

NASUWT The Teachers' Union

1. The NASUWT welcomes the opportunity to submit evidence to the Scottish Government consultation on the Gender Recognition Reform (Scotland) Bill.
2. The NASUWT is the teachers' union, representing teachers and head teachers across the UK.
3. The NASUWT welcomes the opportunity to take part in the consultation on this very important piece of legislation. The NASUWT reaffirms its commitment to gender self-declaration, as a means to remove barriers to equality for trans people. This response is in line with NASUWT policy and the Union's response to the previous consultation on Gender Recognition reform, submitted in February 2018.

GENERAL COMMENTS

4. The NASUWT believes that all pupils/students and staff in schools and colleges have a right to learn and work in a safe environment, where they are treated with dignity and feel valued and respected.
5. The NASUWT is committed to supporting trans teachers, pupils, and teachers with trans students in their classes.
6. The NASUWT has provided detailed guidance for members, both trans and non-trans on issues of trans equality in schools and colleges.
7. The NASUWT also runs a comprehensive programme of Continuing Professional Development seminars and courses on 'trans awareness', available to all members.

SPECIFIC COMMENTS

The Gender Recognition Act

8. The NASUWT advises schools and colleges that legislation provides the minimum standard that should be expected in terms of trans equality and that it is good practice for employers to focus not just on legal requirements but also the wider wellbeing of staff and how they can ensure a fully inclusive workplace.
9. The NASUWT welcomes the Scottish Government's move to legislate for a self-declaration system for legal gender recognition.

Question 1: Do you have any comments on the proposal that applicants must live in their acquired gender for at least 3 months before applying for a GRC?

10. The NASUWT recognises that the current process of securing a Gender Recognition Certificate through the Gender Recognition Act places a heavy burden on the individual concerned, causing potential stress, anxiety and mental ill health. Anything which removes the barriers to legal recognition, and moves from a medical model of recognition to a social model is welcomed.

11. The NASUWT acknowledges the concerns raised by some regarding safe spaces for women and the potential for some to seek to misuse the system in order to access (for example) women only spaces. It is crucial, therefore, that robust safeguards exist within the process in order to deter and prevent such abuse.

12. The NASUWT would assert that the requirements retained and introduced within the proposed Act, as amended, would ensure that the process will be robust and not taken lightly by any individual. (ie the requirement to declare the intention to live in the acquired gender permanently; and the requirements for statutory declarations and the change to make false declaration a criminal offence, punishable by imprisonment).

13. The NASUWT would also assert that provisions already exist (as exceptions) within the Equality Act 2010 which protect safe spaces for women.

Question 2: Do you have any comments on the proposal that applicants must go through a period of reflection for at least 3 months before applying for a GRC?

14. The NASUWT would assert that any extended period of time increases potential exposure to transphobia, harassment and abuse, in addition to difficulties caused by an individual's personal documents not being consistent or matching the gender presented. The latter can result in an individual having to 'out' themselves when they would not otherwise have chosen to do so.

Question 3: Should the minimum age at which a person can apply for legal gender recognition be reduced from 18 to 16?

15. The NASUWT has no fixed view on the reduction of the age limit to 16, however it believes that all measures that remove the barriers which place a heavy burden on the mental health and wellbeing of young people should be welcomed.

16. The NASUWT notes that the move is to bring this in line with the minimum age for marrying or entering into a civil partnership – both of which are also accompanied by some form of declaration that the individual intends to live in that state/situation permanently.

Question 4: Do you have any other comments on the provisions of the draft Bill?

17. The NASUWT acknowledges the provision contained within the draft Bill to make provision for the Registrar General to charge fees for Gender Recognition Certificate applications. Whilst the NASUWT welcomes the statement that any fee would be likely to be considerably lower than the current "£140, as the new proposed system does not require there to be a tribunal (the current GRP is a UK Tribunal)", the Union would request firmer assurances or guarantees that this will, indeed, be the case. It is clear that any fees form a barrier to those from socio-economically disadvantaged backgrounds and any proposed fee structure should be Equality Impact Assessed.

18. The NASUWT acknowledges the importance of the exceptions in the Equality Act 2010 for single sex services, where it is proportionate, and affirms the importance of the preservation of these exceptions. However, the NASUWT would also stress the importance of ensuring that there are sufficient and appropriate services for trans people to access, if they are excluded from a service based on the exceptions in the Equality Act 2010

19. The Gender Recognition Certificate brings an individual's birth certificate in line with the gender markers on other personal identification documents. It also allows trans workers to have pension and insurance policies administered accurately, and ensure that there is dignity for them at the end of their life, in that their death can be recognised in the correct gender.

Question 5: Do you have any comments on the draft Impact assessments?

19. Annex F: DRAFT BUSINESS AND REGULATORY IMPACT ASSESSMENT (BRIA)

Whilst the NASUWT is disappointed at the Scottish Government decision not to extend legal gender recognition at this stage to non-binary people, we acknowledge and welcome the decision to set up a working group on non-binary people.

20. Annex G: DRAFT CHILD RIGHTS AND WELLBEING IMPACT ASSESSMENT

The NASUWT has no additional comment on Annex G

21. Annex H: DRAFT FAIRER SCOTLAND DUTY ASSESSMENT

The NASUWT acknowledges the lack of robust data on trans workers in Scotland and welcomes the introduction of a 'trans status' question for the 2021 census. This will, hopefully, ensure that any future Impact Assessments are based on more robust statistical evidence. Additionally the NASUWT would assert that the Scottish government should gather evidence on harassment and discrimination of trans people and transphobic hate crime. All other questions are covered in the general consultation response above.

22. Annex I: DRAFT DATA PROTECTION IMPACT ASSESSMENT (DPIA)

The NASUWT has no additional comment on Annex I

23. Annex J DRAFT EQUALITY IMPACT ASSESSMENT RECORD

The NASUWT acknowledges the positive information contained within Annex, in relation to the advancement of equality of opportunity for trans people and the lack of negative impact on other groups with protected characteristics as defined by the Equality Act 2010.