

**Government Consultation
Review of the Gender Recognition Act 2004
18 October 2018**

1. The NASUWT welcomes the opportunity to submit evidence to the Government consultation on the Review of the Gender Recognition Act 2004.
2. The NASUWT is the teachers' union, representing teachers and headteachers across the UK.

GENERAL COMMENTS

3. 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.
4. The NASUWT is committed to supporting trans teachers and pupils, and teachers with trans students in their classes.
5. The NASUWT has provided detailed guidance for members, both trans and non-trans, on issues of trans equality in schools and colleges.
6. 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

7. 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.
8. 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 stress, anxiety and mental ill health. Removing the barriers to legal recognition to one that is more in line with recognised good practice and less lengthy, intrusive and humiliating for trans people should be welcomed.
9. The NASUWT supports a simplified, free statutory gender recognition processed 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.
10. Trans people should not be prevented from fully accessing their human rights. Requiring someone who is seeking legal recognition of their acquired gender to have undergone medical treatment or have a medical diagnosis is a breach of their right to respect for private life under Article 8 of the European Convention on Human Rights.
11. The NASUWT questions whether the wording 'required to live in their acquired gender until death' is appropriate or just. Placing such a stipulation could result in a trans person feeling that their gender has

been assigned to them again, rather than it being their own choice. This would place yet another unnecessary burden on the individual. This is the only form of Statutory Declaration which includes this statement.

12. People who identify as non-binary would find this proposal particularly difficult. The NASUWT firmly believes that any changes to legislation should be fully inclusive for non-binary people.
13. 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.
14. 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.
15. 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. According to the Totaljobs Trans Employees Survey 2016¹, 36% of trans people had left a job because the environment was unwelcoming. The Stonewall *LGBT in Britain – Trans Report*² found that one in four trans people (25%) have experienced homelessness at some point in their lives. According to the British Social Attitudes survey, carried out by the National Centre for Social Research in 2017³, a third of employers are less likely to hire a trans person. Trans unemployment is not monitored in the UK – but it is certainly much higher than the national average. The burden of

¹ <https://www.totaljobs.com/insidejob/trans-employee-survey-report-2016/>

² <https://www.stonewall.org.uk/lgbt-britain-trans-report>

³ http://www.bsa.natcen.ac.uk/media/39147/bsa34_moral_issues_final.pdf

charges for a Gender Recognition Certificate could prove exceptionally difficult for people already suffering financially.

16. The NASUWT believes that, should the need for any medical reports and processes for the purposes of Gender Recognition remain, these should be routinely provided as part of the NHS and not be chargeable to the patient.
17. 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.
18. The NASUWT believes that the failure to recognise and protect those who identify as non-binary is a contravention of the Yogyakarta Principles⁴, which emphasise that: *Each person's self-defined...gender identity is integral to their personality and is one of the most basic aspects of self-determination, dignity and freedom.*
19. 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 the provision of single-sex spaces and for proportional exclusions. The NASUWT welcomes the Government's guarantees that it does not plan to amend these protections within the Equality Act, although, as previously stated, we would request that the Act be extended to include non-binary people.
20. 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'.

⁴ http://data.unaids.org/pub/manual/2007/070517_yogyakarta_principles_en.pdf

21. 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.
22. 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.
23. 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.
24. 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 consultation. Trans men also face threats, intimidation and violence prior to, during and following transition – predominantly from men.
25. In addition, as previously stated, the NASUWT opposes anything which would place yet another unnecessary burden on the individual. The NASUWT recognises that the process of undergoing gender reassignment is far from simple, with many bureaucratic issues already existing, such as significant changing of documents.
26. The NASUWT has long campaigned for equality for all its members and was at the forefront of the trade union campaign for the equalisation of same-sex survivor benefits. The Union acknowledges the Department for Education (DfE) announcement in April 2018 that

teachers' adult survivor pensions for all same-sex spouses and civil partners would be based on the same accrued pension as adult survivor pensions for widows of opposite-sex marriages, backdated to 1972. The NASUWT also welcomes the Government's commitment to extending civil partnerships to opposite sex-couples, as this will eliminate one element of inequality which exists within the Gender Recognition Act.

27. The NASUWT is concerned at the continued disparity between marriage and Civil Partnerships where the latter is not available to couples of the opposite legal sex. Whilst marriages can remain when one person acquires a Gender Recognition Certificate, currently the same rights are not afforded to those in a Civil Partnership. The NASUWT therefore calls on the Government to progress its commitment to removing this injustice by bringing forward legislation providing opposite sex couples access to Civil Partnerships.
28. The NASUWT also recognises the burdens that gender questioning and gender dysphoria place on the mental health and wellbeing of young people.
29. According to the *Stonewall School Report 2017*⁵, more than two in five trans pupils have tried to take their own lives and more than four in five trans people have self-harmed. These figures cannot be ignored. There is evidence that transitioning improves trans people's mental health. Although this does not form part of the consultation, and the NASUWT has no fixed view on the reduction of the age limit, all measures that remove the barriers which place such a heavy burden on the mental health and wellbeing of young people should be considered and welcomed.
30. Young people can change their name, seek employment, join the armed forces and train to be an officer and enter into marriage or a civil

⁵ <https://www.stonewall.org.uk/school-report-2017>

partnership at the age of 16. All of these are actions which are not entered into lightly. The question must be asked, therefore, why there are different age limits for different situations. There may be an argument for the equalisation of age limits.

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