

Gender Recognition Reform (Scotland) Bill

16 May 2022

**NASUWT evidence to the Scottish Parliament Equalities,
Human Rights and Civil Justice Committee**

The NASUWT's submission to the Scottish Parliament Equalities, Human Rights and Civil Justice Committee sets out the Union's views on the key issues which should be explored by the Committee in its examination of the draft legislation to change the system through which transgender people can gain legal recognition in Scotland. 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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Q1: The removal of the requirement for a medical diagnosis of gender dysphoria and supporting medical evidence.

The NASUWT fully supports trans workers' rights and welcomes the increased visibility and empowerment of trans and non-binary people in society.

The NASUWT is committed to campaign for a simplified, free, statutory gender-recognition process based on self-declaration and to support rights for gender non-binary people at work and in wider society.

The NASUWT's view is that individuals have the right to self-identification and self-determination and the right to assert their gender identity free from fear, intimidation or penalty. The NASUWT therefore welcomes the Scottish Government's move to legislate for a self-declaration system for legal gender recognition.

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.

The Union therefore agrees with the Bill's intention to improve the pre-existing process by which trans men and women can obtain a Gender Recognition Certificate, which they can then use to change the sex recorded on their birth certificate. This process has been in place since the Gender Recognition Act was passed in 2004, but the Bill will make important positive changes to the process of applying for a Gender Recognition Certificate, which many applicants find stressful, difficult, demeaning, and expensive. For that reason, only a small number of people apply each year, leaving many trans men and women with an identity document that does not match their other documents (gender recognition is not required to change the sex on a passport or driving licence) and does not reflect how they live their life. The Union therefore

strongly supports the Bill's proposals to move from a medicalised view of transition to a system of statutory self-declaration.

Q2: Provisions enabling applicants to make a statutory declaration that they have lived in the acquired gender for a minimum of three months (rather than the current period of two years) and that they intend to live permanently in their acquired gender.

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 nor 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.

Being unable to apply for legal gender recognition until two years after you have transitioned places trans men and women in a position where they may have to show their birth certificate at significant moments when this does not reflect who they are. The current situation can increase their risk of facing discrimination and harassment, as well as undermining their right to privacy. The Gender Recognition Certificate brings an individual's birth certificate in line with the gender markers on other personal identification documents. It allows trans workers to have pension and insurance policies administered accurately, and ensures that there is dignity for them at the end of their life, in that their death can be recognised in the correct gender.

The Union supports this change to existing practice because it would make it simpler and quicker for trans people to access legal gender recognition.

Q3: Whether applications should be made to the Registrar General for Scotland instead of the Gender Recognition Panel, a UK Tribunal.

The Union agrees with the removal of the Gender Recognition Panel from the process, with applications instead being made to the Registrar General.

The NASUWT supports this change as it recognises trans people as experts in their own genders and would streamline and simplify the process.

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Q4: Proposals that applications are to be determined by the Registrar General after a further period of reflection of at least three months.

As part of the process under the Bill, applicants must swear under oath that they are living in their acquired gender and intend to do so for the rest of their life. Trans people will have spent a considerable amount of time considering their identity already and the statutory declaration set out in the Bill gives this process sufficient weight so that any applicant will understand it to be a serious undertaking. In this context, a further delay of three months feels arbitrary and unnecessary.

Q5: Whether the minimum age for applicants for obtaining a Gender Recognition Certificate should be reduced from 18 to 16.

The NASUWT has no fixed view on the reduction of the age limit. 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.

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.

Q6: If you have any comments on the provisions for interim Gender Recognition Certificates.

The NASUWT notes that the provisions for interim Gender Recognition Certificates would be maintained under the terms of the Bill and ensure that in Scotland there is no 'spousal veto' which exists in England and Wales. The Union supports these parts of the Bill as making no substantive change to the existing arrangements in Scotland which allows both spouses to access their legal rights, and to end a marriage or civil partnership. It is important that trans people are still able to access legal gender recognition even if their spouse is not supportive.

Q7: If you have any comments on the provisions for confirmatory Gender Recognition Certificates for applicants who have overseas gender recognition.

The NASUWT supports this part of the Bill, which would allow trans men and women who had obtained legal gender recognition outwith Scotland to apply for a 'confirmatory Gender Recognition Certificate. While it is recognised this would not be a routinely utilised section of the law, it would be of use in a number of limited circumstances, such as where a trans spouse from a couple who married in Scotland received gender recognition in another, they could then apply for a confirmatory Gender Recognition Certificate to update their Scottish marriage certificate.

Q8: If you have any comments on the offences of knowingly making a false application or including false information.

The Bill includes a new provision for making a false declaration or application for a Gender Recognition Certificate. However, this provision mirrors pre-existing legislation for making a false statutory declaration, and has the same penalties. The Union is uncertain that this additional provision is therefore necessary, as it duplicates existing law.

Q9: If you have any comments on the removal of powers to introduce a fee.

It is clear that any fees form a barrier to those from socio-economically disadvantaged backgrounds, and the NASUWT has campaigned for any proposed fee structure to be equality impact assessed. Indeed, the Union had previously sought firm reassurances and guarantees that any fee would be considerably lower than the current £140. It is therefore welcome that the Bill stipulates a need for parliamentary approval before a fee could be introduced. Access to legal gender recognition should not be determined by your ability to pay and should be accessible to all who want it.

Q10: If the Bill's intended policy outcomes could be delivered through other means, such as using existing legislation or in another way.

The NASUWT supports a legislative framework, as proposed, to deliver the intended policy outcomes.

Q11: If you have any suggestions for how this Bill could be amended. If so, please provide details.

New section 8S provides that a person of interest can apply to the sheriff court to revoke a Gender Recognition Certificate which they believe was issued fraudulently or was otherwise invalid. While the Bill's Explanatory Notes state that a person who has an interest is a 'spouse, civil partner or child of a person who has obtained a Gender Recognition Certificate, and we support the existence of a mechanism to apply for a Gender Recognition Certificate to be revoked if the application was fraudulent. There are concerns that this section is too widely framed. As it currently stands, this provision could mean that trans men and women may have to defend their identity and transition in court if a 'person of interest' files to revoke their Gender Recognition Certificate simply because they do not accept their transition.

New section 8U provides that 'The Registrar General for Scotland may by regulations make provision for or about [...] information or evidence to be included in an application [...] in addition to the information and evidence required by this Act'. The Union believes that greater clarity is required on what information or evidence could be required. As it stands, this section implies the Registrar General could request information similar to that currently required which would defeat the purpose of the Bill.

Q12: Any other comments on the Bill?

The NASUWT reaffirms its commitment to gender self-declaration, as a means to remove barriers to equality for trans people. This Bill is an important step forward in improving the way that trans men and women can be legally recognised as who they are.

The NASUWT is disappointed at the Scottish Government's decision not to extend legal gender recognition at this stage to non-binary people. We believe a world leading gender recognition law should include legal recognition for

trans people who do not identify as male or female. While these proposed changes would significantly improve the current process, and bring Scotland's gender recognition law more in-line with the approach of many other countries in Europe like the Republic of Ireland, Malta, and Iceland, the reforms proposed stop short of providing Scotland with a gender recognition law that is world-leading. Other countries have been more ambitious in changing their laws to ensure that all trans people can be respected and recognised as who they are.

The requirement that people be 'ordinarily resident' in Scotland may mean that asylum seekers and refugees cannot apply, and this must be remedied.

It is important that this Bill is progressed timeously and is not derailed by further unnecessary consultation processes or through comparison with the hitherto variable position of the UK Government.