

**Department for Education consultation**

**Guidance for Schools and Colleges: Gender Questioning Children Government**

**Response of the British Sociological Association**

**March 2024**

*[Condensed version for web publication]*

**Structure and overall guidance**

Question:

Do you think the structure of the guidance is easy to follow?

Response:

No. The guidance does not contain information on the Equality Act 2010 Protected Characteristic of 'gender reassignment'. The guidance does not have practical guides for schools in terms of changing records, facilitating trips, use of facilities. There is much more information in the Guidance for Scottish Schools (2021) published by the Scottish Government.

Question:

Does this guidance provide practical advice to support schools and colleges to meet their duties effectively?

Response:

No. This document offers no advice on meeting the Equality Act 2010 with regard to the protected characteristic of 'gender reassignment'. There is a lack of detailed information on the practicalities of working with trans and gender diverse pupils. There are no case studies and there is a lack of reference to school systems. The 2021 Scottish guidance has in depth advice and examples on meeting the needs and protecting this group of pupils.

**Responding to Requests and Engaging parents**

Question:

Does this section provide enough detail to help schools and colleges support children?

Response:

No. There is not enough information on any of these areas. On the law, there is no mention whatsoever of the relevant protection under the Equality Act. There is a lack of guidance on meeting requirements under the Human Rights Act 1998, including the right to privacy and freedom from discrimination.

Question:

Think about the points outlined for schools and colleges to consider on pages 9-11 regarding making decisions about how to respond to requests for social transition. Are these points helpful?

Response:

No. The guidance seems to treat trans and gender diverse pupils as an immediate Safeguarding concern. The guidance presents social transition, including even using a nickname, changing a hairstyle or uniform or experimenting with pronouns, as a medical and medicalised process. The guidance encourages a pathologising response to pupils. The guidance frames trans and gender diverse pupils as a default threat or danger to other pupils. This is unhelpful and stigmatising. A school is not a Gender Identity Service or CAMHS, it would not be appropriate for schools to be involved with medical or clinical advice.

### **Registration of Name and Sex**

Question:

Does this section on page 12 provide enough detail for schools and colleges to ensure each child is recorded correctly and according to the Education Act 1996, Pupil Registration (England) Regulations 2006, GDPR and the Data Protection Act?

Response:

No. The guidance frames a pupil changing names, using a nickname, or experimenting with pronouns as a default Safeguarding concern and potential threat to other pupils. It offers no practical guidance, examples or case studies on how schools have used school systems to quickly alter records where needed. The guidance suggests schools do not have to accommodate such requests, however, under the Equality Act, a pupil with the protected characteristic of 'gender reassignment' would indeed be protected.

### **Changing Names**

Question:

Does this section on page 12 provide enough detail for schools and colleges to respond to a child's requests to change their name?

Response:

No. The current guidance does not provide adequate information and is actively misleading in not informing schools of their duties to protect and accommodate trans and gender diverse students under the Equality Act, Human Rights Act and other relevant laws such as the UN Convention on the Rights of the Child.

### **Pronouns**

Question:

Does this section on page 13 provide enough detail for schools and colleges to respond to a child's requests to change their pronouns?

Response:

No. Further guidance is needed. By framing trans and gender diverse pupils as an inherent risk, threat or danger to other pupils, and by framing this as an immediate Safeguarding concern, the guidance directs schools to immediately involve parents in any discussion about gender identity, preferred pronouns or name uses etc. but it is a fundamental principle of Safeguarding that parents and families are not always safe for children and in some cases may be a risk to pupils. 'Outing' trans or gender diverse pupils to parents and family should not be a default position, and would have to be done with consideration for the child's best interests and safety.

### **Single-Sex Spaces - Toilets, Changing Rooms and Showers and Boarding and Residential Accommodation**

Question:

Does this section on pages 14 and 15 provide enough detail for schools and colleges to respond when a child who is questioning their gender makes a request to use facilities (e.g. toilets, changing rooms, showers and boarding and residential accommodation) designated for the opposite sex?

Response:

No. There is no practical guidance, examples or case studies on how schools have done this or could do this. Pupils with the protected characteristic of 'gender reassignment' under the Equality Act must be protected and accommodated, there should not be a default position of forcing trans pupils into spaces for their sex registered at birth, or should there be a default provision of segregation. Trans pupils have rights to use the facilities for the sex they identify as. Unisex provisions can be accessible to all and should be available. There is no practical information in this guidance about practical measures to accommodate pupils.

Question:

Think about the circumstances provided in the guidance on pages 14 and 15, outlining the option for schools and colleges to find alternative facilities. Does the guidance provide enough support to help schools and colleges determine how to offer alternative facilities?

Response:

No. There is no practical information on creating accessible, safe, private facilities for all. Can privacy be increased in unisex spaces? How could this be done? Can you provide examples and case studies from schools that have done this?

Question:

Does this section provide enough detail for schools and colleges to support children who do not wish to use accommodation that is designated for their sex in relation to boarding and overnight accommodation?

Response:

No. No information is provided. There are no case studies or practical examples. Pupils with the protected characteristic of 'gender reassignment' have the right to be accommodated and should not be discriminated against. There should be information provided on how to improve privacy for all, and how to ensure that trans pupils are not segregated by default or framed as an innate threat or danger to other students; they are a pupil in need of protection.

## **Uniform**

Question:

Does this section on page 16 provide enough detail for schools and colleges to respond to a gender-questioning child who makes a request in relation to uniform?

Response:

No. There is no practical guidance on how schools do this in practice. A change of uniform is framed as 'social transition' which is framed as dangerous and an immediate Safeguarding concern. An inclusive approach for all schools would be to avoid sex-segregated uniform requirements altogether. A trans pupil with the protected characteristic of 'gender reassignment' is also legally entitled to request the uniform of the sex they identify as. Experimenting with gender presentation can be a common part of life for young people and should not be treated as a deviance or pathologised as a medical matter. It is perfectly normal for young people to

experiment with gender.

## **Physical Education and Sport**

Question:

Does this section on page 17 provide enough information on what to do if a gender questioning child asks to participate in a certain sport or activity with the opposite sex?

Response:

No. There are no practical case studies or positive examples from schools with excellent model inclusion policies. Trans and gender diverse pupils have a right to be protected and included at school and to participate fully in school activities. The focus should be on how to include all pupils. Trans and gender diverse pupils are not a threat or danger to other pupils and should not be framed as being so. Pupils with the protected characteristic of 'gender reassignment' should not be discriminated against.

Question:

Think about the circumstances provided in the guidance on page 17, outlining the need for fairness and safety in PE or sport. Does the guidance provide enough support to help schools and colleges determine what is fair and safe?

Response:

No. There are exemptions within the Equality Act which allow for the provision of separate spaces for trans people for safety and privacy reasons and for reasons of fairness in sports. This guidance does not provide information on the Equality Act protected characteristic at all, and it does not provide enough information on this area.

## **Single-sex schools**

Question:

Does the guidance on the application of the Equality Act to admissions to single sex schools on page 18 provide enough information to support single sex schools in making decisions about the admission of children who are questioning their gender?

Response:

No. There are no practical examples or case studies. There should be an assumption of inclusion for trans pupils who are legally protected under the Equality Act.

Question:

Do you have any comments regarding the potential impact of the guidance on those who share a protected characteristic under the Equality Act 2010, whether negative or positive? How could any adverse impact be reduced and are there any other ways we could advance equality of opportunity or foster good relations between those who share a protected characteristic and those who do not?

Response:

This guidance stigmatises trans and gender diverse pupils. The draft guidance frames trans and gender diverse students as innate threats to other pupils. It suggests that perfectly normal experimentation with gender expression and gender identity is a Safeguarding concern and dangerous medical process. The draft guidance does not afford trans pupils their legal rights under the Equality Act. The draft guidance focuses on protecting other pupils from trans and gender diverse pupils without stating what threat they present. This is stigmatising and could result in poor relations between minority gender diverse groups and the majority population in the school. There is more detailed and accurate guidance in the 2021 document 'Supporting Transgender Pupils in Schools' for Scottish schools, produced by the Scottish Government and we would suggest this as a much more thorough piece of guidance.