

Supporting Transgender Pupils In School guidance

**Children's Rights and Wellbeing Impact
Assessment (CRWIA)**

August 2021



Scottish Government
Riaghaltas na h-Alba
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Children's Rights and Wellbeing Impact Assessment (CRWIA) Stage 1

1. Policy title and overall aim

The Supporting Transgender Pupils In School guidance will provide non-statutory guidance to independent, grant-aided and education authority schools on the provision of support to transgender pupils in order to secure their full learning potential.

2. What aspects of the policy/measure will affect children and young people up to the age of 18?

The guidance is focussed towards education authority, independent and grant-aided schools. By far the vast majority of pupils attending schools in Scotland will be up to the age of 18 years of age.

3. What likely impact – direct or indirect – will the policy/measure have on children and young people?

There will be direct impact to children and young people as a result of this guidance document.

The implementation of the guidance will benefit all children and young people, and particularly transgender young people, through helping staff in Scotland's education authority, grant-aided and independent schools to provide the best possible educational experiences for girls, boys and trans girls and trans boys. The guidance is directed to the organisations who are responsible for the delivery of education and the implementation of equality provisions.

4. Which groups of children and young people will be affected?

The guidance will apply to all children and young people of school age and who are attending school in Scotland. The guidance will apply to primary, secondary and special schools in the local authority and independent and grant-aided sectors in Scotland. Children who are of school age are generally considered to be between the ages of 5 to 18 (or in very few cases 4 or 19 years of age).

5. Will this require a CRWIA?

Yes. There is a need to ensure that the needs and rights of transgender children and young people are met, whilst also respecting and meeting the needs and rights of all pupils.

CRWIA Declaration

CRWIA required?

Yes, partial

Authorisation

Policy lead

Laura Meikle, Unit Head, Support and Wellbeing Unit, Learning Directorate

Date 3 November 2020

Deputy Director or equivalent

Sam Anson, Head of the Improvement, Attainment and Wellbeing Division, Learning Directorate

Date 4 November 2020

CRWIA Stage 2

The CRWIA – key questions

1. Which UNCRC Articles are relevant to the policy/measure?

List all relevant Articles of the UNCRC and Optional Protocols. All UNCRC rights are underpinned by the four general principles: non-discrimination; the best interests of the child; the right to life, survival and development; and the child's right to have their views given due weight.

Article 1

The guidance will apply to schools and therefore school age children and young people.

Article 2 - Non-discrimination

The guidance seeks to support schools in meeting transgender young people's needs and to prevent discrimination against any transgender young person or any other young person.

Article 3 - Best interests of the child

The guidance makes clear the requirement to seek and take account of children and young people's views, to ensure children and young people are involved in decisions about them and to respect their confidentiality and privacy in relation to their information. Through these measures schools will be able to ensure that they act in the best interests of children and young people.

Article 6 - Life, survival and development

The guidance seeks to support schools and school staff in the delivery of positive educational experiences for girls, boys, trans girls and trans boys, in order that they reach their full potential. This is in line with education authorities' duties under the 2000 Act to provide education which "is directed to the development of the personality, talents and mental and physical abilities of the child or young person to their fullest potential."

Article 8 - Protection and preservation of identity

The implementation handbook for the convention says that gender identity is an aspect of identity. The guidance supports schools and school staff to ensure that a young person who has chosen to undertake gender reassignment whilst attending school will be supported to ensure a positive educational experience. The guidance provides a range of advice which will support schools to respond positively to meet transgender young people's needs.

Article 12 - Respect for the views of the child

The guidance makes clear the requirement to seek and take account of children and young people's views, to ensure all children and young people are involved in decisions about them and to respect their confidentiality and privacy in relation to their information. This is in line with education authorities duties to "have due regard, so far as is reasonably practicable, to the views (if there is a wish to express them) of the child or young person in decisions that significantly affect that child or young person, taking account of the child or young person's age and maturity."

Article 13 - Freedom of expression

This article enables children and young people to seek, receive and share information, as long as the information is not damaging to themselves or others. The guidance supports

the provision of information to children and young people, by informing school staff about sources of advice and information that transgender young people may find useful.

Article 14 - Freedom of thought, conscience and religion

This article may be relevant, as there may be circumstances where a young person's wish to transition may be in conflict with their parent or carers beliefs. This does not arise as a direct result of the guidance, but is a matter which schools may become aware of in their support of the young person and their family.

Article 16 - Right to privacy

This article is relevant to the guidance. All children and young people are entitled to privacy in relation to their information in line with data protection, GDPR requirements and pupils' education records regulations. The guidance makes clear these specific requirements as they apply to all children and young people, including transgender young people, but does not change those arrangements or operate under a different legislative requirements.

Article 17 - Access to information; mass media

The guidance provides sources of advice and information which can be accessed by children and young people, transgender young people, schools and parents and carers. This is to ensure that children and young people are enabled to access information from a range of sources if they require to.

Article 18(2) - Parental responsibilities and state assistance

Concerns assistance to parents and carers in the performance of their child-rearing responsibilities. The guidance provides sources of advice and support for parents and carers in order to secure support for them in relation to their child's transition.

Article 19 - Protection from all forms of violence

The guidance is clear that schools and school staff should respond to all incidences of bullying, including prejudice-based bullying. The guidance also provides advice on ensuring the safety of all children and young people, including transgender young people. The guidance also comments on the specific matters which are related to the experiences of female pupils in schools as these are relevant to private spaces. The guidance makes clear that there should be specific consideration of these matters.

Article 23 - Children with disabilities

The guidance is clear that in any decision to use accessible facilities the needs of all children and young people who access those facilities must be considered. This includes children and young people with a disability.

Article 28(2) - Right to education

The guidance supports the delivery of this right through the provision of support for transgender young people in order to secure their rights to education. This is in line with the rights of all children and young people to education.

Article 29 - Goals of education

The guidance offers advice which supports schools and school staff to support transgender young people enabling them to have a positive educational experience. This is in line with education authorities responsibilities under the 2000 Act to provide education which "is directed to the development of the personality, talents and mental and physical abilities of the child or young person to their fullest potential."

Article 34 - Sexual exploitation

The guidance recognises that girls feel particularly vulnerable in school toilets and changing rooms. The guidance also recognises that those spaces can be places which transgender young people and boys can also feel vulnerable. Therefore the guidance seeks to ensure that the rights of all young people can be respected whilst appropriate arrangements for the provision of these spaces is made to meet and respect the rights and needs of all.

2. What impact will the policy/measure have on children's rights?

The guidance will have a positive impact for transgender young people and will have a neutral impact for all other children and young people. This impact has been assessed through the EQIA process which has been recorded fully.

3. Will there be different impacts on different groups of children and young people?

The guidance will have a positive impact for transgender young people and will have a neutral impact for all other children and young people. This impact has been assessed through the EQIA process which has been recorded fully. There are competing interests in relation to the provision of toilets and changing rooms and communal accommodation. There is a need to ensure that the rights of girls, boys and trans girls and trans boys are all respected in the provision of these facilities. Because the guidance is clear on this point and provides advice on the consideration of these matters, the impact has been considered to be neutral for girls and boys.

4. If a negative impact is assessed for any area of rights or any group of children and young people, what options have you considered to modify the proposal, or mitigate the impact?

There is a need to ensure that the rights of girls, boys and trans girls and trans boys are all respected in the provision of toilet, changing room and communal accommodation. Because the guidance is clear on this point and provides advice on the consideration of these matters, there is not considered to be a negative impact for any area of rights or any group of children and young people.

5. How will the policy/measure contribute to the wellbeing of children and young people in Scotland?

The guidance will support the wellbeing of transgender young people, for whom there is evidence of poor health and wellbeing and educational experiences at school. There are specific considerations in the guidance on the use of toilets for girls, boys and trans girls and trans boys as it is recognised that all of these groups can feel vulnerable in relation to their use of toilets in schools and may avoid drinking fluids as part of strategies to not use school facilities. The guidance sets out the considerations that schools may make in order to support children and young people in these circumstances. The guidance also sets out sources of advice and information which support all children and young people's wellbeing, and transgender young people's wellbeing. The guidance makes clear the link between the need to support the mental health and wellbeing of all young people including transgender young people.

6. How will the policy/measure give better or further effect to the implementation of the UNCRC in Scotland?

The guidance makes clear the alignment to the responsibilities to ensure articles highlighted above are respected.

7. What evidence have you used to inform your assessment? What does it tell you?

The evidence base has included a wide range of statistical and research evidence provided by a range of organisations and established by officials as part of the Equality Impact Assessment Process. This has provided clear evidence of the experiences of transgender young people in schools, lesbian gay and bisexual young people in schools, and girls in schools. The evidence base has highlighted that, in particular, toilets and changing rooms are of particular concern for children and young people within all of these groups.

8. Have you consulted with relevant stakeholders?

Evidence has been sought from a range of interested organisations including parents' organisations and children's organisations, and those with specific and educational interests. Officials have proactively sought to establish evidence in relation to the various issues and matters which have arisen in the preparation of the development of this guidance.

9. Have you involved children and young people in the development of the policy/measure?

There has not been direct involvement of children and young people in this development of the guidance. However, the evidence base used for the impact assessment does include the views of children and young people as provided within research publications. The evidence base also makes clear the need for specific guidance on supporting transgender young people due to evidence of their poor educational experiences.

CRWIA – Stage 3

Publication Template

CRWIA for a non-legislative policy/measure

CRWIA title: Supporting Transgender Young People in Schools

Publication date: 16 July 2021

Summary of policy aims and desired outcomes

The ‘Supporting Transgender Young People In Schools’ guidance will provide non-statutory guidance to independent, grant-aided and education authority schools on the provision of support to transgender young people in order to secure their full learning potential.

Executive summary

The guidance provides a range of advice guidance and information to schools and school staff on the provision of support to children and young people who are transgender.

Background

The Equality Act 2010 provides that those with the protected characteristic of gender reassignment should be protected from discrimination in schools. In 2017 LGBT Youth Scotland developed and published guidance on Supporting Transgender Young People in Schools. This guidance has been developed further from the LGBT Youth Scotland guidance and has been prepared by the Scottish Government in order to support schools in ensuring that all children and young people, including transgender young people have positive educational experiences.

Scope of the CRWIA, identifying the children and young people affected by the policy, and summarising the evidence base

The CRWIA applies to the guidance on ‘Supporting Transgender Young People in Schools’ prepared by the Scottish Government, and applies to children and young people who are of school age.

There is limited evidence on some aspects relating to transgender young people and therefore sources of advice from third sector and other organisations have been sought. The evidence base includes statistical information and research on the experiences of children and young people in schools from differing perspectives. This includes children and young people’s views on their experiences.

Children and young people’s views and experiences

Children’s and young people’s views and experiences have been drawn in evidence through a range of cited research where they have responded to research questionnaires or have undertaken research themselves and have reported it.

Key Findings, including an assessment of the impact on children’s rights, and how the measure will contribute to children’s wellbeing

The guidance will positively impact on children and young people who are transgender. There will be neither negative nor positive impact for other children and young people, due to the specific framing of the guidance to address certain specific concerns.

The guidance will support the wellbeing of transgender young people and will further the wellbeing of other young people.

Monitoring and review

The implementation of the guidance will be monitored through ongoing discussion with stakeholders, and through specific means such as the recording and monitoring of bullying incidents, including prejudice-based bullying which provides information on transphobic bullying and sexism.

CRWIA Declaration

Authorisation

Policy lead

Laura Meikle, Unit Head, Support and Wellbeing Unit, Learning Directorate

Date 3 November 2020

Deputy Director or equivalent

Sam Anson, Head of Improvement, Attainment and Wellbeing Division, Learning Directorate

Date 4 November 2020



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