

Response ID ANON-Q2TN-2S83-N

Submitted to Guidance for Schools and Colleges: Gender Questioning Children
Submitted on 2024-03-12 13:05:20

Rationale and guiding principles

About you

1 Are you responding to this consultation as an:

Organisation, for example, a charity, school/college or think tank

2 If you are responding as part of an organisation, would you prefer your response was kept confidential?

No

3 If you are responding as an individual, are you responding as (please select all that apply):

N/A

Please specify :

4 If you are responding to this consultation as an organisation, are you responding as:

Other, please specify

Please specify:

A community interest company

5 Are you responding to the consultation with an interest in:

Primary schools, Secondary schools, Faith schools, Alternative provision/special schools, School sixth forms, FE college, Sixth form college, Designated institutions

6 If you want all, or any part, of your response to be treated confidentially in response to a freedom of information request, please explain why you consider it to be confidential.

Please try to limit your response to under 250 words. Please do not add any details which may easily identify you or your organisation.:

Introductory Questions : Age

7 If you are responding as an individual, are you:

Over 18

8 What is your sex?

Male

9 Is the gender you identify with the same as your sex registered at birth?

No

10 Where are you based?

England

Please try to limit your response to under 250 words. Please do not add any details which may easily identify you or your organisation.:

Structure and overall guidance

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

No

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

Please try to limit your response to under 250 words. Please do not add any details which may easily identify you or your organisation.:

The document presents itself as guidance on supporting trans children and young people in school, but does not offer any practical steps for schools and colleges on how to support and include trans children and young people. The focus, instead, appears to be on the steps schools and colleges should take to make trans children and young people that come out to school staff feel like they're not respected or valued. Furthermore, is no information for schools on children and young people who have already socially transitioned (who may or may not be open about their trans status at a new school), children and young people who are being bullied because they're trans or are perceived to be trans, or children and young people that has said that they're questioning their gender identity and would like some support. In addition to this, there is no mention of what schools ought to do to support intersex children and young people, non-binary children and young people, and trans children and young people with special educational needs and/or disabilities.

We note that the document makes no reference to the protected characteristic of gender reassignment. This characteristic, as defined in the Equality Act 2010 applies to children and young people as well as adults. TransActual are concerned that, if followed, this guidance will lead education providers to breach the Equality Act 10 – both through discriminatory actions (or inactions) as well as through breaches of the Public Sector Equality Duty. We note that no Equality Impact Assessment has been published alongside this guidance.

The word 'trans' is not once used to refer to trans children and young people in the document – quite startling given that this is who the guidance purports to be about. Instead the term 'gender identity ideology' is used, presenting the lives of trans people of all ages as 'contested'. The Endocrine Society state that 'there is a durable biological underpinning to gender identity that should be considered in policy determinations.' This document ignores that and instead promotes a view that presents someone coming out as trans as a last resort that ought to be avoided at all costs.

The term 'biological sex' is used throughout the document without defining it. Schools are not given guidance on how they will determine their pupils' 'biological sex' – whether it would be based on their birth certificate (based on the appearance of their genitals at birth), their chromosomes, or their hormonal profile.

Lastly, and most importantly – the guidance is inaccessible to those who are most impacted by it. Not having an Easy Read version of the document makes it harder for trans children and young people themselves to access and understand. It also means that people with literacy difficulties are also excluded from accessing the guidance – this group is likely to include some parents and carers, youth workers, and support workers.

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

No

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

Please try to limit your response to under 250 words. Please do not add any details which may easily identify you or your organisation.:

We believe that this document may lead education staff to:

- Fail to fulfil Ofsted's requirements
- Fail to adhere to the teaching standards
- Fail to follow good practice in relation to safeguarding children.
- Fail to comply with the Data Protection Act 2018
- Breach the UN Convention on the Rights of the Child
- Breach the Equality Act 2010
- Fail to fulfil their duties under the Public Sector Equality Duty

This document does nothing to help schools understand how to fulfil their duties under the Public Sector Equality Duty and the requirements of the Equality Act 2010 more broadly. The failure to even mention the protected characteristic of 'gender reassignment' is a notable one.

The guidance in relation to matters such as toilets and changing rooms encourages schools and colleges to create a blanket ban on trans boys using boys' facilities and trans girls using girls' facilities. This is unlawful under the Equality Act 2010, which states that any exclusion of trans people from single-sex provisions may only be made if proportionate and justifiable to do so and on a case-by-case basis.

The UK is a signatory of the UN Convention on the Rights of the Child. It states that children have a number of inalienable, fundamental rights – in particular, the right to have their views meaningfully respected. If schools use this document as guidance, they will be denying trans children and young people that (and other) right.

Under GDPR, organisations are expected to ensure that the data they hold is correct and kept confidential. This guidance encourages schools to share highly personal information with all members of staff and with a child or young person's parent or carer without their consent. Furthermore, it discourages them from changing a child or young person's school records to reflect a name change.

Through these breaches of privacy, and other problems within the guidance, this document could lead schools and colleges to stray from following best practice in safeguarding children. It's widely acknowledged that being LGBT+ does not in itself constitute a safeguarding risk to anyone. However, this document presents trans children young people as a safeguarding risk to others, and ignores the risk of harm they may experience as a consequence of being trans. Keeping Children Safe in Education emphasises the importance of child-centred approaches to safeguarding, yet this document advocates for the opposite.

When they inspect schools, Ofsted look at the extent to which schools promote diversity and equality of opportunity, help children and young people to understand all of the Equality Act 2010's protected characteristics, support pupils to become respectful and tolerant members of society and to ensure 'an inclusive environment that meets the needs of all pupils, irrespective of age, disability, gender reassignment, race, religion or belief, sex or sexual orientation, and where no discrimination exists, for example in respect of wider opportunities for pupils.' This guidance from the DfE could place schools at risk of failing to live up to Ofsted's expectations.

The Teacher's Standards state that a teacher must 'treat 'pupils with dignity, building relationships rooted in mutual respect', and 'show tolerance of and respect for the rights of others'. Any teacher following this DfE guidance will be unable to meet these standards, as it encourages them to not respect children's rights and to not show trans children and young people respect.

Responding to Requests and Engaging parents

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

No

16 If you answered no, in which of the following areas do schools and colleges need further guidance to support a child? [tick all that apply]

How schools and colleges should involve parents in decisions, How schools and colleges should manage engagement with parents with different feelings or views to their child, When schools and colleges should seek specialist advice or support, How schools should put in place a 'watchful waiting' period before acting on a child's request, How schools and colleges can identify what issues may impact the wider school or college community, How schools and colleges should handle decisions that impact on the wider school and college community., The law, Something else (please specify)

Please try to limit your response to under 250 words Please do not add any details which may easily identify you or your organisation.:

In order to support trans children and young people, schools need guidance that offers them information on:

- The protected characteristic of gender reassignment and their duties under the Equality Act 2010
- What they can do to support a trans child or young person's wellbeing
- What gender dysphoria is and the impact that puberty can have on a trans child or young person's dysphoria
- What they can do and where they can signpost any child or young person that is questioning their gender and/or experiencing dysphoria
- How to maintain trans children and young people's privacy
- How to support trans children and young people moving from one phase of education to the next
- Preventing transphobic bullying
- Challenging the gender stereotypes that underpin most transphobic (and other anti-LGBTQ+) bullying
- Ensuring that trans children and young people feel safe and supported at school
- Working with a trans child or young person's parents or carers, with consent, to support the pupil in question
- How to ensure that trans children and young people have access to role models in order that they can see a future life for themselves
- How they can support the wider school community to understand what it means to be trans, in order that they're able to grow to be respectful and tolerant members of our society
- How to teach RSHE in a trans-inclusive way

In addition to the omissions in content, the guidance does not clarify some of the statements it makes. For example, it mentions 'potential impact on the school community' as a consideration when deciding whether to 'allow' a young person to socially transition. However, it does not specify what that 'impact' might be.

The guidance is quite clear in giving the expectation that trans children in primary schools should not be offered the support that is known to positively impact the mental health outcomes of trans children and young people. It gives no guidance for primary schools on what they ought to do instead to support the mental health of these children.

We know that being trans is not in itself a safeguarding risk, but that the risks come from society and the behaviour of others towards trans children and young people. However, too many school staff are not aware of this and it ought to be made clear in the guidance. Reference to children and young people at 'significant risk' of harm is made in the document, but it is not defined. A lot of school staff remain unaware of the risks faced by trans children and young people in society. As a result, many school staff are ill equipped to assess whether a trans child or young person's may pose a risk to their safety, 'significant' or otherwise. This means that, when they 'out' a trans child or young person to their parents or carers without their consent, they may be placing them at risk of harm and failing in their responsibilities around safeguarding children.

Whilst the guidance says a lot about the role of parents and carers, it does not offer schools and colleges guidance on how to navigate conversations with parents and carers. This sort of guidance is particularly needed, especially if parents and carers disagree with each other or with their child on how to proceed. There's also little guidance on what to do if parents or carers are supportive.

As previously mentioned, the suggestion that trans children and young people should use facilities and take part in activities with other people of the same assigned sex as them (example trans boys doing activities with girls and trans girls doing activities with boys) or face social isolation (via segregated, single-occupancy facilities) places schools and colleges at risk of breaching the Equality Act 2010. Furthermore, it promotes situations that will place trans children and young people at higher risk of bullying and social isolation, and that will potentially damage a pupil's relationship with education entirely.

In addition, we are interested to note that the guidance quotes para 5.19 of the Cass Interim Report in stating that 'social transition is not a neutral act' but that it does not quote para 5.20 of the same report which states that 'doing nothing' cannot be considered a neutral act'.

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

No

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

Please try to limit your response to under 250 words Please do not add any details which may easily identify you or your organisation.:

Metro's Youth Chances Report found that 58% of trans people knew they were trans before they were 13. In recommending that social transition ought not to be an option for trans children when they're at primary school, this guidance completely ignores this.

Research from Galop found that nearly half of trans and non-binary people had experienced abuse about being trans from family members before the age of 18. By prioritising the views of parents and carers over the views of trans children and young people, the guidance also ignores this research.

There is a growing body of evidence, much of it published in peer reviewed journals, to indicate that social transition and supportive environments have a significantly positive impact on trans children and young people. This guidance also ignores this, instead presenting social transition as a last resort. By framing social transition as a last resort, the guidance gives the message that it is undesirable for a trans person to come out as trans and socially transition. This is clearly a biased view born of transphobically motivated ideology.

Whilst they do acknowledge that trans children and young people might have their parents' or carers' full support, the document offers no guidance on how to support their social transition. Instead it focussed on what trans children and young people may not do and on the unspecified 'impacts' their social transition may have on others. It places the needs of everyone else in the school over the needs of trans children and young people. Every child and young person ought to be able to expect their school or college to provide them with an environment where they can thrive and learn. There's evidence to show that trans children and young people are more likely to avoid going to school, leading to negative educational and social outcomes. Any school or college that follows the guidance in this document, will be creating a hostile environment for trans children and young people, increasing the risk of repeated absences and school refusal.

Registration of Name and Sex

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

No

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

Please try to limit your response to under 250 words. Please do not add any details which may easily identify you or your organisation.:

Being known other than the name on their birth certificate is not unique to trans children and young people. For example, children and young people that are known by their middle name, a shortening of their first name (for example, Chris), or children and young people using a new name for safety (because of being in witness protection or escaping an abusive environment). This guidance singles trans children and young people out, and as such, is discriminatory.

The Department for Education 2014 guidance on applying the Equality Act states "it would be unlawful discrimination for a teacher to single out a pupil undergoing gender reassignment and embarrass him in front of the class because of this characteristic". The Equality Act has not changed. As such, education providers may find themselves at risk of legal action if they follow this guidance document.

It's well documented that trans people of all ages can find the use of their old name and pronouns deeply distressing. Having the wrong name read out for them every morning and afternoon at school is likely to have a detrimental impact on trans children and young people's mental health and their relationship to school.

People aged 16 and over are able to legally change their name without permission from their parents or carers. If schools and colleges don't respond to this legal name change by updating their records, this will be a failure to hold true and accurate data and thus be a breach of GDPR.

There's arguably no reason to include anyone's gender on the school register, because it is not relevant to whether or not a pupil is attending school. Schools collect and use lots of data about children and young people – for example, ethnicity data. These do not appear on the class register but may still be used to monitor equality of opportunity.

The guidance offers no information about which staff would or would not need to know a trans child or young person's sex assigned at birth. This lack of clarity may be misinterpreted to assume that it's relevant to all school staff. No consideration appears to have been given for the privacy of those trans children and young people who are not openly trans at school – that is, those who have moved to a new school since socially transitioning. Furthermore, no reason has been given as to why it would be necessary for a member of school staff to know a trans child or young person's assigned sex at birth.

Changing Names

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

No

22 If you answered no, in which of the following areas do schools and colleges need further guidance to respond to a child's requests to change their name? [tick all that apply]

How schools and colleges should make a decision about a child's request to change their name, When schools and colleges might refuse a request in relation to a child changing their name, How schools and colleges should involve parents in a decision about a child's request to change their name, How schools and colleges should make relevant staff and other children aware of any agreed changes to name, What factors schools and colleges should take into account., How schools and colleges should respond to other children and staff who do not wish to use a different name, The law, Something else

Please try to limit your response to under 250 words. Please do not add any details which may easily identify you or your organisation.:

The guidance gives no justification for not referring to trans children and young people using the name and pronouns that they've been asked to use. The teaching standards place an expectation that teachers will treat the children and young people in their care with respect. Continuing to call someone a name they've asked you not to is not respectful. As mentioned elsewhere in this response, there is evidence to show that calling trans children and young people by their preferred name reduces the risk of negative mental health outcomes. That the guidance ignores this suggests that its publication was driven by ideological motivations rather than a wish to promote good practice.

The document offers no guidance on what schools should do if a young person aged 16 or over has changed their name legally, but their parents or carers are unsupportive. It is especially important that schools and colleges understand the legal implications of not changing a young person's school records if their legal name has changed.

Schools regularly refer to children or young people by their preferred names – for example, referring to Tom rather than Thomas if a child or young person asks them to. School management systems have a field for preferred names. This guidance could leave schools in doubt as to whether they can use preferred names for any child or young person, or whether it is specifically trans children and young people that they can't use a preferred name for. If the latter, this is likely a breach of the Equality Act 2010.

Pronouns

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

No

24 If you answered no, in which of the following areas do schools and colleges need further guidance to respond to a child's requests to change their pronouns? [tick all that apply]

When schools and colleges should refuse a request in relation to a child changing their pronouns, What factors schools and colleges should take into account., How schools and colleges should involve parents in a decision about a child's request to change their pronouns, How schools and colleges should make relevant staff and other children aware of any agreed changes to pronouns, How schools and colleges should respond to other children and staff who do not wish to use different pronouns, The law, Something else

Please try to limit your response to under 250 words Please do not add any details which may easily identify you or your organisation.:

Intentional, repeated misgendering is widely accepted as a form of bullying and harassment. However, this document actively encourages school and college staff to do just that. A trans child or young person's peers, will of course follow suit. Schools have a duty to protect their pupils from bullying and harassment, yet this guidance promotes actions that are widely considered to be bullying. Staff are not permitted to take other discriminatory actions to make children and young people feel bullied or harassed (for example, comments based on religious bias), so this guidance singles trans children and young people out.

This refusal to use the requested pronouns for a trans child or young person is likely to be considered discrimination or harassment under the Equality Act 2010. The DfE guidance on applying the Equality Act states "it would be unlawful discrimination for a teacher to single out a pupil undergoing gender reassignment and embarrass him in front of the class because of this characteristic". There has been no change to the Act, and this document acts to contradict it. This will leave schools and colleges at risk of legal action if they follow the guidance.

There is also age based discrimination in the blanket statement telling schools to never use a trans child's new pronouns. No justification is given for this arbitrary cut off, and no reference is made to the Metro Youth Chances report that demonstrates that a good number of trans people come to realise that they're trans whilst in primary school.

The guidance frames using a trans child or young person's preferred pronouns as an absolute last resort. No explanation is given for this reasoning. We can only assume that the writers of the guidance consider being trans to be a bad thing, and thus social transition to be undesirable. By pushing this messaging, the DfE could be considered to be neglecting their responsibilities under the Public Sector Equality Duty.

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

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

No

26 If you answered no, in which of the following areas do schools and colleges need further guidance? [tick all that apply]

How schools and colleges should make a decision about a child's request not to use facilities designated for their sex, When schools and colleges have to refuse a request in relation to a child using facilities designated for the opposite sex., How schools and colleges should involve parents in a decision about a child's request not to use facilities designated for their sex, What factors should be considered when deciding whether to offer alternative facilities, Toilets, Changing rooms, Boarding and residential accommodation, The law, Something else

Please try to limit your response to under 250 words. Please do not add any details which may easily identify you or your organisation.:

The guidance ignores the evidence showing that trans children and young people able to use facilities in line with their gender are likely to have better mental health outcomes. Instead, it frames trans children and young people as inherently dangerous to others without stating what the 'danger' is.

No guidance is given on what schools are to do if they do not have a gender-neutral toilet with floor to ceiling walls, or if they don't have a single occupancy space for trans children and young people to change in. As there is government policy to state that gender neutral facilities should not be provided as standard in public buildings, such as schools and colleges, this doesn't leave many options.

Telling a trans boy that he can only use girls' facilities or segregated single-occupancy facilities marks him as different. It also removes the child or young person's choice to keep their trans status private. It's already well documented that, when trans children and young people don't have access to appropriate facilities (ie trans boys being told they may only use the girls' toilets), they avoid using any facilities at school. They manage this by drinking less during the day (which is dangerous on a hot summer day) and by holding on until they get home, risking urinary tract infection. Lack of access to facilities they feel comfortable using, will increase the likelihood of truancy and school refusal.

The Education (School Premises) Regulations 1996 say that schools and colleges should accommodate 'special requests' relating to the provision of toilets. Furthermore, the Equality Act 2010 states that the exclusion of trans people must be proportionate, justifiable and on a case by case basis. This is not something that is outweighed by the feelings of other pupils (or their parents). For example, it wouldn't be legal to exclude a lesbian teenager from the girls' changing rooms at school simply because she's a lesbian and other girls don't want to share with her.

By encouraging education providers to implement a blanket rule, the DfE are placing any organisation following their guidance at risk of breaking both of these laws.

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

No

Please try to limit your response to under 250 words. Please do not add any details which may easily identify you or your organisation.:

The guidance offers no information on what schools and colleges ought to do if they're unable to provide alternative, single-occupancy facilities for trans children and young people. There is a high likelihood that they may not be able to - whether for financial reasons, lack of space, or issues with the school buildings. Some schools have just one single-occupancy accessible toilet, so they ought to be offered guidance on how to manage the impact of this on both trans children and young people and on disabled young people.

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

No

29 If you answered no, in which of the following areas do schools and colleges need further guidance? [tick all that apply]

How schools and colleges should make decisions about requests to access boarding and overnight accommodation designated for children of the opposite sex, When schools and colleges should refuse a child's request to use different boarding and overnight accommodation while on a school or college trip, How schools and colleges should involve parents in a child's request to use different boarding and overnight accommodation while on a school or college trip, The law, Something else

Please try to limit your response to under 250 words . Please do not add any details which may easily identify you or your organisation.:

As mentioned elsewhere in this response, this document encourages education providers to break the Equality Act 2010 in relation to the protected characteristic of gender reassignment and access to single-sex spaces. The Act is clear that decisions to exclude trans people should be made on a case by case basis, but this guidance directly contradicts this by encouraging a blanket ban. Inclusivity, rather than exclusion, ought to be the assumption. Schools and colleges would instead benefit from guidance on:

- Considerations around a trans child or young person's privacy when sharing accommodation with others.
- Steps that could be taken to prevent transphobic bullying and social exclusion within dormitory accommodation.
- The issues a trans child or young person might encounter on an overseas trip and how to support them through it.
- How to ensure that trans children and young people feel comfortable to take part in residential trips.
- What to do if a young person requests single occupancy accommodation that they're unable to provide and what the legal implications of refusal might be.

Unfortunately, this document offers none.

Uniform

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

No

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

How schools and colleges should make a decision about a gender questioning child who makes a request in relation to uniform, When schools and colleges might refuse a request in relation to a child wearing a different uniform, How schools and colleges should involve parents in a decision about a gender questioning child who requests an exception to uniform requirements., How a school or college might accommodate a request within their uniform policy, How schools and colleges should make relevant staff and other children in the school or college aware of any changes agreed., The law, Something else

Please try to limit your response to under 250 words. Please do not add any details which may easily identify you or your organisation.:

We were surprised to see the DfE seeming to endorse gendered uniform options for children and young people. It's been long considered good practice to offer all children and young people the option to wear any items from the uniform list. This ensures that children and young people are not subjected to expectations of their appearance based on gender stereotypes.

The document offers no guidance on what schools ought to do if, for example, a cisgender boy wishes to wear a skirt. Would he be allowed because he's not trans? Specifying that schools ought to have stricter uniform requirements for trans children and young people singles them out, is discriminatory and places schools at risk of breaching the Equality Act 2010.

Taking the choice away from trans children and young people in relation to swimwear makes it less likely that they will take part in swimming lessons. This means that schools following the guidance will be failing to promote equality of opportunity, thus failing in their responsibilities under the Public Sector Equality Duty. No guidance is offered as to whether this restriction ought to apply only to trans children or young people, or to others. For example, would a Muslim girl wishing to wear more modest swimwear (such as a full cov dress and swimming leggings) also be restricted from accessing school swimming sessions?

Physical Education and Sport

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

Yes

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

How schools and colleges should make a decision about whether a child can take part in a certain sport or activity., When schools and colleges should refuse a request in relation to a child taking part in a certain sport or activity, How schools and colleges should involve parents in a decision about a child's request to participate in a certain sport or activity, How schools and colleges should make relevant staff and children aware of any changes agreed, The law, Something else

Please try to limit your response to under 250 words. Please do not add any details which may easily identify you or your organisation.:

This guidance starts from the assumption that it is somehow dangerous for trans boys to do PE with other boys and for trans girls to do PE with other girls. It makes no mention of the risk assessments that PE teachers ought to be doing every time they teach a lesson. Ability and strength are always a consideration, regardless of trans children or young people being present in a lesson. For example, a class of Year 9 boys will have children at very different stages of puberty. Some boys may be quite some way into puberty, have had their growth spurt and started to develop more muscle mass. Other boys in the same year group could still be a lot smaller and weaker than other boys and lots of the girls, having not yet had a growth spurt or started to develop more muscle strength. Particular consideration will also be given to disabled children and young people who may need to join a lesson in a different way, or whose inclusion may give rise to additional safety considerations. To single trans children and young people out is therefore inherently discriminatory.

The guidance also contradicts guidance from organisations such as the Football Association, which states that trans young people under the age of 16 can play in the football team that most closely aligns with their gender, regardless of sex assigned at birth.

What the document doesn't do is offer any guidance for schools on how they can ensure that trans children and young people are able to engage with and actively participate in PE and school sports.

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

No

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

Please try to limit your response to under 250 words] Please do not add any details which may easily identify you or your organisation.:

The guidance makes assumptions about the physical characteristics of trans children and young people, and their cisgender peers. In reality, there is a lot of overlap amongst cisgender girls and boys in relation to their weight, height and strength. There's a lot of variation amongst cisgender boys and amongst cisgender boys. This is part of life and always has been.

Safety and fairness is not solely determined by a child or young person's size. For example, one might question the fairness of asking a child who has never played rugby to play it against one who has played all their life and now represents their county or has already started playing against adults.

As outlined above, this document offers no information on guidance and safety and in fact ignores the risk assessment processes that schools and colleges ought to already have in place.

Injuries are a risk when doing sports, regardless of who is taking part. There is no evidence that the presence of trans people during sport makes injuries more likely.

These factors combined mean that this document is encouraging schools and colleges to take unjustified and disproportionate measures that will have the impact of excluding trans children and young people from PE. PE is compulsory until the age of 16, however it's widely known that it's a lesson that teenagers will make particular efforts to avoid. Instead of coming from an assumption of exclusion, the guidance ought to offer information for schools on how to provide trans children and young people with fair and equitable access to the PE curriculum and school sports more broadly.

Single-sex schools

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

No

37 If you answered no, in which of the following areas do schools and colleges need further guidance to support effective decisions on the admission of children who are questioning their gender [tick all that apply]

The law

Please try to limit your response to under 250 words Please do not add any details which may easily identify you or your organisation.:

The document fails to include the following information:

- A school will not lose its single-sex status by admitting a trans child or young person or by allowing a trans student to remain there after they come out as trans.

- If a school refuses entry to a trans student specifically because they're trans, they would be likely to breaking the Equality Act 2010 in relation to the protected characteristic of gender reassignment.

Because of the terminology used in the guidance, there is additional potential for confusion. The use of the term 'biological sex' is imprecise, as no definition is offered. Are schools and colleges to base decisions on a child or young person's birth certificate (ie their genitals observed at birth), their chromosomes or their hormonal profile? The use of the phrase 'gender questioning' rather than 'trans and non-binary' or 'gender reassignment' adds further confusion – someone that is questioning their gender is not necessarily trans.

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

Don't know

39 If yes, was that child questioning their gender?

Don't know

Please do not add any details which may easily identify you or your organisation.:

Public Sector Equality Duty [PSED]

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

Please give reasons for your answer and try to limit your response to under 250 words:

TransActual are concerned that the DfE has not published an Equality Impact Assessment or a Children's Rights Impact Assessment in relation to this guidance. As noted throughout this response, we've identified several potential negative impacts. Not just for those with the protected characteristic of gender reassignment, but on the basis of sex (in relation to school uniforms), religion (in relation to swimwear), age (in relation to primary school children) and disability (in relation to toilet facilities).

Gender reassignment is a protected characteristic under the Equality Act 2010 and applies regardless of age. The Act is based on the principle of exclusion, yet this document appears to be based on exclusion and to ignore the protections given to trans people of all ages by the Equality Act 2010. As discussed throughout our response to this consultation, there are numerous examples which may lead education providers to break the law if they follow this guidance. We note that Government lawyers have already identified this as an issue, and that their guidance was ignored.

The document gives little guidance on the balancing on perceived conflicts of rights between different protected characteristics of the Equality Act 2010. There are examples that could have been given, for example the way in which schools manage strongly held religious beliefs relating to gender and sexual orientation. There is much case law in relation to the interaction of the faith and belief protected characteristic with the sexual orientation characteristic. It has long been established that having a particular faith or belief does not entitle someone to cause someone else to feel harassed (ie someone might think that their religion is the one true religion, but they're not entitled to harass people that observe other religions). 'Gender critical' beliefs ought to be treated no differently under the law but this guidance gives the opposite impression.

General

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

Yes

If yes, please detail below and try to limit your response to under 250 words.:

This guidance is fundamentally flawed. The foreword essentially states that nobody is really transgender, whether a child or an adult. This sets the tone for the entire document, which works from the assumption that social transition is an inherently bad outcome that must be avoided at all costs. Despite being guidance about trans children and young people, the word trans is not used once in the whole document. In short, it presents being trans as a bad thing. This represents a failure on the part of the DfE to fulfil their responsibilities under the Public Sector Equality Duty.

By following the 'guidance', schools and colleges are likely to:

- Breach the Equality Act 2010 and place themselves at risk of legal action.
- Breach the UN Convention on the Rights of the Child, particularly in relation to children having the right to have their views meaningfully respected.
- Negatively impact the educational aspirations and outcomes of trans children and young people. Before they can fulfil their academic potential, children and young people need to feel safe and supported.
- Negatively impact the mental health of trans children and young people.
- Negatively impact the physical health of trans children and young people in relation to issues caused by avoiding using the toilet at school, as well as the health implications of being less likely to engage in PE and school sport.

They will, however, be none the wiser as to what to do when a child or young tells them they're trans.

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

No

If yes, please detail below and try to limit your response to under 250 words.:

This 'guidance' completely ignores research into the experiences of trans children and young people and the way in which support can improve their educational outcomes. It is also in stark contrast to the guidance from the Scottish Government, which does offer guidance around the law and around the steps that schools can take to support trans children and young people. Whilst education is devolved in Scotland and certain aspects of the Public Sector Equality Duty differ, the Equality Act 2010 applies as much in Scotland as it does in England and Wales. The sole reason for the difference in the two documents is political ideology - the Westminster Government appear to hold the view that, with the right amount of discouragement, people can be prevented from being trans.

Trans people can't control whether or not we are trans and being trans is not inherently a bad thing to be. Most of the challenges trans people face in life

are due discrimination and harassment, and the impact of that on our lives. There is a requirement for public bodies to act to eliminate discrimination, promote equality of opportunity and foster good relations. By publishing this document, the DfE will fail to fulfil any of those duties.