

Authorisation of medical interventions (Recommendations 8 and 9)

The current system for decision making about medical interventions modifying the sex characteristics of children born with variations in sex characteristics has allowed interventions that are not always medically necessary.

This is inconsistent with human rights law, and may have severe and lifelong consequences for people, as evidenced by their lived experience.

Without reforms, interventions may continue to be made that are not medically necessary. Current practice includes interventions that are based on psychosocial rationales, such as gender-conforming treatments.

Medical interventions should only be authorised where the child or younger person concerned has provided their own personal consent, or where the intervention is a medical necessity (see Fact sheet 3: Medical necessity)

Authorisation by an Independent Panel (see Fact sheet 5: Independent Panels) should be required for any medical intervention to modify innate variations in sex characteristics in those born with variations who are aged under 18.

In the rare case of emergency situations, where there would be a real risk of serious and irreparable harm the Independent Panel should have an expedited process to consider the request for authorisation.

Only where this still does not provide enough time to address the emergency, an intervention may proceed without authorisation. In those circumstances the relevant Independent Panel must be notified promptly following the conduct of the medical intervention.

Legislation should prohibit medical interventions without authorisation, and there should be appropriate criminal penalties attached to breaching this prohibition. It is the Commission's view, however, that parents should not be subject to criminal sanctions. The authorisation requirement may also have implications in terms of disciplinary action against health professionals and civil liability.