

Research Briefing

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Provisions to support transgender children in schools



Summary

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Summary

This briefing and a separate briefing, [Gender recognition reform: consultation and outcome](#), together supersede a previous Commons Library briefing, [Gender recognition and the rights of transgender people](#). The two new briefings include developments since the previous one was published.

Consultation on draft guidance

In December 2023, the Department for Education published a [consultation on draft non-statutory guidance](#) for schools and colleges in England on children questioning their gender. The government has said that while this guidance is in place to help teachers, [parents' views should be at the centre](#) of the decisions schools make about their child.

The [consultation](#) is open until 12 March 2024.

Equality Act 2010 in schools

In England, Wales and Scotland, the Equality Act 2010 prohibits discrimination against transgender children in all schools. The [Department for Education \(DfE\) guidance on the Equality Act](#) says protections apply to those who are undergoing, have undergone, or are proposing to undergo, a process (or part of a process) of reassigning their sex by changing physiological or other attributes.

Guidance in Scotland, Wales, and Northern Ireland

As schools policy is a devolved issue, this briefing focuses on the position in England, but some information is included on relevant policies and pupil experiences in Scotland, Wales, and Northern Ireland. Guidance has been published on [support for transgender pupils in Scotland](#) and [Northern Ireland](#), and is [currently being developed in Wales](#).

In 2023, the Equality and Human Rights Commission (EHRC) published updated guidance on the Equality Act and how it applies to schools in [England](#) and [Scotland](#).

The Equality Act does not apply in Northern Ireland, but [guidance issued by the Education Authority](#) says the European Convention on Human Rights may offer some protections for transgender pupils.

1 Overview

1.1 Legal provisions to support transgender children in schools

In England, Wales and Scotland, the [Equality Act 2010](#) and the associated Public Sector Equality Duty (PSED) prohibits discrimination against transgender children in all schools, regardless of how the school is funded or managed.¹ The Equality Act 2010 does not apply in Northern Ireland. The Equality Commission for Northern Ireland has published information on [discrimination legislation in Northern Ireland](#).

The UK Department for Education (DfE) defines the pupils protected under the characteristic of gender reassignment in the 2010 Act:

Gender reassignment is defined in the Equality Act as applying to anyone who is undergoing, has undergone or is proposing to undergo a process (or part of a process) of reassigning their sex by changing physiological or other attributes. This definition means that in order to be protected under the Act, a pupil will not necessarily have to be undertaking a medical procedure to change their sex but must be taking steps to live in the opposite gender, or proposing to do so.²

1.2 Transgender pupils' experience of education

The UK Government conducted a [National LGBT survey](#) in 2017. The survey found that of the transgender respondents who were transitioning while at school, 36% said their school was “very” or “somewhat” supportive of their specific needs.³ For a more detailed view of the results, see the [associated data viewer](#). The Government Equalities Office has also published the [LGBT Action Plan](#) (2018), which includes further information in respect to education.

The Northern Ireland Department of Education published research on the [post-primary school experiences of LGBT 16-to-21-year-olds](#) in 2017. The survey's findings included that:

¹ For example, Equality and Human Rights Commission (EHRC), [Public sector equality duty: guidance for schools in England](#), August 2022

² Department for Education (DfE), [The Equality Act 2010 and schools](#), May 2014, para 3.4

³ Government Equalities Office, [National LGBT survey \[PDF\]](#), 2018, p15

- A majority of both LGB (69.4%) and transgender (61.5%) respondents had spoken to other pupils about their LGB or transgender identity and many felt supported by their peer group.
- Almost half of respondents (48.4%) had experienced bullying as a result of their sexual orientation or gender identity; responses to bullying from schools were not perceived to be very satisfactory.
- A majority of respondents (63.1%) believed that transgender issues were handled 'badly' or 'very badly'.⁴

The LGBT+ rights charity Stonewall, working with Cambridge University, published its [school report](#) in 2017. It surveyed the experiences of transgender children in British schools. Included in its findings for 2016/17 were:

- Nearly two thirds (64%) of surveyed transgender pupils reported being bullied for being LGBT+.
- One in three transgender pupils (33%) were not able to be known by their preferred name at school.
- Around three in five (58%) were not allowed to use the toilets they felt comfortable in.
- Around three in five (61%) transgender pupils reported speaking to a member of staff at school about being transgender. Of these, nearly three in four (73%) said staff have asked them what would make them feel comfortable at school and accommodated their wishes.⁵

Stonewall has also published survey reports on the experiences of transgender children in Welsh and Scottish schools as [School report Cymru](#) (2017) and [School report Scotland](#) (2017).

The EU Agency for Fundamental Rights conducted a [survey of LGBTI experiences](#) across the EU in 2019, including in the UK.⁶ In the UK, the survey found that of transgender respondents aged 15 to 17, 39% hid their LGBTI identity at school.⁷ An [associated data viewer](#) allows users to break down survey results further.

⁴ Department of Education, [Post-primary school experiences of 16-21 year old people who are Lesbian, Gay, Bisexual and/or Transgender \(LGB&T\)](#), Research briefing, September 2017, p1-2

⁵ Stonewall, [School report: The experiences of lesbian, gay, bi and trans young people in Britain's schools in 2017](#), 2017, pp6, 27

⁶ EU Agency for Fundamental Rights (AFR), [A long way to go for LGBTI equality](#), May 2020; EU AFR, [Country Data- UK](#), May 2020

⁷ EU Agency for Fundamental Rights, [LGBTI survey: Data explorer- Living openly and daily life](#), May 2020

2 Current guidance for schools in England

2.1 The Equality Act 2010 in schools

The Equality Act 2010 applies to all schools in England, in both state and independent sectors. Bodies responsible for a school, such as a local authority or governing body, are liable for breaches of the Act.

Which body is responsible in any situation depends on how responsibilities are organised at the school. For example, a local authority may be responsible for admissions, while a governing body may be responsible for issues regarding exclusions.⁸

The Department for Education's (DfE) [Equality Act 2010: Advice for schools](#) (May 2014) provides non-statutory guidance for all schools in England. It sets out a general requirement for schools to advance equality of opportunity between those who have a protected characteristic, such as sex or gender reassignment, and those who do not. The guidance says the 2010 Act makes it unlawful for the responsible body of a school to discriminate against, harass or victimise a pupil or potential pupil:

- in relation to admissions,
- in the way it provides education for pupils,
- in the way it provides pupils access to any benefit, facility or service, or
- by excluding a pupil or subjecting them to any other detriment.⁹

The Equality and Human Rights Commission (EHRC) has also published [Technical guidance for schools in England](#) (updated 2023)¹⁰ on the Equality Act 2010.

The EHRC told the Commons Women and Equalities Committee in 2016 that the Equality Act:

⁸ EHRC, [What does the equality law means for you as an education provider: Schools](#), 2014, para 1.3

⁹ DfE, [The Equality Act 2010 and schools](#), May 2014, para 1.5

¹⁰ EHRC, [Technical guidance for schools updated](#), 22 September 2023

Does not provide protection from harassment related to gender reassignment for students in schools, unlike most other protected characteristics; although such treatment by a school may amount to direct discrimination.¹¹

The DfE responded saying, “the lack of protection against harassment in this regard is not significant, as the provisions on direct discrimination provide adequate protection in a school setting”.¹² The Department for Education’s (DfE) [Equality Act 2010: Advice for schools states:](#)

Where schools are concerned, the offence of harassment as defined in this way in the Act applies only to harassment because of disability, race, sex or pregnancy and maternity, and not to religion or belief, sexual orientation or gender reassignment. It is very important to recognise that this does not mean that schools are free to bully or harass pupils on these other grounds - to do so would still be unlawful as well as unacceptable. Any case against the school would be on grounds of direct discrimination rather than harassment.¹³

Under the 2010 Act and the Public Sector Equality Duty (PSED), schools must publish details on how they are complying with the PSED annually and update their equality objectives at least every four years.¹⁴

In academies and maintained schools, Ofsted is responsible for ensuring schools fulfil their statutory duties under the Act, assessing whether schools have effective anti-bullying policies, and ensuring schools promote equality of opportunity within an inclusive environment.¹⁵

Ofsted also inspects independent schools that are not members of associations. These are known as non-association independent schools. [Guidance on Inspecting teaching of the protected characteristics in schools](#) includes information on how independent schools are required to encourage respect for the protected characteristics, and that not doing so may mean the school fails to meet the [independent school standards](#).¹⁶

Independent schools that are members of associations are normally inspected by the Independent Schools Inspectorate. The inspectorate’s [Inspection Handbook](#) states that “inspectors will be alert to any evidence that teaching...discriminates against pupils contrary to Part 6 of the Equality Act 2010.”¹⁷

¹¹ Women and Equalities Committee, [Transgender Equality](#), HC390, 14 January 2016, para 349, [Written evidence submitted by the EHRC to the Transgender Equalities Enquiry](#) (PDF), 19 October 2015, para 3.9

¹² Women and Equalities Committee, [Transgender Equality](#), HC390, 14 January 2016, para 350

¹³ Department for Education, [Equality Act 2010: Advice for schools](#), May 2014, p10

¹⁴ DfE, [What maintained schools must publish online](#), April 2023; DfE, [What academies, free schools and colleges must or should publish online](#), April 2023

¹⁵ Ofsted, [School inspection handbook](#), January 2024; Ofsted, [Guidance: Inspecting teaching of protected characteristics in schools](#), August 2023

¹⁶ Ofsted, [Inspecting teaching of the protected characteristics in schools](#), August 2023

¹⁷ Independent Schools Inspectorate, [Handbook for the inspection of association independent schools, including residential \(boarding\) schools and registered early years settings](#), September 2023, p33

2.2

Published guidance and advice

The DfE issued non-statutory guidance on [gender separation in mixed schools](#) in June 2018. The guidance intends to support all schools in identifying what is expected of mixed schools where children are separated by gender.

On the separation of pupils by any protected characteristic, the guidance says schools must justify to Ofsted and other inspectors, parents and the wider community the reasons for the separation, and:

Where a statutory exception is relied upon, they will be expected to demonstrate that they have considered and documented why the exception applies. Outside the specific statutory exceptions, they should be in a position to demonstrate that separation does not give rise to any detriment because its effect is negligible.¹⁸

Several local authorities have published their own guidance for schools, but this has sometimes proved controversial. For example, in May 2020 [Oxfordshire County Council said it would withdraw its ‘Trans Inclusion Toolkit’](#) and that it would instead adopt expected Equality and Human Rights Commission guidance.¹⁹ At the same time, the council said it was [withdrawing from a judicial review of the toolkit](#) which was expected to be heard in Autumn 2020.²⁰

Toilet facilities and changing rooms

As noted in the DfE blog [Gender identity in schools](#), it is “up to schools to decide what facilities they provide, including whether to provide unisex or gender neutral toilets,” as long as policies adhere to statutory regulations and are inclusive.²¹

The DfE’s [Advice on standards for school premises](#) for both local authority and academy schools and the [School Premises Regulations \(England\) 2012](#) state that schools must provide separate toilet facilities for boys and girls aged eight years or over, except where the toilet facility is in a room that can be locked from the inside to ensure the privacy of the occupant and is intended for use by one pupil at a time.²² The [DfE’s 2023 consultation on revised guidance for schools](#) states that these regulations, as well as the [Education \(Independent School Standards\) Regulations 2014](#), “impose statutory

¹⁸ DfE, [Gender separation in mixed schools](#), June 2018, para 3

¹⁹ The Times, [Council ditches trans guidance on lavatories after girl’s victory](#), 9 May 2020; Oxfordshire County Council, [Statement on the Trans Inclusion Toolkit](#), updated 4 May 2020

²⁰ As above

²¹ DfE, [Gender identity in Schools](#), 22 June 2016

²² DfE, [Advice on standards for school premises](#), March 2015, pp5, 6

requirements for both maintained and independent schools to provide sex-separated toilets for pupils aged eight or over.”²³

The same advice says suitable changing accommodation and showers must be provided for pupils aged 11 years or over at the start of the school year who receive physical education, although gender considerations are not set out in this regulation.²⁴

Sports

Section 195 of the [Equality Act 2010](#) contains an exemption, which allows for gender-separated sport. The section applies to participation in a “gender-affected activity”. Referencing the Act, the DfE [Guidance on gender separation](#) says that a “gender-affected activity” is:

A sport, game or other activity of a competitive nature in circumstances where the physical strength, stamina or physique of the average girl (or boy) would put her (or him) at a disadvantage in competition with the average boy (or girl).²⁵

The guidance says that events where pupils are separated by gender should take account of the age and stage of development of the children competing, stating that the exception in the 2010 Act is less likely to apply to younger children:

The judgment on whether girls would be at a physical disadvantage needs to take into account the particular group in question, so it is much less likely to justify separation in relation to sports for younger children. It is appropriate for schools to take account of the age and stage of development of children who are likely to be competitors in considering whether an activity is gender-affected.²⁶

School uniforms

Schools are not required to have uniforms, or ones that differentiate between genders (for example through the prescribed wearing of skirts or trousers), though the DfE “strongly encourage[s]” schools to have a uniform.

The DfE’s non-statutory [school uniform guidance](#) highlights gender reassignment as a protected characteristic which schools should consider when developing and implementing their uniform policy .²⁷

²³ Department for Education, [Gender Questioning Children: Non-statutory guidance for schools and colleges in England](#), December 2023, p14

²⁴ DfE, [Advice on standards for school premises](#), March 2015, p5

²⁵ DfE, [Gender separation in mixed schools](#), June 2018, para 10

²⁶ As above

²⁷ DfE, [Guidance: School uniforms](#), 2 June 2023

2.3

Relationships and sex education curriculum

Section 34 of the [Children and Social Work Act 2017](#) requires relationships and sex education to be taught in all schools in England.

The requirements involve:

- All primary schools in England teaching ‘relationships education’.
- All secondary schools teaching ‘relationships and sex education’.
- Retaining the parental right of withdrawal from sex education, with new rights for children to ‘opt-in’ as they approach age 16.
- Flexibility for schools in their approach, including for faith schools to teach within the tenets of their faith.
- Reformed statutory guidance, following consultation.

[The Relationships Education, Relationships and Sex Education and Health Education \(England\) Regulations 2019](#) brought these changes into force in September 2020. Statutory health education in schools was also brought in as part of these changes.

Final statutory guidance on [Relationships education, relationships and sex education \(RSE\) and health education](#) was published by the DfE in June 2019.

In September 2020, the DfE published:

- Guidance for schools to [Plan your relationships, sex and health curriculum](#).
- Guidance for [Teaching about relationships, sex and health](#), including training modules to teach aspects of relationships and sex education and also health education at both primary and secondary level.

The guidance on planning the curriculum provides the following information about how and when gender issues should be covered, such as representing families with same-sex parents, avoiding gender stereotypes and not suggesting that someone who does not fit into a gender stereotype must have a different gender identity:

All pupils should receive teaching on lesbian, gay, bisexual and transgender (LGBT) relationships during their school years. Secondary schools should include LGBT content in their teaching. Primary schools are strongly encouraged, and enabled, when teaching about different types of family, to include families with same sex parents.

The guidance provides information on how to deal with the sensitivity of the topic:

We are aware that topics involving gender and biological sex can be complex and sensitive matters to navigate. You should not reinforce harmful stereotypes, for instance by suggesting that children might be a different gender based on their personality and interests or the clothes they prefer to wear. Resources used in teaching about this topic must always be age-appropriate and evidence based. Materials which suggest that non-conformity to gender stereotypes should be seen as synonymous with having a different gender identity should not be used and you should not work with external agencies or organisations that produce such material. While teachers should not suggest to a child that their non-compliance with gender stereotypes means that either their personality or their body is wrong and in need of changing, teachers should always seek to treat individual students with sympathy and support.²⁸

Wider information can be found in the Library briefing [Relationships and Sex Education in Schools \(England\)](#).

²⁸ DfE, [Plan your relationships, sex and health curriculum](#), 24 September 2020

3 Consultation on new guidance (2023)

In December 2023, the Department for Education published a [consultation on draft non-statutory guidance](#) for schools and colleges in England on children questioning their gender. The [consultation](#) is open until 12 March 2024.

In a written statement to the Commons [announcing the draft guidance](#), Education Secretary Gillian Keegan said the guidance was meant to support schools and reassure parents:

Schools and colleges have been left in a position where they are having to navigate this highly sensitive, complex issue, which is still not properly understood. We appreciate how daunting this is for school and college staff and for parents and children too. The aim of the guidance is to provide clarity for schools and colleges, and reassurance for parents.²⁹

3.1 Draft guidance

Five principles

The [draft guidance](#) says that the guidance is based around five general principles for schools and colleges. This is to help them respond to requests from parents and children who might ask a school or college to accommodate a child who is questioning their gender:

- Schools and colleges have statutory duties to safeguard and promote the welfare of all children, and should ensure that an agreed course of action fulfils those duties to that child and their peers – which may or may not be the same as a child’s wishes.
- Schools and colleges should be respectful and tolerant places where bullying is never tolerated.
- Parents should not be excluded from decisions taken by a school or college relating to requests for a child to ‘socially transition’, but should be engaged as a matter of priority. A child should be encouraged to speak to their parents, except in “exceptionally rare circumstances” where this might constitute a significant risk of harm to the child.

²⁹ [HC Deb 19 December 2023 c90WS](#)

- Schools and colleges have specific legal duties that are framed by a child’s biological sex. Children’s legal sex is always the same as their biological sex.
- There is no general duty to allow a child to ‘social transition’. If a school or college decides to accommodate a request, a cautious approach should be taken that complies with legal duties, and some forms of social transition will not be compatible with schools’ and colleges’ statutory responsibilities.³⁰

Department for Education’s summary of the draft guidance

The DfE published an article [summarising some of the key aspects of the draft guidance](#), including:

- Parents have a right to know when a child requests to socially transition: teachers should discuss the child’s request with their parents or guardian and take into account their views, except in exceptional circumstances where this risks significant harm to the child.
- Physical differences between children of different sexes should be considered in deciding who can take part in PE and sports, to keep them safe and fair.
- Changes of pronouns used within schools should be “rare”, and “even in these rare occasions, children and teachers shouldn’t be made to use ‘preferred pronouns’. Instead, alternatives should be found.”
- Where a request is made, schools may agree to some flexibility on uniform requirements, having consulted with the child’s parents.³¹

The Schools Minister has said that an equality impact assessment will be published when final guidance is issued later in 2024, following the consultation.³²

It was widely reported earlier in 2023 that the Government considered a ban on social transitioning during the drafting of the guidance, but was advised by the Attorney General that this would be incompatible with the Equality Act.³³

³⁰ Department for Education, [Gender Questioning Children: Non-statutory guidance for schools and colleges in England](#), December 2023, p6

³¹ Department for Education, [Gender questioning children: Everything you need to know about new draft guidance for schools](#), 19 December 2023

³² [PQ 8264 \[Children: Transgender People\], 5 January 2024](#)

³³ See, for example, Times, [Tougher transgender guidance for schools is unlawful, Sunak told](#), 18 July 2023

In a [written statement to the Commons](#) in July 2023, the Education Secretary said that this was “a difficult and sensitive area...decisions must not be taken lightly or in haste.”³⁴

Initial reaction

It was reported soon after the publication of the draft guidance that lawyers at the Department for Education had [raised concerns about successful legal challenges](#) to the guidance. A spokesperson for the government responded that the guidance was legal and “will help schools navigate these complex and sensitive issues.”³⁵

The organisation Sex Matters has said that the “[overall approach of the guidance is helpful](#)” but that it could be clearer, and questioned the suggestion that “schools have discretion to allow some aspects [of social transition], in exceptional cases... This is unworkable and places an extra workload on overstretched staff.”³⁶

The organisations Gendered Intelligence, LGBT Foundation, Mermaids, Stonewall, and the Trans Learning Partnership, have produced [a guide on responding to the consultation](#),³⁷ and have been [critical of the proposals](#) as seeking “to deny the existence of transgender pupils, discouraging them from coming out and being their authentic selves, and could lead to young people being forcibly outed to parents and teachers.”³⁸

The National Association of Head Teachers (NAHT) has said that their “initial view is that the draft guidance [leaves a lot of questions unanswered](#), and members will continue to be placed in incredibly difficult positions.”³⁹

³⁴ [HC Deb 20 July 2023 c83-84WS](#)

³⁵ Schools Week, [Trans guidance: DfE lawyers said schools face ‘high risk’ of being sued](#), 19 December 2023

³⁶ Sex Matters, [Responding to the schools guidance consultation](#), 1 February 2024

³⁷ Stonewall and others, [Support trans youth: respond to the government consultation](#),

³⁸ TES, [DfE urged to rethink school transgender proposals](#), 2 February 2024

³⁹ National Association of Head Teachers, [DfE consultation on draft guidance for schools in England regarding gender-questioning children](#), 8 January 2024

4 Policies in Wales, Scotland, and Northern Ireland

4.1 Wales

The Welsh Government is currently developing guidance for schools, and has said that [draft guidance will be published for consultation in spring 2024](#).⁴⁰ This guidance was a commitment that formed part of the [LGBTQ+ Action Plan for Wales](#), published in February 2023.

In addition to the Equality Act 2010, the [UN Convention on the Rights of the Child](#) (UNCRC) was adopted into Welsh law in 2011. The Children's Commissioner for Wales has published '[A children's rights approach for education in Wales](#)', which details equality and non-discrimination in schools.

The Welsh Schools Inspectorate, Estyn, has published a thematic report in October 2020 on [Good practice in supporting LGBT learners in schools and colleges](#) (October 2020). Estyn recommended that "all schools and colleges review how well they teach diversity and inclusion and integrate these into everyday life".⁴¹

4.2 Scotland

The Scottish Government published guidance on [Supporting transgender young people in schools](#) in 2021. It provides advice for schools on issues including dealing with bullying, that teachers should use the name/pronoun a young person chooses, the rules relating to toilets and changing rooms, and approaches to school sport.

The Equality Act 2010 is in force in Scotland, and the Equality and Human Rights Commission (EHRC) has published [Technical guidance for schools in Scotland](#) (updated 2023) on the Act.

The [Children and Young People \(Scotland\) Act 2014](#) places a duty on the Scottish Government to take account of the UNCRC and children's rights.

⁴⁰ Welsh Government, [Welsh Government consultation on draft trans guidance for schools](#), 11 January 2024

⁴¹ Estyn, [Schools and colleges in Wales urged to review their support for LGBT learners](#), 15 October 2020

Local authorities should also take steps to improve understanding and realisation of these rights.

4.3 Northern Ireland

The Northern Ireland Education Authority published [Supporting Transgender Young People](#) in October 2019. The non-statutory guidance applies to pre-schools, primary schools, post-primary and special schools. It provides advice for schools on a range of issues, including school sports, toilets and changing facilities, bullying and school uniforms.

On legal protections for transgender pupils, the guidance says:

4.2 [...] Unlike Great Britain, there is no legal protection from discrimination for transgender pupils in education. Guidance from the Equality Commission for Northern Ireland outlines that although schools in Northern Ireland have a responsibility not to discriminate against pupils on the protected grounds of sex, sexual orientation, race or disability ‘the law does not apply to age, religious belief and political opinion and gender reassignment in schools’.⁴²

The Education Authority says the European Convention on Human Rights may offer relevant protections in respect to the right to freedom from discrimination and the right to family and private life.⁴³

In 2016, the Equality Commission for Northern Ireland recommended changes to the law to strengthen protections for transgender children in schools.⁴⁴ Currently, the Commission recommends schools adopt a “good practice” approach that:

Extends beyond the mere letter of the law to include pupils who are disadvantaged because they are transgender, or because of their religious belief and political opinion.⁴⁵

Further guidance from the Northern Ireland Equality Commission is available on their page: [Equality law for schools](#).

⁴² Education Authority, Guidance for Schools, [EQTAS centres and youth services on supporting Transgender Young People](#), October 2019, para 4.2

⁴³ As above, para 4.6, p14, n66

⁴⁴ Equality Commission Northern Ireland, [Gender law reform](#), November 2016, pp11-13

⁴⁵ Equality Commission Northern Ireland, [Good practice: A transgender pupil](#)

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