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Guidance

Equality and diversity impact assessment: inspecting protected characteristics

Updated 27 September 2021

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Introduction

This page sets out Ofsted's consideration of how the guidance on ['Inspecting teaching of the protected characteristics in schools'](#) will fulfil the requirements of the Equality Act 2010, including the public sector equality duty (PSED) set out in [section 149 of the Equality Act 2010](#).

conduct prohibited by the Act
Advance equality of
opportunity between people
who share a particular
protected characteristic and
people who do not share it

Foster good relations
between people who share a
particular protected
characteristic and people who
do not share it

Decision-making

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The PSED requires Ofsted to have due regard to the need to:

- eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Equality Act 2010
- advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it
- foster good relations between persons who share a relevant protected characteristic and persons who do not share it

The main PSED consideration for the 'Inspecting teaching of the protected characteristics in schools' guidance is the potential for unlawful discrimination in relation to our inspection of schools. Those most likely to be adversely impacted share the protected characteristics of: religion or belief; sexual orientation; or gender re-assignment. We believe that the guidance has no disproportionate negative impact on equality. We considered appropriately the need to advance equality when preparing the guidance.

Brief outline of guidance

We have revised our guidance for inspectors on inspecting the teaching of the protected characteristics in schools. This is mainly because the Department for Education (DfE) will begin to impose [The Relationships Education, Relationships and Sex Education and Health Education \(England\) Regulations 2019](#) on 1 September 2020, which require that:

- pupils receiving primary education must be taught relationships education
- pupils receiving secondary education must be taught relationships and sex education (RSE) and health education

Under these regulations, the DfE has published [statutory guidance on relationships education, RSE and health education](#). The regulations require all types of state and independent schools to have regard to the statutory guidance.

We have also updated our guidance to reflect the new regulations and statutory guidance. We have had policy discussions with the DfE to ensure that the guidance reflects accurately the intent of both the new regulations and the statutory guidance.

Our guidance clarifies that if a primary school (state-funded or independent) does not teach pupils specifically about LGBT relationships, this will not normally have an impact on the leadership and management graded judgement at inspection, as long as the school can satisfy inspectors that it has otherwise fulfilled the requirements of the applicable statutory guidance. However, it may have a negative impact on the graded judgement for personal development, particularly if inspectors identify one or more other weaknesses in the school's promotion of and provision for pupils' personal development.

The [independent school standards \(ISS\)](#) expressly require independent schools to encourage respect for the protected characteristics. However, in line with [the DfE's guidance on the ISS](#), our guidance sets out that our inspectors will not automatically judge a non-association independent primary school that does not teach pupils specifically about LGBT relationships to have failed to meet the relevant requirements of the ISS, as long as the school can demonstrate that it has otherwise complied with the requirements of the statutory guidance.

The DfE has carried out an [equality and diversity impact assessment on its statutory guidance](#). We also carried one out as part of our [education inspection framework \(EIF\) consultation](#). This equality and diversity impact assessment does not seek to reconsider the content of those assessments. It is limited to assessing specifically the impact of the revisions made to 'Inspecting teaching of the protected characteristics'.

Evidence and analysis

In line with our section 149 duty, we have given due regard to how the revisions to the guidance could impact individuals or groups who share one or more of the protected characteristics. We also considered how, if at all, the revisions would satisfy the 3 parts of the PSED.

We considered all the protected characteristics and identified that the following 3 are of particular relevance to the guidance:

- religion or belief
- sexual orientation
- gender re-assignment

Eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Act

Potential negative impact

We have taken steps to reduce the risk of direct or indirect discrimination as a result of the guidance.

Indirect discrimination can occur when a policy disadvantages people who share a protected characteristic when compared with people who do not share a

protected characteristic.

We considered the impact of the guidance on those whose religion or belief prevents teaching about LGBT relationships and/or gender re-assignment. We do not consider that the new inspection guidance has a negative impact on those individuals or groups. The new regulations and the DfE's statutory guidance stipulate that pupils should be taught about these matters. The equality and diversity impact assessment for the statutory guidance notes that:

“ All schools, including faith schools, will be able to teach the new subjects in accordance with their school values and ethos while also having due regard to the guidance and being consistent with the requirements of the Equality Act 2010.”

Our guidance does not go beyond the statutory guidance or stipulate how schools must go about teaching this content. It states that inspectors will expect to see that pupils 'develop age-appropriate knowledge and understanding during their time at the school'.

We also considered whether the guidance may amount to indirect discrimination against pupils who share the protected characteristics of sexual orientation or gender re-assignment, because schools that do not teach about LGBT issues will not automatically receive a negative impact on their inspection judgement for leadership and management. We concluded that, in these circumstances, the potentially negative impact on the personal development inspection judgement coupled with the requirement on schools to comply with the statutory guidance are sufficient to ensure that the rights of these individuals and groups are protected.

Potential positive impacts

The position in relation to the ISS in the guidance means that we will not judge non-association independent primary schools more harshly than state primary schools if they do not teach about LGBT issues.

The guidance emphasises the importance of compliance with the DfE's statutory guidance and therefore encourages schools to teach pupils about all the protected characteristics while considering religion and belief.

By speaking with pupils, considering the school's curriculum, behaviour and bullying policies and other relevant evidence on inspection, we will ensure that pupils who are LGBT or who are considering their sexual orientation are supported and protected.

Advance equality of opportunity

between people who share a particular protected characteristic and people who do not share it

We have considered each of the 3 relevant protected characteristics in relation to the guidance. We do not consider any impact to be likely in relation to the other protected characteristics.

The guidance sets out that inspectors will use the same approach in reaching judgements for faith schools and non-faith schools. We believe that this will ensure a fair and equal approach to the inspection of faith and non-faith schools. This removes any perceived disadvantage for those teachers, parents and pupils who hold particular religious beliefs.

Inspectors will expect all schools to comply with the statutory guidance: ensuring that all pupils have access to relationships education and health education, and that pupils in all secondary schools have access to RSE. This will promote the equality of opportunity for LGBT pupils and those considering their sexual orientation.

Foster good relations between people who share a particular protected characteristic and people who do not share it

We have considered each of the 3 identified protected characteristics in relation to the guidance. We do not consider any impact to be likely in relation to the other protected characteristics.

The position set out in the guidance is likely to be welcomed by faith schools because it makes our expectations on inspection clear. It should enhance trust between Ofsted and those who hold particular religious beliefs.

The guidance states that 'pupils need to be taught about all the protected characteristics and show respect for those who share them'. It gives examples of ways that schools can manage this. For any primary or secondary school, state-funded or independent, to be judged good or better for personal development, it should demonstrate that no forms of discrimination are tolerated and that pupils show respect for those who share the protected characteristics as defined in the Equality Act 2010. An intention of the EIF, and the personal development judgement in particular, is to encourage the fostering of good relations between all learners.

Decision-making

There are minimal negative implications for equalities in this proposal. We have considered these and put appropriate mitigations in place. Therefore, the decision is to proceed with the roll-out of guidance to inspectors as planned.

Monitoring and evaluation

We routinely consider whether our guidance pages require revision throughout each academic year. Many pieces of guidance are revised and re-published just once a year to reduce the potential burden on schools. In conjunction with all other guidance material, we will review the guidance on inspecting teaching of the protected characteristics at least annually.

DfE will review its statutory guidance 3 years from its implementation. We will consider any revisions it makes and update our guidance to reflect them.

We will keep this equality and diversity impact assessment under review as the guidance is implemented on inspection. We will review it again if/when there are revisions to the inspector guidance. The reviews will assess whether the guidance remains consistent with Ofsted's obligations under the PSED.

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