



## BRIEFING PAPER

Number 9078, 10 December 2020

# Provisions to support transgender children in schools

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### Contents:

1. Overview
2. Position in England
3. Policies in Wales, Scotland, and Northern Ireland



# Contents

<b>Summary</b>	<b>3</b>
<b>1. Overview</b>	<b>4</b>
1.1 Provisions to support transgender children in schools	4
<b>2. Position in England</b>	<b>6</b>
2.1 The <i>Equality Act 2010</i> in schools	6
2.2 Curriculum reforms and guidance	9
<b>3. Policies in Wales, Scotland, and Northern Ireland</b>	<b>11</b>

## Summary

This briefing paper and a separate briefing paper, [Gender recognition reform: consultation and outcome](#) (Number 09079, 10 December 2020), together supersede a previous Commons Library briefing paper, [Gender recognition and the rights of transgender people](#) (Number 08969, 22 July 2020). The two new briefing papers include developments since the previous paper was published.

### This paper's coverage

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

In Northern Ireland, [guidance](#) issued by the Education Authority says the European Convention on Human Rights may offer some protections for transgender pupils.

As schools policy is a devolved issue, this briefing focuses on the position in England, but some information is included on relevant policies and pupil experiences in Scotland, Wales, and Northern Ireland.

In 2014, the Equality and Human Rights Commission (EHRC) published guidance on the *Equality Act 2010* and how it applies to schools in [England](#) and [Scotland](#).

The UK Government committed to publishing an update to its guidance for schools on how to apply the *Equality Act 2010* in its [2018 LGBT action plan](#). The Government Equalities Office said in July 2019 that the EHRC was [also developing guidance](#) for schools on supporting transgender pupils.

Across the UK, schools are subject to safeguarding duties to protect pupil wellbeing and are required to have anti-bullying policies. Decisions on uniform, provisions for shared sanitary and changing facilities and mixed sport are primarily made by schools themselves, within their respective statutory framework. Under guidance published following recent curriculum changes in England, all pupils should receive teaching on LGBT relationships during their school years.

A [2017 survey](#) by the charity Stonewall found that nearly two thirds (64%) of surveyed transgender pupils reported being bullied for being LGBT. It also found three in five transgender pupils reported speaking to a member of school staff about being transgender.

Several local authorities have published guidance for schools, but this has sometimes proved controversial. For example, in May 2020 Oxfordshire County Council said it had taken the decision to [withdraw its Trans Inclusion Toolkit](#) and that it would instead adopt expected EHRC guidance. At the same time, the council said it was withdrawing from the judicial review of the Toolkit, which was expected in Autumn 2020.

In England in 2014, the DfE's advice on [The Equality Act 2010 and schools](#) noted that "a partnership of bodies in Cornwall have produced a useful [guidance document for schools and families](#)."

In 2017, the NASUWT Teachers' Union published guides for [England](#), [Wales](#), [Scotland](#) and [Northern Ireland](#).

# 1. Overview

## 1.1 Provisions to support transgender children in schools

### Introduction

In England, Wales and Scotland, the [Equality Act 2010](#) and the associated Public Sector Equality Duty (PSED) prohibits discrimination against transgender children in all schools, regardless of how the school is funded or managed.<sup>1</sup> The *Equality Act 2010* does not apply in Northern Ireland.

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

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

### Transgender pupils' experience of education

The UK Government conducted a [National LGBT survey](#) in 2017. The survey found that of the transgender respondents who were transitioning while at school, 36% said their school was "very" or "somewhat" supportive of their specific needs.<sup>3</sup> An [associated data viewer](#) has also been published. The Government Equalities Office has also published the [LGBT Action Plan](#) (2018) and [LGBT Action Plan: Progress report 2018 to 2019](#) (2019), which provide further information in respect to education.

The Northern Ireland Department of Education published research on the [post-primary school experiences of 16-21 year old people who are LGBT](#) in 2017. In 2013, the Northern Ireland Executive published [Grasping the nettle: The experiences of gender variant children and transgender youth living in Northern Ireland](#).

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

- Nearly two thirds (64%) of surveyed transgender pupils reported being bullied for being LGBT.

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<sup>1</sup> For example, Equality and Human Rights Commission (EHRC), [Public sector equality duty: guidance for schools in England](#), July 2014

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

<sup>3</sup> Government Equalities Office, [National LGBT survey](#), 2018, p15

- One in three transgender pupils (33%) were not able to be known by their preferred name at school.
- Around three in five (58%) were not allowed to use the toilets they felt comfortable in.
- Around three in five (61%) transgender pupils reported speaking to a member of staff at school about being transgender. Of these, nearly three in four (73%) said staff have asked them what would make them feel comfortable at school and accommodated their wishes.<sup>4</sup>

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

The EU Agency for Fundamental Rights conducted a [survey of LGBTI experiences](#) across the EU in 2019, including in the UK.<sup>5</sup> In the UK, the survey found that of transgender respondents aged 15-17, 39% hid their LGBTI identity whilst at school.<sup>6</sup> An [associated data viewer](#) allows users to break down survey results further.

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<sup>4</sup> Stonewall, [School report: The experiences of lesbian, gay, bi and trans young people in Britain's schools in 2017](#), 2017, pp6, 27

<sup>5</sup> EU Agency for Fundamental Rights (AFR), [A long way to go for LGBTI equality](#), May 2020; EU AFR, [Country Data- UK](#), May 2020

<sup>6</sup> EU Agency for Fundamental Rights, [LGBTI survey: Data explorer- Living openly and daily life](#), May 2020

## 2. Position in England

### 2.1 The *Equality Act 2010* in schools

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

Which body is responsible in any situation is dependent on how responsibilities are organised. For example, a local authority may be responsible for admissions, whilst the governing body may be responsible for issues regarding exclusions.<sup>7</sup>

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

- in relation to admissions,
- in the way it provides education for pupils,
- in the way it provides pupils access to any benefit, facility or service, or
- by excluding a pupil or subjecting them to any other detriment.<sup>8</sup>

The Equality and Human Rights Commission (EHRC) has also published [Technical guidance for schools in England](#) (2014) on the *Equality Act 2010*. The EHRC told the Women and Equalities Committee in 2016 that the Act:

Does not provide protection from harassment related to gender reassignment for students in schools, unlike most other protected characteristics; although such treatment by a school may amount to direct discrimination.<sup>9</sup>

The DfE responded saying, "the lack of protection against harassment in this regard is not significant, as the provisions on direct discrimination provide adequate protection in a school setting".<sup>10</sup>

Under the 2010 Act and the Public Sector Equality Duty (PSED), schools must annually publish details on how they are complying with the PSED and at least every four years update their equality objectives.<sup>11</sup>

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<sup>7</sup> EHRC, [What does the equality law mean for you as an education provider: Schools](#), 2014, para 1.3

<sup>8</sup> DfE, [The Equality Act 2010 and schools](#), May 2014, para 1.5

<sup>9</sup> Women and Equalities Committee, [Transgender Equality](#), HC390, 14 January 2016, para 349, [Written evidence submitted by the EHRC to the Transgender Equalities Enquiry](#), para 3.9

<sup>10</sup> Women and Equalities Committee, [Transgender Equality](#), HC390, 14 January 2016, para 350

<sup>11</sup> EHRC, [Public sector equality duty for schools in England](#), 2014, pp3, 6; DfE, [What maintained schools must publish online](#), 25 October 2018

In academies and maintained schools, Ofsted has responsibility for ensuring schools fulfil their statutory duties under the Act, assessing whether schools have effective anti-bullying policies, and ensuring schools promote equality of opportunity within an inclusive environment.<sup>12</sup>

The UK Government committed to publishing an update to its guidance for schools on how to apply the *Equality Act 2010* in its [2018 LGBT action plan](#).<sup>13</sup> The Government Equalities Office said in July 2019 that the EHRC was [also developing guidance](#) for schools on supporting transgender pupils.<sup>14</sup> Elements of draft EHRC guidance were reported in the press in September 2019.<sup>15</sup>

## Published guidance and advice (England)

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

On the separation of pupils by any protected characteristic, the guidance says schools must justify to Ofsted (if they are in the state sector) and others the reasons for the separation, and:

Where a statutory exception is relied upon, they will be expected to demonstrate that they have considered and documented why the exception applies. Outside the specific statutory exceptions, they should be in a position to demonstrate that separation does not give rise to any detriment because its effect is negligible.<sup>16</sup>

Several local authorities have published guidance for schools, but this has sometimes proved controversial. For example, in May 2020 Oxfordshire County Council [said](#) it had taken the decision to withdraw its 'Trans Inclusion Toolkit' and that it would instead adopt expected Equality and Human Rights Commission guidance.<sup>17</sup> At the same time, the council said it was withdrawing from a judicial review of the Toolkit which was expected to be heard in Autumn 2020.<sup>18</sup>

In 2014, the DfE's advice on [The Equality Act 2010 and schools](#) in England noted: "a partnership of bodies in Cornwall have produced a useful [guidance document for schools and families](#)."

In 2017, the NASUWT Teachers' Union published guides for [England](#), [Wales](#), [Scotland](#) and [Northern Ireland](#).

The following Library briefings provide further information on specific policies:

- [Relationships and Sex Education in schools \(England\)](#)
- [Safeguarding in English schools](#)
- [Bullying in UK schools](#)

<sup>12</sup> Ofsted, [School inspection handbook](#), November 2019, p53 and paras 53, 218, 226, 243; Ofsted, [Guidance: Inspecting teaching of protected characteristics in schools](#), 17 September 2020, 'How we inspect'

<sup>13</sup> Government Equalities Office, [LGBT Action Plan](#), July 2018, p12; Government Equalities Office, [LGBT Action Plan: One year on](#), July 2019, p12.

<sup>14</sup> Government Equalities Office, [LGBT Action Plan: One year on](#), July 2019, p12

<sup>15</sup> [Girls must bow to trans rights in new rules for schools](#), Sunday Times, 14 September 2019

<sup>16</sup> DfE, [Gender separation in mixed schools](#), June 2018, para 3

<sup>17</sup> [Council ditches trans guidance on lavatories after girl's victory](#), The Times, 9 May 2020; Oxfordshire County Council, [Statement on the Trans Inclusion Toolkit](#), updated 4 May 2020

<sup>18</sup> Ibid.

### Toilet facilities and changing rooms

As noted in the DfE blog [Gender identity in schools](#), it is “up to schools to decide what facilities they provide, including whether to provide unisex or gender neutral toilets,” as long as policies adhere to statutory regulations and are inclusive.<sup>19</sup>

The DfE’s [Advice on standards for school premises](#) for both local authority and academy schools and the [School Premises Regulations \(England\) 2012](#) state that separate toilet facilities for boys and girls aged eight years or over must be provided, except where the toilet facility is provided in a room that can be secured from the inside to ensure the privacy of the occupant and is intended for use by one pupil at a time.<sup>20</sup>

The same advice says suitable changing accommodation and showers must be provided for pupils aged 11 years or over at the start of the school year who receive physical education, although gender considerations are not set out in this regulation.<sup>21</sup>

### Sports

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

A sport, game or other activity of a competitive nature in circumstances where the physical strength, stamina or physique of the average girl (or boy) would put her (or him) at a disadvantage in competition with the average boy (or girl).<sup>22</sup>

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

The judgment on whether girls would be at a physical disadvantage needs to take into account the particular group in question, so it is much less likely to justify separation in relation to sports for younger children. It is appropriate for schools to take account of the age and stage of development of children who are likely to be competitors in considering whether an activity is gender-affected.<sup>23</sup>

### School uniforms

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

The DfE’s 2013 [school uniform guidance](#) (which is not legally binding), says schools should consider their obligations to not discriminate unlawfully or put “certain people at a particular disadvantage because

Organisations have also issued guidance on supporting transgender pupils in England:

- NASUWT, [Guidance for teachers and school leaders](#)
- National Education Union, [Supporting trans and gender questioning students](#)
- Cornwall County Council/Intercom, [Schools Transgender Guidance](#)

<sup>19</sup> [Gender identity in Schools](#), DfE in the Media, 22 June 2016

<sup>20</sup> DfE, [Advice on standards for school premises](#), March 2015, pp5, 6

<sup>21</sup> [Ibid](#), p5

<sup>22</sup> DfE, [Gender separation in mixed schools](#), June 2018, para 10

<sup>23</sup> [Ibid](#), para 10

of their gender, race, sexual orientation, religion or belief or gender reassignment," by designing flexible policies "to allow for necessary exceptions." <sup>24</sup>

## 2.2 Curriculum reforms and guidance

Relationships and Sex Education (RSE) in English schools has recently been reformed. This section provides an overview of the changes and relevant guidance. Wider information can be found in the Library briefing [Relationships and Sex Education in Schools \(England\)](#).

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

The changes involve:

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

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

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

The disruption caused by the coronavirus pandemic means that, while the legal provisions came into force on 1 September 2020, [schools may delay their introduction of the new requirements until summer 2021](#) if they are not ready to begin teaching the revised subjects.

In September 2020, the DfE published:

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

The guidance on planning the curriculum provides the following information about how and when gender issues should be covered:

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

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<sup>24</sup> DfE, [School uniform: Guidance](#), 2013, pp4, 6; DfE, [The Equality Act 2010 and schools](#), May 2014, para 2.17

## 10 Provisions to support transgender children in schools

We are aware that topics involving gender and biological sex can be complex and sensitive matters to navigate. You should not reinforce harmful stereotypes, for instance by suggesting that children might be a different gender based on their personality and interests or the clothes they prefer to wear. Resources used in teaching about this topic must always be age-appropriate and evidence based. Materials which suggest that non-conformity to gender stereotypes should be seen as synonymous with having a different gender identity should not be used and you should not work with external agencies or organisations that produce such material. While teachers should not suggest to a child that their non-compliance with gender stereotypes means that either their personality or their body is wrong and in need of changing, teachers should always seek to treat individual students with sympathy and support.<sup>25</sup>

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<sup>25</sup> DfE, [Plan your relationships, sex and health curriculum](#), 24 September 2020

### 3. Polices in Wales, Scotland, and Northern Ireland

#### Wales

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

NASUWT Cymru has also published guidance on [trans equality in schools and colleges](#) in 2017.

The Welsh Schools Inspectorate, Estyn, has published [Celebrating diversity and promoting inclusion: Good practice in supporting lesbian, gay, bisexual and transgender \(LGBT\) learners in schools and colleges](#) (October 2020). Estyn recommended that "all schools and colleges review how well they teach diversity and inclusion and integrate these into everyday life".<sup>26</sup>

#### Scotland

The *Equality Act 2010* is in force in Scotland, and the EHRC published [Technical guidance for schools in Scotland](#) (2014) on the Act. In 2019, draft guidance from the EHRC regarding Scotland was reported in the press, but no further guidance for schools has been published.<sup>27</sup>

The [Children and Young People \(Scotland\) Act 2014](#) places a duty on the Scottish Government to take account of the UNCRC and children's rights. Local authorities should also take steps to improve understanding and realisation of these rights.

NASUWT Scotland published guidance entitled '[Trans Equality in Schools and Colleges](#)' in 2017.

The charity LGBT Youth Scotland published [Supporting transgender young people: Guidance for schools in Scotland](#) in 2017 (updated January 2020). This was endorsed by 16 local authorities and is available on Education Scotland's National Improvement Hub website.<sup>28</sup>

The Children's Commissioner for Scotland said changes should be made to some recommendations in LGBT Youth Scotland's guidance and called for a Children's Rights Impact Assessment "prior to [it] being further promoted or used in schools."<sup>29</sup> The Scottish Government said in 2019 that it is "supportive of the guidance", but was "neither asked

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<sup>26</sup> Estyn, [Schools and colleges in Wales urged to review their support for LGBT learners](#), 15 October 2020

<sup>27</sup> [Girls schools could admit transboys under proposals being considered by the equalities watchdog](#), The Telegraph, 30 August 2019; [Scots head teachers warned over PE ban on transgender pupils](#), The Times, 1 September 2019

<sup>28</sup> Education Scotland, [Supporting transgender young people- Guidance for schools in Scotland](#), January 2020, p58

<sup>29</sup> [Trans guidance for Scottish schools breaches children's rights, campaigners warn](#), The Herald, 30 January 2019; [Schools transgender guidance will not be reviewed](#), STV, 18 February 2019

## 12 Provisions to support transgender children in schools

nor considered endorsement” of the document,<sup>30</sup> and in June 2019 committed to “replac[ing] the LGBT Youth Scotland work with guidance from the Scottish Government” following an equality impact assessment and children’s rights assessment.<sup>31</sup> The Scottish Government has said the new guidance has been delayed due to the coronavirus pandemic.<sup>32</sup>

In 2018, the Scottish Government’s [LGBTI Inclusive Education Group](#) put forward recommendations for improvement. Scottish ministers accepted [33 of them in full](#). The recommendations included embedding LGBTI teaching across the curriculum, including in subjects beyond relationships, sexual health and parenthood.<sup>33</sup> The Scottish Government said the recommendations would be implemented by March 2021.<sup>34</sup>

### Northern Ireland

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

On legal protections for transgender pupils, the guidance says (emphasis in original):

4.2 [...] Unlike Great Britain, there is no legal protection from discrimination for transgender pupils in education. Guidance from the Equality Commission for Northern Ireland outlines that although schools in Northern Ireland have a responsibility not to discriminate against pupils on the protected grounds of sex, sexual orientation, race or disability *‘the law does not apply to age, religious belief and political opinion and gender reassignment in schools’*.<sup>35</sup>

The Education Authority says the European Convention on Human Rights may offer relevant protections in respect to the right to freedom from discrimination and the right to family and private life.<sup>36</sup>

In 2016, the Equality Commission for Northern Ireland recommended changes to the law to strengthen protections for transgender children in schools.<sup>37</sup> Currently, the Commission recommends schools adopt a “good practice” approach that:

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<sup>30</sup> Scottish Government, [“Supporting transgender young people: Guidance for schools in Scotland” FOI review](#), 27 June 2019

<sup>31</sup> Scottish Parliament, [Question 1 \[Children and Young People \(Rights and Wellbeing\)\]](#) 3 October 2019; [Gender Recognition Act 2004 Review](#), 20 June 2019

<sup>32</sup> [School lavatory gender rules still in force after Ministers rejected them](#), The Times, 15 August 2020

<sup>33</sup> Scottish Government, [LGBTI education](#), 8 November 2018

<sup>34</sup> Scottish Government, [Guidance note to education authorities on LGBT inclusive education](#), May 2019.

<sup>35</sup> Education Authority, Guidance for Schools, [EOTAS centres and youth services on supporting Transgender Young People](#), October 2019, para 4.2

<sup>36</sup> [Ibid.](#), para 4.6, p14, n66

<sup>37</sup> Equality Commission Northern Ireland, [Gender law reform](#), November 2016, pp11-13

Extends beyond the mere letter of the law to include pupils who are disadvantaged because they are transgender, or because of their religious belief and political opinion.<sup>38</sup>

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

The NASUWT Teaching Union has published [Trans Equality in Schools and Colleges](#) (2017) in Northern Ireland.

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<sup>38</sup> Equality Commission Northern Ireland, [Good practice: A transgender pupil](#)

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