Scottish Trans Response to the EHRC's Technical Guidance for Schools Consultation

September 2026

We submitted the following to the Equality and Human Rights Commission's (EHRC) consultation on their updated guidance for schools on their legal obligations not to discriminate against, harass or victimise pupils under the Equality Act 2010.

The consultation and proposed guidance was different for England, Wales and Scotland. We responded to the questions about the Scottish guidance. You can find out more about the consultation here: https://www.equalityhumanrights.com/guidance/technical-guidance-schools-consultation

Written responses were limited to 2000 characters per answer.

Content note: the response details are concerns about significant negative impacts on trans children and young people's physical and mental health. This includes mentioning risks of bullying and sexual violence.

30 Bernard Street, Edinburgh EH6 6PR 0131 467 6039
en@equality-network.org www.equality-network.org

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Q: The guidance covers the experiences and needs of pupils with different protected characteristics. Tell us whether there is any information missing in relation any of the protected characteristics.

Gender Reassignment

Tell us more about your response.

The draft focuses entirely on where trans pupils should be excluded from provisions that align with their gender identity or use gender neutral spaces, giving no examples of where pupils can be treated in line with their gender identity. This approach is very likely to cause direct and indirect gender reassignment discrimination and breach trans pupils' human rights.

Requiring trans pupils to always use the facilities that correspond with their "biological sex at birth" can cause significant harm. There is evidence that taking this approach can mean that pupils experience:

• Abuse and violence, including sexual harassment

• Avoidance of gendered spaces, which, particularly regarding toilets, has negative effects on their physical and mental health

• Increased feelings of gender dysphoria, negatively impacting on their mental health and interfering with their rights to privacy and preservation of their identity.

These issues have a wider impact on trans pupils' experiences of education. A more in-depth review of this evidence can be found in our response to the Scottish Government's consultation on updating School Premises Regulations (https://www.scottishtrans.org/wp-content/uploads/2026/03/Scottish-Trans-response-to-Scottish-Government-consultation-on-updates-to-School-Premises-General-Requirements-and-Standards-Scotland-Regulations-1967.pdf).

The sentence "It does not include people who may identify as trans or transgender but who do not fall within that definition" doesn't need to be included in the definition of "trans" given at 1.24 as this is self-evident. It is important that the guidance is clear, as at 3.248, that while not all children and young people who explore their gender identity will have

the protected characteristic of gender reassignment, case law is clear that children can have this protected characteristic. It is therefore entirely appropriate to refer to “trans pupils” or to use examples where pupils are described as “trans boys” or “trans girls”.

Q: Does the guidance clearly explain the important concepts in the Equality Act 2010, such as protected characteristics, discrimination, harassment, and victimisation?

No

Tell us how we could improve the way we define important concepts in the guidance.

While the guidance defines direct and indirect discrimination, it does not give examples of the discrimination that trans pupils will face by being excluded from spaces in line with their gender identity and segregated from their peers. We think that trans pupils will clearly experience direct discrimination where this results in:

- Negative impacts on their physical health (Li, A. Hillion, JA., Godeau, E. (2026) “School toilet use and avoidance: a systematic review of barriers, facilitators, and impact on child and adolescent health” *Journal of Public Health)* and mental health (DeChants, J.P., Price, M.N., Nath, R., Hobaica, S. and Green, A.E. (2024) “Transgender and nonbinary young people’s bathroom avoidance and mental health” *International Journal of Transgender Health* 26(2): 351-359)
- having to access facilities that are less accessible and causing them to miss time in lessons;
- singling them out as the only pupil in a school to use staff facilities;
- facing intense scrutiny from their peers;
- experiences of bullying (Atherton, S. (2024) “The privacy and visibility paradox: trans students’ experiences of toilets and changing rooms in UK secondary schools” *Gender and Education* 36(7): 747-762).

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There is no defence in law to direct discrimination.

We also think that trans pupils will clearly experience indirect discrimination where they are subject to a policy or practice to restrict access to all shared facilities provided for boys or girls on the basis of “biological sex at birth”, or to use facilities separately to their peers.

While this can be justified if it is a proportionate means of achieving a legitimate aim, we do not accept that negatively impacting on trans pupils’ physical and mental health, interfering with their right to privacy and to preserve their identity, singling them out from all other pupils or causing them to face transphobic bullying could ever be described as "proportionate".

Q: The guidance explains the obligations that the Equality Act 2010 places on schools. Tell us whether the explanations are clear in relation to the following areas:

	Clear	Not clear	I don’t know
Admissions			x
The provision of education and access to benefits, facilities and services for pupils		x	
Exclusions from school			x
Making reasonable adjustments for disabled pupils			x
The positive actions provisions of the Act	x		
Dispute resolution and enforcement of the Act			x
Exemptions that apply generally across the Act and how they apply specifically to schools		x	

Tell us how we could explain schools' responsibilities under the Equality Act 2010 more clearly.

We don't believe that schools will be able to address inequality and discrimination faced by trans pupils as a result of following this guidance.

One example of this is that the guidance suggests at 3.124 that the use of gender-neutral pronouns, or the avoidance of pronouns, is an acceptable way for teachers to refer to trans students. While we note that this may be a reflection of case law, we are concerned about the impact this may have on trans pupils. Research shows that trans pupils can experience "rejection" and "non-affirmation" from teachers as particularly harmful:

"In terms of teacher rejection, parents described their children as being acutely aware of discomfort exhibited by teachers and school staff, experiencing it as rejection from a school authority figure." (Horton, C. (2022) Gender minority stress in education: Protecting trans children's mental health in UK schools *International Journal of Transgender Health)*

Research from the Trevor Project with over 10,000 trans young people found: "pronoun respect was associated with 31% lower odds of a past-year suicide attempt… compared to those who did not experience pronoun respect." (https://www.thetrevorproject.org/research-briefs/pronoun-usage-and-mental-health-impacts-of-pronoun-respect-in-tgnb-young-people/) Using the language a trans pupil has requested is important for their mental health, wellbeing, and feelings of belonging and inclusion at school.

We are extremely concerned that the current legal framework may mean that teachers are permitted to treat trans pupils in ways that will cause them distress and harm, undermine their identity, and cause them to face discrimination. The EHRC has statutory duties to highlight to the UK Government that the current legal framework requires treating trans children and young people in ways that will clearly impact on their human rights and cause them to face inequality and discrimination.

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Q: How clearly does the guidance explain the duties that the Public Sector Equality Duty (PSED) places on schools?

Not very clearly

How could we improve the explanation of the PSED in the Technical guidance for schools in Scotland?

We believe the explanation of PSED is insufficient, as there is no acknowledgement that exclusion of trans pupils from facilities in line with their gender identity and segregation from others makes delivering any of the three arms of PSED in relation to pupils with the protected characteristic gender reassignment impossible. In fact, it will be counterproductive across all three arms of the duty.

Polices that trans pupils must use facilities for their “biological sex at birth” or be segregated from others may cause direct and indirect discrimination, as explained in previous answers. It will lead to decreased opportunities for trans pupils compared to their peers when, for example, they're banned from sports competitions and sharing dorms with others on residential trips. The main suggestion presented in the guidance to meet the needs of trans pupils is to segregate them into separate facilities from others. This will clearly be counterproductive to the aim of fostering good relations between groups who do and don’t share protected characteristics, as trans pupils will be separated and othered from their peers across many different aspects of life at school.

We believe that the EHRC has statutory duties to highlight to the UK Government that the current legal framework requires treating trans children and young people in ways that will clearly impact on their human rights and cause them to face inequality and discrimination.

Q: Does the guidance take account of the law in relation to schools as the law applies for the start of the 2026 / 2027 academic year?

No

Tell us more about your answer.

While this guidance focuses on schools' responsibilities under the Equality Act 2010, following the guidance, in our view, could cause schools to be in breach of their legal requirements under the Human Rights Act 1998.

Trans pupils' access to appropriate toilets and facilities can be a genuine question of safety. A 2019 study based on US survey data with more than three thousand trans young people looked at the risk of sexual assault and whether or not this was impacted by school policies on access to toilets and changing rooms (Murchison, G.R, Agénor, M., Reisner, S.L., Watson, R.J. (2019) "School Restroom/Locker Rooms Restrictions and Sexual Assault Risk Among Transgender Youth" *Paediatrics* 143(6) https://pmc.ncbi.nlm.nih.gov/articles/PMC8849575/). It found that:

- 26% of trans students had experienced sexual assault in the last year. That compared to 15% of female students who were not trans, and 4% of male students who were not trans.
- Trans pupils who attended schools that restricted their access to toilets and changing rooms (i.e., did not allow them to use the facilities that aligned with their gender identity) were at increased risk of sexual assault.
- This was particularly pronounced for trans girls, who were 2.5 times as likely to experience sexual assault if they attended a school that restricted their access to toilets and changing rooms.

Where schools had policies that did not allow trans pupils access to toilets and changing rooms that aligned with their gender identity, the increased risk of sexual assault was experienced across all school settings, not just in toilets and changing rooms themselves.

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We believe that the EHRC has statutory duties to highlight to the UK Government that the current legal framework requires treating trans children and young people in ways that will put them at risk of serious violence and harm, clearly impact on their human rights, and cause them to face inequality and discrimination.

Q: How much do you agree or disagree with the following statements?

The examples in the guidance are helpful	Strongly disagree
The guidance needs more examples	Strongly agree
The examples in the guidance are realistic	Disagree
The examples in the guidance are accurate	Strongly disagree

Tell us how we could improve the examples used in the guidance.

The guidance includes no examples of instances where it is appropriate to treat trans pupils in line with their gender identity, or how to mitigate the negative impacts they will experience from not being able to use facilities in line with their gender identity. In our view, this is likely because the harm that will result is so significant that it cannot be meaningfully mitigated.

Because the examples focus only on instances where exclusion or different treatment is lawful, we think it will encourage schools to default to this approach even in situations where exclusion is not required, even if it is lawful. The guidance would be significantly more balanced, and more likely to result in positive school experiences for trans pupils, if it gave examples of lawful ways that schools could include trans pupils in line with their gender identities.

We also note that throughout the examples, trans girls are often referred to using “they” rather than “she” pronouns (such as in 10.35), or pronouns are avoided altogether (e.g. “the pupil”), even though this is not done in other instances where pupils are referred to and where their gender is known, such as in 3.121. We believe that this should be changed, and that the guidance should model inclusive language by

referring to trans pupils using the language they would likely request ("she" for trans girls and "he" for trans boys).

The example given of an LGBT consultation group as a form of positive action at 8.37 is useful, thorough and clear, and will be helpful for schools to understand where they can introduce similar measures.

Q: Is any information missing from the guidance?

Yes, there is a lot of information missing

Tell us what information should be added to the guidance.

The guidance does not cover the obligations that schools have to uphold the human rights of children and young people. This is especially the case in Scotland, where the UNCRC is incorporated into Scots law. The treatment of trans children and young people described in this guidance may result in breaches of the following UNCRC rights:

- To be free from discrimination (Article 2)
- To preserve identity (Article 8)
- To express their views freely in matters affecting them (Article 12)
- To privacy (Article 16)
- Be free from violence and abuse (Article 19)
- To the highest attainable standard of health (Article 24)
- To an education that develops their personality, talents and mental and physical abilities to their fullest potential (Article 29)

The potential for increased risk of harm including sexual assault and violence may also place schools at risk of breaching trans pupils Article 3 rights under the European Convention of Human Rights.

We believe that if schools develop their policies based only on their obligations under the Equality Act, without considering their legal obligations under the Human Rights Act and UNCRC, that their policies may be unlawful. Even if this guidance is limited in scope to the Equality Act, we think it would be useful for the guidance to flag that these obligations also exist in the "Interaction with other Legislation and Responsibilities" section in Chapter 2.

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In addition, we believe that the EHRC has statutory duties to highlight to the UK Government that the current legal framework requires treating trans children and young people in ways that will put them at risk of violence and abuse, clearly impact on their human rights, and cause them to face inequality and discrimination.

Q: Tell us what other support we could offer to help schools understand and comply with the Equality Act 2010.

The guidance should be clearer on when certain choices about the treatment of trans pupils, such as treating them differently from others, may be lawful in some circumstances, and where it is necessary in all instances. Likewise, it should be clearer that while there may be instances where exclusion of trans pupils from certain spaces is lawful, that this does not mean that their inclusion would be unlawful.

Where more than one approach is available, and especially where an approach is lawful but may have negative impacts on trans pupils (including direct and indirect discrimination) the guidance should be clearer on how schools make these decisions in a way that has the best interests of pupils in mind. This should also include efforts that schools can take to mitigate the negative impacts these decisions may have – although as we have mentioned in previous answers we do not always think this will be possible.

Ambiguity in how sport is described may also lead to the complete exclusion of trans pupils from all physical activity in schools. This section currently, as with other sections, focuses on when it is lawful to exclude trans pupils or treat them differently. However it does so in the context of section 195 of the Equality Act, which deals only with competitive gender-affected activity. It is unclear why examples of inclusion, and explanations of how to be inclusive, are not also provided, particularly regarding recreational activities and non-competitive sports.

This incomplete explanation may lead schools to default to excluding trans pupils from all gendered sport and physical activity provision, even where this may not be necessary or proportionate, and especially if no alternative framework is given to help schools make more considered

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decisions. Exclusion from physical activity in school can have significant impacts on the mental and physical wellbeing of trans pupils.

Q: How much do you agree or disagree with the following statements?

The guidance was easy to find on the EHRC website	Neither agree nor disagree
The guidance webpages were easy to use	Neither agree nor disagree
The guidance was accessible with assistive technology	Neither agree nor disagree
The language was easy to understand	Strongly disagree
The guidance structure was easy to navigate	Neither agree nor disagree

Q: Tell us about any further comments you have about the Technical guidance for schools in Scotland.

In our response we mention the physical and mental health impacts that trans people can face from bathroom avoidance. Research on this published in the International Journal of Transgender Health 26(2) (DeChants, et al. (2024), “Transgender and nonbinary young people’s bathroom avoidance and mental health”, p. 351-359) based on a survey of over 13,000 trans young people in the US found that:

“Transgender and nonbinary young people in this sample also reported a number of physical health problems related to bathroom avoidance, including “holding it,” avoiding food or water, and medical issues such as urinary tract infections and kidney infections, with transgender and nonbinary young people who reported always avoiding public bathrooms in the past year reporting significantly higher rates of physical health problems compared to their peers who only sometimes avoided public bathrooms in the past year. Nearly two in five transgender and nonbinary young people reported restricting their food or water intake to avoid needing a restroom. These experiences have serious health consequences for transgender and nonbinary young people, as food and

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water restriction may lead to dehydration, malnutrition, disordered eating practices, or other physical health problems."

On mental health impacts, the study also found that:

"Transgender and nonbinary young people who reported sometimes or always avoiding public bathrooms in the past year reported significantly higher odds of recent symptoms of anxiety, recent symptoms of depression, and seriously considering suicide in the past year compared to their transgender and nonbinary peers who never avoided using public bathrooms in the past year. Transgender and nonbinary young people who reported sometimes or always avoiding public bathrooms also reported nearly twice the odds of attempting suicide at least once in the past year, compared to their transgender and nonbinary peers who never avoided using public bathroom in the past year."