

Boys and Girls and the Equality Act

Guidance for Schools

on avoiding unlawful discrimination
related to the protected characteristics
of sex and gender reassignment

Scotland edition

About this Guide

This guide is about schools' responsibilities under the Equality Act 2010 towards all boys and girls in relation to the protected characteristics of sex, and "gender reassignment".

This is not a guide to gender identity issues or healthcare for individual pupils; rather, it is about the general rules and policies that schools need in order to be fair and inclusive, keep everyone safe and work with parents.

The general principles are of clarity of language, and doing no harm. Children who experience gender dysphoria or who identify as transgender should not be treated less favourably in education, but they have not changed sex. By taking steps to avoid sex discrimination (i.e. not treating girls and boys differently, apart from where sex matters), schools will also avoid much risk of indirect discrimination against children who may have the protected characteristic of gender reassignment.

Schools should be careful to ensure that equality or anti-bullying policies do not inadvertently undermine safeguarding, isolate children from their parents or put them at risk.

Areas of risk are highlighted in this document.

Who is it for?

This guide is for:

- **Teachers, school leadership teams and Parent Councils and governors** in both state and independent schools at primary and secondary levels setting rules and policies
- **Parents and young people** seeking to understand their rights
- **Local education authorities** producing their own guidance

The guide includes a model policy which schools can adopt.

It may also be useful for other institutions that work with children and young people, such as youth associations and sports clubs. It is also offered as an input to guidance that may be developed by the government or national public bodies. Its focus is on the UK legal framework. This version is specifically for Scotland. There is a separate edition for England and Wales.

Who has it been developed by?

This guide has been developed by **Sex Matters**, an organisation that campaigns and advocates for clarity about sex in law, language and policy, together with **Transgender Trend**, which promotes evidence and analysis in the way that institutions support children with gender dysphoria.¹

It draws on the **Equality Act 2010** and the safeguarding frameworks used in England, Wales and Scotland² as well as the Equality and Human Rights Commission (EHRC, 2014)³ and (EHRC, 2014)⁴.



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Foreword

Schools play a unique and important role as communities in which children develop, in a cohort with their peers, and in partnership with parents and carers. Schools have a legal and moral obligation to ensure **equality of opportunity for all pupils**, and to create **safe environments for children and young people**.

Growing numbers of children have been experiencing mental distress linked to feelings of “gender dysphoria”,⁵ with increasing numbers identifying as transgender.⁶

Schools and teachers have faced a barrage of demands and opinion about “transgender children”, some of it linked to guidance suggesting that children’s rights under the Equality Act mean that schools must “affirm” them as the opposite sex. Several local authorities have withdrawn such guidance when challenged. ⁷**The Scottish Government announced in 2019 that it would issue its own guidance in this area, as of date of publication of this guidance this has not been published.**

This guide seeks to cut through the confusion.

All children have a right to education and to be protected from harm. Schools need to have child-welfare focused policies, rules and expectations, and robust safeguarding practices. They need to have rules and practices that treat all children fairly, in line with the Equality Act 2010. This guide is concerned with those whole-school rules.

This guidance (and the England and Wales version) was also developed with regard to guidance issued last year on Relationship and Sex Education by the Department for Education in England and Wales. It discourages schools encouraging children to think that **if they don’t comply with gender stereotypes “either their personality or their body is wrong and in need of changing”**.⁸

It also takes heed of the judgment of the High Court in England and Wales which recently considered whether children are able to give informed consent for treatment with puberty blocking drugs. It found that it would be highly unlikely that a child aged under 13 could understand and weigh the long-term risks and consequences, and doubtful for a child aged 14 or 15. For children aged 16 and 17, clinicians should seek court authorisation.⁹ In response to this the Scottish Government has said it would consider its findings.

We have taken a cautious approach in this guide, aiming to ensure that children who experience gender dysphoria or who identify as transgender are not treated less favourably in education, without seeking to entrench their identification at an early age, and without removing them from normal safeguarding practice, or risking discrimination or harm to other children.

This is a consultation draft. Your feedback is welcome. You are invited to provide detailed comments by filling in the [consultation form](#).

You can also email info@sex-matters.org or info@trangendertrend.com.

1 Key messages

1. Every child has a sex. No child is “born in the wrong body”. Every child should be free to express themselves. This does not change a child’s sex.
2. A child who identifies as a different gender to their sex has not legally changed sex. Under equality law, they remain protected against discrimination based on their sex, as well as against discrimination based on the protected characteristic of “gender reassignment”.
3. No child should feel they need to act like a stereotypical girl or boy in order to fit in at school. Individual students should be treated fairly and with sympathy and support.
4. All policies must be in line with safeguarding. It will never be consistent with safeguarding to keep a child’s sex secret from peers or teachers.
5. Schools should make clear that all pupils are welcome to share single-sex facilities with children of the *same* sex, but not to share facilities designated for the *opposite* sex.
6. All bullying and harassment should be tackled.
7. Single-sex schools do not have to admit children of the opposite sex based on “gender identity”.
8. Where single-sex facilities are provided, such as in sports and changing rooms, policies and rules should be applied consistently and unambiguously.
9. Alternative single-occupancy unisex facilities are an appropriate alternative for any child who wants more privacy, and would accommodate those who experience gender dysphoria.
10. Schools should make clear that everyone is included and valued. It is not “transphobic” to recognise that everyone has a sex, and to have sex-based rules where justified.

2 Background

Schools have a duty of care to protect the health, safety and welfare of all pupils. It is important that policies driven by equality considerations do not inadvertently undermine the ability to assess and act on risks that a child or young person may be in or may pose to others.

The Children & Young People (Scotland) Act places a duty on schools and local authorities to safeguard and promote the welfare of all children. This sits within the framework of **Getting It Right for Every Child** (known as GIRFEC) the national approach for all people who support children to work together in safeguarding. Providers of education must promote safe practice to protect children, young people and adults from harm, abuse and exploitation.¹⁰

At the same time, schools must comply with the **Equality Act 2010**, which covers all aspects of school life in relation to pupils, prospective pupils, parents, carers and employees. This means they should be fair and non-discriminatory, and not put individuals or groups of people at a disadvantage.

When it comes to the pastoral care of individual children with complex needs, schools should work together with parents on any decisions, in line with the school's safeguarding policy, national safeguarding frameworks and the Local Authority.

Protected characteristics

Schools have legal obligations under the Equality Act 2010 not to discriminate against pupils because they have, or are perceived to have, or associate with someone who has, a protected characteristic. Everybody has some protected characteristics. The protected characteristics likely to be relevant in relation to children and gender issues are:

- **Sex.** Everyone is either male or female. Male children are boys and grow into young men. Female children are girls and grow into young women. There is no provision for a person under 18 to change their legal sex.¹¹
- **Gender reassignment.** People who propose to transition to live as if they were a member of the opposite sex have the protected characteristic of gender reassignment. It is not clear whether a child can be said to have meaningfully proposed to make such a life-changing decision, but in any case, children should not be discriminated against for being perceived to have made such a decision, or for considering it.
- **Disability.** Children experiencing severe gender dysphoria (a state of anxiety, discomfort or distress because of mismatch between their perceived identity and their sex) may also be covered by the protected characteristic of disability (if anxiety prevents them undertaking normal day-to-day activities, such as using school toilets or changing rooms). Children may also have other special educational needs and disabilities (SEND) that are relevant.
- **Sexual orientation.** This is defined by the Equality Act as meaning orientation towards persons of the same sex, persons of the opposite sex, or persons of either sex. Children who have not yet understood and experienced their sexuality as mature adults may confuse being gender non-conforming or feelings of attraction to the same sex with having an opposite-sex identity.¹²

“Gender identity” is not itself a protected characteristic. It should not be used in equality policies in place of sex or gender reassignment.

Doing no harm: Taking a child-welfare-centred approach

Schools should take a **do-no-harm approach** which ensures that children experiencing gender-identity issues are fully included and supported in education and safeguarding, without pressure to make life-defining choices at an early age.

For example the England and Wales DFE guidance states: *“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.”*

Following the *Bell v Tavistock* decision, schools and local education authorities should consider withdrawing guidance that promotes the use of blockers and hormones, and materials that promote the “born in the wrong body” narrative and undermine safeguarding. They must still consider how to protect every child’s rights.

Decisions made by the school must consider the best interests of both the individual child and their peers, at that particular moment in time, taking into account that they will continue to grow up together, as a cohort, in school.

As they grow up, children develop from being infants who might easily “pass” as a member of the opposite sex because of clothing and hairstyle, and who have yet to understand the full implications of the differences between the sexes. As they go through puberty, girls’ and boys’ bodies diverge in strength, build, athletic potential and secondary sex characteristics, and they develop a better understanding of sex and sexuality.

There is little research evidence for the efficacy of “puberty blocking” medication and cross-sex hormones in improving the mental health of children.¹³ What is known, however, is that this pathway, if continued, leads to young people becoming sterilised, permanently medicalised and lacking ordinary sexual function. The High Court in England and Wales has ruled that it is doubtful that a child under 16 can consent to this treatment; and that for children aged 16 and 17, clinicians should seek court authorisation if they have any doubt that it is in the child’s best interests. Although this judgement does not apply to Scotland, Local Authorities should consider the potential for future legal challenges.

Schools should be wary of making decisions (such as to allow a 5-year-old boy to be treated as if he was a girl) that might be seen as having little physical risk at that age, but which, in practice, lock the school and the child into an expectation of this treatment continuing.

3 Avoiding discrimination

Remember that a child who identifies as a different gender remains protected against discrimination based on their sex

The Gender Recognition Act 2004 allows adults to change their legal sex, but does not allow children to make that decision.¹⁴

People who have not changed their legal sex through a gender recognition certificate (this includes all young people under 18) are legally and physically the actual sex that is recorded on their birth certificate. This has been confirmed by the Equality and Human Rights Commission.¹⁵

A child who identifies as “transgirl” (i.e. a male child who identifies as a girl) is legally male and would be treated as male for the purposes of the sex discrimination provisions in the Equality Act. A “transboy” (i.e. a female child who identifies as boy) is female. The sex discrimination exceptions in the Equality Act (which allow single-sex facilities, schools and sports) apply to them in the same way as to all other children of the same sex.

Treating boys and girls differently based on gender stereotypes or tradition is likely to result in sex discrimination. It can also exacerbate feelings of gender dysphoria and exceptionalism for those who don't feel comfortable about their sex. It can result in indirect discrimination based on “gender reassignment”.

By taking steps to avoid discrimination based on sex (i.e. not treating girls and boys differently apart from where sex matters), schools will also avoid much risk of indirect discrimination against children who may have the protected characteristic of gender reassignment.

Discrimination in the Equality Act 2010

Direct discrimination means treating someone less favourably than someone else because they have a protected characteristic.

Indirect discrimination occurs when a provision, criterion or practice is applied in the same way for all, but has the effect of putting people with a protected characteristic at a disadvantage.

Indirect discrimination is unlawful unless it can be shown that the treatment or practice is justified as **a proportionate means of achieving a legitimate aim**. Legitimate aims include safeguarding, maintaining academic or other standards, and ensuring the health, safety and welfare of pupils.

This does not mean that mixed schools should seek to be “gender neutral” or mixed sex in everything. Rather, they should be clear that they treat girls and boys differently (i.e. have rules and policies based on sex) only where this is objectively justified, such as for safety, fairness and bodily privacy.

Schools should identify areas where sex-based rules and spaces are justified - such as in toilets, sports, changing facilities and overnight accommodation - and areas where treating boys and girls differently

is unjustified, such as in determining what subjects pupils can study, what games they can play, what they should wear and what name they can use.

In a mixed school, any separation of pupils by sex is likely to involve subjecting the pupils to a detriment. This will be direct discrimination.

No child should feel they need to be a stereotypical girl or boy in order to fit in at school. In general, schools should attach no privileges or status, stigma or punishment to children for conforming to, or not conforming to, gender stereotypes associated with their sex, or with the opposite sex. In most cases, if a behaviour, activity or item of clothing, hairstyle or jewellery is suitable for a girl in school, it is also suitable for a boy, and vice versa. For example, if a girl enrolls in primary school wearing trousers and with short hair, this should not be remarked upon. It would not be appropriate or necessary to ask her parents “what pronouns to use”.

Schools should mix the sexes but avoid using boy-girl seating, or demanding boy-girl pairs in science or splitting the class into boy-girl teams for quizzes etc. This increases stereotypes about girls and boys, as well as causing distress to students experiencing gender-identity issues.

Information and record-keeping

Schools should be clear in their record-keeping that they record the sex (male or female) of all pupils. This is essential for protecting the health and welfare of children, and for monitoring discrimination.

- Although “gender” is sometimes used as a euphemism for “sex”, this is confusing. Sex is a protected characteristic and is recorded on a child’s birth certificate. For clarity, the word “sex” should be used in equality policies and record-keeping.
- **Schools do not have any obligation under the Equality Act or human-rights law to agree to keep a child’s sex confidential from teachers, peers or other parties who have responsibility for the health, safety and welfare of the child.**¹⁶ It is not reasonable for a child or their parents to ask a school to keep a child’s sex secret or to affirm the child’s view that their declared gender identity is their sex. Keeping secrets about sex is a safeguarding risk.¹⁷
- A pupil might request that peers and staff use a “preferred pronoun”, but they cannot compel this. It should be made clear that other children are not required to keep secrets or to lie about sex. Information should be given to children that is age-appropriate and honest.
- While some children may say they feel a “gender identity”, it should not be assumed that this is something all children have. For example, a girl is a girl because she is female, not because she is assumed to feel a gender identity, or because she conforms with gender stereotypes about girls’ clothing or interests.

Keeping secrets about sex makes a child vulnerable

Lying about a child's sex to their peers and teachers locks the child into an extreme form of social transition, which makes flexibility difficult and is likely to make approaching puberty a fearful prospect. Keeping secrets isolates children from their peers and from other sources of support. A child whose sex has successfully been kept secret from their peers will have been led to believe that if others knew their actual sex they would wish them harm. Maintaining secrecy about a child's sex creates a growing tension as puberty approaches, and puts pressure on children to take physical steps, such as breast-binding or seeking unregulated hormone treatment on the internet.

Uniform

- In formulating its uniform policy, a school will need to consider its obligations not to discriminate unlawfully (either directly or indirectly).¹⁸
- In general, it is good practice not to have different rules or standards about uniform, hairstyles, jewellery or make-up based on sex.
- Schools that organise a leavers do, dance, prom or other social event should not set sex-based rules about what girls or boys can wear, or expectations about who they dance with.
- In most cases, dress codes that differ by sex are based on tradition and do not meet a legitimate aim. There are exceptions. For reasons of dignity and safety, it would be inappropriate for a girl who has reached puberty to go swimming in trunks with no top. It would be reasonable to have uniform requirements that allow children of either sex to wear trunks or swim shorts with a surf top. This policy accommodates all of those who prefer more coverage than a traditional girls' one-piece swimsuit.

Names and pronouns

- If a child changes their name legally, the school should use the new name. Children are not required to have stereotypically gendered names, but schools should note that changing a child's name does not mean that their sex has changed.
- Many schools allow pupils to use informal forenames (nicknames or shortened versions) chosen by pupils, even if these differ from what is recorded on their birth certificate. Schools should not discriminate in this policy, but should allow it for all pupils (within reasonable limits; such as that children cannot ask to be called something different on a weekly basis). A child should not be limited to adopting a name stereotypically associated with their sex.
- Pronouns are words that stand in for the names of people or things: she/her, he/him, it, they/them. Pupils might request that teachers and peers use "preferred pronouns" for

them, but they cannot compel this. In particular, no child should be admonished or disciplined for using grammatically correct pronouns for another pupil.

- Schools should make clear that they have responsibilities for the freedom of speech, and freedom of religion and conscience, of all pupils, as well as for the particular needs of children with special educational needs and disabilities, when responding to a request by a child to be referred to by pronouns denoting the opposite sex. Children should be encouraged to treat each other with kindness and respect, but teachers should remember that this principle extends to refraining from seeking to impose counter-intuitive language on other children.
- Schools should not agree to use a name or pronoun for a child that they keep secret from parents. Any concerns about a child (including about their psychological state, who they are talking to online or that they are wearing a binder) should be able to be discussed with parents, in line with normal pastoral and safeguarding practices. **Neglecting to protect a child with the normal standard of safeguarding because the child identifies as trans is discrimination on grounds of gender reassignment.**

Schools should not discriminate against children because they are gender non-conforming or identify as transgender or non-binary:

- A child who identifies as trans should not be barred from being a prefect or going on a school trip because they identify as trans.
- A child who identifies as non-binary should not be treated less favourably by teachers in class, for example by not being called on.
- A boy who comes to school in a dress should not be barred from being in the school photograph (this would be sex discrimination, since a girl in a dress would be allowed to be in the photograph).
- A child who identifies as trans should not receive less robust safeguarding protections than other children. Schools' equality policies must take care not to ring-fence children outside of normal safeguarding.

Information-sharing is essential for safeguarding.

Information can be shared legally without consent, if a practitioner is unable or cannot be reasonably expected to gain consent. Nothing should get in the way of safeguarding. Schools should take care in their training, culture and policies that they do not inadvertently discriminate against children who identify as transgender by offering less robust risk assessment and safeguarding. For example, a child who discloses to a teacher that they feel like their body is “wrong” after talking to strangers on the internet, or that they are binding their breasts, is disclosing a safeguarding risk.

4 When treating the sexes differently is justified

The Equality Act allows schools to have policies and provisions that treat girls and boys differently, where this is a proportionate means to a legitimate aim, or where it is a requirement of an enactment¹⁹; and school premises regulations require separate toilet, changing and washing facilities for boys and girls.

Not all discrimination is outlawed by the Equality Act. There are specific exceptions that allow services to be provided, where appropriate, to a particular age group, to a particular sex, or to people who share another protected characteristic (such as disability).

The Equality Act allows single-sex services, including within schools. One of the key justifications for single-sex services is “circumstances where it would be reasonable for a person to object to the presence of a person of the opposite sex”.²⁰

Single-sex services rely on sex-based rules (for example “no boys in the girls’ changing room”), whenever sex segregation is objectively justified or required by law. The rule should be applied to all equally. Although some organisations argue that children should be allowed to use facilities of the “gender they identify with”, the Equality Act does not require this; and doing so will in some cases put schools in breach of school premises regulations. It is compulsory under school premises regulations to provide single-sex toilets and washing facilities for children aged 8 and over; and it will always be lawful under the Equality Act to exclude children from toilets, washing, changing rooms and sleeping accommodation provided for children of the opposite sex. This is to protect the privacy and dignity of the other children, and to maintain a safe environment. Furthermore, schools require clear rules and policies, not constant negotiation with individual children, who are also growing up alongside peers.

Situations of sex segregation can have a detrimental impact on children if this causes them anxiety or exclusion due to gender dysphoria. **Whenever facilities are sex-segregated, schools should make clear that this does not mean children with alternative gender identities or expression are not welcomed in facilities shared with other children of the same sex as them.** For example, a boy who wears a dress to school, or a girl who asks to be called by a boy’s name, should not be teased or bullied in the changing room.

For those children who do not wish to use facilities shared with children of their own sex, the school should accommodate them with alternative private (unisex) facilities where possible.

The fact that a child might *want* to use facilities of the opposite sex is not a justification to allow them to, since this undermines the bodily privacy of other children.

What does “proportionate means of achieving a legitimate aim” mean?

This is a form of words used throughout the Equality Act. It means that a “policy, criterion or practice” can be objectively justified, even if it results in detriment to a group who share a protected characteristic. Sex-based rules are justified where:

- The aim must be a real, objective consideration, and not in itself discriminatory (for example, ensuring the health and safety of others would be a legitimate aim).
- The importance of the aim must outweigh any indirect discriminatory effects.
- There must be no alternative measures available that would meet the aim without too much difficulty and would avoid such a discriminatory effect: if proportionate alternative steps could have been taken, there is unlikely to be a good reason for the policy.

This is probably the most misunderstood aspect of the Equality Act in relation to sex and gender. For example guidance produced by LGBT Youth Scotland and the Scottish Trans Alliance states: ²¹

“There is no law in Scotland, or in the UK, which states that only people assigned male at birth can use men's toilets and changing rooms, or that only people assigned female can use women's toilets and changing rooms. Discrimination case law has established that transgender people who have started living in accordance with their gender identity must not be banned from using the facilities matching their gender identity.”

In fact this is not the case. As previously noted, the Equality Act requires, that schools should only segregate the sexes where doing so is objectively justified. Objective justifications include the need for bodily privacy when changing or using the toilet (which is also a requirement of school building regulations) or for sports at the age where girls' and boys' bodies begin to diverge. Schools can also treat the sexes differently to advance equality of opportunity. This could include a programme to encourage girls into STEM subjects or football, or encourage boys to consider careers in care, for example, as allowed for under Section 158 of the Equality Act 2010. Wherever institutions treat males and females differently in this way, they are using the single- and separate-sex exceptions provided for in the Equality Act.

A policy of allowing some male teenagers to change and shower in female facilities, and vice versa, would undermine the ability of the changing-room policy to meet its original aims. However, a policy along the lines of “we only have two changing rooms; everyone must change with their own sex” could be detrimental to someone suffering from dysphoria. An alternative policy such as “in addition to male and female changing rooms, there is a unisex option” would still meet the aim of allowing girls and boys to have normal bodily privacy, and would alleviate the distress that a child with gender dysphoria may feel if they are changing with children of their own sex. This avoids indirect discrimination.

Single-sex schools

Single-sex schools are allowed to admit pupils of only one sex without this being unlawful sex discrimination.²² This means that girls' schools can exclude all boys (including those who identify as girls), and boys' schools can exclude all girls (including those who identify as boys). This is not discrimination based on gender reassignment.²³

A single-sex school should not refuse admission or exclude a pupil because they have declared a transgender identity, or dress in the style of the opposite sex. This would be direct gender-reassignment discrimination. The child remains their actual sex and can be included in a single-sex school.

Admitting a child to a single sex school of the opposite sex is unlikely to be in their best interests

Although single-sex schools may sometimes allow children of the opposite sex to attend the school for some lessons (for example admitting boys to the sixth form of a girls' school), they are under no obligation to do this for any individual child, or as a policy, or to allow a child to be admitted as if they were a member of the opposite sex.

It would be unlikely to be in the best interests of a child to be admitted into a single-sex school of the opposite sex, on the basis of their gender identity, as this formalises transition without giving them the time and flexibility to explore their identity as they grow older.

The Equality Act does not require that a school consider a male child's request to be treated as female (and vice versa) in single-sex situations on a case-by-case basis; rather, it requires that, they consider the overall impact of their policy (such as whether they provide a unisex option in addition to the separate provision required by school premises regulations).

RSHP lessons

A school separates boys and girls for certain Relationships, Sexual Health and Parenthood (RSHP) lessons where they are discussing puberty. This policy is justified, as it allows children of both sexes to talk freely and without embarrassment about their bodies. It would not be appropriate to place a male child who identifies as female in the girls' group – it would probably be embarrassing and difficult for the girls and could be upsetting for the male child. A male child with gender dysphoria should not be excluded from the boys' lesson if the child wants to attend, but this should be discussed sensitively beforehand, as they might also find this upsetting. They may need to be excused from the group sessions altogether and provided with support to access the curriculum separately in this instance.

Changing and washing rooms

A school provides separate changing areas for girls and boys. The Equality Act 2010 allows for separate-sex services (under Schedule 3 Paragraph 26 and 27(6)). This would cover separate changing facilities or toilets for girls and boys in schools. The School Premises (General Requirements and Standards) (Scotland) Regulations 1967 state that every school which is not designed exclusively for girls, half the toilet accommodation should be for boys (and should include stalls and urinals) and that washbasins should be inside individual cubicles or near to them.²⁴ This results in the familiar layout of boys and girls washrooms.

It would not be appropriate for children who identify as transgender to be allowed to use the facilities for the opposite sex. **The EHRC’s technical guidance has previously stated that “A suitable alternative might be to allow the pupil to use private changing facilities, such as the staff changing room or another suitable space.”**²⁵ NSPCC guidance, “Safe use of changing facilities”, suggests that reasonable adjustments could include providing a private, separate changing space for the child or arranging for that child to change at a different time to other children or at home.²⁶

Sleeping accommodation

A school has single-sex dorms on a school trip. The Equality Act 2010 permits schools to arrange single-sex communal accommodation, for example on school trips or for boarding schools (including linked facilities such as toilets and showers). This is for reasons of privacy. As with toilets and changing rooms, it is not appropriate to accommodate children of the opposite sex in single-sex communal accommodation (since it would then no longer be single-sex). Children who identify as trans should not be made to feel unsafe or unwelcome sharing accommodation with children of the same sex as them, but they might also feel more comfortable with a single room.

Any teacher organising a trip away will also have to consider histories of bullying, disability and special needs, behavioural and other vulnerabilities for all children, and the layout of the site in allocating sleeping arrangements. Schools should not breach their policies on single-sex accommodation or risk assessment about arrangements for sleep-away trips because a child identifies as transgender.

Sexual harassment

Sexual harassment is defined in the Equality Act as unwanted behaviour of a sexual nature which:

- violates your dignity
- makes you feel intimidated, degraded or humiliated
- creates a hostile or offensive environment

Allowing a male teenager to use the girls’ showering and changing facilities or the girls’ toilets could fall into this definition, even if this is not the intention.

Females and males are around 50% of the population each, whereas pupils who identify as transgender will always be a small minority. It is more efficient and less discriminatory overall to maintain single-sex spaces, and at the same time offer flexible facilities that can be used by a child who expresses distress at changing with their own sex, than it is to compel girls to accept male children in previously single-sex spaces and tell those who feel uncomfortable to use a separate facility, as has been suggested in some schools guidance.

Schools must support children and young people in the principle of consent - that is, saying yes or doing things because you choose to, not because someone is pressuring you to. As the NSPCC’s “Pants” campaign says: “Your body belongs to you. No one should ever make you do things that make you feel embarrassed or uncomfortable.” This means that girls and boys should understand they have a right to have privacy from the opposite sex when changing, washing and sleeping. They should not be made to feel that this is unkind or not

inclusive, or that in order to be inclusive or “celebrate difference” they should ignore their own discomfort and allow people to cross their boundaries.

Children who identify as trans should not be given the impression that they have the right to undermine others’ boundaries by, for example, being allowed to use facilities for the opposite sex.

Sports

Single-sex sports are permitted by section 195 of the Equality Act. This applies to 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). So, for example, this exception would permit a mixed school to have a boys-only and girls-only football and hockey teams

- Pupils who identify as trans should not be discriminated against in participating in single-sex sport or PE lessons, or in representing the school in competitions with those of the **same sex** as them.
- Schools must take into account the age and stage of physical development of the pupils when assessing fairness and safety in determining whether sports should be mixed or single-sex. However, this is not required to be done on an individual basis. As the case of *Homer vs. West Yorkshire police* highlights, the objective justification for a rule related to age or sex is judged at the level of the rule itself, not each individual affected by it. For example, a boy who is a late developer and small for his age might be disadvantaged compared to his peers in U14s rugby, but this would not be a reason to allow him to play on the U13 team. Nor would it justify allowing him to play for the girls’ team.
- It must be remembered that a male child who identifies as a “transgirl” is male. If it has been deemed legitimate that an activity is single-sex for the purpose of fair competition or the safety of competitors, there is no need for any further exemption to be used to justify excluding any particular male child from girls’ sport.
- While Section 195 refers to sports competitions, girls-only sport sessions may also be justified on health and safety grounds (for example, a 16 year old male child playing contact rugby with girls, even in training, would be a safety risk). While children may train in mixed-sex groups in athletics, it would be legitimate to have separate girls’ and boys’ events even in training, since otherwise girls are likely to be discouraged and demotivated by boys’ greater speed and strength. Positive action, as set out in section 158 of the Equality Act 2010, also allows for provision of specific sports programmes for one sex only if the school reasonably thinks that there is disadvantage, different needs, or low levels of participation by one group. Thus, for example, if the school has mixed football training that tends to be dominated by boys, it would be legitimate to also have a girls-only football training session.

Sports – rules for safety and fairness cannot be overruled on a case-by-case basis

Applying a case-by-case approach to including males in girls' sports is unfair, both on the girls and on the male child involved. Allowing a male child to play on a girls' team at a young age is not a sustainable strategy, as over time the child will diverge from female competitors.

5 Inclusion

Schools should ensure that pupils with gender dysphoria or who identify as trans can participate fully in school life. Schools can maintain clear boundaries about single-sex facilities while including children with gender dysphoria or who identify as trans in education.

- All young people should be allowed to express how they identify in conversation, and schools should be aware of and take action to address any bullying of children for gender nonconformity. However, schools cannot impose the use of “preferred pronouns” on teachers or other children, as this undermines their rights of freedom of thought and expression.²⁷ All schools should make clear that gender non-conforming pupils, including those who identify as trans or non-binary, are welcome in the single-sex facilities and sports of their own sex. There should be no bullying. If a gender non-conforming child feels unsafe in the appropriate toilet, changing room, dormitory or tent for their sex, this is a problem that the school must tackle. Allowing a male child to change or compete in sports with females to avoid homophobic or transphobic bullying by other boys is not acceptable.
- If a school only provides separate-sex communal facilities, it should be aware that this could amount to indirect discrimination against a pupil who suffers from gender dysphoria. Providing alternative individual facilities where possible would be an appropriate alternative for the child who is distressed at changing with children of their own sex.
- Accessible toilets and changing facilities in schools can be used as gender-neutral facilities (and gender dysphoria can be a disability), but schools should ensure that there is enough capacity overall and that there are no negative consequences for other pupils needing these facilities.
- Schools can reduce situations where children’s sex is emphasised, for example, girl-boy seating, a tradition of calling young people Ms Smith and Master Brown, or of having certain roles for girls and boys at school events, or of indicating a child’s sex by the colour of the label on their drawer, or on an exam schedule. These examples of explicitly highlighting sex, or dividing children by sex, are unnecessary and may cause distress to children with gender dysphoria - as well as being potentially discriminatory on grounds of sex in their own right.

Supporting good relations

Parent Councils & Governing bodies, head teachers, special educational needs co-ordinators and staff at all maintained primary and secondary schools, and including other education providers are required to support good relations between people with different protected characteristics, as part of the Public Sector Equality Duty. Under their general equality duty, public bodies are required to have “due regard” when making decisions and developing policies to the need to:

1. Eliminate discrimination, harassment, victimisation and other conduct that is prohibited by the Equality Act 2010.
2. Advance equality of opportunity between people who share a protected characteristic and people who do not share it.
3. Foster good relations across all protected characteristics – between people who share a protected characteristic and people who do not share it.

Although some people believe that “transgirls are girls” and “transboys are boys”, this is not a belief that is shared by everyone, and it is not reflected by the law or by material reality. In practice, “transgirls” are boys with particular needs, and “transboys” are girls with particular needs. The school curriculum and policies should not enforce particular beliefs about the idea of “gender identity”.

A child with a parent or other relative who identifies as transgender or has transitioned should not face bullying, and schools should deal sensitively with parents. But a child (and indeed the non-transitioning parent) may have their own views about a parent’s transition. A school should not enforce the view that “transwomen are women”, since a child may continue to view their transitioning father as a man, or mother as a woman, and the child is entitled to their own perception and beliefs.

Gender dysphoria, (as well as other conditions such as autism) can lead to a person wanting to control their environment and other people. However, beliefs cannot be imposed on others, and schools have a responsibility not to discriminate in relation to children with any protected characteristic.

Schools should not take the step of expecting pupils collectively to decide on measures that might reduce their bodily privacy or increase their risk of exposure to sexual harassment, for example through student forums and consultation. Girls in particular may feel that there is a taboo against stating clearly that a “transgirl” is male, and that allowing male people into girls’ single-sex spaces makes them uncomfortable. Calls for “inclusion” or against “bigotry” should not be used to pressure children to accept sharing changing rooms with members of the opposite sex. It should be remembered that each cohort of girls will include girls with religious beliefs, girls who have been victims of sexual abuse, and girls who are simply uncomfortable changing or showering with male-bodied people, and that as children get older it will become less and less appropriate to share such spaces. It should be made clear to children who identify as transgender, and to their families, that this is not an individual negotiation.

It is not fair to set expectations that a pre-pubescent male child who identifies as a girl should be able to use female facilities, since this solution will not be appropriate as they and their peers develop through puberty. It would be better for all to find practical solutions that respect every child’s bodily privacy from the outset, and enable flexibility for a child whose gender dysphoria may resolve.

It should be made clear to a child who identifies as transgender, and to their family, that distinguishing between their sex and feelings of gender identity, and allowing people of the opposite sex to be able to maintain boundaries and bodily privacy, are not challenges to their humanity or their existence. This

supports good relations between people with different protected characteristics, and the teaching of relationship and sex education, and consent.

It should be made clear to all in the school community that everyone is welcome and included, but it is not “transphobic” to recognise that everyone has a sex. This is crucial for equality, safeguarding, sex and relationship education, and good relations.

Annex: Model policy for a school

Purpose of this policy

1. The purpose of this policy is to set a framework for how [school] will support students in relation to gender-identity issues.
2. This policy forms part of our overall Equal Opportunities Policy in relation to students, and supports staff in meeting the requirements of the Equality Act 2010 (in relation to the protected characteristics of sex and “gender reassignment” in particular). It is also aligned with our Safeguarding Policy and responsibilities, and our Anti-Bullying Policies.

Scope of the policy

3. The policy applies to all pupils in relation to admissions, teaching and learning, pastoral provision, scholarships and awards, health and safety, personal conduct, and complaints and disciplinary procedures.
4. The policy clarifies the ways in which school rules, provisions, criteria and practices address the need to ensure that pupils who are gender non-conforming or gender questioning, or who identify as transgender or non-binary, are not treated less favourably than other pupils.

Guiding principles

5. The school values all its students and staff and aims to create an inclusive culture, workplace and learning environment that protects everyone from unjust or unfair treatment based on age, sex, race, disability, religion and belief, pregnancy and maternity, sexual orientation, gender reassignment or marriage and civil partnership.
6. The school seeks to establish and maintain an environment where children feel secure, are encouraged to talk and are listened to when they have a worry or concern.
7. The school aims to respond to children with complex needs or are going through a difficult period in their life, and to support their health, wellbeing and educational attainment.
8. The school aims to treat all pupils with dignity and respect.
9. The school does not support stereotypes about the appearance, behaviour or interests expected of girls and boys, or women and men.
10. Every child should be free to express their identity, but expressing an alternative gender identity or proposing to transition does not change a child’s sex.

Protection against harassment and bullying

11. Bullying is defined as behaviour by an individual or group usually repeated over time, that intentionally hurts another individual or group either physically or emotionally
12. Bullying includes name-calling, taunting, mocking and making offensive comments, offensive graffiti, excluding people from groups, gossiping and spreading hurtful or untrue rumours, kicking, hitting, pushing, taking belongings and cyber-bullying.
13. All pupils, staff and parents shall be encouraged to value and respect others. Incidents of bullying and harassment will not be tolerated, including those based on sex, sexual orientation, gender non-conformity and beliefs about gender.
14. The school works hard to ensure that all students know the difference between bullying, “falling out” and disagreeing.

15. Excluding children from facilities for the opposite sex is not bullying. Expectations will be stated clearly and respectfully by the school. Individual children will not be permitted to negotiate access to facilities for the opposite sex.

Confidentiality

16. The school is not able to admit a child on the condition that their sex must be kept confidential from other students and staff, or that staff will lie about their sex. We believe that keeping secrets about sex is inappropriate and makes the children themselves vulnerable, and prevents the school from fulfilling its duty of care to all pupils.
17. Records about health and welfare are kept separate from pupils' academic files in a secure place and marked "Strictly Confidential".
18. The school will respect the confidentiality of all students and will not reveal sensitive personal information without the prior agreement of the individual, except to protect their vital interests, in line with our safeguarding policy.

Pastoral care

19. Students who have any concerns about their own wellbeing or the wellbeing of another student should feel free to approach their form tutor or head of year, whether that concern is to do with academic studies, health, relationships with other students, issues at home or any other matter.
20. Parents are welcome to contact the school at any time to discuss their child's welfare and progress or relevant medical or social issues. Such enquiries should be directed, in the first instance, to the child's Head of Year. Appointments can also be made with other members of the Leadership Group, including the Head teacher.

Safeguarding

21. A child disclosing gender-identity issues must not fall outside of normal safeguarding practice, as outlined in our Safeguarding Policy, including the commitment to work in partnership with parents.
22. Staff should be aware that children experiencing gender-identity issues may also raise safeguarding concerns, such as significant changes in behaviour, performance or attitude, mental-health issues, self-harm, self-medication, emotional or sexual experiences in which they may have been significantly harmed, or relationships that put them in danger.
23. If any member of staff is concerned about a child, he or she must inform the Designated Senior Person and record information regarding the concerns on the same day.
24. If a child confides in a member of staff or volunteer and requests that the information is kept secret, it is important that the member of staff/volunteer tell the child in a manner appropriate to the child's age and stage of development that they cannot promise complete confidentiality. Instead, they must explain that they may need to pass information to other professionals to help keep the child or other children safe.
25. Any proposed action in relation to child-welfare concerns should be undertaken with prior discussion with the parents, unless to do so would place the child at risk of harm.

Uniform

26. All items of school uniform and dress code apply equally to children of either sex. Any item that can be worn by a boy can also be worn by a girl, and vice versa.
27. Clothing requirements are based on sex only where this is needed for health, safety and dignity, such as athletic protectors for boys and appropriate coverage of swimwear for girls.

Names and pronouns

28. Children may ask to be called by a different forename than that in their official records (for example a familiar or shorter version, a middle name or a complete change of first name, including a name associated with the opposite sex).
29. Pupils who want to change the name they go by in daily use can do so by filling in a form available at student services, and this will be added to the register alongside their legal name. A confirmation will be sent to their parents.
30. If a child's name is legally changed by deed poll, parents should bring this information to the school office and records will be updated.
31. If a child is taking external examinations, there is the option of having the male/female flag removed from qualifications systems by exam boards. Please contact the school office at least three months before the exam to enable this request to be granted.
32. Pronouns are words that other people use to refer to a person (generally he/him or she/her). Pupils may request that teachers and peers use "preferred pronouns" for them, but they cannot compel this, nor will the school agree to use different pronouns when talking about a child to their parents.

Sports

33. Not all sporting activities at school are segregated by sex, but where they are this is for safety and fairness, particularly of female participants, or for "positive action" (such as encouraging girls to take up football).
34. In considering whether a sport, game or other activity should be offered separately to girls and boys, we take into account the age and stage of development of the year group, not of each individual.
35. Where sports are organised separately for girls and boys, this is by sex, not gender identity
36. All pupils are welcome to play in mixed sports and in sports with others of the same sex.

Trips away

37. Trips away are an important enrichment of school life. We plan them with full risk assessment and seek to make them accessible to all.
38. Children and parents with any concerns or anxiety about trips away should contact the organiser in advance to discuss particular needs.
39. Sleeping arrangements are organised by sex, not gender identity.

Toilets and changing rooms

40. Single-sex facilities are the simplest way of providing privacy for girls and boys over the age of 8.
41. Our toilets and changing rooms are segregated by sex, not gender identity.
42. All pupils are welcome to use the single-sex facilities that correspond with their sex.
43. We recognise that some children will not feel comfortable in single-sex facilities and will endeavour to provide alternatives for children who would feel more comfortable with greater privacy (i.e. single-occupancy unisex facilities).

Further resources

Official guidance

EHRC: Technical Guidance for Schools in England

www.equalityhumanrights.com/sites/default/files/technical_guidance_for_schools_england.pdf

EHRC: What equality law means for you as an education provider: schools

<https://www.equalityhumanrights.com/en/publication-download/what-equality-law-means-you-education-provider-schools>

DFE: The Equality Act 2010 and schools www.gov.uk/government/publications/equality-act-2010-advice-for-schools

DFE: Gender separation in mixed schools

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/719398/Gender-separation-guidance.pdf

DFE: Plan your relationships, sex and health curriculum

<https://www.gov.uk/guidance/plan-your-relationships-sex-and-health-curriculum>

Other resources

Transgender Trend: Supporting gender-diverse and trans identified children in school

<https://www.transgendertrend.com/product/school-resource-pack-3rd-edition-digital-download/>

Transgender Trend: Transgender Schools Guidance Safeguarding Concerns

<https://www.transgendertrend.com/product/safeguarding-concerns/>

Safe Schools Alliance Fact sheets

<https://safeschoolsallianceuk.net/resources-2/factsheets>

Endnotes

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- ¹ Thanks also to For Women Scotland for advice on the Scottish Edition.
- ² HM Government (2018) Working Together to Safeguard Children, A guide to inter-agency working to safeguard and promote the welfare of children https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/779401/Working_Together_to_Safeguard-Children.pdf and Scottish Government (2006) Getting It Right for Every Child <https://www.gov.scot/policies/girfec/>
- ³ EHRC. 2014. Technical Guidance for Schools in England https://www.equalityhumanrights.com/sites/default/files/technical_guidance_for_schools_england.pdf
- ⁴ EHRC. 2014. What equality law means for you as an education provider: schools <https://www.equalityhumanrights.com/en/publication-download/what-equality-law-means-you-education-provider-schools>
- ⁵ The NHS Gender Identity Development Service doubled between 2014-15 and 2015-16; growth in referrals has slowed down more recently <https://tavistockandportman.nhs.uk/about-us/news/stories/referrals-gender-identity-development-service-gids-level-2018-19/> The number of children changing their names by deed poll has seen a 30-fold increase <https://www.thetimes.co.uk/edition/news/jo-or-joe-surge-in-trans-children-changing-names-5xftj66j6>
- ⁶ Littman, Lisa. 2018. Parent reports of adolescents and young adults perceived to show signs of a rapid onset of gender dysphoria. PLOS ONE 14(3): e0214157. <https://doi.org/10.1371/journal.pone.0214157>
- ⁷ <https://safeschoolsallianceuk.net/get-involved/write-to-your-local-education-authority/>
- ⁸ DFE (2020) [Plan your relationships, sex and health curriculum](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/864812/Plan_your_relationships_sex_and_health_curriculum.pdf)
- ⁹ Bell and Mrs A v Tavistock and Portman <https://www.judiciary.uk/wp-content/uploads/2020/12/Bell-v-Tavistock-Judgment.pdf>
- ¹⁰ Education Scotland (2021) Child Protection and Safeguarding Policy Education Scotland <https://education.gov.scot/media/dkxhghwz/child-protection-and-safeguarding-policy-es-feb21.pdf>
- ¹¹ While adults can change their legally recorded sex via a gender recognition certificate, this is not available to children under 18.
- ¹² The surgical suite: Modern-day closet for today's teen lesbian <https://4thwavenow.com/2016/01/25/the-surgical-suite-modern-day-closet-for-todays-teen-lesbian/>
- ¹³ Biggs, M. 2019. The Tavistock's Experiment with Puberty Blockers, Department of Sociology and St Cross College, University of Oxford. http://users.ox.ac.uk/~sfos0060/Biggs_ExperimentPubertyBlockers.pdf
- ¹⁴ Gender Recognition Act 2004 <https://www.legislation.gov.uk/ukpga/2004/7/contents>
- ¹⁵ <https://www.equalityhumanrights.com/en/our-work/news/our-statement-sex-and-gender-reassignment-legal-protections-and-language>
- ¹⁶ For example, Keeping Children Safe in Education states that: "At all times, the school or college should be actively considering the risks posed to all their pupils and students and putting adequate measures in place to protect them and keep them safe."
- ¹⁷ For example, as the NSPCC says, keeping secrets and isolating children puts them at risk of grooming: "Groomers might also try and isolate children from their friends and family, making them feel dependent on them and giving the groomer power and control over them. They might use blackmail to make a child feel guilt and shame or introduce the idea of 'secrets' to control, frighten and intimidate." <https://www.nspcc.org.uk/what-is-child-abuse/types-of-abuse/grooming/>
- ¹⁸ DFE, 2013. School uniform: guidance for schools. <https://www.gov.uk/government/publications/school-uniform>

¹⁹ Equality Act 2010, Schedule 22 Paragraph 1.

²⁰ Equality Act 2010. Schedule 3 Paragraph 27 (6)

²¹ LGBT Youth Scotland/ Scottish Trans Alliance (2017) Supporting Transgender Young People Guidance for Schools In Scotland. <https://www.lgbtyouth.org.uk/media/1344/supporting-transgender-young-people.pdf>

²² EHRC. 2014. Technical Guidance

²³ Single-sex schools are allowed to admit children of the opposite sex exceptionally, but this does not mean they have to admit children of the opposite sex. For example, as the DFE guidance states: “Even if the daughters of certain staff members at the boys’ school are allowed to attend, you are still regarded as a single sex school and are not discriminating unlawfully against girls by not admitting any girls other than daughters of staff.” DFE (2014), What equality law means for you as an education provider: schools.

https://www.equalityhumanrights.com/sites/default/files/what_equality_law_means_for_you_as_an_education_provider_schools.pdf

²⁴ School Premises (General Requirements and Standards) (Scotland) Regulations

1967 <https://www.legislation.gov.uk/ukxi/1967/1199/made>

²⁵ EHRC. 2014. Technical Guidance

²⁶ NSPCC. 2108. Safe Use of Changing Facilities. <https://thecpsu.org.uk/media/445544/safe-use-of-changing-facilities-lg-sept-2018.pdf>

²⁷ Article 9 of the European Charter of Human Rights (ECHR), to which the UK is a signatory, gives individuals the right to freedom of thought and to manifest their protected beliefs. Article 10 of the ECHR gives the right to freedom of expression, which also involves the right not to say what you do not believe. Lee vs Asher. 2018 USC <https://www.supremecourt.uk/cases/uksc-2017-0020.html>

ABOUT THE ORGANISATIONS

Sex Matters is a UK based not-for-profit organisation. We have a singular mission: to reestablish that sex matters in rules, laws, policies, language and culture in order to protect everybody's human rights.

Sex Matters was founded by solicitor Rebecca Bull, barrister Naomi Cunningham, policy researcher Maya Forstater, and development biologist Dr Emma Hilton. We campaign, advocate and produce resources to promote clarity about sex in law, policy and institutions. Our priorities are to:

- **Establish clarity about the law** – Sex is a protected characteristic, and the Equality Act 2010 protects single-sex services. Clear guidance for organisations is needed.
- **Support people to speak up** – It should not take courage to say that sex is real, binary, immutable and important – but right now it does.
- **Empower organisations** – We work to empower organisations to adopt sound, fair and transparent policies that reflect material reality and protect everybody's human rights.

Contact us at info@sex-matter.org. Our briefings and resources can be downloaded from www.sex-matters.org.

Transgender Trend is the leading UK organisation calling for an evidence-based approach to the treatment of gender dysphoria in children and young people and for factual teaching about sex and biology in schools. We are also concerned about legislation which places transgender rights above the right to safety for girls and young women in public toilets and changing rooms along with fairness for girls in sport.

Our team includes teachers and safeguarding professionals, academics and parents. Founder and Director Stephanie Davies-Arai was shortlisted for the John Maddox Prize 2018 for the schools guide Supporting gender diverse and trans-identified students in schools. Stephanie's reputation and work in these fields was acknowledged when she was granted permission to intervene in the groundbreaking judicial review Bell v Tavistock in October 2020.

Our website www.transgendertrend.com is consulted worldwide by governments, universities and other professional bodies. Our resources for schools are consistent with equality law and best practice for helping to support trans identified and gender non-conforming young people in schools. Contact us at info@transgendertrend.com.

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