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## **Thousands of English schools in danger of breaking the law on sex and gender**

### **Experts call for new UK government guidance to be aligned with the law**

Launching the UK's first review of the legal framework on sex and gender in education, Sex Matters has warned that thousands of schools and colleges in England are in danger of breaching legal requirements due to a lack of government guidance and faulty existing guidance from the Equality and Human Rights Commission.

Titled [Keeping children safe as boys and girls in education](#), the review found that schools are legally obliged to recognise sex in a wide range of areas, including registration, data protection, toilet and changing facilities, and behaviour policies, and that it is crucial that every teacher know each child's sex in order to fulfil their duty of care and safeguarding.

[Polling by YouGov](#) has found that four-fifths of teachers (79%) say their schools have pupils who identify as trans or non-binary. Four-fifths (81%) say their schools would use chosen pronouns, while a fifth (19%) say their schools would also allow pupils to use the facilities of their "gender identity" rather than their sex.

Sex Matters has highlighted that in taking these steps, schools may be breaching the law, putting them at risk of being sued.

Sex Matters' executive director Maya Forstater said: *"We spoke to education, equality and safeguarding experts, lawyers, teachers, parents and school leaders and we looked at the breadth of legislation and regulations for schools.*

*"None of this legislation tells schools that they can lie about a child's sex, or that they should place some children outside of the normal rules and protections for girls and boys. Schools that get confused about the law and that don't have clear policies will be at risk of breaching their statutory duties."*

Sex Matters analysed more than 20 laws and regulations, including the Education Act, the School Standards and Framework Act, Teachers' Standards, the National Curriculum and statutory guidance on safeguarding.

Sex Matters found that there is no legal provision for schools to record or treat children as being the sex that they are not, and that there is no obligation for single-sex schools to admit children of the opposite sex.

The review found that social transition in schools, including mandating the use of preferred pronouns, is inconsistent with statutory obligations including safeguarding requirements and human-rights law.

Miriam Cates MP said: *“Schools need to have clear and fair rules that apply to everyone in order to keep children safe.”*

*“Given the unsafe and potentially unlawful ‘self-ID’ practices that are now prevalent in many schools, it is the responsibility of the Secretary of State for Education to provide clear guidance to teachers that makes clear their safeguarding duties to all children, including those questioning their gender.”*

The review also highlighted that the Education Act 1996 strictly forbids political indoctrination, and that schools and teachers may not promote or express partisan political views or personal beliefs in ways that exploit pupils’ vulnerabilities. Recent high-profile stories in the media highlight cases in both the curriculum and teachers’ behaviour.

Schools are also obliged to respect pupils’ philosophical beliefs, and a requirement on children to refer to a boy as “she” or a girl as “he” (i.e. a ban on “misgendering”) is likely to constitute belief discrimination against children and parents. Maintained schools are also obliged to respect children’s article 9 and 10 rights to freedom of belief and freedom of expression.

Education law barrister Alice de Coverley said: *“Children and young people are as entitled to protection under the Equality Act 2010 as adults are – schools must consider the welfare of all their pupils, and respect their rights.”*

*“Pupils are protected against discrimination on the basis of sex, sexual orientation, gender reassignment, religion, belief and disability. Schools need to take effective steps to remove barriers to equality while protecting the welfare of all pupils.”*

Sex Matters’ legal review has been launched ahead of a much-anticipated update on guidance for schools and colleges in England from the Secretary of State for Education, Gillian Keegan, on what to do when a child is “questioning their gender”. Keegan announced in July that there would be a delay in publishing the guidance.

Sex Matters is urging the government to ensure its guidance is consistent with the law. The group [wrote to the Minister for Women and Equalities Kemi Badenoch](#) in early August, calling on her to ask the Equality and Human Rights Commission explicitly whether it still believes that the interpretation of the Equality Act it has been giving to schools since 2014 is correct.

Sex Matters has sent its review to the Minister and Secretary of State for Education, Gillian Keegan.

**Journalists who would like to interview anyone quoted here, please contact [press@sex-matters.org](mailto:press@sex-matters.org) or call Sally Parkin, Sex Matters’ press officer, on 07956 316 248.**

**To subscribe to the Sex Matters weekly memo on news about sex and gender, or to receive our press notices, please [sign up here](#).**

## Notes for editors

### Links and references

- **Sex Matters review of legal framework on sex and gender in schools:** *Keeping children safe as boys and girls in education* (attached – link to follow once embargo lifted)
- **YouGov poll:** <https://sex-matters.org/posts/updates/school-survey/>
- **Sex Matters letter** to Minister for Women and Equalities Kemi Badenoch: [https://sex-matters.org/wp-content/uploads/2023/08/20230809\\_Kemi-Badenoch.pdf](https://sex-matters.org/wp-content/uploads/2023/08/20230809_Kemi-Badenoch.pdf)
- **Sex Matters schools guidance resources:**
  - Blog: Getting to good schools guidance, August 2023: <https://sex-matters.org/posts/schools-and-safeguarding/getting-to-good-schools-guidance/>
  - Publication: Why social transition in schools is not possible, May 2023: <https://sex-matters.org/posts/publications/why-social-transition-in-schools-is-not-possible-and-government-guidance-should-say-so-clearly/>
  - Publication: Sex Matters Schools Guidance, February 2023: <https://sex-matters.org/posts/publications/sex-and-gender-identity-keep-your-pupils-safe-and-comply-with-the-law/>
  - Webinar: Sex Matters in Schools webinar, October 2022: <https://sex-matters.org/posts/publications/guidance/for-teachers/sex-matters-in-schools-webinar/>
  - Publication: Sex and gender: model policy for schools: <https://sex-matters.org/posts/publications/sex-and-gender-model-policy-for-schools/>
- **Secretary of State for Education Gillian Keegan** announces delay in schools guidance in July 2023: <https://questions-statements.parliament.uk/written-statements/detail/2023-07-20/hcws983>
- **Amanda Spielman, His Majesty's Chief Inspector for Ofsted**, told Parliament in November 2022 that guidance which incorporates safeguarding is urgently needed: <https://committees.parliament.uk/oralevidence/11604/html/> Excerpts:
  - *"The first thing to say is that there is very limited guidance for schools at the moment. The Department for Education is working towards some guidance that has been expected for some time. We are now hoping that it will be published sometime around the end of the year. I have not myself seen the draft, but it is clearly urgently needed. The issues have become way more complicated over the last few years."*
  - *"It is very important that parents understand what their child's concerns are if their child is having serious questions or doubts or explorations of gender identity. To keep parents in the dark about that is obviously a safeguarding risk. It is very important for all schools to understand that whether or not a child is exploring gender identities, the*

*fundamental principles of safeguarding continue to apply and biological sex continues to be relevant.”*

- *“I suspect one of the reasons that schools are finding this hard is that there are significant numbers of children beginning to think that they need to explore these issues, but a long delay in getting them to appropriate clinical treatment, which may make schools feel that they need to do something in the meantime. I think that helping schools to manage that matters.”*

### **About Sex Matters**

Sex Matters is a human-rights organisation co-founded in 2021 by Maya Forstater, who is its director, to campaign for sex-based rights. It lobbies for clarity on sex in law and institutions; publishes research, guidance and analysis; supports and mobilises people to speak up; and holds organisations accountable.

### **About Maya Forstater**

Maya Forstater is co-founder and executive director of Sex Matters. In 2019 she lost her job as a researcher with the European arm of American think-tank Center for Global Development, after tweeting and writing about sex and gender. She was the claimant in the landmark test case which established that the protected characteristic of belief in the Equality Act covers gender-critical beliefs. Her website is [forstater.com](https://forstater.com) and she tweets @MForstater.

**Sex Matters** is a human-rights organisation campaigning for clarity about sex in law, policy and language | [sex-matters.org](https://sex-matters.org)