaches further depoliticise and disenfranchise civil society organisations, rather than working intersectionally,

as advocated by the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW).

NI lags behind both Great Britain and Ireland in policy areas relating to gender-based violence, gender identity and state-provided childcare. The implementation of Section 75¹ of the Northern Ireland Act 1998 was intended to enforce the equality provision of the peace deal. In reality, it has resulted in depoliticising equality by treating women and men as the same, and has failed to be trans inclusive. The Gender Equality Strategy Expert Advisory Panel Report (2020) identified gender-neutral policy as ‘a significant barrier to women’s equality’. One of the key recommendations from the report was a need for training to ensure government departments understand the difference between gender equality and gender neutrality. The report calls for an intersectional approach and further research about the healthcare needs of the LGBTQ community in NI, specifically regarding gender-affirming healthcare services.

In some instances, trans advocates have pushed for gender-neutral approaches. For example, advocates argue for gender-neutral (or all-gender) toilets and more inclusive language about who accesses abortion services, such as ‘people who access abortions’ instead of only ‘women who access abortions’. However, in the case of gender-neutral policy in NI, these are not the types of policy initiatives championed. Equality provisions in the NI Act have translated to gender neutrality rather than gender-sensitive and intersectional policymaking. Without being intersectional, gender-neutral legislation disadvantages and excludes trans people and gender minorities.

Campaigning and lobbying groups in the women’s sector in NI work to serve various marginalised groups in a non-hierarchical way, aiming to meet everyone’s needs. For example, rather than a policy approach that is either for women or gender neutral, the Women’s Policy Group follows a ‘both/and’ framework, creating a policy environment that is responsive to various demands that are viewed as equal. Transgender NI – a human rights and community organisation for trans and gender-diverse people in NI – has increasingly fed into the work of the Women’s Policy Group, with sections of the ‘Feminist Recovery Plan’ and the ‘Women’s Manifesto’ explicitly outlining the needs of trans women. Additionally, the response from Alliance for Choice – a group that campaigns for abortion rights – to the NI consultation on abortion legislation included insights from focus groups with Transgender NI.

More broadly, trans activists argue that it is essential to eradicate the barriers that requiring legal genders enshrines in law, especially in terms of accessing direct services. Some activists suggest abolishing legal gender, especially on key documents, such as a driver’s licence or passport. The introduction by some countries of the ‘X’ passport marker is one approach for introducing a third, gender-neutral option other than male or female. Alternative framings to ‘gender-neutral’, such as ‘women and gender-minorities’, offer a more inclusive path forward, while acknowledging the original intent of the paradigm shift in gender-focused policy. Policymakers might also consider keeping the word ‘women’ rather than replacing it with ‘gender’, and being clear that trans women are included in the policy with a specific commitment to gender minorities and non-binary people.

This year, the NI executive is continuing consultations about gender policy, including updating the Gender Recognition Act 2004. We argue that gender-neutral policy must be reconsidered to better meet the needs of the people who need gender-based

protection the most: women's organisations, LGBTQ organisations and, especially, trans organisations. With more European governments implementing a gender-neutral policy, there is a need for intersectional and feminist guiding principles for these policies. Furthermore, even with the introduction of gender-neutral approaches, it is still important to continue to gather gender-disaggregated data about how people access services. Given how the policies disproportionately impact queer and trans communities, we urge governments to continue to prioritise developing policy on gender informed by women's organisations in collaboration with lesbian, gay, bisexual and trans (LGBT) organisations.

Note

¹ Section 75 of the Northern Ireland Act 1998 includes an: Equality of Opportunity duty, which requires public authorities in carrying out their functions relating to Northern Ireland to have due regard to the need to promote equality of opportunity between the nine equality categories of persons of different religious belief, political opinion, racial group, age, marital status or sexual orientation; men and women generally; persons with a disability and persons without; and persons with dependants and persons without. (See: <https://www.equalityni.org/ECNI/media/ECNI/Publications/Employers%20and%20Service%20Providers/S75GuideforPublicAuthoritiesApril2010.pdf>)

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Conflicts of interest

The authors declare that there is no conflict of interest.

Reference

Gray, A., Louise, C., Powell, R. and Harding, S. (2020) Gender Equality Strategy Expert Advisory Panel Report: Research Thematic Areas, Key Findings and Recommendations, December 2020: Available online: <https://www.communities-ni.gov.uk/system/files/publications/communities/dfc-social-inclusion-strategy-gender-expert-advisory-panel-report.pdf>