

Reform of the Gender Recognition Act

27 November 2020

**NASUWT evidence to the House of Commons
Women and Equalities Select Committee**

The NASUWT's submission sets out the Union's views on the key issues identified by the Committee in the terms of reference for the Inquiry. The NASUWT's evidence is informed directly by serving teacher and headteacher members and also by the work of its representative committees and consultative structures, made up of practising teachers and school leaders working in the education system.

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Introduction

1. The NASUWT welcomes the opportunity to comment on the Women and Equalities Committee inquiry into Gender Recognition Act (GRA) reform.
2. This response reflects and builds on the NASUWT response submitted in 2018 to the previous Government consultation on GRA reform. In that response the NASUWT asserts that the process of securing a Gender Recognition Certificate places a heavy burden on the individual concerned, causing stress, anxiety and mental ill health. The Union is therefore disappointed that since that time trans people have had to continue to endure the lengthy and humiliating process to change their gender.
3. The NASUWT is also concerned that the delay has further fuelled the toxicity of the debate around gender recognition that is taking place in some areas. The Union believes that this is also creating bitter and unnecessary divisions between particular groups.
4. The NASUWT is fully committed to tackling inequality, prejudice, discrimination and intolerance not only within education, but also within the wider society. The Union has a long and proud history of challenging inequalities and championing equality and social justice throughout all of its policies and practices.
5. 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.
6. The NASUWT is committed to supporting trans teachers and pupils, and teachers with trans students in their classes.

7. The NASUWT has provided detailed guidance for members, both trans and non-trans, on issues of trans equality in schools and colleges. The Union's guidance is informed by the direct experience of teachers and headteachers and for the purposes of this response, also from NASUWT trans members.

SPECIFIC COMMENTS

Will the Government's proposed changes meet its aim of making the process "kinder and more straight forward"?

8. The NASUWT is an affiliate of the Trades Union Congress, which collectively represents more than 5.6 million working people. In 2018 and again in 2020, the TUC adopted a policy position which supports progressive reform of the Gender Recognition Act 2004 and a strong commitment to trans rights.
9. The NASUWT fully supports this position and believes that more should be done to remove the barriers for acquiring a Gender Recognition Certificate, to a process that is more in line with recognised good practice and less lengthy, intrusive and humiliating for trans people.
10. The Union is therefore not convinced that the Government's proposed changes go far enough to remove these barriers and make the changes more straight forward and dignified for those wishing to acquire a Gender Recognition Certificate.
11. As outlined in the previous 2018 submission, the NASUWT supports a simplified, free statutory gender recognition process based on self-declaration. Any requirement for an evidence based process must similarly protect against the malicious or other misuse or denial of the rights of individuals to be recognised in their chosen gender.

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Financial burdens for obtaining a Gender Recognition Certificate and requirement for a diagnosis of gender dysphoria

12. Many trans people never apply for a GRC. Some may be ineligible under the criteria; others may be eligible but perceive no benefit to obtaining one and thus it must be considered a personal choice.
13. The NASUWT opposes anything which is a barrier to equality. Charging a fee for a Gender Recognition Certificate is one such barrier for many trans people and discriminates particularly against those on low incomes. The Stonewall and YouGov Trans report¹ showed that 1 in 4 trans people had experienced homelessness at some point in their lives.
14. The report further identified that 62% of trans people who had undergone or currently undergoing medical intervention for their transition were very unsatisfied with the waiting time for an appointment. This has caused undue stress and anxiety for many trans people. The burden of charges for a Gender Recognition Certificate could prove exceptionally difficult for people already suffering financially.
15. The NASUWT believes that the Government should do more to make the process simpler and less bureaucratic for trans people to obtain a Gender Recognition Certificate. The proposals to place the process online and reduce the current fee of £140 to a 'nominal amount', does not go far enough to assure trans people that their rights are respected by the Government.
16. The NASUWT believes that, should the need for any medical reports and processes for the purposes of Gender Recognition remain, these

¹ YouGov/Stonewall LGBT in Britain, Trans Report 2018

Written evidence submitted by NASUWT (GRA1291)

should be routinely provided as part of the NHS and not be chargeable to the patient

17. Currently a medical diagnosis of gender dysphoria is required for obtaining a GRC. This assumes that being trans is an illness. The NASUWT supports the TUC's position that the GRA should be amended so that the process of acquiring a GRC does not rely on such a diagnosis.
18. The NASUWT further notes that the World Health Organisation recognises in its revised International Classification of Diseases (11th Revision – ICD11) that there should be no automatic assertion of mental disease or disorder to trans people. The International Lesbian, Gay, Bisexual, Trans and Intersex organisation (ILGA) also supports this position.

Changes to the requirement for individuals to have lived in their acquired gender for at least two years and Statutory Declaration

19. Currently an applicant has to provide evidence that they have lived in their acquired gender for at least two years. The NASUWT is concerned that this requirement is based on factors that reinforce gender stereotypes.
20. However the Union recognises the importance of a mechanism built into the process, which demonstrates the seriousness of intent and allowances for a specified period of time for reflection prior to and following a GRC application.
21. The NASUWT supports a simplified, free statutory gender recognition process based on self-declaration for trans people.

Provisions and Exceptions within the Equality Act 2010

22. The NASUWT acknowledges the concerns of some groups regarding the provision of safe spaces for women. The NASUWT fully supports the provisions and exemptions within the Equality Act 2010 that allow for single-sex spaces and for proportional exclusions. The Union asserts that these exemptions must remain in place and that clear guidance on the use of single sex exemptions and genuine occupational requirements be developed for employers and organisations that can apply them.

23. Furthermore, the NASUWT recognises that within the current Gender Recognition Act, a provision exists to disclose the 'protected information' regarding a trans person who has been granted a Gender Recognition Certificate, where the disclosure is for the 'purpose of preventing or investigating crime'.

24. Any reforms to acquiring a Gender Recognition Certificate should not affect the privacy rights of individuals and their personal histories. Preserving the confidentiality of individuals' personal information from service providers should be fundamental to any reforms to the Gender Recognition Act.

25. The NASUWT therefore requests that the Government provide assurances that the current legislation can and will be used where there are any threats to safe spaces and services for women and comprehensive guidance to service providers on how to perform risk assessments to prevent abuse.

26. The NASUWT also suggests that the Government has a duty to fund services such as refuges and women's prisons adequately and sufficiently to allow for proper risk assessments to be made, in order to eliminate any risk of abuse of a self-identification model of gender recognition.
27. The NASUWT would also stress that the Gender Recognition Act applies to trans men as well as trans women. It is important that trans men are not forgotten in these conversations and this inquiry. Trans men also face threats, intimidation and violence prior to, during and following transition – predominantly from men.

Spousal consent provisions within the GRA

28. The NASUWT supports the right and freedom of the individual to exercise their human rights without the consent of others. If no medical certificate is required to obtain legal gender recognition, then spousal consent is also unnecessary. Self-declaration implies that the decision lies with the individual; therefore, this would be negated by adding a layer of consent elsewhere.
29. The NASUWT also believes that spousal consent gives the spouse inappropriate power and risks issues of coercive control, which is a criminal offence under Section 76 of the Serious Crime Act 2015.

What else should the Government have included in its proposals?

30. The NASUWT believes that the provisions of the Equality Act 2010 and the Gender Recognition Act 2004 should be extended to recognise and include non-binary people.
31. The Union welcomed the Employment Tribunal ruling (Taylor vs Jaguar Land Rover Ltd) which found that non-binary and gender fluid individuals can fall under the protected characteristic of gender

reassignment and thus also have protections under Section 7 of the Equality Act 2010.

32. The NASUWT urges the Government to make explicit reference to the experiences and rights of non-binary people in their guidance materials to employers, to encourage greater awareness of the issues for non-binary people..

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November 2020