

Guidance

Protected characteristics and separation by sex on school inspections

Guidance for inspectors on inspecting separation by sex in schools and the teaching of protected characteristics and relationships and sex education (RSE).

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Applies to England

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Ofsted works in the interests of children, parents and carers. Our mission is to raise standards and improve lives by identifying, championing and striving for the highest quality of education and care for all children and learners across England.

Inspectors consider schools' compliance with the Equality Act 2010 (the Equality Act) obligations during inspection, as well as our own Equality Act duties. This guidance sets out some important areas where equalities must be considered.

Inspecting relationships and sex education and health education (RSHE) and teaching of protected characteristics

Relationships education is compulsory for all primary school pupils and relationships and sex education (RSE) is compulsory for all secondary school pupils.

In line with Ofsted's duties under the Equality Act, inspectors must determine whether the school has had regard to the [Department for Education's \(DfE\) statutory guidance on relationships education, relationships and sex education and health education \(RSHE\)](#), and is teaching pupils about the protected characteristics in an age-appropriate way.

This guidance sets out that pupils should leave school with a proper understanding of the importance of equality and respecting and understanding differences. Schools should take steps to ensure pupils receive a balanced presentation of opposing views and beliefs where political issues are brought to their attention.

Where a school has departed from any applicable element of this guidance, they will need to have a good reason for doing so. Inspectors must record in their evidence base any departures from the guidance; the rationale given by leaders for these departures; the evidence that any such departures have been made reasonably and in good faith and are not designed to frustrate or evade statutory requirements; and the inspectors' views on whether the rationale given justifies the departure.

All primary and secondary schools should be able to demonstrate that no form of unlawful discrimination is tolerated and that pupils show respect for those who share the protected characteristics. Depending on the circumstances, schools may need to take specific steps to prevent kinds of prejudice or discrimination (for example, misogyny or racism) from taking hold in some groups of pupils, in line with the [DfE guidance](#)

Be mindful that schools can choose to teach the tenets of any faith on the protected characteristics. For example, they may explain that same-sex relationships and gender reassignment are not permitted by a particular religion. However, if they do so, they must also explain the legal rights lesbian, gay, bisexual and transgender (LGBT) people have under UK law, and that LGBT people must be respected.

The school's compliance with its duties and the extent to which it has had regard to the DfE's guidance must inform the inspectors' grading across leadership and governance and the personal development and well-being evaluation area.

If a primary school does not teach awareness of and respect towards LGBT people, this will not have an impact on the leadership and governance grade as long as the school can satisfy inspectors that it has still fulfilled the requirements of the DfE's statutory guidance. If it cannot do this, for example if it has failed to consult with parents, inspectors will consider this when grading leadership and governance. They will do so both in terms of considering whether parental engagement is sufficient, and considering whether there has been compliance with core statutory functions.

If a secondary school does not teach awareness of and respect towards LGBT people or has not fulfilled other requirements of the DfE's statutory guidance (for example, it has failed to consult with parents), it will not be meeting the expectations of the DfE's statutory guidance.

If inspectors identify that a school has not had regard to the guidance and is not teaching about the protected characteristics in an impartial and/or age-appropriate way, inspectors must record this in their evidence base and report card, explaining how it has affected their grading.

If, on inspection, an inspector is unsure or would like further guidance, they should contact the national duty desk, who may seek advice from policy and/or legal teams.

Separation by sex in mixed schools

Policy position

On all inspections of a mixed-sex (also known as co-educational) school, inspectors must assess the extent to which the school complies with the Equality Act. Inspectors must consider whether schools may be unlawfully discriminating in relation to protected characteristics, such as sex, race, religion or belief. They will do this by speaking to leaders and

those responsible for governance, looking at the curriculum offer for all pupils and seeing how this is implemented in practice in the classroom, along with a range of other evidence-gathering activities.

If inspectors believe that a co-educational school may be separating pupils by sex, they should follow this guidance and read the DfE's [Gender separation in mixed schools](#) guidance. Inspectors should also contact the national duty desk, who may seek advice from the relevant policy team and legal services as soon as possible.

Any potential separation by sex may be identified during inspectors' pre-inspection planning, before an inspection or during a live inspection. If a school is separating pupils for lessons and/or at social times because they share the protected characteristic of sex, and the requirements outlined in this guidance are met, this may constitute unlawful discrimination.

This guidance applies only to mixed-sex schools. It does not affect the legality of single-sex schools, which can lawfully discriminate on the grounds of sex in their admission process as determined by [paragraph 1 of Schedule 11 of the Equality Act 2010](#). However, if these schools admit pupils of the opposite sex at certain key stages, for example in the sixth form, they should not unlawfully discriminate against those pupils because of their sex.

Impact on inspection grades

If inspectors believe that the school meets the criteria that suggest it is discriminating unlawfully, inspectors should address this in the inspection report card. Any apparent unlawful discrimination may also impact on the leadership and governance grade (due to non-compliance with core statutory duties) and the personal development and well-being grade (due to the impact on pupils), as specified in the toolkits.

Impact on leadership and governance grade

It is for a court to ultimately decide whether a school is unlawfully discriminating against its pupils. However, if inspectors have evidence that a school meets the criteria that suggest it is discriminating unlawfully, the grade for leadership and governance is unlikely to be 'expected standard' or above (due to statutory core functions not being carried out, and the likely potential negative impact on pupils).

In deciding on the appropriate grade, inspectors should consider what action the school has taken (if any) to remedy the potential unlawful discrimination. This includes whether the school has obtained reliable advice on its position and has acted reasonably in line with that advice.

Considering advice from other bodies

A school may inform inspectors about advice from the DfE or legal advice it may have, which states that its practice is lawful. If inspectors are shown evidence of such advice, they must consider it. However, the existence of the advice does not in itself prevent inspectors from concluding that the school's practice is likely to be unlawful, exercising their professional judgement on the evidence available. They can still conclude that the leadership and governance grade should be 'urgent improvement' or 'needs attention'. In these instances, inspectors should contact the national duty desk, who may seek advice from policy and legal colleagues.

Genuine and imminent plans to remedy discrimination

In deciding on the appropriate grade for leadership and governance, inspectors should consider what action the school has taken (if any) to remedy the potential unlawful discrimination.

If a school provides evidence of its genuine and imminent plans to remedy any unlawful discrimination and can satisfy inspectors that the unlawful discrimination is continuing for reasons beyond its control, a grade of 'needs attention' for leadership and governance will normally be appropriate. If leaders indicate to inspectors that they intend to continue with the unlawful practice, or they fail to provide robust and current evidence of their plans to correct it, the leadership and governance grade will normally be 'urgent improvement'.

Inspectors may find that a school is intending to remedy the unlawful discrimination by de-amalgamating (splitting) into separate girls' and boys' schools, with separate unique reference numbers (URNs) or de-amalgamating its secondary or sixth-form phase while keeping its primary phase mixed. If the school's only step towards compliance is to split at some point in the future, the grade for leadership and governance will normally be 'urgent improvement'. However, if the school is taking steps towards splitting within a reasonable time frame – usually before the beginning of the next academic year – then a grade of 'needs attention' for leadership and governance will normally be appropriate.

Independent school standards

Under the education inspection framework, non-compliance with the independent school standards (ISS) normally means a school will not receive a leadership and governance grade better than 'needs attention'.

Paragraph 3(j) of the ISS is designed to allow the DfE to take regulatory action against a school that unlawfully discriminates in its teaching contrary to [Part 6 of the Equality Act 2010](#).

The DfE's [non-statutory guidance for schools on meeting the ISS](#) sets out examples of teaching that are unlikely to meet this standard, including separation of girls and boys in mixed schools that disadvantages one sex or both.

If inspectors identify that an independent school is separating pupils by sex and is discriminating unlawfully, inspectors will normally judge that the requirement in paragraph 3(j) of the ISS is not met. In making this judgement, inspectors must take account of the [Genuine and imminent plans to remedy discrimination](#) section of this guidance if the school is intending to remedy any unlawful discrimination.

Impact on personal development and well-being grade

The school curriculum should extend beyond the academic, technical or vocational. Schools should support pupils' personal development and well-being in various areas of their lives. This aims to give pupils the qualities they need to flourish in our society. An inclusive environment at school is more likely to meet the needs of all pupils and allow them to flourish.

If a school is discriminating against pupils by sex unlawfully, the personal development and well-being grade may also be negatively affected. Inspectors may also identify other relevant issues during inspection, for example stereotypical language being used, which they should note in inspection report cards. Any grade on personal development and well-being will always depend on the overall quality of the school's provision for personal development and well-being and the severity of the impact of the unlawful separation (or other related issues) on pupils.

The inspection process when inspectors believe unlawful discrimination is occurring

In all cases where inspectors identify (or believe they may have identified) unlawful discrimination, they must contact the national duty desk, who may seek advice from the relevant policy team and notify legal services as early as possible. Inspectors must also provide legal services with a copy of the inspection report card for review before the draft report card is sent to the school. This is to ensure consistency of approach and to minimise the risk of complaint and legal challenge.

Before inspection

If inspectors believe a school is separating pupils by sex, they should do everything possible to clarify the position before the inspection. They must also alert the national duty desk, who may seek advice from the relevant policy team and legal services as soon as possible. The lead

inspector should review the school's website. For independent schools, the case record may also hold relevant information.

For any school in which separation by sex has been identified during pre-inspection planning, the lead inspector should use the supplementary script in the main phone call with the school (see [Annex A](#)). They should talk broadly about any matters that may indicate a possible unlawful separation issue.

If inspectors believe that they have identified potential unlawful sex discrimination, for example, the headteacher confirms that there is separation by sex in the school during the main phone call, the national duty desk must contact the relevant policy team and alert legal services as soon as possible.

During inspection: 5-step approach

We have designed the 5-step approach to enable inspectors to identify clearly when a school is not complying with the Equality Act because they are separating pupils on the basis of sex.

The 5 steps are:

1. Is there evidence of a difference or differences in the way the school treats girls and boys?
2. If yes, is there evidence that the difference or differences amount to less favourable treatment of, or a detriment to, girls, boys or both? For example, are there differences in the subjects being offered to pupils, in the extra-curricular activities available or the quality of teaching being offered?
3. If yes, is the less favourable treatment or detriment due to the pupils' sex, or a different factor?
4. If yes, is the less favourable treatment or detriment both due to the sex of the pupils and prohibited under [section 85\(2\) of the Equality Act 2010](#)?
5. Does the positive action exception (or another exception) apply? If an exception applies, such as outlined in [section 158 of the Equality Act 2010](#), there will be no unlawful discrimination. If inspectors believe this to be the case, they should contact the national duty desk, who may seek advice from policy and legal colleagues.

Step 1: is there evidence of differences in the way the school treats girls and boys?

Inspectors should be alert to any form of separation of pupils by sex, whether it is during lessons, at unstructured times, during school

activities or in access to school facilities (for example, allowing girls and boys access to the school library on different days).

Inspectors should be aware that separating pupils by sex even when pupils appear to be treated equally in other respects (separate but equal treatment) may still be unlawful discrimination.

If inspectors identify separation by sex, inspectors must ask school leaders to explain their rationale for the separation.

If the school has a separation policy, inspectors should obtain a copy and consider its contents with reference to this guidance and [DfE's guidance on gender separation in mixed schools](#).

For guidance on single-sex sports see [Other exceptions: section 195 Equality Act 2010 – single-sex sports](#).

Schools are required, however, in line with safeguarding duties and legislative requirements, to ensure the privacy and dignity of all pupils through the provision of single-sex toilets and changing facilities.

Step 2: is there evidence that the differences amount to less favourable treatment of, or a detriment to, girls, boys or both?

If a school chooses to separate pupils by sex for all lessons and social activities, so that they have no opportunity to mix during the school day, this practice will be highly likely to amount to less favourable treatment. This is because denying boys and girls the practical and social benefits of such interactions may create a detriment to both girls and boys. This is still the case even if the school argues that pupils are treated equally or that the separation is the result of parental choice.

Extent of separation

The frequency and extent of the separation by sex will be relevant to the less favourable treatment of, or detriment to, pupils. Sustained, long-term separation by sex is more likely to amount to a detriment. Inspectors should reflect differences in the severity of the less favourable treatment, and consequently the detriment to pupils, in their grades.

There may be cases where separation is considered negligible because its effect on pupils is so small that pupils are not concerned or worried about it. Inspection grades will not be affected if inspectors judge the effect on pupils to be negligible.

Separation by sex in lessons only

Separation by sex in all lessons is likely to amount to less favourable treatment even when pupils can mix socially. For example, if there is evidence that boys perform less well in separated classes than in mixed

classes (in a school that separates only in certain year groups), inspectors may take the view that the reason for the poor performance of boys in those classes is the separation policy. This is because they miss out on the educational benefits of studying alongside girls.

The same may also apply for separation by sex for a single subject for a whole academic year.

Views of pupils

Where possible, inspectors should speak to a range of pupils about any differences in treatment, the impact of the differences and how they feel about their treatment. They should then decide whether it would be reasonable for a pupil to consider the separation detrimental. If a pupil takes the view that the different treatment was to their detriment, then less favourable treatment or detriment is likely to exist (except where that view is likely to be considered unreasonable).

Detriment includes the pupil being deprived of an opportunity or choice that the pupil values. Therefore, the views of pupils are a relevant factor that inspectors should consider when deciding whether a detriment exists. If there is evidence from pupils that there is a detriment, inspectors should contact the national duty desk, who will seek advice from policy and legal colleagues.

Inspectors will consider each case individually. Pupils' views are one source of evidence among many.

Outcomes and opportunities

It is possible for a detriment to exist or for treatment to be less favourable even if pupils have a positive educational outcome. Offering different opportunities to pupils of one sex when they are denied to pupils of the opposite sex may be less favourable treatment even if the opportunities are of equal value or quality.

Step 3: is the less favourable treatment or detriment due to the pupils' sex?

Under [section 13\(1\) of the Equality Act 2010](#), a school's treatment of a pupil cannot amount to direct discrimination unless it is because of a protected characteristic. Less favourable treatment of, or detriment suffered by, pupils that is not due to their sex (or another protected characteristic) will not be unlawful discrimination. For example, if those attending an extra tuition group are all boys, there will be no unlawful discrimination against girls if the boys in the group were selected because of their academic performance rather than their sex, and girls who performed in the same way would be allowed access to that group. Inspectors must make a comparison between 2 pupils: one who has the protected characteristic and one who does not.

If inspectors conclude that pupils have made a genuine choice to be educated separately (see the [Choice section](#)), this will be relevant to their decision about whether the pupils have suffered less favourable treatment or detriment.

Choice

If pupils (or their parents) have made a choice to be educated separately, that choice is relevant to inspectors' consideration of Step 2, only where it would be possible for pupils to remain in the same school even if they or their parents later decide to reverse that choice.

However, pupil choice may also be relevant for inspectors' consideration of Step 3. If pupils have made a genuine choice to be educated in a single-sex group, it is possible for inspectors to conclude that any detriment arises from that choice and not from their sex, therefore there is no unlawful discrimination. To reasonably reach that conclusion, inspectors must be satisfied that there has been a genuine choice, such as any pupil having the opportunity to be educated in a mixed-sex group in the same school.

Inspectors must do everything possible to speak to pupils about their choices, to help assess whether all choices are genuine. See the [Engaging with pupils section of Ofsted's school inspection operating guide for inspectors](#).

Step 4: is the less favourable treatment or detriment due to the sex of the pupils and is it prohibited under section 85(2) of the Equality Act 2010?

Under [section 85\(2\) of the Equality Act 2010](#), a school must not discriminate against pupils:

- (a) in the way it provides education for the pupil
- (b) in the way it affords the pupil access to a benefit, facility or service
- (c) by not providing education for the pupil
- (d) by not affording the pupil access to a benefit, facility or service
- (e) by excluding the pupil from the school
- (f) by subjecting the pupil to any other detriment

Anything done by the responsible body of a school in connection with the content of a school's curriculum is exempt from Part 6 of the Act, as set out in [section 89\(2\)](#). There is a difference between the way education is provided (curriculum delivery) and the content of the curriculum. In most cases, separation by sex will relate to the delivery of the curriculum and will fall into (a) or (c) above, potentially resulting in discrimination on the basis of sex.

Any detriment will need to be clearly identified and explained in the evidence base along with the rationale for the inspector's conclusion that

it falls into one of the categories above.

Step 5: does the positive action exception (section 158 of the Equality Act 2010) or another exception apply?

The school can provide evidence to inspectors that the practice it has implemented is in line with the positive action exception or other relevant exception if this is the case see [Other exceptions: section 195 Equality Act 2010 – single-sex sports](#) section.

To succeed in relation to the positive action exception, schools must meet 2 basic requirements:

1. The school must reasonably think that one of 3 circumstances applies:
 - a group sharing a protected characteristic is suffering a disadvantage connected to that characteristic (for example, boys are underperforming compared with girls)
 - a group sharing a protected characteristic has different needs to those of pupils not sharing that characteristic (for example, some teaching methods may help boys more than girls)
 - the participation of a group sharing a protected characteristic in a particular activity is disproportionately low
2. The school has taken action that is proportionate to do any of the following:
 - overcome/minimise the disadvantage
 - meet the different needs
 - enable or encourage participation in that activity

A school may meet the positive action exception if, for example, the school's reason for separation is educational and it supports the educational reason by evidence.

In general, the more extensive the separation practice, the less likely it is that the positive action exception will apply.

Faith schools

A group of pupils sharing the protected characteristic of religion or belief could fall within [section 158\(1\) of the Equality Act 2010](#). These issues are complex and, when they arise (for example, if a school suggests that its pupils will suffer discrimination from the approach set out in this guidance to separation by sex), inspectors should contact the national duty desk, who will seek advice from policy and legal colleagues.

Reasonableness

Inspectors must see evidence from the school that separation supports

its objective (for example, improving attainment of a disadvantaged group) in order to conclude that a school reasonably thinks that one or more of the positive action circumstances apply.

If a school contends that separation by sex in its school improves, for example, pupils' attainment, it will need to provide evidence that:

- both girls and boys achieve better, on average, when separated
- separation is the most likely reason for the improved achievement

Proportionality

In reaching their judgement on whether any positive action is proportionate, inspectors should consider:

- whether the action is an appropriate way to achieve the school's stated aim
- if so, whether the action or proposed action was/is reasonably necessary to achieve that aim
- whether it would be possible for the school to achieve its aim as effectively by other actions that are less likely to be discriminatory

Separation by sex for certain subjects may be proportionate based on the circumstances of the specific groups affected. However, the school would need to show inspectors that there were no other less discriminatory measures that could achieve the same aim.

If the school takes an action that is proportionate in one academic year, the school should review the approach to ensure that it remains proportionate in any subsequent academic year.

Other exceptions are set out in [Other exceptions: section 195 Equality Act 2010 – single-sex sports](#).

Other exceptions: section 195 Equality Act 2010 – single-sex sports

[Section 195 of the Equality Act 2010](#) applies to pupil participation in a 'gender-affected activity'. This exemption permits single-sex sports. Separation by sex in sports, if justified, can be sustained and long-term.

For a school to lawfully separate by sex relying on section 195(1), the sport, game or activity in question has to be of a competitive nature and be 'gender-affected'.

Is the sport, game or activity of a competitive nature?

The sport, game or activity need not be competitive at all times. However, overall it should include a competitive aspect, whether that is competition within the school or competition against pupils at other schools.

Is the sport, game or activity also gender-affected?

To answer this question, inspectors will need to ask whether the school reasonably thinks that the sport, game or activity of a competitive nature is such that 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) in events involving that activity.

Whether the sport is gender-affected for children will also depend on the age and stage of development of those children who are likely to be competitors. Schools are less likely to be able to justify separation by sex in relation to sports for younger children.

If the sport, game or activity is not gender-affected, then the separation by sex will usually not be justified under section 195(1), although other exceptions may apply to allow separation, such as positive action under section 158.

After inspection

If inspectors find that a school is seemingly unlawfully discriminating directly or indirectly under the Equality Act, the leadership and governance grade will not normally be better than 'urgent improvement'. In consultation with legal and policy colleagues, inspectors must consider all the relevant circumstances, including the nature and scale of the discrimination. They must also consider the steps taken by leaders to determine whether the practice is lawful and/or to remedy any unlawfulness. Separation that has only a limited negative impact on pupils (if, for example, it happens only in a very small proportion of lessons) may still be unlawful. If the separation has a limited negative impact on pupils and/or the school is taking clearly evidenced and prompt steps to end the discrimination, a grade of 'needs attention' is likely to be the best fit for leadership and governance. In all cases, the final report card must identify what steps, if any, the school has taken.

Irrespective of the leadership and governance grade, inspectors will always make a factual reference in the final report card to any apparently unlawful separation by sex of pupils that they have identified. The relevant writing guidance for all inspection types contains wording that inspectors must include, when required.

Annex A: supplementary script for inspectors

For any school in which inspectors have identified potential separation by sex during pre-inspection planning, the lead inspector should use a supplementary script in their main call to the school and talk broadly about any matters that may indicate a possible unlawful separation issue.

Specific questions may include:

- Is there separation of pupils by sex in lessons?
- Is there separation of pupils by sex during breaktimes, lunchtimes or after-school activities?
- What is/are the reason/reasons for the separation?
- Does the layout of the school support separation (for example, separate entrances for girls and boys or girls and boys being taught on different floors)?
- Could you explain how the curriculum and timetable are organised for all pupils – are there any differences between what the school offers girls and boys in the curriculum?
- Are there any parts of the school day or subjects/areas of the curriculum where girls and boys are separated? Why is this done?
- Are there any facilities, for example the library, art department or computer department, that are only available to boys or to girls?
- Are there any facilities, other than toilets and changing rooms, where girls and boys have different access arrangements (for example, where girls and boys have access to on different days)?
- Are there any differences in the career education opportunities provided to girls and boys?
- How are external trips and visits organised? Are there any differences in the trips offered to girls and boys? Do the trips take place at the same time? Are girls and boys able to mix on these?
- Is there a written separation policy and, if so, how regularly is it reviewed?
- Has the school obtained any advice from the DfE or other external source about its separation policy and practice? (If so, who gave this advice and what does it say?)[see [note 1](#)]
- What action has been taken as a result of any advice received?

Note 1: Although capable of demonstrating a responsible approach to leadership and governance, legal advice obtained by schools is the subject of legal professional privilege and it should only be considered if a school wishes to rely on it, waives privilege (that is, the school chooses to abandon its right to confidentiality) and volunteers it in full (that is, the school shares the legal advice with a third party, such as Ofsted, freely).

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