

Briefing: Updated Guidance on Supporting Transgender Pupils in Schools

The EIS has a commitment to high standards of education rooted in equality and inclusivity. Young people have the right to learn, and teachers and lecturers have the right to work in an educational environment that is free from discrimination, where the rights of all are upheld.

This briefing paper has two primary aims:

- To inform members of the refreshed [guidance on supporting transgender pupils in schools](#), published by the Scottish Government, and;
- to provide details of key technical updates in the new guidance.

Background

The Scottish Government has published refreshed non-statutory guidance for education authorities and schools, that gives advice on the legislative, policy and practical considerations that they may wish to make, in supporting transgender young people. The guidance is intended of use to all teachers and school staff, to be used in conjunction with other equality-related guidance on supporting young people. Links to further guidance and resources are provided at the end of this briefing.

With this publication, Scotland becomes one of the first countries in Europe to issue government-led guidance on supporting trans young people in educational establishments.

The guidance was developed by the Scottish Government, working closely with LGBT Youth Scotland and Scottish Trans Alliance. The guidance replaces previous guidance for schools developed by LGBT Youth Scotland in 2017. The guidance has been subject to an Equality Impact Assessment and a Children's Rights and Wellbeing Impact Assessment.

The refreshed guidance emphasises the importance of meeting the needs of all pupils in a way that also is inclusive of trans pupils, whilst observing the rights of all pupils to privacy and safe spaces. Advice is given on how to best support transgender young people, as well as more broadly on creating inclusive school environments. In keeping with the GIRFEC framework, the guidance is **not prescriptive about requirements that will depend on individual circumstances.**

This briefing for EIS members points to key aspects of the guidance which may be useful to teachers and gives advice on questions that may arise for members in implementing the guidance.

If you have further questions, we would advise that you consult the guidance itself, which is available on the [Scottish Government's website](#).

The guidance, at a glance

The guidance is largely the same as the previous guidance, however it has been updated to provide further detailed technical advice and it makes more explicit reference to the **UNCRC** and **GTC Scotland Professional Standards**, and policies such as **Respect for All**.

Throughout the guidance, there is an added emphasis on advancing the rights of all children and young people to safe and equitable environments and school activities.

Transgender pupils' experiences

There is no accurate figure of the transgender population in the UK, however, estimates range between 200,000-500,000, some citing an estimate of between 0.5% and 0.6% of the population (based on international figures). This would mean that out of Scotland's population of 5.5 million, there could be around 27,500 and 32,500 transgender people in Scotland, of all ages. Trans people may choose to transition later in life, but if trans people were equally distributed across the country and in schools, this would mean around 1 trans pupil per 200 pupils. It is therefore likely that at some point in a teacher's career, they will meet a transgender pupil (although they may not be aware that the pupil is transgender).

LGBT Youth Scotland's research from between 2007 and 2017 illustrated important changes towards improved safety and equality for transgender young people. In that time, the organisation reported a 25% increase in transgender young people thinking that "**Scotland is a good place to live**". However, despite increasing awareness of trans equality, and visibility of transgender people, there are still barriers that need addressed in order that trans pupils can equitably access and benefit from their educational experience.

LGBT Youth Scotland's research (2017) showed that 82% of trans young people experienced bullying in school, with 95% saying this affected their educational attainment. 53% of transgender young people rated their school experience as 'bad', while significant increases in satisfaction with university experiences were found (rising from 37% to 60% since 2007).

There has been some media criticism of the *Supporting Transgender Pupils in Schools* guidance for citing research with smaller sample sizes and not conducting random sampling. The reports cite a preliminary study carried out by the Children's Aid Society of Toronto and Delisle Youth Services in 2012 about the health impacts of parental support for trans youth, with a sample size of 84

(selected from wider study sample of 433 individuals, to consist only trans youth who had transitioned or begun to socially transition gender and 'come out' to their parents).

The study's findings are used in the guidance only to suggest trans young people with supportive parents will be more likely to have good mental health, evidence which should come as no surprise, regardless of sample size. The study notes a lack of statistical significance due to small sample size. Findings regarding mental health mirrors LGBT Youth Scotland surveys of the Scottish trans youth population.

When considering evidence on transgender pupils' experiences, it may be helpful to remember that transgender people are a very small minority of the population, therefore a representative sample from a transgender pupil population will be significantly lower than those aiming to be representative of the general population. When supporting any young person, the EIS would advocate an individual approach in which the needs of each young person are listened to and their individual circumstances considered.

Teachers' professional responsibility

Generally, the refreshed guidance considers in more detail the personal experiences of trans young people, underlining the need for wellbeing considerations to be at the heart of any approach taken in supporting trans young people in schools. For example, in the section on coming out, the new guidance has added in the following section before giving advice on how to respond:

"When a young person approaches you to discuss their gender identity, they have often taken a long time to consider who to talk to and are looking for an adult to listen and be supportive. Coming out can be beneficial for young people's wellbeing as it allows them to discuss how they feel and get the support they need at the earliest point possible. A school staff member may be the first person that a young person speaks to." p. 21.

Teachers do not have to be experts in every aspect of their pupils' lives, nor have answers relating to every equality area and protected characteristic. When supporting any child or young person, teachers should refer to the professional values and GTC Scotland's Code of Professionalism and Conduct, which includes:

"2.1 treat sensitive, personal information about pupils with respect and confidentiality and not disclose it unless required to do so by your employer or by law;"

¹ <https://www.gtcs.org.uk/professional-standards/professional-standards-for-teachers.aspx>

“2.7 be aware of the general principles of the UN Convention on the Rights of the Child, regarding equal treatment, the child’s best interests, and giving appropriate weight to the views of the child.”

“5.1 engage and work positively with pupils, colleagues, parents and carers in an open, inclusive and respectful way, in line with the law and with a non-judgemental approach whatever their background, personal circumstances, cultural differences, values and beliefs;”

“5.2 help pupils to understand different views, perspectives, and experiences and develop positive relationships both within the educational establishment and in the local community;”

“5.3 recognise that they are a role model and therefore should be aware of the potentially serious impact which any demonstration by you of intolerance or prejudice could have upon your standing as a teacher and your fitness to teach.”

Updated technical details

The updated guidance includes updated reference to the Equality and Human Rights Consortium’s Technical Guidance on the Equality Act (2010) for schools in Scotland. Some sections give more detailed advice that teachers may find useful to consider. Below are some key technical aspects that you may want to look up in the guidance:

- *Supporting a transgender young person who is 'coming out'* (from page 20).
The guidance provides advice on supporting a young person who is transitioning, information about the process of changing their name and recorded sex in relation to SEEMis and clarifies the difference between a school record and a legal name change.
- *Safe and accessible toilets and changing rooms* (from page 25).
The guidance clarifies that a transgender young person should not be made to use the toilet or changing room of their sex assigned at birth and should be offered appropriate changing facilities (these could be private facilities, or another suitable space to change in). The guidance encourages supporting all pupils, including listening to the needs of any young person and if possible, letting those who request this, change privately. It is recognised in the guidance that many young people, including transgender pupils and girls may appreciate private changing rooms, recognising where good practice would also benefit pupils who are not transgender.
- *PE and school sport* (from page 29).
The guidance makes recommendations for appropriate considerations for both PE class activity – where transgender pupils should participate with the gender group they identify with, and possible exceptions in sports competitions, as well as in relation to PE clothing, allowing

transgender young people to wear sportswear that matches their gender identity, allowing swimwear alternatives that may be more comfortable and alerting to the risks, as well as mental health benefit, of chest binders.

- *Day and Residential trips* (from page 30).
The guidance gives detail around considerations which schools must have in mind, such as talking about respect for boundaries and privacy in a shared space, when planning allocation to communal accommodation on residential trips, as well as good practice for engaging with young people prior to a trip to consider the needs and wishes of all pupils in preparation for a trip.
- *Responding to concerns from young people, parents or staff* (from page 46).
This section addresses the potential that concerns that may be raised by young people, parents or staff, and stresses the importance of communicating a consistent and accurate message to counteract any misinformation about being transgender. The guidance further directs to where school staff and teachers can access support if they experience any issues arising from dealing with concerns or complaints.

Question and answers

The EIS has provided guidance to members on supporting LGBT learners, and staff, for a number of years by offering advice, professional learning and where necessary, representation. This has been done within a broader commitment to equality for all and an equal balancing of the rights of all, whatever the relevant protected characteristics. The below have been prepared in response to questions that may arise from members on the refreshed guidance and has been evaluated by legal opinion. This section of the briefing will be updated as necessary.

1. How can teachers best support a transgender young person?

The Scottish Government guidance should be used as a first port of call for schools and teachers who are supporting a transgender child or young person. The guidance details good practice in providing support but is not prescriptive about what is required specifically in individual circumstances. Within the parameters of the Scottish Government guidance, teachers should use their professional judgment in providing support to a young person. There are a number of specialist organisations that can help, some of whom are listed at the end of this briefing.

2. What should teachers do if they are concerned about a young transgender person's mental health?

Being transgender is not in itself a cause for a wellbeing concern, nor is it a child protection issue. However, if a young person experiences bullying or is made to hide their identity at home, this can have a significant wellbeing and mental health impact. Support for that young person should be informed to a large extent by their needs as expressed by them, in light of young people having the right to shape the decisions that affect them.

The expectation would be that school policies on bullying will in the first instance inform how any incidences of transphobic bullying are handled but the guidance also points out that some bullying behaviours towards trans young people (or those perceived to be trans) may be reportable by the school to the police as potential hate crime. Police Scotland- especially Community Police Officers- would be able to advise on this as necessary.

Considering and respecting a young person's views that they do not wish to share that they are transgender with anyone else, does not mean, if there is a child protection issue present, that information will not be shared – the professional(s) should consider what is in the best interest of the pupil to ensure their safety, invoking established child protection procedures if and as appropriate.

Schools and other services can provide valuable support to young people in these circumstances, and also to parents/ carers who may require support following their child's disclosure. In supporting transgender young people who have not disclosed to their parents/ carers and wider families, the wellbeing of the young person should be a central focus in the process of listening and responding to the young person's needs.

3. Transgender people are protected under the characteristic of 'gender reassignment' under the Equality Act (2010). What should schools do to make sure they do not discriminate against a transgender pupil on the basis of their protected characteristic?

Direct discrimination occurs where a person treats a transgender person less favourably than they would treat others *because of* their gender reassignment. It should be noted that a pupil does not have to be transgender to suffer discrimination. A pupil could be discriminated against if they are treated less favourably than others because they are perceived to be transgender or because they associate with someone who is transgender.

A school may fall foul of indirect discrimination if it has a policy, criterion or practice which applies to all pupils but has the effect of disadvantaging transgender pupils. For example, if an 'ice-breaker' exercise for first year pupils is to bring in a photograph of themselves as a toddler, this practice may cause a transgender pupil great distress.

Harassment is another form of discrimination which has the potential to arise in schools. Harassment occurs where someone engages in unwanted

conduct (verbal or physical) related to gender reassignment which has the purpose or effect of violating a transgender person's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for them. It is important to note that the intention behind the unwanted conduct is irrelevant; it is the transgender person's perception, the wider circumstances and the reasonableness of their reaction which are important.

If a pupil is subjected to a detriment because they have complained of discrimination (whether to the school or an external body) or have done anything else in connection with the Equality Act 2010 (for example campaigned for transgender rights) or intend to complain or are suspected of complaining, this may amount to victimisation.

The Scottish Government Guidance contains advice on how schools and teachers can uphold the Equality Act (2010) by providing good support to transgender young people and following processes that include them equitably within education. Further [technical guidance for schools on the Equality Act \(2010\)](#) can be found on the Equality and Human Rights Commission website. Schools and teachers can be confident in their practice as long as they follow the guidance provided.

If a young person feels they have experienced discrimination, they can complain to the school (directly or via their parents), in the first instance and this should be investigated by the school, in line with the guidance.

4. When it comes to school activities that are divided between boys, and girls, which group should transgender young people participate with?

Where there is a difference in service or activity between boys and girls, transgender people should be treated according to their gender identity – or, if they are non-binary, on the basis that they have a choice (and this might alter from time to time). So, if a school activity is divided between boys and girls, a transgender boy should as the standard, be with the rest of the boys.

There are only possible exceptions to this, in very limited circumstances. The EHRC's Services, Public Functions and Associations: Statutory Code of Practice ² provides for exceptions in relation to transgender persons for competitive sports where physical strength, stamina or physique are significant factors – so as to determine a 'fair' competition between participants. This exception would not be applicable to physical activity, PE or sports as part of the Health and Wellbeing curriculum that young people receive in schools.

² <https://www.equalityhumanrights.com/en/publicationdownload/services-public-functions-and-associations-statutory-code-practice>

There is a possibility for single-sex exceptions in the Equality Act (2010), but only in extremely limited circumstances. Generally, a service that provides single or separate sex services, or different services to women and men, should as a default treat transgender people according to their gender identity and take a person-centred approach to everyone.

In relation to communal accommodation, for example dormitories in a residential accommodation, an exception could be considered only for reasons of privacy, or because of the nature of sanitary facilities serving the accommodation. The guidance advises that all students are consulted regarding their specific needs, as adjustments such as private cubicles, may also be of benefit to students who are not transgender.

According to the EHRC's Technical Guidance for Schools³, examples of legitimate considerations for schools when it comes to these considerations might include:

- ensuring that education, benefits, facilities and services are targeted at those who most need them
- the fair exercise of powers
- ensuring the health and safety of pupils and staff, provided that risks are clearly specified
- maintaining academic and behaviour standards, and
- ensuring the wellbeing and dignity of pupils.

It is important to note that exclusions can never be a blanket approach, but happen only in limited individual circumstances, where it is objectively justified, in relation to the considerations above. Efforts should be put towards being inclusive of all pupils as far as possible, and schools should take a pupil-centred approach to each individual case and activity.

5. Does changing a young person's name and sex on their SEEMiS record change their legal sex?

No, the guidance makes it clear that **"Changing the recorded sex in SEEMiS has no effect on a young person's legal sex."** Schools do not need to ask for anything else other than a written instruction from the pupil (and with their parents' or carers' consent if they are under 16).

6. How can teachers respect a young person's gender identity, without their record being changed?

If a young person wants to go by a different name, informally in school, or tells you that they are thinking about transitioning, but does not want

³ <https://www.equalityhumanrights.com/en/publication-download/technical-guidanceschools-scotland>

others to know yet, you should respect their wishes. The guidance recommends that parents are involved as early as possible, however you should be guided by the rights of the young person to their identity and self-expression. The guidance contains further information about using the right pronouns, listening and supporting a young person who tells you that they may be transgender.

7. If a transgender young person shares with a teacher that they are transgender, and the teacher does not disclose this to their parents, does this conflict with parental rights? Could the teacher get in trouble?

The guidance states that **“Recognising the rights of all parents and carers, it is recommended that consent is obtained from all of those with parental responsibilities for those young people under 16. Bringing parents into this discussion at as early a point as possible would be helpful.”**

If a pupil wishes to transition whilst attending a school, conversations should be had with the pupil regarding this as the pupil’s pronouns/name etc., may change and would then be known widely at the school. If the child is under 16, then parents would require to be involved in notifying the school in writing of the wish to change name and pronouns. A school should not be expected to hide a 16+ year-old pupil’s name or pronouns from a parent, but the guidance emphasises that disclosure should be discussed with the pupil and their views considered and respected.

Some transgender young people experience difficulties in disclosing to their parents/ wider families, which can impact on them emotionally and in relation to their mental health, particularly where the young person anticipates that the reaction will be negative.

The optimum scenario in terms of supporting any young person in their personal and emotional development is where school and home can work together in common purpose.

8. What can teachers do if they are worried about responding to concerns or complaints in relation to the trans inclusive practice outlined in the guidance?

Whilst teachers may have begun to engage with LGBT inclusive education overall, they may be worried about not having the sufficient knowledge to support a transgender young person, or be unsure how to respond to any concerns from parents or pupils.

Many teachers, school staff, parents, and pupils will be aware of ongoing media discourse that has arisen in the UK in recent years, regarding the inclusion and rights of transgender people. Witnessing polarised and heightened media discourse related to a very small minority group in the population (transgender people), could lead to worry and misinformation.

For transgender children and young people, this might mean that they are unsure about what their rights are, and worried about who they can trust to tell that they are transgender. It is important that schools give time for professional learning on LGBT inclusive practice and that there are well-communicated processes in place that are aligned with Scottish Government guidance.

If a young person (transgender or not) or a parent, has concerns about their safety in school, it is important to assess whether this is a result of inappropriate behaviours and take reasonable and proportionate measures in response to any risks identified. The guidance says that if a young person has concerns or feels unsafe, they should be supported, and they may want to use private changing facilities, or using toilets during class time when facilities are quieter.

The guidance emphasises that any complaints should be dealt with as part of the school's or education authority's complaints procedure and should follow the confidentiality and information sharing protocols in place. The school should consider the needs of all young people and respect the rights of all, and take steps that are reasonable and proportionate in response to ensure there is no detriment or disadvantage to any pupils.

It is very important, that schools dispel any misinformation, and the guidance is clear: a transgender young person's presence does not constitute inappropriate behaviour and is not a safety concern in itself.

If a teacher experiences negative responses due to following the Scottish Government guidance, this should be raised with the management of the school and with branch/ local union representatives, with any legal advice being sought as necessary. Teachers should feel supported in implementing the guidance that is in place. Similarly, schools should be supported by the local authority in doing so. Headteacher members of the EIS should also seek advice from the EIS at school/local level as necessary.

Further guidance and resources

- LGBT Youth Scotland is Scotland's national organisation for LGBT young people, and offers a range of classroom resources <https://www.lgbtyouth.org.uk/>
- Mermaids provides support for transgender, nonbinary and gender diverse children and young people, including families and professionals www.mermaidsuk.org.uk
- National Gender Identity Clinical Network for Scotland www.ngicns.scot.nhs.uk and their resource on Information for Parents and Carers, Language and Terminology <https://www.ngicns.scot.nhs.uk/wp->

[content/uploads/2019/05/Information-for-Parent-and-Carers -Language-and-Terminology-V.1.pdf](#)

- Stonewall Scotland have a range of resources, toolkits and events on their website <https://www.stonewallscotland.org.uk/>
- Technical Guidance for Schools in Scotland <https://www.equalityhumanrights.com/en/publication-download/technical-guidance-schools-scotland>