

Supporting Transgender Pupils In Schools

Guidance for Scottish Schools

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Scottish Government
Riaghaltas na h-Alba
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Foreword



The aim of this Government's education policy is to achieve excellence and equity for all our young people in a high-performing education system. To achieve this we must ensure every child and young person is happy, safe, respected and included in their learning environment. By doing so, we are creating the right environment for everyone to participate fully in their education and achieve their potential.

The provision of a safe, respectful and inclusive learning environment for all pupils is paramount and it is therefore vital that our schools have the confidence to meet the needs of all pupils, including transgender pupils, within the school. In June 2019, we announced our intention to produce guidance in this area.

This guidance reflects the Equality Act 2010 duties on education providers with advice, based upon the *Getting it Right for Every Child* approach, on the practical application of those duties in a school setting. I am confident this guidance does so in a way that will help schools meet the needs of all of their pupils including girls and transgender pupils.

While the primary focus of this guidance is to help schools support transgender pupils, the guidance also recognises the particular importance of privacy and the provision of safe spaces for girls and boys within schools. This is a critical theme that is recognised and addressed throughout this guidance.

The Government is also taking forward a range of other actions to address the issue of gender equality within education. Programme for Government commits us to developing national guidance for schools that will set out the range of support and practical prevention and intervention measures available to address the issues of gender-based violence and harmful sexual behaviour in schools.

Additionally, the recommendations of the First Minister's Advisory Group on Women and Girls commits us to establishing a national taskforce on gender equality in education and learning. These actions complement the aims of our cross-cutting Equally Safe Strategy and our broad commitment to eradicate gender-based violence in every part of our society. I am determined that the education system continues to be a key contributor to this work.

The health and wellbeing of every child and young person must be at the heart of our decision making. I am confident that this guidance, combined with our forthcoming work on gender equality, will help schools deliver a learning environment where privacy, safety, dignity and respect is afforded to every pupil so they can each achieve their full potential.

A handwritten signature in black ink, appearing to read 'S Sille'.

Shirley-Anne Somerville
Cabinet Secretary for Education and Skills

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Introduction

The Scottish Government is committed to enabling all young people¹ to reach their full learning potential, recognising the importance of their health and wellbeing. This aim is supported through policy and legislative frameworks which support equality, equity and excellence in education. Together, these provide the framework of support to enable all young people, including those with protected characteristics, to realise their human rights, experience equity and excellence, and to receive support for their learning.

This non-statutory guidance is framed within the legal framework of the Equality Act 2010 and other relevant education and children's legislation. The publication of this guidance was delayed by the COVID-19 pandemic. The information and statistics contained within it are current.

The Equality Act 2010 places specific requirements upon education authorities, managers of grant-aided schools and proprietors of independent schools, to prevent unlawful discrimination in their schools. The protected characteristics of disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex and sexual orientation apply in relation to schools.

The Children and Young People (Scotland) Act 2014 places duties on certain public authorities, including local authorities and health boards, to report every 3 years on the steps they have taken in that period to secure better or further effect of the United Nations Convention on the Rights of the Child (UNCRC) requirements within their areas of responsibility. The Scottish Government remains committed to the incorporation of the UNCRC to the maximum extent of the Parliament's powers and to commencement of the UN Convention on the Rights of the Child (Incorporation)(Scotland) Bill as soon as possible.

Local authorities, as any public authority, have a duty not to act in a way which is incompatible with human rights protected under the European Convention of Human Rights (ECHR). This applies to all young people, including girls and boys and trans young people. They all have rights and protections and strengths and vulnerabilities. All young people should experience privacy, safety, dignity and respect.

In 2019, there were 697,989 pupils in Scotland's public schools². It is known that around 200 young people per year receive support from the Young Person's Gender Service with their transition³.

Purpose of the guidance

This guidance aims to help school staff in Scotland's education authority, grant-aided and independent schools to provide transgender young people with the best possible educational experiences. It is recognised that in order to achieve this, there are a number of considerations which schools and school staff must respond to. These have been reported by schools, education authorities, families and young people. The guidance provides practical advice, information and signposts to age and stage appropriate resources to support schools and their staff, to secure the best possible educational

¹ We use 'young people' throughout this guidance to mean children or young people who are of school age and 'young person' to mean a child or young person who is of school age.

² Table 2.1 <https://www.gov.scot/publications/summary-statistics-schools-scotland-no-10-2019-edition>

³ Scottish Public Health Network (ScotPHN) Health Care Needs Assessment of Gender Identity Services, May 2018, page 44

https://www.scotphn.net/wp-content/uploads/2017/04/2018_05_16-HCNA-of-Gender-Identity-Services-1.pdf

experiences for all their young people, including transgender young people. The guidance may also be used by schools to support young people who identify as non-binary⁴.

The guidance is not exhaustive, it is intended as a reference document, and is therefore presented thematically with links to relevant sections and further information throughout. The guidance also signposts to other sources, legislation, guidance and resources throughout. The document aligns with guidance for schools prepared by the Equality and Human Rights Commission. Further information is available in the Additional Resources section.

Status of the guidance

This guidance is non-statutory and is designed to help education authority, grant-aided and independent schools to make decisions effectively but cannot be prescriptive about what is required in individual circumstances. Education authority, grant-aided and independent schools are responsible for ensuring that their policies, practices and information take full account of the legal requirements of the relevant legislation. The guidance includes quotes and reflections from young people and school staff on their experiences; and examples of good practice and scenarios to illustrate some of the processes and considerations involved in applying the main legislative provisions. This guidance does not interpret the legislation since this is a matter for the courts. It is for education authorities and managers of grant-aided and independent schools to take their own legal advice on such matters, as appropriate.

This guidance has been developed from *Supporting Transgender Young People* which was developed and published by LGBT Youth Scotland in 2017. The guidance is therefore based on the experiences of transgender young people and good practice approaches suggested by school staff, and a wide range of professionals with expertise in the field of education and human rights.

If someone needs more information or support for a young person, they can speak to their school management team, the education authority or other agencies and partners.

Context

This guidance has been developed at a time when there is significant public discussion about the rights of transgender people, including young people. These discussions include debate about the impact of meeting transgender people's needs and the potential impact for women and girls.

We recognise that there are men who seek to abuse women and we want women to be safe from that violence. We have taken action to change the law to protect women from such abuse. This is a global issue and not a new issue for Scotland or indeed the UK. It is not the fault of trans people. It is the fault of the abusive men. Which is why we will continue to address violence against women and girls through our Equally Safe strategy which takes a gendered approach.

As indicated in the Ministerial foreword, gender-based violence is a recognised concern within schools which the Scottish Government is committed to addressing. This guidance also recognises those matters, within the context of meeting all young people's needs, but due to the forthcoming specific work, does not address those issues in significant detail.

⁴ The Scottish Government has established a [Working Group on Non-Binary Equality](#) which will consider ways to improve equality for non-binary people

Language used⁵

The guidance uses the terms 'transgender' and 'trans' as umbrella terms⁶ for those whose gender identity differs in some way from the sex assigned at birth. Young people and their families may prefer to use other terms.

The term 'gender reassignment' is the protected characteristic under the Equality Act 2010 which relates to transgender people. Under the Act a young person has the protected characteristic of gender reassignment⁷ if they propose to undergo, are undergoing or have undergone any part of a process for the purpose of reassigning their sex. This is a personal process, rather than a medical process, for example the young person may propose to change their name and pronouns. More information can be found in the legislation section on page 57. There is more about language on page 48.

Why is this guidance needed?

In terms of experiences of young people, research⁸ carried out with around 700 lesbian, gay, bisexual, transgender (LGBT) young people in Scotland showed that:

- 82% of transgender young people had experienced bullying in school on the grounds of being LGBT or T
- 68% of trans young people who had experienced bullying said that it negatively affected their educational attainment
- Only 24% of LGBT young people would feel confident reporting transphobia in school
- 27% of trans young people left education as a result of homophobia, biphobia or transphobia⁹ in the learning environment

Throughout the survey responses trans young people highlighted examples of the discrimination they faced:

"I was often called a 'tranny' or 'dyke' and told to kill myself by numerous pupils throughout the school". – Trans Young Person

"I was told I was disgusting and in PE I was forced to change in a disused shower cubicle in case I 'stared at' any of the girls." - Trans Young Person

"I was deliberately misgendered and excluded from activities". – Trans Young Person

The same study¹⁰ found that

- 63% of transgender young people experienced suicidal thoughts or behaviours
- 59% of transgender young people had self-harmed, and that

⁵ The Scottish Government has established a [Working Group on Non-Binary Equality](#) which will consider ways to improve equality for non-binary people

⁶ Please see information on Transgender identities and terms on page 49

⁷ <http://www.legislation.gov.uk/ukpga/2010/15/section/7>

⁸ Dr.Lough Dennell, B.L, Anderson, G. and McDonnell, D. (2018) *Life in Scotland LGBT Young People*. LGBT Youth Scotland.

⁹ <https://www.lgbtyouth.org.uk/media/1299/addressing-inclusion-2020.pdf> discusses the terms transphobia and homophobia and provides advice information on these issues within a school context

¹⁰ Dr.Lough Dennell, B.L, Anderson, G. and McDonnell, D. (2018) *Life in Scotland LGBT Young People*. LGBT Youth Scotland.

- 83% of transgender young people who had experienced mental health problems, had been bullied at school.

In addition, a review of prevalence of mental health problems in trans youth, which included 15 studies from 2011-2016, found that trans young people have increased rates of depression, suicidality and self-harm, and eating disorders compared to their peers¹¹.

The Scottish Association for Mental Health estimates that one in four people in Scotland will have mental health problems at some point in their lifetime. LGBT young people are at a higher risk of experiencing mental health problems than other young people as a result of¹²:

- Prejudice and discrimination resulting from (actual or perceived) sexual orientation¹³ or gender identity
- Negative responses and rejection (feared or experienced) from friends, family¹⁴ and services
- Pressure to conform to gendered norms and expectations of heterosexuality
- Not coming out as a result of these pressures and fear of experiencing homophobia, biphobia or transphobia

When asked 'what makes for positive mental health?' one young person said:

"Talking about it in schools and removing the stigmas around it... so that they are more comfortable to talk about it and get help" – Trans Young Person

It is recognised that it is essential that the needs and rights of transgender young people, as with all young people, should be met and respected. This guidance aims to provide a framework through which schools and school staff can provide this support.

¹¹ Connolly, M.D., Zervos, M.J., Barone, C.J., Johnson, C.C., and Joseph, C.L.M (2016). "The Mental Health of Transgender Youth: Advances in Understanding" *Journal of Adolescent Health*, 59(5): 489-495.

¹² Dr. Lough Dennell and Logan (2012). *Life in Scotland for LGBT Young People: Health Report*. LGBT Youth Scotland.

¹³ <http://www.legislation.gov.uk/ukpga/2010/15/section/12>

¹⁴ In this guidance the term 'family' includes parents, carers and legal guardians.

Principles and practice

The following principles are good practice recommendations shaped by the UN Convention of the Rights of the Child (UNCRC):

- All young people (including transgender young people) have the right to an education and to participate in the broader life of their school
- All young people (including transgender young people) should be protected from discrimination, harm and abuse
- All young people (including transgender young people) should be involved in all decisions affecting them, understand any action which is taken and why; and be at the centre of any decision making
- All young people (including transgender young people) have the right to an identity and for this to be respected
- All young people (including transgender young people) have the right to a private life. Being transgender is not a child protection or wellbeing concern in itself (see more on confidentiality and information sharing' on page 35).

Professional values and standards

Professional values are at the heart of General Teaching Council(GTC) Scotland's Professional Standards for Scotland's Teachers 2021. These Professional values¹⁵ guide teachers in all their work with learners and are helpful when thinking about how best to support transgender young people. Teachers are not expected to be experts and to have all the answers. What matters most is having a respectful and inclusive approach.

The professional values of trust and respect, integrity and social justice are core to what it means to be a teacher in Scotland and include:

- Promoting health and wellbeing of self, colleagues and the children and young people in my care.
- Building and fostering positive relationships in the learning community which are respectful of individuals.
- Embracing global educational and social values of sustainability, equality, equity, and justice and recognising children's rights.
- Respecting the rights of all learners as outlined in the UNCRC and their entitlement to be included in decisions regarding their learning experiences and have all aspects of their wellbeing developed and supported.
- Committing to social justice through fair, transparent, inclusive, and sustainable policies and practices in relation to protected characteristics, (age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion and belief, sex, sexual orientation) and intersectionality.

GTC Scotland's Code of Professionalism and Conduct (COPAC) sets out the standards of conduct and competence expected of registered teachers. and includes:

¹⁵ <https://www.gtcs.org.uk/professional-standards/professional-standards-for-teachers.aspx>

“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;”

“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.”

As the independent professional body for Scotland’s teachers, GTC Scotland ¹⁶ is committed to promoting equality and diversity within the profession. Central to teacher professionalism is an expectation that all teachers are positive role models to all young people in showing respect to transgender young people, and also to help learners understand different views, perspectives and experiences.

Trade unions

Some unions give teachers support and advice about working with transgender young people, and about challenging discrimination in the workplace. For example, see <https://www.eis.org.uk/Equality/LGBT> for a range of resources and guidance for LGBT members.

All main teaching unions are committed to promoting equality and respecting diversity. Some may have designated equality representatives who support teachers to promote and advance equality and diversity in the workplace. While this guidance is aimed at supporting transgender young people, schools should work to ensure they are inclusive environments for staff as well as learners.

Recognition and development of gender identity

Recognition and development of gender identity can occur at a young age. Some young people are exploring their gender identity in primary school settings. Primary schools need to be able to meet the needs of these young people to ensure they have a safe, inclusive and respectful environment in which to learn. This guidance is, therefore, applicable to primary school settings although careful professional judgement must be applied to ensure support offered is age appropriate.

If a young person in the school says that they now want to live as a boy although their sex assigned at birth was female, or they now want to live as a girl, although their sex assigned at birth was male, it is important to provide support and listen to what they are saying.

¹⁶ www.gtcs.org.uk

If others deny this, it may have a detrimental impact on the young person's wellbeing, relationships and behaviour and this is often clearly apparent to teachers, parents and carers.

If a young person would like changes to be made in order that they are supported to learn, then consider 'what is in the best interests of the young person?'. You may also want to get support and advice from school leadership, local authorities or an outside agency.

Parents and carers play an important part in a young person's life and in any decision making process, particularly for those in a primary school setting. Where possible, consider the best approach to involving and including the young person in any decision making. If information needs to be shared with others, take time to consider the young person's view and understand the impact this decision may have on their wellbeing. You should make sure that any sharing of information complies with the relevant legal requirements.

All young people who have capacity to form their own views have a right to express their views freely in matters that affect them, under Article 12 of the UNCRC. There are particular considerations for young people's legal capacity in relation to their own decision making when they are under the age of 12 years in certain decisions. Further information on legal capacity is available on page 60, Information on involving young people is available from page 47.

Many children behave in ways which do not conform to gender stereotypes, and they may experience bullying as a result. Although this guidance was not developed specifically for young people who do not conform to gender stereotypes, who are not transgender, this guidance may still be useful to inform school practice.

In general, being alert to gender stereotypes¹⁷ and being aware that not every child will identify as the sex they were assigned at birth, will help create an environment in which all young people can flourish.

In primary schools this awareness could mean:

- Ensuring play and learning options are gender neutral
- Ensuring feedback is consistent (boys and girls aren't praised for different things)
- Using books and resources which challenge gender stereotypes and include transgender people
- Participating in transgender commemorative and celebratory days (such as LGBT History Month and Transgender Day of Visibility alongside other commemorative days (such as International Women's Day)).

Not conforming to gender stereotypes is a healthy and normal part of growing up and should not lead to any assumptions being made that the child may be transgender, or lesbian, gay or bisexual. The distinction between 'gender non-conforming behaviour'¹⁸ and

¹⁷ Guidance on Improving Gender Balance and Equalities 3-18 is available from <https://education.gov.scot/improvement/learning-resources/improving-gender-balance-3-18/>. The guidance seeks to: challenge gender stereotypes, address unconscious bias, improve gender balance in subject uptake and learner pathways, promote whole-establishment approaches to equality.

¹⁸ Gender non-conforming = A person whose behaviour or appearance does not conform to prevailing cultural and social expectations about what is appropriate to their gender. Further information on Gender non-conforming people is available on page 51

transgender young people is that transgender young people are likely to be 'persistent and insistent' that their gender identity does not align with the sex they were assigned at birth.

Overcoming barriers

In this section:

- Bullying and safety
- Coming out
- Changing name, recorded sex and pronouns
- Toilets and changing rooms
- School uniform
- Social dancing, PE and school sport
- Promoting Health and Wellbeing
- Day and residential trips and other activities

This section explores some common barriers to learning experienced by transgender young people, and suggests how teachers and schools can be inclusive and supportive.

Bullying and safety

The Scottish Government's anti-bullying strategy 'Respect for All: The National Approach to Anti-bullying for Scotland's Children and Young People'¹⁹ provides a holistic approach to anti-bullying which makes clear that all types of bullying, including transphobic bullying, are completely unacceptable. The guidance defines bullying as: "both behaviour and impact; the impact is on a person's capacity to feel in control of themselves. This is what we term as their sense of 'agency'. Bullying takes place in the context of relationships; it is behaviour that can make people feel hurt, threatened, frightened and left out. This behaviour happens face to face and online."

'Respect for All' provides an overarching framework and context for all anti-bullying work that is undertaken in Scotland. The approach aims to build capacity, resilience and skills in young people, and all those who play a role in their lives, to prevent and deal with bullying.

Teachers should be alert to the fact that transgender young people face disproportionately high levels of bullying. All teachers should address and respond to bullying behaviour, including transphobic bullying.

Transphobic bullying

Transphobic bullying is behaviour or language which makes a young person feel unwelcome or marginalised because of perceived or actual transgender identity or transgender expression.

Sometimes the bullying directed at a trans young person also includes aspects of homophobic or biphobic²⁰ bullying because of confusion between gender identity and sexual orientation.

¹⁹ <https://www.gov.scot/publications/respect-national-approach-anti-bullying-scotlands-children-young-people/>

²⁰ Further information on dealing with transphobic, biphobic and homophobic bullying is available from <https://www.lgbtyouth.org.uk/media/1299/addressing-inclusion-2020.pdf>

Transphobic bullying can include:

- Name calling, rumour spreading and gossip about a young person's transgender identity
- Physical attack (which may become a police matter).
- Excluding someone from conversations, activities and games
- Stealing from someone or damaging their property with homophobic, biphobic and/or transphobic graffiti
- Threatening someone or spreading rumours through texts or social media
- 'Outing' or threatening to 'out' someone to peers, teachers or family
- Gestures, looks and other non-verbal communication
- Harassment and/or intimidation
- Deliberately using the wrong name and/or pronoun. This is different from people trying their best and making a mistake.

There is a need to address the root cause of prejudice as well as effectively respond to incidents as they arise in school settings. Transphobic bullying can also be directed at someone who is not transgender such as by referring to them in a derogatory manner on the basis they are perceived to be transgender. Some young people experience bullying:

- Because others think that they are transgender
- Because they have transgender family or friends
- Because they are seen as different or not conforming to traditional gender stereotypes.

"All I knew was that anyone who dressed weirdly or dressed in the 'wrong' clothes was bullied and there wasn't any support available."

Trans young person

"I experienced transphobic bullying even though I didn't realise I was transgender purely because I dressed like a boy."

Trans young person

Young people who are exhibiting bullying behaviour will need help and support to:

- Identify the feelings that cause them to act this way
- Develop alternative ways of responding to these feelings
- Understand the impact of their behaviour on other people
- Repair relationships.

School staff need to help young people who demonstrate bullying behaviour by providing clear expectations about behaviour as well as providing a range of ways to respond. This can include taking steps to repair a relationship, and where appropriate, supporting them

to make amends. School staff need to challenge prejudice and offer the opportunity to learn and change behaviour.

All education authority schools in Scotland are expected to use the SEEMiS management information system, to record and monitor bullying incidents in schools. SEEMiS now enables schools to record any underlying prejudice or other negative attitudes reported in an incident of bullying, including those relating to a protected characteristic under the Equality Act 2010.

Therefore, schools are expected to record incidents of transphobic bullying, specifically detailing the transphobic elements. This allows schools to accurately monitor incidents; how they responded; and the impact²¹.

A bullying incident may be one-off or ongoing. It may occur in school grounds or in other settings, such as online or in the community. Regardless, school staff should address any issue which is impacting on a young person's health and wellbeing and is creating a barrier to their learning.

Transgender people in same-sex relationships may also experience homophobia or homophobic bullying.

Is transphobic bullying a hate crime?

There is no crime of bullying as such. Whether an instance of bullying behaviour constitutes a hate crime will depend on the individual circumstances of any case.

Some bullying involves criminal behaviour, such as assault, graffiti or breach of the peace. If the bullying behaviour in any given case is criminal, the statutory aggravation relating to transgender identity provided for in hate crime legislation²² applies where the offender evinces (demonstrates) malice and ill-will toward the victim based on their trans identity (or perceived trans identity), or where it can be proved that the offence was motivated by malice and ill-will toward transgender people.

Adults and young people can seek appropriate advice and guidance from Police Scotland if they consider a crime may have taken place²³. Where necessary, a young person who engaged in bullying behaviour that was a crime²⁴ (whether or not it was a hate crime) and which has been reported to the police may then be referred to the Children's Reporter or, where appropriate keeping in mind that the presumption should be against criminalising young people, the procurator fiscal²⁵.

Police Scotland's school liaison officers may also be able to proactively assist schools to reduce violent incidents and anti-social behaviour.

²¹ Guidance on recording and monitoring bullying incidents in schools

<https://www.gov.scot/publications/supplementary-guidance-recording-monitoring-bullying-incidents-schools/>

²² See section 2 of the Offences (Aggravation by Prejudice) (Scotland) Act 2009 ("the 2009 Act"), discussed in more detail on page 60 of this document. The 2009 Act can be found here:

<https://www.legislation.gov.uk/asp/2009/8/contents>. Once it is in force, the Hate Crime and Public Order (Scotland) Act 2021 will consolidate, modernise and extend existing hate crime legislation – and will replace the 2009 Act. The new Act can be found here: <https://www.legislation.gov.uk/asp/2021/14/contents>.

However, for the time being the 2009 Act continues to be the relevant legislation.

²³ More information on reporting a hate crime or hate incident is at: <https://www.scotland.police.uk/advice-and-information/hate-crime/>

²⁴ Please see further information on the age of criminal responsibility in Scotland at <https://www.gov.scot/policies/youth-justice/raising-age-criminal-responsibility/>

²⁵ https://www.copfs.gov.uk/images/Documents/Prosecution_Policy_Guidance/Book_of_Regulations/Book%20of%20Regulations%20-%20Chapter%2016%20-%20Children.PDF

More information on reporting a hate crime or hate incident is at:
<https://www.scotland.police.uk/advice-and-information/hate-crime/>

Dealing with incidents

Young people should feel happy, safe, respected and included in the learning environment and all staff should be proactive in promoting positive relationships and behaviour in the classroom, playground, and wider learning community. Above all, keep the young person at the heart of any and all responses; consider what impact the actions you take will have on their and others' wellbeing. This applies to all young people involved in bullying incidents:

- Recognise that simply listening can help
- Explore with the young person the options open to them
- Take the views of young people seriously, considering what they want to happen next
- Remember to consider the privacy of young people and any legal impact of sharing information with others
- Take steps to address any underlying prejudice in the school
- Address any transphobic language used in school environments.

Helping young people feel safe

All young people benefit when everyone feels safe at school.

If a member of school staff witnesses a young person being bullied because of their gender identity, or perceived gender identity, they should follow the school and local authority's anti-bullying policy or guidance. Bullying incidents should be resolved proactively, using a respectful, proportionate and holistic approach which takes account of the impact of the incident as well as any underlying prejudice or other negative attitudes. If the incident involves a staff member, this should be reported to the senior management team.

School staff can help young people feel safe from transphobic bullying by ensuring that school policies and practice are supportive. Recommendations are:

- Local authority and school anti-bullying policies should specifically mention transphobic bullying and/or gender identity
- Staff, young people, parents and carers should know about anti-bullying policies and school procedures
- Teachers should educate young people about transgender issues and work towards creating a culture of respect. Age appropriate resources highlighted in the resources section in this document may help
- All incidents of discrimination, intimidation, harassment or violence should be thoroughly investigated
- Young people should be informed about the outcome of any investigation and supported to recover from the impact of bullying
- Anti-bullying approaches should be embedded within the whole-school approach to inclusion and respect for all young people.

More information:

The Addressing Inclusion: Effectively challenging homophobia, biphobia and transphobia guidance provides information and guidance to school staff on addressing homophobic, biphobic and transphobic bullying in Scottish schools and complements Respect for All: The National Approach to Anti-Bullying for Scotland's Children and Young People.

respectme,²⁶ Scotland's national anti-bullying service, can also provide advice and guidance about anti-bullying policy and practice and information for parents and carers.

Coming out

“Coming out in high school was reasonably easy and I faced minimal negativity which was a very good thing of course. It undeniably improved my mental health and esteem significantly.”

– Trans young person

When someone discloses their gender identity or sexual orientation²⁷ this is called 'coming out'. Because there is a general assumption that people are heterosexual and not transgender, those who fall into this category don't usually feel that they have to disclose this. Lesbian, gay, bisexual and transgender people often need to 'come out' to let others know that they identify, and live their lives differently, from the general assumption. Transgender young people often have to choose between hiding how they feel or telling someone. If they don't know that their family, friends or teachers are 'trans-friendly', they may assume that, if they come out, people will reject them. This, along with negative media messages, means that many transgender young people delay 'coming out' or speaking to someone about how they feel.

Transgender people may come out at any age and to varying degrees: some people want to live fully as themselves in all aspects of life; others may want to come out to just a few trusted people. It is important to understand that:

- Coming out can be a lifelong process
- Only an individual can decide when and who to tell
- Coming out is a personal choice; and people should not feel forced to 'come out' to others if they don't feel ready to do so.

See more information on confidentiality, capacity to make decisions, and recognition and development of gender identity on pages 35, 60, and 13 respectively.

Some transgender young people who have socially transitioned may want to be open with others about their gender history. Others treat their gender history as private, and do not disclose this to others.

If a young person transitions at school, other learners and staff will most likely be aware of their gender history. Similarly, if a young person has a non-binary²⁸ gender identity, being open about this will mean other young people and staff know that that young person is

²⁶ www.respectme.org.uk

²⁷ Please see paragraph 5.127 of the of Technical Guidance for Schools in Scotland for a definition of sexual orientation <https://www.equalityhumanrights.com/en/publication-download/technical-guidance-schools-scotland>

²⁸ See definition of non-binary on page 51.

transgender. However, transgender young people who join your school after transitioning may want to keep their gender history private, and this should be respected.

Responding to young people coming out

“My advice to schools on how they can help young trans people wishing to come out would be to let them take the reins in how they wish to come out.”

– Trans young person

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.

Some tips for responding to a young person who talks to you about being transgender or about their gender identity include:

- Don't panic: they don't expect you to be an expert
- Say 'thank you': the fact that they have trusted you enough to speak to you is a privilege
- Ask what support you can give: listen to what they say, and repeat it back to check you've understood correctly
- Don't agree to anything you're not sure of, seek further information and support for yourself and the young person if needed. The resources section in this document may help.
- Don't say 'it's just a phase' as this can diminish the importance of the issue for the young person
- Ask what name and pronoun you should use to address them. Check if that's all the time or in certain circumstances
- Ask if you can share information and with whom
- Arrange a time to meet up again, to check in and see how they are doing
- Check if there's anything else they want to talk about
- Ask how things are at home? Are their family aware that they are considering their gender identity? Are they being supported at home? The resources section in this document may help.

Remember, many young people can be nervous when 'coming out' to others so take time to listen, show empathy and be affirming of how they feel.

If a young person comes out to you, it's also important not to deny their identity, or overly question their understanding of their gender identity. Teachers can of course ask reflective questions that allow young people to express themselves, explore their gender identity and identify their needs.

For more information on supporting transgender young people and practical steps for good practice go to page 41.

For more information on confidentiality and information sharing go to page 35.

A guide to supporting transgender young people coming out is also available from LGBT Youth Scotland²⁹.

Changing name, sex and pronouns

“My guidance teacher was really understanding and helped me let all my teachers know about my new name.”

– Trans young person

Some young people who are transgender change their name and/or pronouns, while others don't. Teachers should respect a young person's wishes and use the name/pronoun they have asked to be used. If you are not sure what name/pronoun they use, ask them in private at a suitable time. It should be noted that anyone can change their name informally as long as it is not for a criminal purpose.

Changing name and recorded sex

Young people can simply choose to tell others informally³⁰ that they want to use a different name. They don't have to change their name on their official school record.

To keep a record of this and improve consistency in staff practice, education authority schools can update the school records held in SEEMiS using the box 'Known As' which can be used to record other names a young person may use in school. Before updating their record it is important to discuss this with the young person to ensure that they would like all teachers in the school to be aware of their name change.

If a young person wants the school to record the change of name and/or change of recorded sex³¹ formally³², they (with their parents or carers if under 16) should write to the school to instruct this. Letter, email or any other form of written communication is sufficient. Schools do not need to ask for anything else as a name change can be made at any time in Scotland. Changing the recorded sex in SEEMiS has no effect on a young person's legal sex.

A young person or their parent can also officially³³ record their change of name at the National Records of Scotland (see below), however, they are not required to do this to give effect to an amendment to the pupil's school record. Schools should accept the written request from the young person and/or their parent or carer as sufficient to make the change to the pupil's record. There is sample text in the appendix on page 69.

²⁹ <https://www.lgbtyouth.org.uk/media/1054/coming-out-guide-for-t-people.pdf>

³⁰ Informally here reflects that the change is not requested officially using a written document. Anyone can change their name informally as long as it is not for a criminal purpose.

³¹ The SEEMiS system refers to a pupil's sex rather than gender and transgender young people may have the way their sex is recorded on their SEEMiS education records changed. See screenshot below.

³² A change in sex recorded within the SEEMiS system is not a legal change of sex, for which it is necessary to obtain a gender recognition certificate.

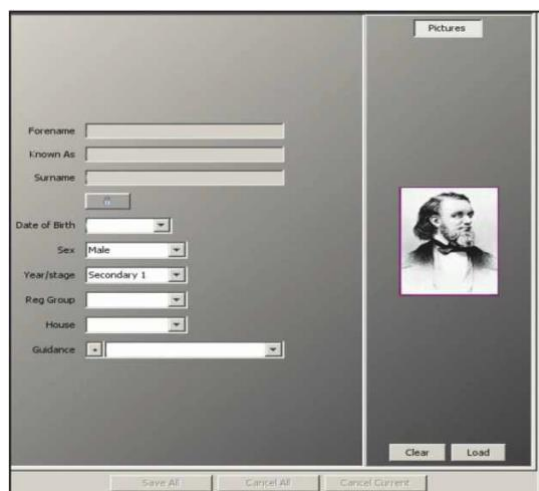
³³ The term official here reflects the legal nature of the changes made.

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.

It is often said that school records are considered a legal record. This reflects the processing of the information within the school record in line with a regulatory requirement. However, no legal steps are required for a change of name or recorded sex within a school record.

How to change the record within the SEEMiS system.

Once the letter has been received, the school can then change the name and sex recorded on the official administration recording system (SEEMiS³⁴) and other school files. With the correct level of SEEMiS administration access, such as the school's business manager or senior management team, the school can then update the name and recorded sex of young people.



Change of name and recorded sex screen on SEEMiS in Application>Records>Edit

Changing names and the sex recorded on administration systems does not affect a candidate's SQA number, and the SQA does not require any documentation. The school simply needs to update the young person's candidate record³⁵:

Note: At present there is no official way to record a young person's pronoun on SEEMiS, however schools can record this information in the young person's file. There is also no option for non-binary identities to be recorded. Schools can ask if the young person prefers one sex over another to be on the official record

How to change details on Glow

Glow accounts for pupils from education authority schools are provisioned directly from SEEMiS. Therefore if a pupil wants to change their display name in Glow, a request should be made to the school and the school should follow the process described above to change the 'Known As' field in SEEMiS.

Some local authorities also have the ability to make Glow username changes in SEEMiS using the 'UserName' field. For local authorities without the ability to make Glow username changes in SEEMiS, changes can be made in the RM Unify Management Console using the 'User ID' field.

³⁴ Or any other administrative system which grant-aided or independent schools may use.

³⁵ www.sqa.org.uk/sqa/75545.html

Local authorities should not make name changes in Glow Office 365, G Suite or Blogs services as there is a risk that data will be overwritten and therefore, revert any intended change. There is a Glow Key Contact in each local authority and they would be able to assist their schools if needed.

Glow accounts for pupils in grant-aided and independent schools are manually created. To change Glow details for a manually created Glow account, users with the appropriate admin access should select the 'Sync Users from CSV' button in the RM Unify Management Console. This enables Super Admins to download their user list, make changes and then upload these changes.

Data protection

Data held within SEEMiS³⁶ is controlled by the local authority and may be shared outwith the school for legitimate education authority functions and council business such as electoral registration.

All school records must be created, processed, transferred, and destroyed in line with the requirements of the Pupils' Educational Records (Scotland) Regulations 2003³⁷, and the requirements of data protection law³⁸. Although changes in recorded sex and name are not specifically flagged to local authorities they will hold this data along with all other information on SEEMiS. Under data protection legislation schools should inform transgender young people and their families³⁹ that any changes made to SEEMiS will be recognised by the local authority, including for purposes such as the electoral roll – schools should not take any additional steps to share this information. The changes will appear automatically, without needing to be flagged.

How can a child's name be changed in law?

Under 16s

Young people under 16 cannot change their own name; only those who have parental responsibility⁴⁰ can change a young person's name.

No formal procedure is required, but a statement of intention to change the name by which a child is known in the form of a statutory declaration will be accepted by most organisations as proof of the change of name. A statutory declaration is a formal statement signed in the presence of a notary public or Justice of the Peace.

If the child's birth was registered in Scotland, or the child is the subject in Scotland of an entry in the Adopted Children Register, or a Parental Order, an application to change the name that appears on the child's birth certificate can be made to National Records of Scotland⁴¹. Any parent with parental responsibility has to be a party to the application. Otherwise the application can be made by anyone else with parental responsibility.

If there is a disagreement between those with parental responsibility as to a proposed change of name, it is possible to apply to the court for a Specific Issue Order. Here, the court would need to be persuaded that the change of name is in the child's best interests.

³⁶ The functions of an education authority referred to here do not apply to independent and grant-aided schools.

³⁷ http://www.legislation.gov.uk/ssi/2003/581/pdfs/ssi_20030581_en.pdf

³⁸ Please see section on Data Protection Law on page 59 for further information

³⁹ The term 'family' includes parents, carers and legal guardians.

⁴⁰ <https://www.mygov.scot/parental-responsibilities-rights/>

⁴¹ <https://www.nrscotland.gov.uk/registration/recording-change-of-forename-and-surname-in-scotland>

In these circumstances mediation may be used as an alternative to proceedings to resolve any disagreement.

16 and 17 year olds

Young people who are aged at least 16 can choose to change their name in the same way as adults, by changing their recorded name(s) or with a Statutory Declaration of Name Change.

As noted above, there is no requirement for a formal change of name to have taken place for a change to be made within the school record system.

NB: At present there is no way to change the sex recorded on a birth certificate for those under 18 in Scotland. However, the sex recorded on their passport, medical records, educational records and other documents can be changed.

Pronouns

Typical pronouns are 'he' or 'she'. Some transgender young people, especially those with a non-binary⁴² gender identity, are unhappy about people referring to them as 'he' or 'she', and use the gender-neutral pronoun 'they'. Other, rarer, non-binary pronouns include 'zie' or 'ey' or 'per'.

Using particular pronouns is an indication of someone's gender identity. Staff should take care not to 'out' a young person by using a pronoun which differs from the one which the young person usually uses in public. Similarly, staff and young people should avoid misgendering a transgender young person. Using the correct pronouns is the right and respectful approach to including transgender young people. Where the wrong pronoun is accidentally used they should simply apologise and try not to do this in the future.

Addressing young people: good practice

If you are supporting a transgender young person, be led by them, checking with them what pronoun and/or name you should use and in which circumstances. This may be different depending on whether it's in public or private, and may change over time. This is part of the process of their transition.

Staff and young people should avoid 'deadnaming'. This is when someone intentionally calls a transgender young person by their previous name. Depending on the situation, it could be distressing for the young person, or be viewed as bullying.

If someone accidentally calls a person by their previous name, they should simply apologise and try not to do this in the future.

Toilets and changing rooms

In a 2017 survey, 5% of LGBT young people responded that they faced discrimination in bathrooms/toilets.

41% of transgender young people surveyed had experienced a hate crime or hate incident in the past year.

52% of respondents referred to school or education as the place in which they experienced the most discrimination. This was also the most prevalent response in the 2012 survey.

Dr.Lough Dennell, B.L, Anderson, G. and McDonnell, D. (2018) *Life in Scotland LGBT Young People*. LGBT Youth Scotland.

<https://www.lgbtyouth.org.uk/media/1354/life-in-scotland-for-lgbt-young-people.pdf>

⁴² See definition of non-binary on page 51.

What the law says

Toilet facilities for boys and girls must be provided in schools. Schools are also required to provide accessible facilities for young people with a disability.

In recent practice, schools have been designed to also include accessible facilities which can be used by anyone who requires to use them, with a focus on accessibility of facilities for a range of reasons; recognising the needs of a variety of people including those with disabilities, and transgender pupils. This reflects wider changes in society, where there is increasing provision of gender neutral facilities, and accessible toilets in public spaces. The design of gender neutral facilities should ensure privacy for all young people, this should wherever possible include features such as full length walls and doors and should take account of the particular needs of female pupils.

There is no law in Scotland which states that only people assigned male at birth can use men's toilets and changing rooms, or that only people assigned female can use women's toilets and changing rooms. This is instead done by social convention.

Paragraph 1.26⁴³ of the Equality and Human Rights Commission's (EHRC) Technical Guidance for Schools in Scotland summarises the exceptions that apply to certain types of school as follows:

- Single-sex schools are allowed to admit pupils of only one sex.
- Mixed schools with single-sex boarding are allowed to offer boarding to only one sex.
- Residential schools are permitted, in some circumstances, to restrict access to communal accommodation based on sex or gender reassignment.

Further advice on these exceptions is provided by the EHRC Technical Guidance for Schools in Scotland⁴⁴. The Technical guidance also sets out examples of what may be considered a legitimate aim within education.

Therefore, there are a number of considerations to make in relation to the provision of toilets and changing rooms within schools:

- A transgender young person should not be made to use the toilet or changing room of their sex assigned at birth.
- Recognise that some transgender young people may not be comfortable using a single sex toilet or changing room that matches their gender identity. In which case providing a gender-neutral space or accessible toilet can be the best alternative.
- Further advice to support considerations is below, but in summary this does not mean that all toilets need to become gender neutral.

Further information on the relevant legal provisions is set out at page 57 and in EHRC guidance. If school staff are in any doubt they should seek advice from their education authority officer or from the senior management team.

⁴³ Paragraph 1.26 of Technical Guidance for Schools in Scotland

<https://www.equalityhumanrights.com/en/publication-download/technical-guidance-schools-scotland>

⁴⁴ <https://www.equalityhumanrights.com/en/publication-download/technical-guidance-schools-scotland>

What does evidence tell us?

Evidence shows that young people can feel vulnerable to bullying whilst using toilets and changing rooms⁴⁵. Much has been done to improve the design of toilets in schools to alleviate concerns over dark and enclosed spaces which can leave young people feeling vulnerable to bullying and other behaviours.⁴⁶

Schools should be aware that some pupils may have experienced gender-based violence. In 2018, the Everyday Heroes programme⁴⁷ consulted young people across Scotland, including 125 young people through engagement sessions, 439 young survey participants and 71 young abuse survivors. Of the participants:

- 31% had experienced gender-based violence;
- 10% had experienced rape or sexual assault; and,
- 7% has experienced sexual abuse.⁴⁸

In light of the above, toilets and changing rooms can therefore be an area of school where boys, girls and trans young people feel particularly vulnerable. It is known that young people may worry about being teased or bullied and may not be comfortable getting changed in front of others, and may wish additional privacy⁴⁹.

For transgender young people these worries may be very prominent, and they may express very particular concerns about experiencing bullying or getting changed with others and may need additional privacy.

Because of being uncomfortable about using school toilets, some young people including those who are transgender resort to going home to use the toilet, or they may limit their fluids/drinks during the school day. Female pupils may also do this as a result of concerns about safety. This has implications for their health and wellbeing, as well as their attendance and attainment. It is therefore important that young people, where possible, are able to use the facilities they feel most comfortable with.

Recommended practice includes:

- Asking the young person about the facilities that they wish to use and if they have any worries
- Respecting the young person's gender identity
- Creating a plan with the young person, outlining what can happen and when
- Planning discussions should consider:
 - ensuring appropriate arrangements are made for the provision of, and disposal of, sanitary products
 - whether there are toilet and changing facilities available within the school which may afford extra privacy, if this is requested

⁴⁵ Toilets unblocked: A literature review of school toilets <https://www.cypcs.org.uk/ufiles/Toilets-Literature-Review.pdf>

⁴⁶ Please see Whole-School Approach section for further information

⁴⁷ <https://everydayheroes.sps.ed.ac.uk/wp-content/uploads/2018/11/Executive-Summary.pdf>

⁴⁸ <https://everydayheroes.sps.ed.ac.uk/wp-content/uploads/2018/11/Executive-Summary.pdf>

⁴⁹ Please see the section below on page 28 on addressing safety concerns

- where facilities are limited, and if a young person needs additional privacy, whether they could access a staff facility without compromising their privacy or the privacy of staff members
- If the young person needs gender neutral facilities:
 - Whether accessible facilities within the school could be used
 - Whether a facility which is currently single sex could be converted to a gender neutral or accessible facility, taking account of the additional privacy requirements for gender neutral facilities.

It is good practice to engage with parents in decision making, working closely with the young people.

As a guide, it is helpful to consider whether:

- the young people's rights are being respected?
- the young people concerned are being treated with dignity and respect?
- all reasonable steps been taken to accommodate the young people's needs?
- young people are being treated differently from their peers and they are experiencing disadvantage as a result, could this be unlawful discrimination?

Safety concerns

When considering safety concerns for all young people including transgender young people, it is important to assess why a young person feels unsafe and whether this is as a result of any inappropriate behaviours.

It is common practice to carry-out risk assessment for any safety concerns; where possible risk assessments should be measurable and based on evidence of risk and understanding of pupils, their needs and the local provision of facilities. For more information on risk assessments see page 33.

If a young person feels unsafe steps should be taken to discuss their concerns and outline the specific steps being taken, to ensure the safety of all young people concerned, this may include specific plans to support a young person in school. All responses to complaints should be reasonable and proportionate. If the complaint relates to another young person who identifies that they will experience disadvantage as a result, then the school should seek to respect the rights of all. More information on responding to concerns can be found on page 46.

Good practice

- If a young person is concerned about the changing facilities, listen to what they are saying. It may be possible to let them change separately/privately to meet their needs. Schools could put up modesty curtains in changing areas or consider the provision of further cubicles. Many young people, including transgender and female pupils at school would appreciate that.
- If a young person repeatedly asks to go to the toilet during class time, it may be because the toilets are quiet then, and they feel safer. Although not ideal, it may be appropriate to allow this, otherwise the young person might not use the facilities at all. Arrange a time to discuss their concerns with them.
- If young people, or their parents/carers, express concerns about sharing toilets or changing rooms with a transgender young person, it may be because they are

concerned that the transgender young person may behave inappropriately. In this instance, schools should seek to dispel any misconceptions: a transgender young person's presence does not constitute inappropriate behaviour.

- If a young person feels uncomfortable for any reason the school should listen to their concerns carefully and identify if additional support is needed.
- If a young person raises a concern regarding sharing facilities with a transgender young person and it is established that they will experience disadvantage as a result, then the school should seek to respect the rights of all. To do this the school should seek to come to an arrangement, to accommodate everyone involved, after discussion and consideration of options available.
- If using existing facilities for disabled pupils to provide a gender neutral option for a transgender young person, ensure this continues to be accessible for disabled pupils with clear signage and/or identifying it as an 'Accessible Toilet' for all.

School uniform

Most schools have a uniform policy or code. There are numerous arguments for and against school uniform: it is up to each school to decide its own dress code. However, forcing transgender young people to wear clothes which do not match their gender identity can be distressing for them, and may constitute discrimination under the Equality Act 2010.

If your school has a uniform, the school uniform policy should include a range of options to accommodate the needs of girls and boys and these should also accommodate the needs of transgender young people through gender-neutral options; this can be helpful for many young people. This approach should allow all young people to wear the school uniform they feel most comfortable in.

Schools should not exclude transgender young people because of how they dress, unless it breaches health and safety regulations.

If your school doesn't have a school uniform, it should be clear that young people can wear what they want, including skirts, trousers, shorts, regardless of gender identity, as long as this complies with school guidelines.

Social dancing

Many schools hold ceilidhs, proms and school discos, and include partnered dance in their curriculum. This can be a much-enjoyed part of school life and schools should not be discouraged from teaching dance and social dancing.

However, schools should be aware of the traditionally gendered aspects of dances and should look for ways to ensure that this doesn't exclude transgender young people. Schools can be inclusive of all young people by:

- ensuring there are no restrictions on who young people can dance with
- allowing young people to wear what feels comfortable to them.

PE and School Sport

Primary schools and schools sports days

Physical education in primary schools is an important part of supporting young people's health and wellbeing. Young people can learn about teamwork, fair play and respect for others. Therefore steps should be taken to ensure that transgender young people can participate in physical education.

“Inclusion is not only about all children being in attendance and taking part, but also about all children receiving appropriate experiences to enhance their learning. Physical education should, therefore, be child-centred, and as they get older, increasingly child-directed, if young people are to achieve, autonomously, the potential benefits of a physically active life... with inclusion at the heart of the CfE all children and young people’s learning experiences focus on personal achievement, personalisation and choice.”

Association for Physical Education Scotland

http://www.afpe.org.uk/physical-education/wp-content/uploads/scotland_position_paper.pdf

In secondary schools

Some transgender young people find PE classes very difficult because they are concerned about not having their gender identity accepted, or about their physical appearance. Teachers should consider any request for different approaches sensitively.

At its core, physical education is about developing the foundations for an active life and is an important aspect of improving young people’s health and wellbeing. Young people can learn about teamwork, fair play and respect for others. Steps should be taken to ensure that transgender young people can participate in physical education.

We recommend:

- if PE classes are organised by sex, a transgender young person should be allowed to take part within the group which matches their gender identity. For a non- binary young person, ask them which group they would feel most comfortable being with
- that any school competition should take account of the age and stage of development of the participants
- for inter-school competitions⁵⁰, the same approaches to ensure fairness and safety should apply. It may be helpful to a young person if you speak to the equivalent staff in the other school(s) to let them know there is a transgender young person in your team/competition, but only with the young person's consent.

Clothing

Good practice in PE, sport and related clothing includes:

- allowing transgender young people to wear sportswear which matches their expressed gender identity
- for swimming, skirted swimsuits, baggy shorts, lycra surfing tops or short wetsuits are alternatives for transgender young people (similar to modest swimwear worn by young people from some faith groups).

A transgender boy or non-binary⁵¹ young person who has developed unwanted breasts might bind their chest to flatten it, so they might need to wear a loose-fitting shirt or

⁵⁰ The Equality Act includes a specific exception in section 195(2) in relation to transgender people participating as competitors in a gender-affected sport. Further information is provided at page 57

⁵¹ See definition of non-binary on page 51.

sweatshirt. Binders⁵² can lead to shortness of breath, can be painful during physical exertion and there are health risks associated with wearing binders that are too tight.⁵³

Binders can, however, have a positive impact on a young person's mental health so staff should allow a young person to decide for themselves about whether or not to wear a binder, to help them join in. Some transgender young people may be willing to wear a looser binder than usual during PE.

Promoting Health and Wellbeing

In Scotland, education authorities and the managers of grant-aided schools must endeavour to ensure that their schools are health-promoting in terms of the Standards in Scotland's Schools etc Act 2000. Education authorities must plan and report on the measures they have taken to that effect in any year. A school is defined as health promoting if it provides activities, environment and facilities which promote physical, social, mental and emotional health and wellbeing of pupils in attendance at the school.

Mental Health and wellbeing

Prevention and early intervention make a big difference in reducing the risk of developing mental health problems and in providing a positive future for our young people. Within schools, the approach to Health and Wellbeing is designed to help young people develop the knowledge and understanding, skills and capabilities to build emotional and physical wellbeing, creating resilience to manage life's challenges. Young people need support and understanding to develop in this way, which is why all staff in schools share a responsibility for supporting the care and wellbeing needs of their young people. Schools should establish open, positive, supporting relationships across the whole school community, where young people feel that they're listened to, and where they feel secure in their ability to discuss challenges as they arise.

Our approach to education and early years is designed to give children the best possible start in life, from high-quality early years provision, to meaningful access to the full range of opportunities for further and higher education and employment at the end of their school life. Improving outcomes for our children will be key to raising their mental wellbeing. Education authorities and all those working in our schools have a responsibility to support and develop the mental wellbeing of young people, with decisions on how to provide that support taken on the basis of local circumstances and needs.

Healthcare in Schools

It is recognised that young people's health can affect their learning. Some young people will require specific help with their health whilst they are at school, as part of supporting their learning, others may be unable to attend school due to ill health. National policy guidance on [supporting healthcare needs in schools](#)⁵⁴ and [children unable to attend school due to ill health](#)⁵⁵ is available.

The individualised planning for young people's healthcare provision, should, in line with national policy, ensure that arrangements for the provision of medication and healthcare

⁵² Ibid.

⁵³ We recommend that young people consult their doctor before using a binder and also if they experience pain at any time due to binding. A binder may be a vest, or athletic support top, or be wrapped bandages. It is used as a way to reduce the size of a person's chest, so they can present as more masculine or gender neutral.

⁵⁴ <https://www.gov.scot/publications/supporting-children-young-people-healthcare-needs-schools> Grant-Aided and Independent schools may wish to follow this guidance as appropriate

⁵⁵ <https://www.gov.scot/publications/guidance-education-children-unable-attend-school-due-ill-health/> This guidance does not apply to grant-aided and independent schools but may be useful for other sectors.

deliver the service they need in the way most appropriate to their personal circumstances, with respect for young people's privacy, dignity and rights. For example, when providing vaccination such as that for Human Papillomavirus Infection (HPV) arrangements should be made, in consultation with transgender young people, and in line with the guidance above, for transgender young people to receive the vaccine at the same time as other pupils. If the young person is uncomfortable having the vaccine at the same time as other young people they (or their parent/carer) can contact their local NHS Immunisation Team, using the contact details within the HPV immunisation consent pack, ahead of the school immunisation date.

Day and Residential trips and other activities

School activities should be inclusive for all. So, when planning these, staff should take into account the needs of transgender young people.

School day trips are not likely to require any specific arrangement unless a transgender young person wishes to use a single-cubicle toilet. You may need to contact the venue to ensure there will be a toilet accessible for transgender young people.

Specific considerations will be required for residential trips, as young people are in closer quarters than usual. Talking about respect for boundaries, privacy and shared living space will help all young people, including transgender young people. For certain residential accommodation it is possible under exceptions provided by the Equality Act⁵⁶ to treat a transgender young person differently in the provision of single-sex communal accommodation if this is a proportionate means of achieving a legitimate aim⁵⁷. This means that schools are not required to place a transgender young person in a dormitory that aligns with their gender identity if this treatment of them is a proportionate means of achieving a legitimate aim. This will require careful consideration⁵⁸.

In considering this, schools will wish to be aware of the guidance provided at paragraphs 9.2 - 9.7 of the EHRC's Technical Guidance for Schools in Scotland⁵⁹ which sets out the matters which schools must take into account in reaching such a decision.

Schools should take time to consider the needs of transgender young people and support them to engage fully in all aspects of the residential trip. The following good practice points will assist in this.

Good practice

- It is usual for there to be significant engagement with young people and their families as part of preparing for a residential trip. This can include the allocation of rooms and sharing arrangements. As part of these discussions, appropriate account should be taken of the wishes, rights and needs of all young people, including those who are transgender, this is in line with many other considerations in preparation for a school trip.
- If a transgender young person wants to share a room with other young people who share their gender identity, they should be able to do so, as long as the rights of all those involved are considered and respected.

⁵⁶ <http://www.legislation.gov.uk/ukpga/2010/15/schedule/23>

⁵⁷ Further information on legitimate aim is available on page 58

⁵⁸ Further information on the provision of residential trips and communal accommodation is available on page 57

⁵⁹ <https://www.equalityhumanrights.com/en/publication-download/technical-guidance-schools-scotland>

- If any young person, including a transgender young person, is concerned about sharing a room with others, you could consider making alternative arrangements, including giving them their own room where appropriate.
- If any young person voices a concern, this should be considered - responses should be reasonable and proportionate, taking into account the rights of all young people.
- If showers are communal, find out if there are single-cubicle or private washing facilities which could be used by any young person, including a transgender young person, who would like greater privacy.
- You could work out a rota so that everyone can wash in private if they want to. Many young people, including female and transgender young people, are unhappy to use communal showers.
- Investigate the ethos and practice of the venue beforehand. If you have any concerns, contact the venue to discuss these in general terms, particularly safety and respect.
- If considering information with others, as part of planning, you should seek the young person's permission before sharing information with others⁶⁰.

Risk assessments

Risk assessments can be useful for thinking about how you will keep all young people safe while they are in your care, including transgender young people. Such assessments are routine and can help with trip or event planning, anticipating risks and the measures to put in place to support the safety of all young people. Risk assessment also supports education authorities in meeting their anticipatory duties in respect of reasonable adjustments for pupils with a disability.

Such assessments are most helpful if you involve the young person in determining risk and how to mitigate it. However, note:

- risk assessments should not be used with the explicit aim of excluding a transgender young person
- risk assessments should be realistic and based on actual risk
- risk assessments should be measurable and based on evidence of risk and understanding of pupils, their needs and the local context. For example, understanding friendship groups, any historical concerns, for example of incidents of bullying behaviour within the group of young people.
- if a trip is to a foreign country, find out if there are anti-LGBT laws and contact the foreign office for advice. Additional information is available from <https://www.gov.uk/guidance/lesbian-gay-bisexual-and-transgender-foreign-travel-advice>
- the information contained in risk assessments should only be shared according to the school's confidentiality and information-sharing policy
- it may be helpful to reassure parents and carers proactively in relating to any risks identified as part of the assessment process.

See confidentiality and information sharing on page 35.

⁶⁰ Please see further information on Confidentiality, Information Sharing and Child Protection on page 35

Support for transgender young people

In this section:

- Getting it Right for Every Child
- Confidentiality, information sharing and child protection
- Working with parents, carers and families
- How teachers can help transgender young people and their family relationships
- Support and referrals for transgender young people

This section includes advice on how best to support an individual young person in school, and covers some common concerns such as confidentiality and working with parents and carers.

Getting it Right for Every Child

As part of the Getting it right for every child approach, every child, young person and parent has a named person who can provide initial advice, information and support where requested, as well as access to wider support. The named person will usually be the Head teacher or deputy head teacher in primary schools or a promoted or principal teacher involved in personal support in secondary schools. The named person can consider the wellbeing needs of the child or young person and can discuss the provision of support to address any needs, including support for transgender pupils. Where needs are identified across a range of services, there should be a child's plan where beneficial. The named person can arrange a lead professional to be responsible for co-ordinating and reviewing a child's plan.

Any consideration of wellbeing should be holistic and based on the child or young person's family and unique circumstances. This includes recognising their strengths and understanding factors that affect their resilience. This approach is supported through the National Practice Model⁶¹ and a range of tools which enable school staff to use a common language and approach with each other and with children, young people and parents.

While the aim of a named person is that there is someone there for every child, young person or parent if needed, there is no obligation to use the named person for support if a child, young person or parent would prefer to access information and support through another person or service.

The Education (Additional Support for Learning) (Scotland) Act 2004 requires education authorities to identify, provide for and to review the additional support needs of their pupils. An additional support need is caused by a barrier to their learning and can be of short or long-term duration. As part of the Getting it Right for Every Child approach schools should consider the support that may be required in order to overcome any barrier to their learning. Further information on additional support for learning is available at page 60.

⁶¹ <https://www.gov.scot/publications/girfec-national-practice-model/>

“I came out to one of my teachers and they told my guidance teacher that I'm trans even though I really didn't want them to. I wasn't ready.”

– Trans young person

Confidentiality and privacy is important to transgender young people. They can worry about people disclosing information about their gender identity to others, and/or about professionals taking action which they have not agreed to.

National Child protection guidelines⁶² require agencies and professionals, including teachers to follow particular procedures for confidentiality and information sharing. But, being transgender is not a child protection issue in itself. If there is a child protection issue, this should be specified and the school's child protection guidelines followed.

Good practice

- It is important to respect a young person's right to privacy⁶³.
- Being transgender is not a child protection issue or wellbeing concern in itself.⁶⁴
- Young people should be involved in all decisions affecting them and understand what is happening and why.⁶⁵
- If a young person wishes to 'come out' in a school setting, information may need to be shared. Teachers should consider who to tell and how; taking into account the young person's view and legal requirements on this.
- A transgender young person may not have told their family about their gender identity. Inadvertent disclosure could cause needless stress for the young person or could put them at risk and breach legal requirements. Therefore, it is best to not share information with parents or carers without considering and respecting the young person's views and rights⁶⁶.
- A transgender young person may wish to change schools as part of their transition process. Their previous name does not need to be shared with the new school. It is not necessary for all staff in a receiving school to know that the young person is transgender. Please see pages 22-25 for further information on school records.
- Young people find it increasingly difficult to maintain their privacy. Teachers may need to support young people if personal information becomes common knowledge through social media or online forums.
- If information about a young person's gender identity is to be made public, there should be an agreed procedure on how to respond to questions from other young people,

⁶² <https://www.gov.scot/publications/national-guidance-child-protection-scotland/>

⁶³ A young person with capacity can exercise rights and give consent to information being shared about them in their own right. Please see section on page 60 about Age of Legal Capacity

⁶⁴ If a teacher is concerned about the safety of a young person, they should follow the school's procedures for recording and/or acting on such concerns

⁶⁵ Please see information on page 60 for information on legal capacity and decision making

⁶⁶ See information on page 59 for additional information on Data Protection Law

teachers and parents/carers to ensure staff give consistent information. It will be helpful to make their parents and carers aware at an early stage whenever possible.

“My teacher worked with me on an email which was sent to all staff to let them know about my true name and gender. There were really positive responses to this which were shared with me and made me feel good.”

– Trans young person

Working with parents, carers and families

“I had to run away from my parents because they were not happy about who I am. Teachers should know that while parents should respect their child's gender identity, they don't always do so.”

– Trans young person

The UNCRC explicitly recognises the central role played by parents and families in ensuring that children grow up healthy, happy and safe. It states that: *“the family, as the fundamental group in society and the natural environment for the growth and well-being of all its members and particularly children, should be afforded the necessary protection and assistance so that it can fully assume its responsibilities within the community”*

And goes on to recognise: *“that the child, for the full and harmonious development of his or her personality, should grow up in a family environment, in an atmosphere of happiness, love and understanding”*⁶⁷.

Evidence shows that young people who have parents who are supportive of their transgender identity are more likely to have good mental health, including improved self-esteem and reduced rates of depression⁶⁸.

Responses to a transgender young person coming out can vary but the majority of parents and carers will want to do what is in the best interests of their child. Of course, some parents and carers may have very legitimate questions about what it means and what will happen next. Others may react negatively because they have inaccurate or incomplete information, or because they are worried about what it will mean for their child and their future. Such reactions often stem from loving and wanting to protect their child.

Parents and carers may have different views from the transgender young person. If this is the case teachers and school staff can assist by creating opportunities for young people to have their views heard and by developing a support plan for the transgender young person in the first instance. Parents and carers may also need additional support to discuss their feelings. For information on sources of support please see page 40.

Whatever the home situation, schools should continue to keep the young person involved in decisions which affect them. This could mean giving the young person the opportunity to voice opinions which differ from their parents and carers. The siblings of transgender young people may also require additional support. They may need space and time to process what is happening, or may be at risk of experiencing bullying from peers. Allowing them an opportunity to talk, and reassuring them that the school is committed to their wellbeing, can be beneficial.

⁶⁷ UNCRC preamble

⁶⁸ Travers R. et al. (2012) 'Impacts of Strong Parental Support for Trans Youth' A report prepared for Children's Aid Society of Toronto and Delisle Youth Services. Canada: Trans Pulse.
<http://transpulseproject.ca/wp-content/uploads/2012/10/Impacts-of-Strong-Parental-Support-for-Trans-Youth-vFINAL.pdf>

Why support for trans youth matters

Trans youth with supportive parents

Trans youth with unsupportive parents

Reported life satisfaction

72%

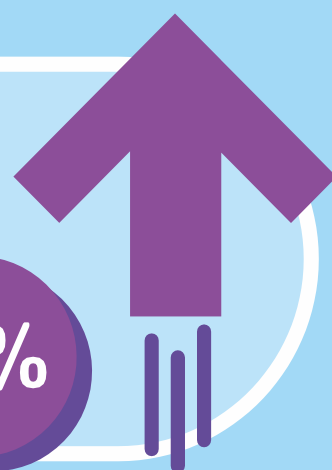
33%



Reported high self-esteem

64%

13%



Described mental health as 'very good' or 'excellent'

70%

15%



Faced housing problems

0%

55%



23%

75%

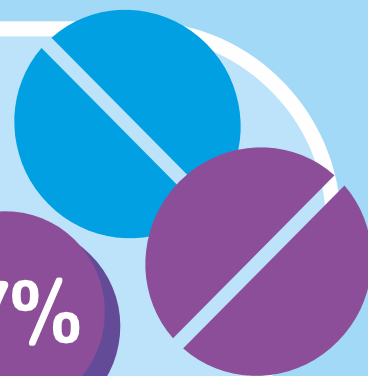
Suffered depression



Attempted suicide

4%

57%



Based on a 2012 study of 433 individuals. Travers R, Bauer G, Pyne J, Bradley K, for the Trans PULSE Project: Gale L, Papadimitriou M (2012).

Impacts of Strong Parental Support for Trans Youth: a report prepared for Children's Aid Society of Toronto and Delisle Youth Services. Based on a resource produced by Trans Student Educational Resources: www.transstudent.org

How teachers can help transgender young people and their family relationships

School staff, including teachers can help by:

- working with young people to agree what they need from their parents/carers
- speaking on behalf of a young person who cannot tell their parents/carers what they need
- providing support or referrals for support to alleviate any distress in the home
- providing a safe space for transgender young people to be themselves and have their identities respected

Schools have a welfare responsibility towards young people, and may have to support the young person if decisions need to be made about a young person's wellbeing. Teachers should always provide impartial information and guidance which prioritises a young person's wellbeing.

It is important to recognise the contribution parents/carers can make, and to find solutions by working collaboratively with young people.

Good practice

- If the young person has not told their family, school staff may want to discuss the most likely reaction with the young person. This will allow the teacher and the young person to discuss whether sharing information is in the young person's best interests, and if so, what information to share and with whom.
- Offer to arrange a meeting with parents or carers; agree this with the young person in advance of the meeting and mutually agree key information to be shared in the discussion and by whom.
- Listen to the concerns of parents and carers without judging them; respond to concerns calmly; and correct any misconceptions.
- The Getting it right for every child approach will keep the young person and parents at the centre of any consideration of wellbeing; and, the identification and agreement of responses and support. Parents and carers may need time to come to terms with what their child has told them. Teachers can help by letting them know about sources of information and support (see below).

If a teacher is concerned about the home environment or the safety of a young person, they should follow the school's child protection policy and procedures for recording and/or acting on such concerns.

Support and referrals for transgender young people

All young people should know where they can go and who they can speak to if they need support.

Schools can help by telling young people (and their families) about support services, for example through posters, websites and social media, and in assemblies, lessons and activities.

There are a range of organisations which provide support and advice to young people about their wellbeing. Schools and education authorities will have local arrangements for the provision of support for health and wellbeing. Organisations such as Childline⁶⁹ can

⁶⁹ <https://www.childline.org.uk/info-advice/>

provide a source of advice and information and online support for all young people on their wellbeing.

LGBT Youth Scotland runs youth groups across Scotland⁷⁰ for lesbian, gay, bisexual and transgender young people aged 13 to 25. This includes specific services for transgender young people in Edinburgh, Glasgow and Dumfries.

LGBT Youth Scotland also provides online support through social media, email and live chat. Here, young people can chat to youth workers about their sexual orientation and/or gender identity, or any other issue. The service is particularly useful for young people in rural areas where there are limited services or for those who are not ready to attend youth groups.

Support and referrals for parents and carers

Agencies that provide advice and support to parents of transgender children include:

- Transparentsees: groups for parents, carers and other family members of trans people, based at the Sandyford Clinic, Glasgow. At present they also run groups in Edinburgh, Perth and Elgin. Please email: transparentsees@gmail.com for details
- Mermaids: a UK-wide organisation which works to reduce isolation and loneliness for parents and young people dealing with gender issues and to empower families and young people: www.mermaidsuk.org.uk, email: info@mermaidsuk.org.uk, helpline number: 0344 344 0550

⁷⁰ <https://www.lgbtyouth.org.uk/groups-and-support/>

Supporting transgender young people at school: steps for good practice

1. Put the young person at the centre and keep them there:

- Allow them to talk about how they are feeling, and thank them for their courage in coming to see you
- If you don't know the answer to something, explain that, and offer to find out more information
- Let them know that you will not share their information with anyone unless they give their permission or there is a risk to themselves or others
- Find out the young person's views before sharing information with others, where possible, seek permission and/or inform them of what will be shared and why⁷¹
- Ask them if they are getting support elsewhere
- Check whether or not the young person is being bullied or feels safe in school
- Ask the young person how they would like you and the school to support them
- Ask the young person if they plan to transition at school and if they would allow the school some time to prepare (if necessary)
- Set a date to meet again.

2. Consider information sharing carefully:

- Do not disclose the transgender identity history or any sensitive information about a transgender young person to anyone inside or outside the school, without considering the young person's view and what is in the best interests of the young person
- Find out the young person's views before sharing information with others, where possible, seek permission and/or inform them of what will be shared and why
- You can, however, discuss situations in general terms with a colleague or a member of the leadership team, ensuring that you do not share personal information or 'out' the young person unintentionally
- If you have a child protection or wellbeing concern, let the young person know that you will need to follow procedures, and share information with the relevant staff or agency.

3. Get advice and support (if required):

- Speak to a colleague or a member of the senior management team for advice and guidance. They may have experience of supporting transgender young people or have a school policy to guide practice
- Contact a specialist service which can provide additional support for the young person, for example groups and on-line support, or training for staff

⁷¹ There are certain circumstances, for example sharing information with other agencies where you are required to seek the young person's consent prior to sharing their information.

- Contact your local authority education officer and/or equality officer or member of the senior management team. They may provide practical guidance and support, or information about the law and school responsibilities.

4. Arrange support meeting(s):

- With the young person's permission, arrange a meeting to plan how the school can reduce any barriers to learning and (if required) support their transition. This could include a plan with goals and clear timescales
- Arrange a meeting with parents/carers, and/or outside agencies as required; if the young person is happy for this to take place
- If they are under 16 and there is a clear wellbeing concern, follow your school procedures and arrange relevant meetings as required
- Let the young person know who will attend any meeting, what will be discussed or if possible, support them to attend.

5. Keep in touch with the young person:

- Make sure the young person knows how the school will support them and, if they are transitioning at school, that the young person is happy with the plans
- Check in regularly with the young person to offer support.

A whole-school approach

In this section:

- Staff learning and confidence
- Policies and procedures
- The learning environment: trans-inclusion and visibility
- Responding to concerns
- Involving young people

This section considers a whole-school approach to supporting transgender young people and creating a transgender-inclusive environment.

Whatever a school chooses to do, it should make it clear to young people, staff and the wider learning community that it is an inclusive environment for everyone, including transgender people.

Staff learning and confidence

School staff have a key role in creating an inclusive learning environment.

No one expects all staff to be experts in transgender inclusion. However, all staff are expected to actively ensure that all young people including those who are transgender are accepted, respected and supported. GTC Scotland guidelines specify that all teachers should treat all young people with respect, and provide the best learning environment they can (see page 12).

Many teachers have already received training in transgender inclusion, and are actively supporting transgender young people across the country. Details of the support which organisations can provide to individual schools on supporting transgender young people and LGBT awareness and inclusion is provided in the Additional Resources section. It may also be useful to ask the local authority to provide joint training for all schools in the area.

Policies and procedures

School policies and procedures help to make the school's approach to supporting transgender young people clear and consistent. They can increase confidence in your school's approach. For example, transgender young people will be able to see a commitment to making them feel supported and included.

Equality policy

An equality policy is useful both for framing your school's approach to inclusion and for sending a clear message to staff and young people that your organisation is transgender inclusive. The equality policy should:

- Make direct reference to the Equality Act 2010 and all relevant protected characteristics⁷²: disability, gender reassignment, race, religion or belief, sex, sexual orientation, and pregnancy and maternity'
- Show the school's commitment to reducing inequality, improving opportunity and fostering good relations between different groups

⁷² More information: <https://www.equalityhumanrights.com/en/equality-act/protected-characteristics>

Where possible policies should also outline unacceptable behaviour relating to each protected characteristic, including examples of transphobia, biphobia, homophobia, sexism, misogyny, racism, sectarianism, islamophobia, and so on.

Anti-bullying policy

An anti-bullying policy demonstrates that your school has taken steps to prevent and address bullying and harassment. The policy supports young people and the wider community to feel safer in school environments, and provide guidance for schools staff on how to deal with incidents. An anti-bullying policy should:

- Reflect the key messages outlined in 'Respect for All' Scotland's National Approach to Anti-Bullying⁷³
- Include specific content on prejudiced-based bullying (including transphobic bullying)
- Identify procedures to respond to homophobic, biphobic and transphobic bullying.

Scotland's anti-bullying service, *respectme*⁷⁴, works with adults involved in the lives of young people to give them skills and confidence to support young people who are bullied and those who bully others. It provides practical support for schools and local authorities, including free training:

For more information on bullying go to page 16.

Environment: trans-inclusion and visibility

Research shows that LGBT young people would feel safer and more supported in education if their identities were reflected in the life of the school. Understanding equalities and diversity is also important for all learners, allowing them to appreciate and respect the diverse range of people whom they will meet and interact with in their lives.

"Talking about transgender people's experiences so that the topic becomes more normalised and better understood, so that people have more awareness. Young people need to know more about what gay and transgender mean. They should be hearing about transgender lives and experiences."

Young Person

The curriculum

Scotland's Curriculum for Excellence is based on a set of core values, including that the curriculum must be inclusive, must be a stimulus for personal achievement and must, through broadening of experience, be an encouragement towards informed and responsible citizenship.

The Experiences and Outcomes in the curriculum are designed to allow teachers the flexibility to include different contexts and themes based on what their learners need to know, that is age and stage appropriate. It may be helpful to share this information with parents and carers. As transgender identities are discussed more and more in society, it is

⁷³ <https://www.gov.scot/publications/respect-national-approach-anti-bullying-scotlands-children-young-people/>

⁷⁴ www.respectme.org.uk

important the curriculum reflects that, and enables learners the opportunities to explore this topic.

In 2017, Education Scotland published guidelines on what it expects to be covered through Health and Wellbeing⁷⁵. It notes that learners working in Level 2 and higher should be able to 'demonstrate an understanding of diversity in sexuality and gender identity'.

Additionally, young people notice the things that schools don't mention⁷⁶. Excluding transgender voices, identities and topics in schools, even unintentionally, when young people already know about them, can send out a negative message.

The best approach is to ensure transgender identities and experiences are explicit within subject- specific experiences and outcomes.

“Had I known more about trans identities I would have been more comfortable around trans people who I met both in and out of school.”

– Young person

Posters and displays

Transgender identities should be included alongside other identities in classroom/school displays. This is to ensure transgender young people feel respected and included in their learning environment, examples are provided below.

Schools could also harness their young people's creativity, and ask them to design posters to show that:

- the school has an inclusive approach to people of all gender identities;
- everyone is treated with respect, and
- the school will challenge gender stereotypes⁷⁷.

⁷⁵ <https://education.gov.scot/improvement/Learning-resources/Curriculum%20for%20Excellence%20Benchmarks>

⁷⁶ Eisner (1979). *The Educational Imagination: on the design and evaluation of school programs*. Macmillan, New York.

⁷⁷ Education Scotland has developed age and stage appropriate guidance on *Improving gender balance and equalities* 3-18



Role models

As long as they are suitable role models for young people, highlighting prominent role models including transgender people as part of age and stage appropriate learning can be helpful for transgender young people. Some examples are:

- Aydian Dowling – fitness instructor and trans man. Finalist in the US Men's Health Ultimate Man contest and featured in Men's Health magazine
- Lana Wachowski and Lilly Wachowski – film-makers. Both siblings are trans women
- Jin Xing – Chinese ballerina, contemporary dancer and trans woman
- Rachael Padman – stellar evolution (formation of stars) and trans woman
- CN Lester – classical musician and non-binary⁷⁸ person
- Juno Dawson – author (young people's fiction and non-fiction) and trans woman

The focus on these individuals should be in relation to their contribution to their field, as a stimulus for lessons. In the same way that teachers no longer talk about 'lady scientists', 'trans scientist' is not appropriate. However, if teachers explain at the end of the lesson that a particular professional is transgender, it has a normalising effect and demonstrates inclusion.

Resources produced by Time For Inclusive Education include Icons: Who Made LGBT History⁷⁹ and Moments: That Shaped LGBT History⁸⁰ and may support the approach outlined above.

Responding to concerns

When dealing with concerns, whether from young people, parents or staff, the most effective approach is to communicate a consistent and accurate message. Their concerns

⁷⁸ See definition of non-binary on page 51.

⁷⁹ <https://www.tiecampaign.co.uk/resources>

⁸⁰ <https://www.tiecampaign.co.uk/resources>

may be based on misconceptions or misinformation, and it may be possible to reassure them.

- **School staff concerns:** If school staff raise concerns about an inclusive approach, the management team should make it clear that, the school has obligations to support all young people, and has a duty of care to ensure the safety, health and wellbeing of all young people, including transgender young people.

If a teacher wants to know more about their professional responsibilities, their union, the GTCS or, where applicable, the local authority can provide this.

- **Parent and carer concerns:** Parents' and carers' concerns should of course be taken seriously. If parents or carers of another young person at the school raise a concern, it can be helpful to meet with them to discuss this further. In general, the school's response should be framed in the context of equality for all young people, while being mindful of the school's confidentiality policy.

See more information on Confidentiality and Information sharing on page 35. There is legislation on personal data and sharing information. More Information on Data Protection Law is on page 59.

Next steps can include:

- Take time to listen to their concerns
- Explain that school has an inclusive ethos and is committed to equality and inclusion
- Address any misconceptions they may have
- Identify whether any additional arrangements or actions are needed to meet the needs of all young people.

Whatever a school chooses to do, it should make it clear to young people, staff and the wider learning community that it is an inclusive environment for everyone, including transgender young people and other young people, where all are respected.

If an issue is raised, it is important to respect the rights of all young people, including transgender pupils and others, while ensuring that all legal requirements are met.

If the decision is that the rights of a young person, or a group of young people, should be restricted (i.e. they are asked to use a separate facility) that decision can only be made where the legal requirements are met. It is always preferable to seek mutual agreement from those involved to all arrangements.

Involving young people

One of the best ways to encourage inclusion is to involve young people directly and support their engagement and participation, in a way that suits the young person. It is an opportunity for them to learn and gain support; it allows them to influence the school culture; and helps the school make the right changes and improvements for their young people. Their involvement and participation needs to be relevant and focused.

Some methods which schools in Scotland have used include:

- inviting young people to participate in or lead working groups on equality and inclusion
- conducting learner-voice surveys to capture young people's views about how well the school supports LGBT inclusion, identify young people's experiences and allow the schools to identify success and improvements These should be anonymous

- setting up an LGBT and allies group, 'Gender Identity and Sexual Orientation Alliance' (GSA), or similar, in school to create a safe space for LGBT young people, their friends and anyone questioning their sexual orientation and/or gender identity. The group may also be interested in leading and developing initiatives which support an inclusive ethos. School staff may wish to support young people with this.

Many schools in Scotland run extra-curricular groups to include and support young people with sexual orientation and/or gender identity.

“I was in S6 when I was introduced to a teacher who was helpful, very kind and I started talking to him and he opened up an LGBT lunch thing where I could go and be who I wanted to be.”

– *Trans young person*

Involving parents and carers

The Scottish Schools (Parental Involvement) Act 2006 provides the legal framework for the formal involvement of parents and carers in the life and work of the school and their engagement in their children's learning. The Act⁸¹ is about improving parents' involvement all aspects of school life as well as their engagement in their own child's education and in schools more generally.

Parental involvement is about parents and teachers working together in partnership to help young people become more confident learners. All the evidence shows when parents, carers and other family members are effectively involved in their children's education, the outcome for their children is better.

Communication between parents and carers, school staff and young people – based on positive, honest and constructive relationships are essential to supporting young people and their learning, in dealing constructively with challenges arising, and matters related to young peoples' relationships with others, the young people's identity, or potentially changing identity.

It is important to recognise that some parents may be separated but should be involved in their child's learning unless there are specific and already established reasons why this should not be the case. In the circumstances where parents are separated schools should:

- use their already established methods for ensuring communication and engagement with both parents
- recognise that parental separation may complicate matters for the young person and the school, and make appropriate arrangements to continue to engage parents and the young person. Strong relationships with parents will support positive engagement.

Language and terminology⁸²

In this section:

⁸¹ This Act applies to education authority schools. Independent and grant-aided special schools will have their own arrangements for the engagement of parents and carers.

⁸² The Scottish Government has committed to establish a working group to consider possible changes to procedures and practice in relation to non-binary people

- Why language is important
- Some common terms and underlying concepts
- Transgender identities and terms
- Sexual orientation and being transgender

Why language is important

Ensuring that language is respectful and inclusive is central to equality and anti-discriminatory practice. When a teacher uses the correct language, it raises awareness amongst young people, and is reassuring.

This section sets out some of the concepts and language used in this guidance. Many people will be unfamiliar with these terms and concepts. This is understandable, and teachers are not expected to be experts in this language. Key points to remember:

- it's always best to check with young people about the words they use and feel comfortable about
- language is constantly evolving, and terms that might seem unfamiliar at first become commonplace
- if anyone, whether teacher, young person, parent or carer, does not understand a particular word or underlying concept, it is fine to ask.

Some common terms and underlying concepts

'Gender stereotypes' – despite some recent progress, in society, boys are generally expected to be unemotional, strong, attracted to girls, sporty and to conform to ideals of masculine physical attractiveness. Girls are generally expected to be nurturing, emotional, helpful, attracted to boys, and to conform to ideals of feminine physical attractiveness. These are called gender 'stereotypes', 'gender norms' or 'gender rules'.

Many young people find these 'stereotypes' too restrictive; they can experience peer pressure to conform to them or may experience bullying if they are seen to break the 'rules'.

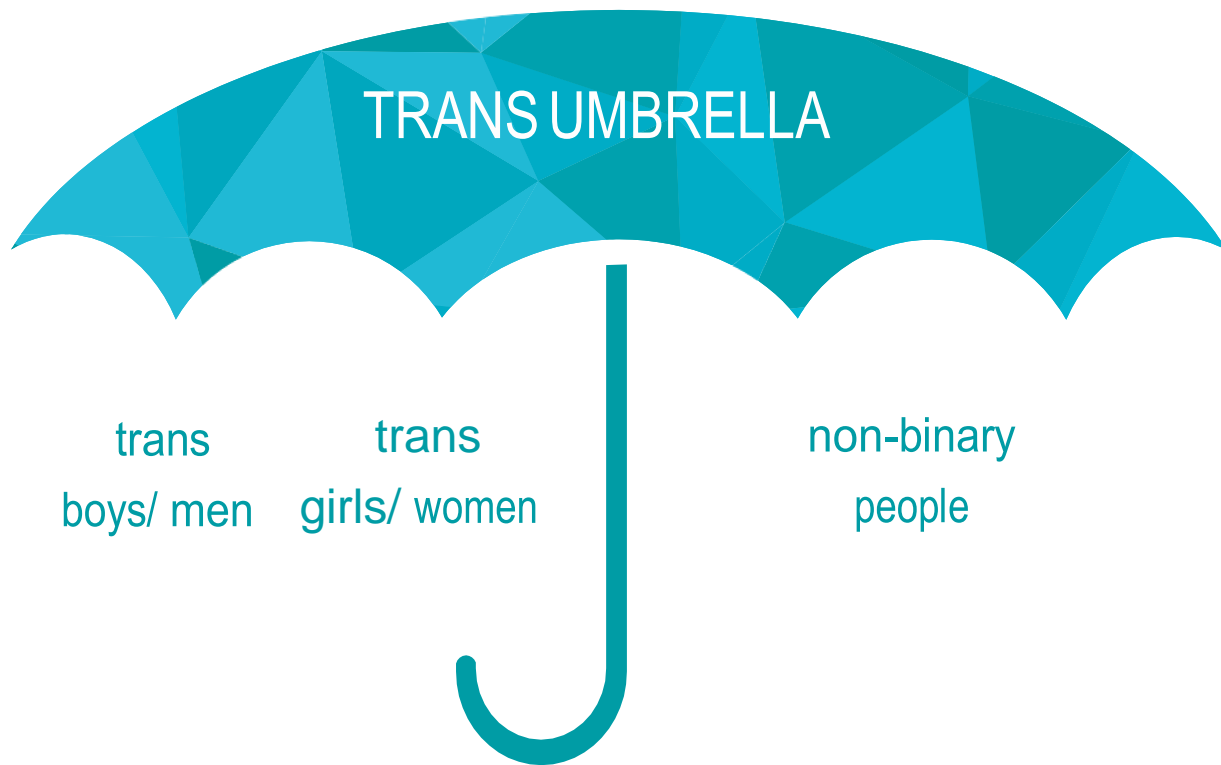
Transgender young people 'break' these gender rules because their gender identity does not match the sex assigned to them at birth, or they express their gender in a way that others do not consider 'normal'.

Gender identity – a person's deeply-felt internal and individual experience of gender. This may or may not correspond with the sex assigned to them at birth.

Gender expression – a person's gender-related appearance including clothing, speech and mannerisms. Young people may express their gender in ways which are not considered traditionally feminine or masculine. Transgender identities and terms

'Transgender' and **'trans'** are umbrella terms for people whose gender identity differs in some way from the sex assigned to them at birth.

The diagram shows the most common identities which come under the 'trans umbrella'.



Teachers can show young people that they have some understanding if they use these terms. Using them correctly also validates young people's identities and experiences. It's worth remembering that:

- Many transgender young people don't know all these terms
- Their understanding of their identity may be developing
- Language is constantly evolving.

The most helpful thing to do is to ask a young person how they identify themselves. But, if they don't have an answer, there is no need to press them. They don't need a label to receive support. It is helpful if teachers are led by the young person, and allow them to explore their own definition and understanding of gender.

Trans boys/men

People whose birth sex is female but who identify as boys/men. Sometimes, the term 'female-to-male' (FTM) is used to describe the direction in which someone is transitioning or wishes to transition.

A trans boy is likely to be distressed about being seen as female. They are likely to assert a male gender identity consistently and persistently. The prospect of going through female puberty, especially breast-growth and menstruation, is often traumatic.

This is different from a girl who some people might describe as a 'tomboy' because she enjoys rough, noisy activities or the clothes or toys traditionally associated with boys.

Trans boys/men will likely use he/him pronouns.

Trans girls/women

People whose birth sex is male but who identify as girls/women. Sometimes the term 'male-to- female' (MTF) is used to describe the direction in which someone is transitioning or wishes to transition.

A trans girl is likely to be distressed about being seen as male. They are likely to assert a female gender identity consistently and persistently. The prospect of going through male puberty, especially facial hair growth and voice breaking, is often traumatic.

This is different from a boy who some people might perceive as 'feminine' because he enjoys gentle, caring activities or clothes or toys traditionally associated with girls.

Trans girls/women will likely use she/her pronouns.

Non-binary people

People who do not identify exclusively as a boy or as a girl. Among young people, the words 'genderqueer' or 'genderfluid' are popular alternatives for non-binary.

Some people describe gender as a spectrum with 'boy' at one end, 'girl' at the other, and non- binary in the middle. This is too simplistic:

- some non-binary people may have a gender identity which incorporates various aspects of being a boy and being a girl
- some non-binary people may strongly reject all aspects of being a boy or a girl
- some non-binary people may find that how comfortable they feel in any gender fluctuates
- some non-binary people experience distress about the physical sex characteristics of their body and/or the prospect of pubertal changes – others do not

The degree to which a non-binary person expresses femininity, masculinity and/or androgyny (combination or absence of masculine and feminine characteristics) is very individual.

Non-binary people also vary in whether or not they wish to change their name. Many prefer to use the gender-neutral pronoun 'they' and may find it distressing to be referred to using gendered pronouns (he or she). Some use a mixture of different pronouns from day to day, and a few use more unusual gender neutral pronouns such as 'per' or 'zie'.

Transition

A multi-step process as transgender people begin living their lives in a way that affirms their gender identity.

In schools, this will primarily consist of a social transition: young people changing their name, pronoun use and physical appearance (hairstyle, clothes and so on).

A small number of young people may begin medical transition while in school. Schools and teachers do not need to be involved in this. The young person may wish school staff who are supporting them to be aware of it. More information about medical transition is on page 61.

Gender non-conforming people

People who do not conform to gender stereotypes in clothes and accessories; speech or mannerisms; interests and behaviour.

Being gender non-conforming is not the same as being transgender or non-binary. Nonetheless, gender non-conforming people may experience the same sort of bullying and similar issues at school as trans boys, trans girls and non-binary people.

Sexual orientation and being transgender

Being transgender is separate from a person's sexual orientation. Sometimes these two different concepts are conflated, and assumptions made. It is therefore, helpful for teachers to understand the differences:

- the term transgender describes a person's gender identity
- sexual orientation describes who an individual is physically and/or emotionally attracted to
- transgender people can be straight, gay, lesbian, bisexual or any other sexual orientation.

“The difference between gender identity and sexual orientation is between who you are and who you love.”

– from the United Nations Free and Equal campaign

Policy, legislation and further information

In this section:

- Education policy and approach
- Legislation
- Puberty and medical transition
- Additional resources

This section sets out the policy and legislative context for supporting transgender young people in schools. The section also provides further information, including on how puberty might affect a transgender young person and medical transition. It also suggests some useful educational resources, books and sources of further information.

Education policy and approach

The following policy and legislative context provides the framework for supporting transgender young people in schools.

Education policy and approaches are designed to allow teachers to use their professional judgement to establish the content, context and manner in which they are carried out. If the words 'trans' or 'transgender' are not specifically mentioned in policy, it does not mean they should be excluded from your approach or from the curriculum.

Curriculum for Excellence

Scotland's Curriculum - Curriculum for Excellence (CfE) - aims for children and young people to be confident individuals, effective contributors, responsible citizens and successful learners.

Under '**Health and Wellbeing**' responsibilities for all, 'Children and young people should feel happy, safe, respected and included in the school environment and all staff should be proactive in promoting positive behaviour in the classroom, playground and the wider school community'. For transgender young people to feel happy, safe, respected and included, their identities need to be positively included in the learning environment, and they need to feel confident that they can talk to school staff.

Under '**Responsibilities for All**' children and young people should, amongst other things:

- develop my self-awareness, self-worth and respect for others
- understand and develop my physical, mental and spiritual wellbeing and social skills
- understand that adults in my school community have a responsibility to look after me, listen to my concerns and involve others where necessary
- learn about where to find help and resources to inform choices
- reflect on my strengths and skills to help me make informed choices when planning my next steps
- acknowledge diversity and understand that it is everyone's responsibility to challenge discrimination.

CfE experiences and outcomes under Health and Wellbeing⁸³ cover respect, healthy relationships and personal development. There are opportunities in other curriculum areas too, including social studies⁸⁴:

- 'I can gather and use information about forms of discrimination against people in societies and consider the impact this has on people's lives.' SOC 2-16b
- 'I can discuss issues of the diversity of cultures, values and customs in our society.' SOC 2-16c
- 'I can explain why a group I have identified might experience inequality and can suggest ways in which this inequality might be addressed.' SOC 3-16a

These outcomes give teachers scope to discuss the experiences of transgender people, and encourage understanding of issues which affect transgender young people and adults.

In 2017, the Scottish Government published guidelines on what it expects to be covered through Health and Wellbeing⁸⁵. It notes that learners working in Level 2 and higher should be able to 'demonstrate an understanding of diversity in sexuality and gender identity'.

Relationships, Sexual Health and Parenthood

In September 2019 a new national online Relationships Sexual Health and Parenthood resource was published⁸⁶. This resource will strengthen the delivery of RSHP education across the country through provision of learning activities that are age and stage appropriate for use in all education settings. The resource includes learning material on healthy relationships, consent, physical and sexual abuse, sexual health and reproduction, emotional wellbeing, stereotypes and equalities, gender and parenthood, all of which are areas that young people have told us they want to learn about.

Improving gender balance and equalities 3-18⁸⁷

Improving Gender Balance and Equalities (IGBE) provides age and stage appropriate resources and research for practitioners to help:

- challenge gender stereotypes;
- address unconscious bias;
- improve gender balance in subject uptake and learner pathways;
- promote whole-establishment approaches to equality.

⁸³ <https://education.gov.scot/Documents/health-and-wellbeing-eo.pdf>

⁸⁴ <https://education.gov.scot/Documents/social-studies-eo.pdf>

⁸⁵ <https://education.gov.scot/improvement/Learning-resources/Curriculum%20for%20Excellence%20Benchmarks>

⁸⁶ <https://rshp.scot/>

⁸⁷ <https://education.gov.scot/improvement/learning-resources/improving-gender-balance-3-18/>

Getting it right for every child

“I felt unsafe at school. People would yell at me across rooms, shove me into walls and on the stairs and I've had water bottles thrown at me.”

– Trans young person

Getting it right for every child (GIRFEC) is the national approach in Scotland to improving outcomes for young people through promoting, supporting and safeguarding their wellbeing so that they can become confident individuals, effective contributors, successful learners and responsible citizens. It aims to provide support that is easy to access and responsive to the wellbeing needs of children, young people and their parents, through an approach that is:

- Child-focused: ensuring the child or young person, and their family, are at the centre of decision-making, and building solutions to support them
- Holistic: looking at the whole picture of a child or young person's wellbeing so that issues are not addressed in isolation from their individual circumstances, their strengths, and their resilience.
- Easily accessed: identifying a need as early as possible so that effective support is offered at the right time and before those needs get worse
- Joined-up: the child or young person, their parents and professionals work together to consider what help is required, involve the services needed to support them, and ensure co-ordination of services where beneficial through a single planning process.

All young people need to be nurtured, included, healthy, active, achieving, respected, responsible and above all safe. Consideration of wellbeing is based on those needs in the context of a young person's world and unique circumstances, as well as their strengths and factors that affect their resilience.

For transgender young people, the Getting it Right for Every Child approach means support should be holistic and they should be at the centre of any assessment, identification of solutions and support, decision making and planning.

- Schools should actively ensure that the school culture and Getting it right for every child approach is inclusive of and responsive to transgender identities, even if there are no 'out' transgender young people in the school. This helps to raise everyone's awareness and prevent transphobic bullying.

“You just have to be more open-minded and understand that that's a person, it doesn't even matter about the gender, that there's a person behind that.”

– Trans young person

United Nations Convention on the Rights of the Child (UNCRC)

The UNCRC applies to all young people and underpins the approach to children's rights in Scotland.

The United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Bill was introduced to the Scottish Parliament on 1 September 2020 and was unanimously passed by Parliament in March 2021. In April 2021, the UK Government referred the Bill to the Supreme Court to determine whether certain provisions are within the legislative competence of the Scottish Parliament. The Bill provides for commencement of the majority of provisions of the Bill 6 months after Royal Assent. It also contains powers for provisions to be commenced earlier than 6 months from Royal Assent. Royal Assent will not be possible until the Supreme Court ruling has been made but Scottish Government is continuing with preparatory work for the implementation of the Bill consistent with the fact that the case is before the Court.

The articles of the UNCRC are an important reference in supporting transgender young people. For example:

- **Article 2** ensures the right to protection from discrimination. Discrimination is being treated unfairly because of who they are. Transgender young people have the right to fair treatment in school. Refusing to accommodate a transgender young person could constitute discrimination
- **Article 3** requires that the best interests of the child must be the primary concern in making decisions that may affect them. Schools must keep the best interests of a transgender young person at the heart of decisions made about them
- **Article 6** requires children and young people to have a right to life, to survive and develop. Transgender young people have the right to develop and grow in school, and this article states clearly that they should be supported in that. Transgender young people are more likely to suffer from suicidal thoughts and self-harm than their peers
- **Article 8** details the right to an identity. It doesn't specifically name transgender young people or gender identity but it clearly states that parties should respect the right of the child to their own identity and name
- **Article 12** requires respect for the views of the child. When schools make decisions about a young person, they should inform the young person and take their views into account. This is, therefore, important when making decisions about transgender young people in school settings
- **Article 16** ensures a child's right to privacy. If a young person comes out as transgender there is no immediate need to inform their parents or others. See more on confidentiality and information sharing on page 35.
- **Article 17** gives children the right to information that is important to their health and wellbeing. For transgender young people, this includes telling them about the support available
- **Article 19** gives children the right to be protected from being hurt and mistreated, physically or mentally. Schools have a key role in keeping transgender young people safe from bullying, including transphobic bullying
- **Articles 28 and 29** ensure the right of all young people to an education. This can be achieved if transgender identities are respected and included in the school environment.

Rights-based approaches can be a very powerful way to engage with learners in relation to wide range of issues.

Legislation

The Equality Act 2010

The 2010 UK Act⁸⁸ provides a legal framework to protect the rights of individuals and advance equality of opportunity for all. It provides discrimination law which protects individuals from unfair treatment and promotes a fair and more equal society⁸⁹.

The Act covers discrimination based on age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation. These categories are known in the Act as ‘protected characteristics’^{90,91}.

The Act provides certain protections for those with a protected characteristic, this includes protections from discrimination, harassment and victimisation.⁹² Chapter 1 of the EHRC Technical Guidance for Schools in Scotland provides an overview of the schools provisions of the Act, including what may be lawful, unlawful and whether exceptions may be available.⁹³

Equality Act exceptions⁹⁴:

The EHRC’s Services, Public functions and Associations: Statutory Code of Practice⁹⁵ sets out that “The basic presumption under the [Equality] Act is that discrimination because of the protected characteristics is unlawful unless any exception applies and any exception to the prohibition of discrimination should generally be interpreted restrictively.”

Section 195 of the Act provides for single-sex and exceptions in relation to transgender persons for competitive sport provided under Part 3 of the Act. Schools will wish to carefully consider whether the activities they are planning would be considered competitive sport, or physical activity and sport as part of the Health and Wellbeing Curriculum. The EHRC’s Services, Public functions and Associations: Statutory Code of Practice provides further advice on this exception⁹⁶.

“Competitive sport – sex and gender reassignment

⁸⁸ The Equality Act 2010 is generally a reserved matter for the UK Government and cannot be amended by the Scottish Parliament.

⁸⁹ <https://www.equalityhumanrights.com/en/equality-act-2010/what-equality-act>

⁹⁰ <https://www.equalityhumanrights.com/en/publication-download/technical-guidance-schools-scotland>
Background

⁹¹ The protected characteristics under the schools provisions are; Disability, Gender reassignment, Pregnancy and maternity, Race, Religion or belief, Sex, and, Sexual orientation see para 1.10 of <https://www.equalityhumanrights.com/en/publication-download/technical-guidance-schools-scotland>

⁹² Chapter 5 provides guidance on the provisions of the Act in relation to discrimination, harassment and victimisation. Paragraph 5.58 is of particular relevance to this guidance.

<https://www.equalityhumanrights.com/en/publication-download/technical-guidance-schools-scotland>

⁹³ <https://www.equalityhumanrights.com/en/publication-download/technical-guidance-schools-scotland>

⁹⁴ It is noted that the UK Government plans to develop and publish non-statutory guidance on how the separate single and separate sex service exemptions in the Equality Act 2010 apply. Please see paragraphs 5.53-5.56 of Gender Recognition Reform (Scotland) Bill, A consultation by the Scottish Government

⁹⁵ https://www.equalityhumanrights.com/sites/default/files/servicescode_0.pdf paragraph 13.2

⁹⁶ Paragraph 13.43 – 13.46 of the EHRC Services, public functions and associations statutory code of practice provides further advice and information on this <https://www.equalityhumanrights.com/en/publication-download/services-public-functions-and-associations-statutory-code-practice>

For sporting competitions where physical strength, stamina or physique are significant factors in determining success or failure, the Act permits separate events to be organised for men and for women.

If the physical strength, stamina or physique of the average person of one sex would put them at a disadvantage compared to the average person of the other sex as competitors in a sport, game or other competitive activity, it is not unlawful for those arranging the event to restrict participation to persons of one sex.

The 2010 Act permits the organisers of such a sport, game or other competitive activity to restrict participation of a transsexual person in that activity but only if this is necessary in a particular case to secure fair competition or the safety of other competitors.”

There are also single-sex exceptions in the Equality Act 2010 for services under Part 3, Services and Public Functions. The EHRC’s Services, Public functions and Associations: Statutory Code of Practice provides further advice on this exception

“Gender reassignment discrimination and separate and single-sex services⁹⁷

If a service provider provides single- or separate sex services for women and men, or provides services differently to women and men, they should treat transsexual people according to the gender role in which they present. However, the Act does permit the service provider to provide a different service or exclude a person from the service who is proposing to undergo, is undergoing or who has undergone gender reassignment. This will only be lawful where the exclusion is a proportionate means of achieving a legitimate aim.”⁹⁸

The 2010 Act also contains an exception relating to communal accommodation.⁹⁹ The EHRC’s Technical Guidance for Schools sets out that “‘Communal accommodation’ is residential accommodation that includes dormitories or other shared sleeping accommodation, which, for reasons of privacy, should be used only by persons of the same sex. It can also include residential accommodation that should be used only by persons of the same sex because of the nature of the sanitary facilities serving the accommodation.” The guidance also sets out the matters which a school would wish to take into account in relation to the exception.

Legitimate Aim

The EHRC’s Technical Guidance for Schools¹⁰⁰ sets out that in the context of school education, examples of legitimate aims might include:

- ensuring that education, benefits, facilities and services are targeted at those who most need them;
- the fair exercise of powers;

⁹⁷ Paragraph 13.54 of the EHRC’s Services, public functions and associations statutory code of practice <https://www.equalityhumanrights.com/en/publication-download/services-public-functions-and-associations-statutory-code-practice>

⁹⁸ Paragraphs 5.28-5.30 of The Services, public functions and associations statutory code of practice provide advice on legitimate aim. <https://www.equalityhumanrights.com/en/publication-download/services-public-functions-and-associations-statutory-code-practice>

⁹⁹ Paragraphs 9.2-9.7 set out the definition and advice in relation to communal accommodation. <https://www.equalityhumanrights.com/en/publication-download/technical-guidance-schools-scotland>

¹⁰⁰ Paragraphs 5.32-5.38 <https://www.equalityhumanrights.com/en/publication-download/technical-guidance-schools-scotland>

- 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.

Further information about legitimate aim in the context of discrimination is available in the EHRC's Technical Guidance for Schools in Scotland¹⁰¹

What does guidance say about gender reassignment?

The EHRC Technical Guidance for Schools¹⁰² sets out that gender reassignment “is a personal process (rather than a medical process) that involves a person moving away from his or her birth sex to his or her preferred gender and thus expressing that gender in a way that differs from, or is inconsistent with, the physical sex with which he or she was born. This personal process may include undergoing medical procedures or, as is more likely for school pupils, it may simply include choosing to dress in a different way as part of the personal process of change. A person will be protected because of gender reassignment once:

- he or she makes his or her intention known to someone, regardless of who this is (whether it is someone at school or at home, or someone such as a doctor);
- he or she has proposed to undergo gender reassignment, even if he or she takes no further steps or decides to stop later on;
- there is manifestation of an intention to undergo gender reassignment, even if he or she has not reached an irrevocable decision
- he or she starts or continues to dress, behave or live (full-time or part-time) according to the gender with which he or she identifies as a person;
- he or she undergoes treatment related to gender reassignment, such as surgery or hormone therapy; or
- he or she has received gender recognition under the Gender Recognition Act 2004. It does not matter which of these applies to a person for him or her to be protected because of the characteristic of gender reassignment”¹⁰³.

Data Protection Law¹⁰⁴

There is also legislation on processing (including sharing) personal information related to young people.

The UK General Data Protection Regulation (UK GDPR) together with the Data Protection Act 2018¹⁰⁵ provides the legal framework for the processing of personal data. They regulate the processing, including the collection, use and disclosure of personal data, and

¹⁰¹ Chapter 5 <https://www.equalityhumanrights.com/en/publication-download/technical-guidance-schools-scotland>

¹⁰² <https://www.equalityhumanrights.com/en/publication-download/technical-guidance-schools-scotland> paragraph 5.112

¹⁰³ Equality Act 2010 Technical Guidance for Schools in Scotland
https://www.equalityhumanrights.com/sites/default/files/equalityact2010-technicalguidance-schoolsinscotland-2015_0.pdf

¹⁰⁴ <https://www.gov.uk/data-protection>

¹⁰⁵ See section 3(10) of the 2018 Act.

gives individuals certain rights in relation to their personal data. Children have rights in their own regard where they have sufficient maturity and understanding to do so, which they are presumed to do from age 12. This means that schools should ensure that transgender young people's rights to processing of their personal data including, where relevant, consent should be met, and that their rights in relation to appropriate use of data within schools should be upheld.

The Education (Additional Support for Learning) (Scotland) Act 2004

This Act¹⁰⁶ states that a child or young person has additional support needs 'where, for whatever reason, the child or young person is, or is likely to be, unable without the provision of additional support to benefit from school education provided or to be provided for the child or young person'.

The legislation may apply to any young person experiencing bullying or discrimination. It also applies to children and young people experiencing poor mental health, where these matters cause a barrier to the child or young person's mental health.

Children and Young People (Scotland) Act 2014

The Children and Young People (Scotland) Act 2014 places a duty on Scottish Ministers to keep under consideration whether there are any steps which they could take which may secure better or further effect in Scotland of the UNCRC requirements, and if appropriate, take those steps. Schools should be mindful of this and of the duty on local authorities to report on the steps taken to secure better or further effect within its areas of responsibility of the UNCRC requirements.

The Offences (Aggravation by Prejudice) (Scotland) Act 2009

This Act creates a statutory aggravation for crimes where at the time of committing the offence, or immediately before or after doing so, the offender evinces (demonstrates) malice and ill-will towards an individual based on their actual or perceived sexual orientation, transgender identity or disability. The statutory aggravations can also apply if it is proved that the offence was motivated by malice and ill-will towards persons who have those characteristics. This Act, in combination with similar legislation focusing on religion and race, is commonly referred to as Hate Crime legislation¹⁰⁷.

If offences are proven to result from such malice or ill-will, the court must take this into account when determining a sentence. This can lead to a longer custodial sentence, higher fine or a different type of sentence.

For more information see: <https://www.scotland.police.uk/advice-and-information/hate-crime/>

The Age of Legal Capacity (Scotland) Act 1991

This Act states that a child of 12 and over is presumed to have sufficient capacity to make decisions, and enter into formal agreements on their own behalf. This includes to instruct

¹⁰⁶ This legislation applies to education authorities. Grant-Aided and Independent schools are not required to meet the requirements of the Act. There are specific provisions where Grant-Aided and Independent schools can make specific requests of an education authority. Please see <https://www.gov.scot/publications/supporting-childrens-learning-statutory-guidance-education-additional-support-learning-scotland/>

¹⁰⁷ See section 2 of the Offences (Aggravation by Prejudice) (Scotland) Act 2009 ("the 2009 Act"). The 2009 Act can be found here: <https://www.legislation.gov.uk/asp/2009/8/contents>. Once it is in force, the Hate Crime and Public Order (Scotland) Act 2021 will consolidate, modernise and extend existing hate crime legislation – and will replace the 2009 Act. The new Act can be found here: <https://www.legislation.gov.uk/asp/2021/14/contents>. However, for the time being the 2009 Act continues to be the relevant legislation.

a solicitor, to sue on their own behalf and consent to their own medical treatment, and to enter into transactions usual for a child of that age. As is noted below, a young person cannot undertake the process of changing their sex on their birth certificate until they are 18 years of age¹⁰⁸. Further information on medical transition and puberty is also available below. These should be read together.

The Gender Recognition Act 2004 and legal recognition

The Gender Recognition Act created a process for the legal recognition of an individual's acquired gender, which enables changing the sex recorded on a person's birth certificate.

If an individual is 18 years or older, has lived in a way that affirms their gender identity for at least two years, intends to continue living in the acquired gender, and has been diagnosed as having gender dysphoria, they can apply to receive a Gender Recognition Certificate (GRC). A GRC enables individuals to change the sex recorded on their UK birth certificate. An individual can receive a GRC without having undergone hormone treatment or surgery.

Puberty and medical transition

Transgender young people may recognise and discuss their gender identity at any age. Before puberty, any transition or change is limited to socially changing their name, pronoun and gender expression. These aspects do not need medical or healthcare involvement.

The onset of puberty can often confirm feelings of 'gender dysphoria' when the body begins to change and develop in ways which are inconsistent with the young person's gender identity. This can be very distressing and transgender young people may develop negative ways of coping such as self-harming.

It is important to recognise that not all young people who identify as transgender seek medical assistance to transition, want medical treatment or need it. In Scotland, medical interventions for transgender young people¹⁰⁹ (under 18) take place at the Young People's Gender Service (YPGS), based at Sandyford Services in Glasgow¹¹⁰. Referral can be made before puberty, though the main focus of the service is on young people who are in early puberty and onwards.

Transgender young people can be referred to the clinic by:

- Their GP
- Their parents or carers
- An outside agency
- Self-referring.

There is a waiting list, so young people may wait some time before an appointment is offered with the clinic. This can be very difficult for some young people. The school, their families and outside agencies often have to support transgender young people at this time.

Following assessment, if the YPGS diagnoses a young person with 'gender dysphoria', it can offer ongoing support. For some young people this may also involve a variety of different medical interventions.

¹⁰⁸ However, they and their family can change the sex recorded on their other ID and records.

¹⁰⁹ There are around 200 Appointed Referrals for young people per year. Page 44

https://www.scotphn.net/wp-content/uploads/2017/04/2018_05_16-HCNA-of-Gender-Identity-Services.pdf

¹¹⁰ https://www.sandyford.org/media/3744/304280_1_1-yp-gender-service-information.pdf

For more information about medical transition please refer to
<https://www.sandyford.org/sexual-health-services/what-are-our-services/gender-identity-service/>

Additional resources

There are a number of organisations and resources which may provide help and support to schools, young people and their families.

There are a range of organisations which provide support and advice to young people about their wellbeing. Schools and education authorities will have local arrangements for the provision of support for health and wellbeing. National organisations can also provide advice and information to young people.

Childline can provide a source of advice and information and online support for all young people on their wellbeing.

<https://www.childline.org.uk/>

Young Scot provide young people with:

- a one-stop-shop of high quality information and opportunities through the national digital platform;
- opportunities and experiences through the Young Scot National Entitlement Card,
- opportunities to develop new ideas and solutions, to create positive change through our Service Design offer, and take part in participation initiatives through our Outreach Service and Schools Strategy.

<https://young.scot/>

LGBT Youth Scotland

Scotland's national charity for LGBTI young people, works with 13–25 year olds across the country. Their website includes resources, services and support for transgender young people (including online support). They support schools through the LGBT Schools Charter programme and provide training on supporting and including transgender young people. **www.lgbtyouth.org.uk**

Scottish Trans Alliance

Assists transgender people, service providers, employers and equality organisations to engage together to improve gender identity and gender reassignment equality, rights and inclusion in Scotland. Their website includes a wide range of information including links to support groups for parents. **www.scottishtrans.org**

Stonewall Scotland

Deliver training, produce resources and develop membership programmes to empower teachers and education professionals to tackle homophobia, biphobia and transphobia in schools and colleges. **www.stonewallscotland.org.uk**

Time for Inclusive Education (TIE)

A Scottish charity that aims to combat homophobia, biphobia and transphobia in schools with LGBT-inclusive education. They provide a range of services, from teacher training to year group assemblies and various workshops. They also offer resources on cross curricular inclusion with a focus on LGBT History (Moments), LGBT role models (Icons) and a resource on LGBT groups in schools. **www.tie.scot**

Mermaids

UK wide charity that supports children, young people, and their families and works to raise awareness about gender nonconformity in children and young people.

www.mermaidsuk.org.uk

Young People's Gender Service– Glasgow

A multi-disciplinary team based in Glasgow who specialise in working with young people aged 17 and under, experiencing uncertainty or distress about their gender. The Service provides clinical input for young people and their families from across Scotland, as well as consultation and training to professionals and other agencies.

<https://www.ngicns.scot.nhs.uk/information/children-and-young-people/>

The following resources can provide support to schools and schools staff to provide learning and teaching which is age and stage appropriate.

Films

My Generation

A film project set up to record the experiences and perspectives of gender variance. Their mission is to create short films which accurately represent individual journeys relevant to gender expression and self-identity. Suggested films for use in Scottish schools include: Luke, Reuben, Rueben six months later, Captain Hannah and Private Mel.

www.mygenderation.com <https://www.youtube.com/mygenderation>

Channel 4: My transgender kid

Documentary about two British families who have gender non-conforming children. Useful introduction for staff, but developed for entertainment purposes.

www.channel4.com/programmes/my-transgender-kid

Books

Suggested books for primary schools use are:

Red, a crayon's story, by Michael Hall

Are you a boy or are you a girl, by Sarah Savage and Fox Fisher

I am Jazz, by Jazz Jennings (picture book)

Introducing Teddy, by Jessica Walton

Who are you, by Brook Pessin-Whedbee

Suggested books for secondary schools to use are:

The art of being normal, by Lisa Williamson

I am J, by Cris Beam

If I was your girl, by Meredith Russo

Rethinking normal by Katie Rain Hill

TransMission by Alex Bertie

Please note, the use of documentaries and books should be reviewed in advance to check whether content is age and stage appropriate

Other resources

Pop'n'Olly is an LGBT and equality educational resource used by children, parents, carers and teachers. There are a range of videos and books which support teaching and learning about equality, diversity and acceptance.

Appendices

Scenarios for teachers

Scenario 1

What do I do if...?

A young person comes out to you as transgender and is looking for support. In order to adequately support them, you feel you need to speak to your colleagues for advice and support. You ask if it's OK to share but the young person says it isn't, they only want you to know.

Points to Consider

Confidentiality and privacy are important in building trust with young people. If a young person trusts you, they are more likely to ask for your advice and support.

Your response will depend on the situation. No teacher can guarantee absolute confidentiality but teachers are expected to act in accordance with the wishes of a young person, especially if there are no other concerns.

- If all relevant information is already in the public domain you are not breaching confidentiality if you share it with a colleague or manager for advice
- You can also talk to others if what you say would not specifically identify a young person or breach their confidentiality
- Being transgender is not a child protection issue but if there is a child protection or wellbeing concern, you should follow your school's guidelines.

See more on confidentiality and information sharing on page 35, coming out on page 20, and steps for good practice on page 41.

Scenario 2

What do I do if...?

A young person has 'come out' as transgender. Other young people are calling them names, threatening them and shoving them or tripping them up in the corridors.

Points to Consider

All of the above constitute bullying. You should respond as soon as possible, consistent with the school anti-bullying policy. It is important to base your response on what the young person wants to happen. Being bullied can be disempowering. It's therefore important that they have a say about what happens next.

- Firstly, take some time to listen to the young person and find out what support they need. They may not want anything to happen at this stage
- Record the incident in line with your school bullying policy and procedure
- Arrange a follow-up meeting and let the young person know who they can talk to.

If the school or local authority anti-bullying policy does not explicitly mention transphobic, homophobic or biphobic bullying, the school should review its policies and procedures.

If any of the elements are violent or could be identified as criminal behaviour this can be reported to Police Scotland.

Consider with the young person when and how they would wish their parents/carers to be brought into any discussions about this (see page 39 for further information).

See more on bullying on page 16.

Scenario 3

What do I do if...?

A teacher deliberately uses the wrong pronoun and name for a transgender young person despite being briefed by the school. This is making the young person visibly upset and angry.

Points to Consider

This scenario is different from getting someone's name or pronoun wrong by accident and is clearly inappropriate behaviour from a staff member. If someone gets a name or pronoun wrong by accident they should simply apologise and try not to do this again.

In this scenario you should report this to the head teacher. The head teacher in line with complaints procedures, should then investigate what has happened, and the young person has the right to know the outcome of the investigation

If others witnessed the behaviour, ask them to report it too

If you, or the young person, are not happy with the outcome of the investigation, either of you can contact your local authority education team or ask them to investigate too

If a head teacher behaves inappropriately towards a transgender young person, you can report the incident to the deputy head or to the local authority education team.

Consider with the young person when and how they would wish their parents/carers to be brought into any discussions about this (see page 39 for further information).

Scenario 4

What do I do if...?

A young person wants to change their name and sex on the official record system (SEEMiS).

Points to Consider

There is no reason why a transgender young person's name and sex cannot be changed on school information management systems. The following is recommended:

The young person or parent should send in a written request (see sample letter in the appendix). For those under 16, there must be consent from their parents and carers.

If a young person (over 16) has requested this but has not spoken to their parents/carers about their gender identity, let the young person know that changing their SEEMiS record means that any letters sent home will effectively 'out' them

At present, there is no option to record non-binary³⁰ identities on SEEMiS. Schools can ask if the young person prefers one sex over another to be on the official record

This does not affect a young person's candidate SQA number. See more on changing names, pronouns and SEEMiS on page 22.

Scenario 5

What do I do if...?

A young person comes out and wants to transition immediately. You would like some time to talk to colleagues to ensure that there is planned support for the young person.

Points to Consider

They should feel supported immediately and as far as possible.

It can, however, be reasonable for you to ask a young person for time to ensure the right support is in place for them. This should be clearly communicated with the young person so that they know what support you are looking for and how long it will take. The following is recommended:

- Find out when the young person is looking to transition and in what way, for example to change their name and gender on records
- Spend some time listening to, and understanding, any concerns they may have
- Consider different scenarios with the young person, thinking about who needs to know and what they should know
- Outline when you will get back to the young person and clearly explain the reasons for any delay.

Consider with the young person when and how they would wish their parents/carers to be brought into any discussions about this (see page 39 for further information).

Scenario 6

What do I do if...?

A parent/carer or another pupil complains about the approach you are taking to support a transgender learner.

Points to Consider

- As with any complaint you should take time to consider their complaint and ensure their views are heard, as part of the appropriate complaints handling process.
- Before sharing information the school should be mindful of confidentiality, following any information sharing protocols and consider its legal obligations in regard to data protection.
- Where the wishes, rights and needs of different young people are involved the school should seek to respect the rights of all
- Take steps that are reasonable and proportionate and consider what is in the best interests of the children and young people involved.
- If someone raises a concern regarding sharing facilities with a transgender young person and can identify that they will experience detriment (or disadvantage) as a result, then the school should seek to respect the rights of all. To do this the school should come to an arrangement, through discussion and consideration of options available.
- Consideration of complaints should be made in line with the school and where appropriate education authority, complaints handling procedures.

Sample text: to request change of name and recorded sex

I/We [insert full name/s], the parents/guardians of [insert young person's name as it appears on current records], in accordance with their wishes, request for them to now be known as [insert young person's new name].

From now on, please ensure all records, documentation, resources and workbooks are in the new name of [insert young person's new name].

We also request that previous records, documentation, resources and workbooks be changed from [insert young person's name as it appears on current records] to [insert young person's new name]. **OR** Previous records, documentation, resources and workbooks do not need to be changed from [insert young person's name as it appears on current records] to [insert young person's new name].

The name [insert young person's old name] should no longer be used to refer to [insert young person's new name].

We also request, in accordance with the wishes of [insert young person's new name], that all locations where gender is recorded, including on SEEMiS, are updated to record the gender of [insert young person's new name] as [insert male or female] and that the pronouns [he/him or she/her] are used when referring to [insert young person's new name]. **OR** We also request, in accordance with the wishes of [insert young person's new name], that the pronouns [they/them or specify other non-binary pronouns] are used when referring to [insert young person's new name] and that gender neutral language is used so that [insert young person's new name] is not referred to as a female/girl or as a male/boy.

Yours faithfully [Insert full name/s]

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Children in Scotland

Convention of Scottish Local Authorities (COSLA)

Education Scotland

Engender

LGBT Youth Scotland

National Parent Forum of Scotland

Rape Crisis Scotland

Sportscotland

Stonewall Scotland

Scottish Transgender Alliance

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