

‘Gender Questioning Children: Non-statutory guidance for schools and colleges in England’ Information and support on how to respond to the consultation

Introduction

On 19 December 2023 the Department for Education published its draft guidance on [‘Gender Questioning Children: Non-statutory guidance for schools and colleges in England’](#) which is now open for public consultation. You can read a simple explainer of the guidance [here](#). These guidelines will help you respond to the consultation which closes on 12 March 2024. Anyone can use them, whether you are an individual or an organisation.

The guidelines will take you through the questions as they appear on the response form. The bullet points under each question are suggestions of key issues you might want to consider raising. We would advise that you:

- Make your response individual and unique, using your own words where possible.
- Include examples of how the guidance would negatively impact trans young people.
- Share your own experiences of being trans at school or supporting trans pupils.

It’s important that you don’t copy and paste from these guidelines as your response is less likely to be counted if you do so.

Make sure that anything personal you share is anonymous, so don’t share any personal or school/college names, or any other identifying information.

Throughout these guidelines we have used the term parents to refer to any adult with parental or caring responsibilities for a child or young person. We have used the term trans to refer to trans, non-binary, and gender questioning people. When we use the term schools, we mean schools and colleges.

These guidelines have been co-produced by Gendered Intelligence, LGBT Foundation, Mermaids, Stonewall, and the Trans Learning Partnership.

How long should I spend on my response?

*If you have **30 minutes**:* We suggest answering all the Yes/No/Don’t Know questions and filling in all the explainer boxes after each one. Remember to avoid copy/pasting from these guidelines, as your response is less likely to be counted if you do.

*If you only have **15 minutes**:* We suggest answering the Yes/No/Don’t Know questions and filling in the General comments section at the end, raising how this guidance will negatively impact on the lives of trans and gender-questioning children and young people.

*If you only have **5 minutes**:* We suggest just answering the Yes/No/Don’t Know questions.

About you / Introductory Questions: Questions 1 - 10

This section asks about you; your age, gender, location, and if you work in education. We recognise that the questions about sex and gender are not phrased very well. You don’t have to answer these if you don’t feel comfortable doing so.

Structure and overall guidance: Questions 11 - 14

Question 11. Do you think the structure of the guidance is easy to follow?

No.

Question 12: If you answered no, how could the structure of the guidance change to make it easier to follow?

In this section, the substantial omissions outlined below make the guidance difficult to follow, as we think crucial information on how schools should support trans pupils has not been included. The structure could be changed to ensure each section includes advice on how to enable trans and gender questioning pupils to fully take part in all aspects of education.

When answering this question, you might want to consider the following:

- *If you found the guidance inaccessible, difficult to understand, or felt there were other major omissions from the content, you may wish to explain this here.*
- There is no easy read version of the guidance, and it is inaccessible for younger pupils who will be impacted by it. The UK Government [has itself stated](#) that if documents do not meet accessibility standards, then they could be breaking the Equality Act 2010.
- The structure of the guidance does not provide any information to schools and colleges on how to best include trans pupils. Areas of omission include:
 - No guidance is provided on how to support:
 - pupils experiencing [common transphobic bullying and harassment](#) in school or college;
 - pupils with poor mental health who may be transgender or questioning their identity;
 - pupils who have already transitioned whether at their current school or college or a previous one.
 - There is no information on the duty of public institutions to prevent discrimination for those with the protected characteristic of gender reassignment nor has an Equality Impact Assessment been provided, to show that the guidance helps schools meet their equalities duties.
 - The guidance makes no reference to non-binary identities, intersex pupils who are trans or trans pupils with SEND and the tailored support they might require.

Question 13: Does this guidance provide practical advice to support schools and colleges to meet their duties effectively?

No.

Question 14: If you answered no, how could we improve deliverability placed on schools and colleges whilst still providing for schools to meet their duties?

This question is asking how the guidance can be improved to make sure that schools and colleges can put this advice in place while making sure that they are still meeting the duties they have to their pupils. Schools and colleges must keep their pupils safe in a number of ways, generally referred to as their 'duty of care'. There are specific things they must do, most of them coming from laws and regulations, such as the [Equality Act 2010](#) and [Keeping Children Safe in Education 2023 \(KCSIE\)](#).

When answering this question, you might want to consider the following:

- *Here you could talk about how this guidance contradicts a school's other legal duties (e.g. safeguarding, equalities or children's rights responsibilities), or how you feel the guidance might affect how trans young people are treated in school. While non-statutory, this guidance should comply with, and build, on the law.*
- Schools and colleges must follow the [Equality Act 2010](#), which protects trans people (regardless of age or having a Gender Recognition Certificate) from discrimination under the protected characteristic of gender reassignment. The guidance doesn't mention this characteristic, nor that it covers any individual of any age who proposes to come out as trans. This will set schools and colleges up to fail as the guidance does not outline school staff's legal duties in this area.
- The Equality Act states that individuals with the protected characteristic of gender reassignment can be excluded from single-sex spaces that align with their gender, but only on a case-by-case basis and where it is a proportionate means of achieving a legitimate aim. The guidance instead proposes a blanket ban.
- [Keeping Children Safe in Education \(KCSIE\) 2023](#) helps schools and colleges safeguard children and young people. This statutory guidance, which must be complied with unless for a good reason, states:
 - Being LGBTQ+ is not a safeguarding concern in itself. Risk of harm can arise from bullying from peers and staff, and abuse in the home, for example.
 - Schools have a statutory duty to safeguard and promote the welfare of their pupils. The guidance does not adequately reflect the existing safeguarding thresholds on confidentiality and whether a school should tell a parent that a pupil wants to socially transition.
 - When safeguarding concerns are raised, these should be shared with [only necessary staff](#) to keep concerns as confidential as possible. This contradicts the guidance, which states that 'all relevant' staff should be informed of an individual's social transition, without defining who the staff would be.

Responding to requests and engaging parents: Questions 15-18

Question 15: Does this section provide enough detail to help schools and colleges support children?

No.

Question 16: If you answered no, in which of the following areas do schools and colleges need further guidance to support a child?

When answering this question, you might want to consider the following:

- *How should schools support pupils who want to come out as trans? In your experience, what can schools do to make social transition a positive experience for trans pupils?*
- Pupils wishing to socially transition have the protected characteristic of gender reassignment, [regardless of age](#). There is no further information about this protected characteristic in the guidance to support this group.
- The guidance offers no clarity on what is meant by the 'potential impact on the school community' of a pupil's decision to socially transition.
- Whether someone has clinical documentation of their transition is irrelevant to how a school should support their social transition. Further clarity is needed that there is no requirement to share this information, where it exists, with schools.
- The guidance ignores safeguarding procedures set out in statutory safeguarding guidance (KCSIE), which confirms that:

- LGBTQ+ identity is not an inherent safeguarding risk.
- Informing parents, where there is no safeguarding risk, could be a breach of confidentiality and may not be in a pupil's best interest.
- Pupils without a trusted adult (such as a supportive parent) with whom to discuss their identity are at significant risk.
- In relation to the role of parents, further information is needed about:
 - How a teacher would balance a pupil and parents' conflicting views or safely initiate a discussion with a parent about a child or young person being trans.
 - How schools can navigate consent to inform parents and the circumstances in which disclosure is necessary, in line with best practice guidelines from safeguarding experts like NSPCC and Childline.
 - How schools and colleges should proceed if both the pupil and parents are supportive of a social transition, as is likely in our experience.

Question 17: 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?

No.

Question 18: If you answered no, what considerations would be more helpful for schools and colleges to consider? For example, when assessing whether to support a child wishing to socially transition, do you think different weight should be given to the views of parents, the age of the child, the long- and short-term impacts on the child, the impact on other children, and any relevant clinical or medical advice?

This question is asking what you think schools and colleges need to consider when deciding whether or not they should allow a pupil to socially transition. When answering this question, you might want to consider the following:

- *Here you might want to discuss what schools and colleges need to consider when a trans person comes out.*
- *You can describe the negative impact that schools following this guidance, such as prioritising a parents' views, would have on a young person seeking to transition.*
- Greater weight should be given to the pupil's needs. The [statutory approach](#) to working with and supporting children and young people is to consider their best interests. When considering what is in a child or young person's best interests, it is vital to listen to their wishes and feelings and allow them to express themselves.
- The [Metro 'Youth Chances: Integrated Report'](#) found that 58% of trans people knew they were trans by the age of 13, showing that school-age children know themselves to be trans.
- School staff are very knowledgeable, but they are not qualified to make decisions based on medical or clinical information. Sharing medical or clinical information, such as whether you're on a waiting list or receiving care, is a personal choice, and no one should feel pressured into sharing this information just because a pupil is trans. No advice is offered on how schools can safely store this sensitive data and who it would be accessible to.
- Not every child and young person is lucky enough to have a supportive family. [Galop](#) found that nearly half of trans and non-binary people have experienced abuse from their family, usually starting before they were 18 and 21% of those experiencing familial abuse did not tell anyone about their experiences. Schools and colleges should only engage with parents with the explicit consent of the child or young person in question.
- There is no guidance on how to support a child or young person navigating social transition with the full support of their parents.

- The question asks what weight, if any, should be given to the impact of an individual socially transitioning on other children or young people. The guidance does not explain what this means.
- [Research](#) consistently shows that supporting an individual's social transition has positive mental health benefits, [even when that person's gender identity changes or evolves](#).

Registration of name and sex: Question 19-20

Question 19: 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?

No.

Question 20. If you answered no, what further information should be included to help schools and colleges?

When answering this question, you might want to consider the following:

- *Here you can describe the potential negative impact of not recording a trans pupil's chosen name or gender on the admissions register.*
- There is no reason not to include a pupil's chosen name or gender identity in the admissions register. All pupils' names and gender could easily be included in the admissions register - schools should not behave differently because a pupil is trans.
- There is no clarity on which staff are relevant, and therefore no consideration of the potential harms of sharing someone's trans status, nor the impact of breaching confidentiality and the rules set by GDPR.
- 16- to 18-year-olds can change their name by deed poll without parental permission, which contradicts the guidance. Schools and colleges would be under a duty to record this name.

Changing names: Questions 21-22

Question 21: Does this section on page 12 provide enough detail for schools and colleges to respond to a child's requests to change their name?

No.

Question 22: If you answered no, in which of the following areas do schools and colleges need further guidance to respond to a child's requests to change their name?

We would suggest ticking all the boxes here. Things you might want to consider including in the 'Something else' box:

- *Here you could describe the negative impact of refusing to use someone's chosen name.*
- There is no reason not to include a pupil's chosen name in the admissions register, particularly if this is the basis for teachers and school staff to refer to the pupil in their day-to-day running of the school.
- Unnecessarily disclosing a previous name would take no consideration of the harms of sharing a pupil's trans status, and repeatedly doing so may constitute harassment.

It would be a breach of confidentiality as well as, in some cases, the rules set by GDPR.

- If a non-trans pupil wants to be known by a different name at school or college, will schools and colleges have to ‘fully consult’ with their parents and then communicate their name change to the school or college community to avoid potential discriminatory double standards for non-trans pupils?
- There is no guidance for schools and colleges to assess whether an informal name change is in the best interests of the child or young person. [Academic research](#) shows the positive impact of using a child or young person’s chosen name on their mental health.
- There is no guidance on how schools manage the frequently damaging impact of staff or pupils refuse to use a pupil’s chosen name.
- There is no information about what a school or college should do if a pupil changes their name legally by deed poll (which a child or young person can do with parental consent if they are under 16 years of age, and without if they are over 16).

Pronouns: Question 23-24

Question 23: Does this section on page 13 provide enough detail for schools and colleges to respond to a child’s requests to change their pronouns?

No.

Question 24: If you answered no, in which of the following areas do schools and colleges need further guidance to respond to a child’s requests to change their pronouns?

We would suggest ticking all the boxes here. Things you might want to consider including in the ‘Something else’ box:

- *Here you can describe the negative impact of refusing to use someone’s pronouns.*
- The guidance suggests that no primary age pupils should be allowed to use a different pronoun, without offering any explanation or evidence to justify this.
- Not using a trans pupil’s chosen pronouns (no matter their age) could be considered discrimination or harassment under the [Equality Act 2010](#) as noted in the example on page 65 of the [EHRC’s Technical Guidance for Schools in England](#).
- Further explanation is needed as to why the guidance suggests all other options before using a pupil’s chosen pronouns.
- Handling transphobic bullying is not addressed, in relation to deliberate misgendering by other pupils or staff, nor schools and colleges adhering to statutory safeguarding duties as established in KCSIE.

Single-Sex Spaces - Toilets, Changing Rooms and Showers and Boarding and Residential Accommodation: Questions 25-29

Question 25: 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?

No.

Question 26: If you answered no, in which of the following areas do schools and colleges need further guidance?

We would suggest ticking all the boxes here. Things you might want to consider including in the 'Something else' box:

- *Here you might want to talk about the challenges that trans pupils face accessing suitable facilities at school, and the impact on them of being denied the ability to go to the toilet, get changed, or go on school trips. You also might want to talk about your positive experiences of trans pupils being supported to use facilities consistent with their gender.*
- Schools and colleges risk discriminating, under the Equality Act 2010, if pupils cannot use the facilities of their chosen gender unless under specific circumstances.
- Regulations provided in the [Education \(School Premises\) Regulations 1996](#) state that schools and colleges must accommodate 'special requests' related to toilet provision. Therefore, blanket denial of a trans person's request for access may be in breach of these regulations, and the Equality Act 2010.
- The feelings of other pupils (or their parents), in and of themselves, do not outweigh the protections afforded to the trans pupil under the protected characteristic of gender reassignment in the Equality Act 2010.
- Trans and non-binary children and young people commonly report avoiding using the toilet whilst at school or college, which may increase the risk of [urinary tract infections](#) and general discomfort.
- Forcing trans young people to use separate facilities from their peers may be an isolating and sometimes humiliating experience for them.
- There is no advice on what schools should do if they are unable to provide suitable, non-sex-segregated toilets or changing rooms due to logistical or budgetary challenges.
 - For example, schools with only one disabled toilet or larger schools could see an impact on disabled people's access to toilets.

Question 28: 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?

No.

Question 29. If you answered no, in which of the following areas do schools and colleges need further guidance?

We would suggest ticking all the boxes here. Things you might want to consider including in the 'Something else' box:

- *Here you might want to talk about challenges that trans pupils have faced when boarding or on school trips, and the ways in which they have been positively included.*
- A blanket ban on a pupil's use of the facilities of their gender would be difficult for schools or colleges to justify, and likely discriminatory, under the provisions set out in the Equality Act 2010.
 - The least discriminatory option may be to offer alternative accommodation to any pupils uncomfortable sharing facilities with a trans or non-binary child or young person. Decisions should be made on a case-by-case basis.
- The following questions remain unaddressed:
 - What accommodations should be made for trans children and young people who have already transitioned? I.e. should a trans boy who has been transitioning for a period of years share accommodation with girls or boys?

- What should schools and colleges do if no accommodation, other than sex segregated rooms, are available, either due to logistical challenges or budget considerations?
- What steps can be taken to ensure that trans and non-binary pupils are able and comfortable to participate fully in residential trips?

Uniform: Questions 30-31

Question 30: 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?

No.

31. If you answered no, in which of the following areas do schools and colleges need further guidance to respond to a gender-questioning child, who makes a request in relation to uniform?

We would suggest ticking all the boxes here. Things you might want to consider including in the 'Something else' box:

- *Here you may want to discuss how this guidance would impact trans pupils wanting to wear the uniform that makes them comfortable.*
- It codifies gendered clothes in a way that is harmful and unnecessary - we should give all children and young people the right to wear the uniform items that make them most comfortable, and many schools take a flexible approach to uniform policy to avoid discrimination.
- The [Government's own guidance](#) on school uniforms advises schools to consider pupils who share a protected characteristic under the Equality Act 2010, citing sex, religion or belief, race, disability, gender reassignment and pregnancy, in uniform policy. Those responsibilities should be reflected in this guidance and should be applied consistently.
- Taking away the choice of swimming costumes would effectively exclude some trans pupils from swimming.
- If a non-trans pupil wanted to wear different items of uniform, would their parents be contacted? Would the request be automatically refused?
- This part could leave schools and colleges open to allegations of direct discrimination; all pupils should be held to the same uniform standards, regardless of their sex and gender.
- If pupils feel uncomfortable wearing uniform for religious, practical, or personal safety reasons, will they be supported, and how?
- Further clarity would be helpful regarding whether uniform adjustments would be allowed for other protected characteristics.

Physical Education and Sport: Questions 32-35

32. 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?

No.

33. If you answered no, in which of the following areas do schools and colleges need further guidance to support children taking part in PE or sport?

The guidance proposes a mandatory blanket ban on trans pupils taking part in a number of separate sex sporting activities consistent with their gender identity. It does not provide sufficiently detailed guidance for schools on how inclusion, fairness, and safety can and should be considered and approached in practice.

We would suggest ticking all the boxes here. Things you might want to consider including in the 'Something else' box:

- *You may wish to include your experiences, both positive and negative, of trans pupils playing in sporting activities consistent with their gender.*
- *You may also wish to talk about the benefits that sport and PE bring to trans pupils, drawing on your experience.*
- The guidance is out of step with existing policies of some sport governing bodies, such as the [Football Association](#), where under 16s can play in a girls' or a boys' team regardless of sex assigned at birth;
- Schools and colleges are left to make difficult, subjective decisions on the different sports where physical differences may impact safety. The level of contact/physicality that would require the exclusion of trans pupils from a sporting activity according to the guidance is not made clear. This could lead to inconsistent decisions being made across schools.
- School and college [must include PE](#) on the curriculum up to age 16 meaning schools risk falling short of this duty if they cannot include an under 16 trans pupil as a result of this guidance.
- The guidance will exclude trans pupils from the mental and physical benefits of exercise, since [many report](#) significant barriers in playing sport in the wrong gender category.
- No advice or guidance is given on how to include trans pupils and make them feel welcome in sport - the guidance focuses on how to exclude. This may contradict the Public Sector Equality Duty requirements to advance equality of opportunities for those with the protected characteristic of gender reassignment.

Question 34: Think about the circumstances provided in the guidance on page 15, 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?

No.

Question 35: If you answered no, what further support should be included to help schools and colleges determine what is fair and safe in PE or sport?

When answering this question, you might want to consider the following:

- *You may wish to include examples of how trans pupils have been safely and fairly included in PE lessons, such as with mixed-gender activities.*
- Schools and colleges need guidance which emphasises the need to promote inclusion, body positivity and health in PE lessons. The guidance should support schools and colleges to enable safe participation for all pupils within a lesson context, rather than compelling exclusion as default.
- Safety is not solely determined by sex differences, but also by technique and oversight by school staff.

- Physical differences are intrinsic to competitive sport - the focus on sex differences in relation to fairness does not consider the impact of technique, training, equal access etc.
- No guidance is offered for pupils who are medically transitioning, e.g., taking hormones and/or puberty blockers, and for whom assumptions about physical differences relating to sex may not apply.

Single sex schools: Questions 36-39

Question 36: 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?

No.

Question 37: If you answered no, in which of the following areas do schools and colleges need further guidance to support effective decisions on the admission of children who are questioning their gender?

We would suggest ticking all the boxes here. Things you might want to consider including in the 'Something else' box:

- The guidance should clarify that, according to [current advice on the Equality Act](#):
 - Single sex schools and colleges can choose to admit trans pupils without losing their single sex status.
 - For example, a single sex boys' school agreeing to admit trans boys, or a single sex girls' school agreeing to admit trans girls would be legal and would not affect the schools' single sex status.
 - Schools and colleges cannot refuse to admit a pupil on the basis that they are trans, non-binary or gender questioning, if their sex assigned at birth aligns with the single sex status of the school or college.
 - For example, a single sex girls' school cannot refuse to admit a trans boy or non-binary person who was assigned female at birth based on their gender identity.
 - Schools and colleges, regardless of their single sex status, cannot remove a pupil for transitioning, desiring to transition or questioning their gender whilst enrolled as a pupil at said school or college.
 - The use of 'gender questioning' rather than 'trans and non-binary' confuses the guidance here. Use of specific, widely recognised language relating to gender reassignment as defined in the Equality Act 2010 would be more helpful.

Question 38: To individuals responding who work in, or represent single-sex schools: Has your single-sex school previously had to make a decision on the admission to your school of a child of the opposite sex (regardless of whether or not the school admitted the child)?

Only answer this question if you work in a single-sex school and feel comfortable answering it. If you do not, you can skip to question 40.

Question 39: If yes, was that child questioning their gender?

You only need to answer this question if you answered yes to question 38 and feel comfortable answering this one. If you answered yes, this question is asking if that child or

children or young person or young people were trans. This question is likely trying to gather data on how many single-sex schools or colleges, if any, have accepted trans pupils. Please do not add any details which may easily identify you, your organisation, or any pupils.

Public Sector Equality Duty (PSED): Question 40

Question 40: 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?

This question is asking what the impact may be on individuals with protected characteristics. It is framed in a way that means all protected characteristics can be considered. When answering this question, you might want to consider the following:

- The Equality Act 2010 [defines gender reassignment](#) as a protected characteristic. It means that schools may not see how this guidance interacts with their existing legal duties under the Equality Act 2010, particularly with regard to discrimination and harassment on the basis of gender reassignment. This could put schools in a position where they are acting unlawfully.
- The guidance does not give schools enough clarity on how to balance the rights of those who hold different protected characteristics. For example, the rights of those with protected beliefs do not allow discrimination or harassment against those with other protected characteristics on the grounds of those beliefs.
- Much of the guidance could be considered to actively encourage schools and colleges to undertake discriminatory action towards children and young people protected by the characteristic of gender reassignment. This has [allegedly already been identified](#) as a key risk by the Government's lawyers, who have noted several areas in the guidance that could be legally challenged.
- The Department has not yet published an Equality Impact Assessment (EIA) so has not shown how the guidance has due regard to its equalities duties, nor has it published a Children's Rights Impact Assessment.

General: Questions 41-42

These questions are a great opportunity to highlight your experiences.

Question 41: Do you have any comments on the overall approach of the guidance?

This is a space for you to share any more thoughts you have about what the guidance says. You might want to consider:

- How this guidance would affect you or your child or young person's school or college experience (or would have if you/they are no longer at school or college).
- How you would implement this guidance, if at all, in your school or college.
- What you think about the guidance discouraging social transition.
- How you feel the guidance treats trans people, and particularly trans children and young people.
- What additional guidance you would need to support trans pupils with SEND.

Question 42: Do you have any further comments you would like to share on the draft of the guidance that have not been captured above?

This is a space for you to share anything else you haven't been able to say yet.