

Equipped for equality

A guide to what schools can and can't do
in the name of equality and human rights





Important

This booklet does not constitute legal advice but general guidelines. Specific advice from a lawyer should always be sought in relation to individual circumstances.



A glossary of terms **highlighted in blue** is on pages 26-30.

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Where to look for help

The table below will help you identify the sections of this guide most relevant in your situation. Having read the relevant section, it will be helpful to read the rest of this guide for context.

<i>Where to look when a school is...</i>	<i>Section(s)</i>
<i>allowing a teacher to pick on children because of their Christian beliefs</i>	<i>1</i>
<i>creating a situation that Christian children find difficult</i>	<i>1</i>
<i>seeking to silence Christian children expressing their beliefs</i>	<i>1B, 1C, 2, 3, 4</i>
<i>using the Equality Act to justify inappropriate teaching</i>	<i>1B, 1C, 2, 3</i>
<i>compelling a child to agree with or support a cause they don't believe in</i>	<i>1B, 1C, 3, 4</i>
<i>allowing teachers to denigrate Christianity</i>	<i>1, 3</i>
<i>treating a parent or child less favourably because of their Christian belief</i>	<i>1B</i>
<i>not concerned about the bullying of Christian children</i>	<i>1B, 1C</i>
<i>strongly promoting a viewpoint with which some parents disagree</i>	<i>2, 3</i>
<i>putting a child on the spot to reveal their viewpoint, when they want to stay silent</i>	<i>4</i>
<i>taking an unbalanced approach to transgender issues</i>	<i>5</i>

Introduction

Christian teachers, parents and pupils are increasingly facing difficulties as the education system becomes more secular. Pressure groups with their own agendas are approaching schools offering advice, training and resources. Often this is backed up with vague appeals to the 'Equality Act' to make schools feel they have no alternative but to follow the advice given. In this way the [Equality Act 2010](#), which is meant to protect the rights of all, becomes a means of marginalising the rights of any parent or pupil who disagrees with these agendas. The Act is a shield to protect everyone, but is instead used by some as a sword to attack others.

This short guide sets out to debunk the myths surrounding what schools in England, Wales and Scotland are required to do because of the Equality Act. Many of the principles may well apply in Northern Ireland but there are some legal differences. The guide also spells out the protections both the Equality Act and the [Human Rights Act 1998](#) afford to religious pupils and parents.

The Human Rights Act brought the [European Convention on Human Rights](#) into UK law and the European Court of Human Rights has ultimate jurisdiction over how this is interpreted. This has nothing to do with membership of the European Union.

This guide is written primarily for parents and pupils, although others will find it very useful.

What is covered?

The guide looks at what **always applies** across the whole of a school's policy and practice. Whatever is done must comply with the Human Rights and Equality Acts. One myth is that these pieces of legislation give **LGBT** rights supremacy over all other rights. Just because something like same-sex marriage is legal, schools can't assume everyone must agree with it. The law is strongly opposed to such coercion.

Where there are conflicts there is to be a balancing of rights and an attempt at [reasonable accommodation](#). Schools also have certain freedoms within equality law so they are not hindered in their work.

This short guide sets out to debunk the myths surrounding what GB schools are required to do because of the Equality Act.

We hope to publish more specific guidance covering [transgenderism](#), [Relationships and Sex Education](#) (RSE), the employment rights of teachers and the [Independent School Standards](#). We also plan to produce guidance for parents on how best to engage with schools.

The approach

The booklet provides examples where clear guidance can be given.

Green boxes show examples that are lawful.

Red boxes show examples that are unlawful.

We have sought to avoid scenarios where the interpretation of the law is too dependent on specific circumstances.

For example, there is no definitive law covering every circumstance surrounding whether a teacher must use the assumed name of a pupil who wants to change sex. There will be occasions where it will be difficult for a teacher or other member of staff to achieve a reasonable accommodation. This is likely to be the case if a child's legal name has been changed, and the child and parents insist they are called by that name. Other children, not being employees, may have more freedom. It is beyond question that every pupil should be treated with respect.



1. Equality law requires schools to protect not promote

1A Curriculum content is exempted from discrimination law

- ▶ Equality law requires schools not to discriminate in **how** they educate or treat pupils. It also requires all public bodies to be mindful of the need to foster good relations between people. However, it does not dictate **what** is taught in schools.
- ▶ Chapter 1 of Part 6 of the [Equality Act 2010](#) applies discrimination law to schools. However, it also states: “*Nothing in this Chapter applies to anything done in connection with the content of the curriculum*”.¹

This is necessary in order to allow teachers to do their jobs. Equality law can't be used to litigate over particular classroom lessons. To similar effect, there are exemptions to the harassment provisions in the Equality Act (see 1B overleaf). All these exemptions protect discussion and freedom of speech in the classroom.

Pupils' sensitivities

A Roman Catholic girl complains that teaching about Guy Fawkes in history lessons puts Roman Catholics in a poor light. The Equality Act does not restrict teaching about the Gunpowder Plot, because the curriculum is exempt from the Act.



1B Discrimination and harassment

Discrimination means treating someone less favourably. Schools must not discriminate against pupils on grounds of several of the protected characteristics in the Equality Act 2010.² This includes the **protected characteristics** of **gender reassignment**, religion or belief and **sexual orientation**.³ It applies to the way education is provided and in the way access is given to a benefit, facility or service.

- Under the Equality Act schools must not **directly discriminate** against pupils on grounds of religion or belief.
- A school may also be liable for **indirect discrimination** if it applies the same rule or practice to all pupils that puts a person with a protected characteristic at a particular disadvantage compared with others. Unlike direct discrimination, indirect can be legally justified if it is a proportionate means of achieving a legitimate aim.

A school might indirectly discriminate against a Christian pupil if the way in which pupils are educated puts him at a disadvantage compared with others in the school who do not share his faith. Such an approach could be lawful if it can be justified, but this is less likely if the school is engaging in controversial and unnecessary methods.

- The Equality Act also requires that schools must not harass pupils on grounds of disability, race and sex. But **harassment** on grounds of gender reassignment, religion or belief and sexual orientation does not apply to pupils.⁴ While conduct that might otherwise be classed as harassment on these grounds could still be treated as direct discrimination,⁵ harassment does not apply to schools in these areas for a reason. It is a signpost to the importance of freedom of expression in areas which can divide opinion (see 4. *Schools cannot compel thought and expression*).

All schools have a duty under the Equality Act not to directly discriminate against pupils on grounds of religion or belief.





Direct discrimination

Parents move to a new area. Their 13-year-old son assumes the identity of a girl and they apply for a school place. The school says there are no places available, but it comes to light that parents who apply after them are being offered places for their children. This appears to be direct discrimination.

Discrimination by association

A small school consults all its teachers on decisions for prefect appointments. Senior leaders reject the objections of one staff member who appears to be opposing the appointment of a student because he lives with gay parents. The student is appointed as a prefect.

Had the school acted on the objections raised by the staff member, the pupil would have suffered direct **discrimination by association**.



Indirect discrimination on religious grounds

A school offers sessions for year 11 pupils to be advised by senior staff on their sixth form options. These are scheduled for after school on a Friday in January. No alternatives are offered. The school serves a number of Jewish pupils. They are unable to attend as the Jewish Sabbath starts just before sunset on a Friday evening.

This is likely to be indirect discrimination, because all pupils are treated the same but the blanket rule particularly disadvantages Jewish pupils. The school has no legitimate reason for restricting appointments to Friday evenings that might otherwise justify this action.



Accommodating religious concerns

A school decides to raise money for charitable work to combat poverty in sub-Saharan Africa. It runs a charity day in aid of Planned Parenthood, on which pupils will be involved in a variety of activities to raise money.

A Roman Catholic family objects on the grounds that Planned Parenthood sponsors abortions in these countries. The school decides to help a different charity that pupils of all religions and beliefs in the school can wholeheartedly support. This avoids any suggestion of indirect discrimination on the grounds of religion or belief.

Justified indirect discrimination

A Christian pupil is told to remove his new fish badge from his blazer. The pupil thinks this is discriminatory. The school points out that any badge not issued by the school breaches its uniform policy.

The boy's parents and church minister agree that wearing the badge is not sufficiently important to his faith. The school has consistently applied its rule to all pupils. It has a legitimate purpose in doing so and this is proportionate in the light of the relatively minor concerns expressed. Therefore, although this is indirect discrimination, it can be justified.

If other personal badges had been permitted there may have been a case for direct discrimination.



Indirect discrimination

A school decides to run a non-uniform day. Pupils are required to dress in the colours of the gay pride flag in exchange for a donation to an **LGBT** rights charity.

Christian parents express their concerns but the school dismisses them, claiming such events are required by the Equality Act. Christian children attend in uniform as they do not share the aims of the charity because of their deeply-held religious beliefs. These children are made to feel marginalised and their friendships with other children who identify as L, G, B or T are damaged.

Such events are not required by the Equality Act and open the school to claims of indirect discrimination against Christian pupils on the ground of religion or belief.



Harassment

A Christian pupil complains that a certain teacher is harassing him by constantly making humiliating jokes about the Christian faith. Despite objections from parents this conduct continues.

Harassment on the basis of religion is not prohibited in schools but in this case it may amount to discrimination.

Giving a view on gay marriage

A pupil asks his teacher whether she agrees with same-sex marriage. She says she doesn't. Another pupil who identifies as gay objects and complains to the headteacher of being harassed.

Rightly, no action is taken. The teacher's conduct is reasonable in replying to a pupil's question. This would equally apply if the teacher did agree with same-sex marriage.



1C The Public Sector Equality Duty (PSED)

- State schools are subject to the **Public Sector Equality Duty**,⁶ which requires them to “have due regard” to the need to:
1. eliminate conduct prohibited by the Equality Act including discrimination and harassment;
 2. advance equality of opportunity between those who share a protected characteristic and those who do not; and
 3. foster good relations between those who share a protected characteristic and those who do not. This particularly involves tackling prejudice and promoting understanding.
- But the PSED is not a charter to promote LGBT rights in schools. The duty is merely to “have **due** regard” and not to secure particular outcomes. The word ‘due’ requires an appropriate response, given circumstances such as the age and cultural and religious backgrounds of the pupils. When making decisions, state-funded schools should take into account their public sector equality duties where relevant. But the duty cannot permit a course of action that is otherwise unlawful.

The Public Sector Equality Duty is not a charter to promote LGBT rights in schools.

Eliminate discrimination

Some Christian pupils meet to pray every Monday break time. Other pupils walking past the classroom’s windows routinely make mocking gestures. A pupil who begins attending is aggressively questioned about why he has done so and is referred to in the hearing of a teacher as a ‘Jesus freak!’ The school checks its bullying records and finds a large number of incidents where the victims have been members of this prayer group.

In the light of the persistent and widespread targeting of this group of pupils, the school adopts and implements a new policy. It clearly identifies unacceptable language and instructs staff in a zero-tolerance approach. This works towards eliminating possible discrimination on the grounds of religion or belief by the school, and tackling prejudice amongst pupils.



Advancing equality of opportunity

A governing body meeting (or, in Scotland, a senior leadership meeting) is reviewing the extra-curricular activities the school offers. Its data shows that there are fewer girls participating in after-school sports than boys.

It instructs the PE department to ask its girls for suggestions of sporting activities they would like to engage in after school with a view to increasing their opportunities to participate. It also asks the headteacher to ensure that announcements of sports results in assembly give equal prominence to the achievements of girls.

This is an example of good practice in applying the PSED.



Fostering good relations

A primary school serves a large Roma traveller community. Lunchtime supervisors notice that children from the traveller families only mix with one another in the playground. Other children avoid them.

The deputy head ensures teachers create a mix of traveller and non-traveller children in classroom group work. Teachers also encourage traveller children to share experiences of their lives in 'show and tell' sessions in an effort to foster good relations and promote understanding.

This is an example of good practice in applying the PSED.



Ideological decision-making

A school's records show it has a significant problem with faith-based bullying but not with bullying on grounds of sexual orientation. However, the school does not take this into account in the formation of its bullying strategy. Instead it simply adopts the recommendations of an LGBT rights organisation.

By ignoring faith-based bullying the school is breaching its PSED. It is also in danger of failing in its basic duty of care to pupils who have a faith.

2. Respecting people does not require agreement

Teaching ‘respect’ in schools should not involve promoting particular beliefs or lifestyle choices, including same-sex relationships

- This is the case in all UK schools. In England, for example, all schools are required to promote the fundamental **British values** of democracy, the rule of law, individual liberty and mutual respect and tolerance of those with different faiths and beliefs.⁷ In addition, independent schools in England are under a statutory duty to promote principles that “encourage respect for other people, paying particular regard to the **protected characteristics** set out in the [Equality Act 2010]”.⁸

Note: Independent schools include academies and free schools.

- Following the introduction of new **Independent School Standards** in England, the Department for Education issued guidance. This made clear that the duty to actively promote principles that encourage respect for people “does not mean, for example, that schools must promote alternative lifestyles or same sex marriage. Rather, it requires respect for other people, even if they choose to follow a lifestyle that one would not choose to follow oneself.”⁹ Although this guidance has been superseded, it is still a useful explanatory note on how the regulations are to be understood.

- The same principle is expressed in current advice from the Department for Education:

“A school can teach that its particular faith has teachings relevant to these matters, and explain to pupils what those teachings are. However, this does not mean that a curriculum... can be planned or teaching provided which advocates or otherwise encourages pupils not to respect other people on the basis of a protected characteristic.”¹⁰

Christians believe that all people are made in the image of God and worthy of respect and love.

i Section 2 is largely concerned with England because the specific requirements for teaching ‘respect’ don’t exist in law in Wales and Scotland. But the principle that respecting people does not require agreement holds true throughout the UK, supported by the requirements covered in sections 3 and 4 of this guide.

Christians want to uphold a right understanding of British values

- ▶ Christians want to uphold democracy, the rule of law and individual liberty. They also want to promote mutual respect and tolerance of people who hold different faiths and beliefs even though they may profoundly disagree with them. This is rooted in the Christian ethic that all people are made in the image of God and are worthy of respect and love. British values do not require schools to promote particular beliefs or lifestyle choices.

Independent schools in England are required to have regard to the protected characteristics

- ▶ However, this duty does not require a particular outcome. It requires schools to ensure that teaching promotes respect for people, with particular reference to the nine protected characteristics in the Equality Act. Ultimately, such vaguely worded duties cannot be interpreted in a manner that causes a school to breach much clearer legal requirements, including human rights.

Respectful disagreement

A school is teaching about Islam in Religious Education lessons. As part of this teaching, pupils consider the Islamic belief that Jesus did not die on the cross. A lively but good-natured and respectful debate ensues between Christian and Muslim pupils in the class.

A parent, hearing that Muslim beliefs were criticised in the lesson, expresses concern that the school's teaching is islamophobic and that it is failing in its duty to promote respect. The school reassures the parent, sharing examples of its work to promote respect for people of different faiths. It also points out that the lesson furthered understanding of Islamic beliefs and respectful disagreement.



3. Schools must educate not indoctrinate

State schools are under a legal duty to provide education without indoctrinating children or seeking to recruit them to any cause or campaign

➤ Under the **Human Rights Act 1998**, “It is unlawful for a public authority to act in a way which is incompatible with a [European] Convention right”.¹¹ Public authorities include state schools.

➤ Article 2 of Protocol No. 1 of the **European Convention on Human Rights** states:

“In the exercise of any functions which it assumes in relation to education and to teaching, the State shall respect the right of parents to ensure such education and teaching in conformity with their own religious and philosophical convictions.”¹²

The European Court of Human Rights has noted:

1. *“the obligation on Contracting States to respect the religious and philosophical convictions of parents does not apply only to the content of teaching and the way it is provided; it binds them ‘in the exercise’ of all the ‘functions’... which they assume in relation to education and teaching”.*¹³
2. *“its aim is to safeguard the possibility of pluralism in education, it requires the State, in exercising its functions with regard to education and teaching, to take care that information or knowledge included in the curriculum is conveyed in an objective, critical and pluralistic manner, enabling pupils to develop a critical mind particularly with regard to religion in a calm atmosphere free of any proselytism. The State [including state-funded schools] is forbidden to pursue an aim of indoctrination that might be considered as not respecting parents’ religious and philosophical convictions.”*¹⁴

The Court’s guide to this article notes that: “Article 2 of Protocol No. 1 applies to all subjects and not only religious instruction. Sexual education and ethics thus fall within the scope of Article 2 of Protocol No. 1.”¹⁵

➤ The UK Supreme Court also judged that Article 8 of the European Convention, which requires respect for privacy and family life, protects the same principles. In a unanimous judgment in *The Christian Institute v The Lord Advocate (Scotland)*,¹⁶ the court stated:

1. *"the interests protected by article 8 include both family life and privacy. The relationship between parent and child is an integral part of family life."*¹⁷
2. *"Family life also encompasses a broad range of parental rights and responsibilities with regard to the care and upbringing of minor children, enabling parents to take important decisions on their behalf, and article 8 protects the rights of parents to exercise such parental authority".*¹⁸
3. *"There is an inextricable link between the protection of the family and the protection of fundamental freedoms in liberal democracies. The noble concept in article 1 of the Universal Declaration, that 'all human beings are born free and equal in dignity and rights' is premised on difference. If we were all the same, we would not need to guarantee that individual differences should be respected. ...Individual differences are the product of the interplay between the individual person and his upbringing and environment. Different upbringings produce different people."*¹⁹
4. *"The first thing that a totalitarian regime tries to do is to get at the children, to distance them from the subversive, varied influences of their families, and indoctrinate them in their rulers' view of the world. Within limits, families must be left to bring up their children in their own way."*²⁰

The ban on indoctrination is reflected in laws that specifically prohibit the promotion of political views in schools. The *Education Act 1996* forbids maintained schools in England and Wales from *"the promotion of partisan political views in the teaching of any subject in the school"*.²¹ This Act also requires these schools to ensure the *"balanced treatment"* of political issues and that pupils are offered a balanced presentation of opposing views.²² There are parallel requirements for independent schools in England.²³

It is worth noting that the courts have repeatedly accepted that views about marriage may be classed as political as well as religious and moral.²⁴ Similar principles apply to other elements of *LGBT* rights. Schools should not advance a political agenda.

Schools should not advance a political agenda.

Political campaigning

A school celebrates 'Purple Friday' in which pupils come to school wearing a purple item of clothing in aid of a **transgender** activist group. All over the school are banners with the slogan 'Trans Rights are Human Rights'. Pupils are expected to give donations to the group.



In assembly, a teacher says that to liberate people from prejudice they must be allowed to change legal sex by self-identification. Cheering is encouraged and the atmosphere is one of a political rally. No alternative view is expressed at any time on the day or thereafter.

This amounts to the unlawful promotion of a particular political view.

Unbalanced

A teacher leads assemblies at a primary school several times every week. He bases these around images taken from news stories showing "things going right for people like us". Many of his statements assert the moral goodness of same-sex relationships. His stated aim is to "embed values which will shape the children's whole lives".

He shows children an image of people campaigning for 'equal marriage' during the Irish referendum on same-sex marriage, and talks to them about its importance. Arguments in favour of keeping the traditional definition of marriage are not covered.

By only promoting one viewpoint, when it can expect a range of views are held amongst parents, the school is failing to respect parents' religious and philosophical views, or to teach in a pluralistic manner.

The school is also open to the claim that it is abusing its position for a political purpose. The Department for Education defines this as including: "*to procure changes to the laws of this or another country... teaching staff should not exploit pupils' vulnerability by seeking to convince them that a particular political position is necessarily correct, or by trying to impose their own views on pupils*".²⁵

A school must not compel a pupil to express their beliefs if the pupil would prefer not to.

LGBT celebration

A school decides to run a compulsory Pride march for all pupils. It believes this helps fulfil its duties under the [Equality Act 2010](#). However, the celebration of sex outside man-woman marriage, together with same-sex marriage, is a core part of Pride marches and contradicts the religious and philosophical views of a number of parents. The school refuses to allow these parents to withdraw their children, labelling any dissent as homophobia.

This is likely to breach the Convention rights of affected pupils and parents.

Exploring the issues

In a lesson, sixth form students are asked to write three arguments for restricting women's facilities to biological women and three arguments for opening them up to all who self-identify as women. One student's father who recently '[transitioned](#)' objects to students considering arguments that would 'exclude trans women' from women's facilities.

The school correctly responds that there has been a balanced and critical treatment of the arguments on both sides and therefore the teaching is appropriate in this case.



4. Schools cannot compel thought and expression

A person cannot be required to endorse or celebrate a cause with which they profoundly disagree

- Under section 3(1) of the [Human Rights Act 1998](#), all legislation, in so far as it is possible to do so, is to be read and given effect in a way which is compatible with the rights in the [European Convention on Human Rights](#). This includes Articles 9 and 10 of the Convention.

- Article 9 states that:

“Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief and freedom, either alone or in community with others and in public or private, to manifest his religion or belief, in worship, teaching, practice and observance.”

Article 9(2) permits limitations on the freedom to manifest one’s religion or beliefs but not on the freedom to hold them. However, obliging a person to express a belief he does not hold has been determined to be an infringement of his Article 9(1) rights.²⁶

- Article 10(1) of the Convention states that:

“Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers.”

The right to freedom of expression has long been held to include the right **not** to express an opinion.²⁷ The freedom not to be obliged to hold or to manifest beliefs that one does not hold is also protected by Article 10 of the Convention.

- Applying these principles, the UK Supreme Court has held that equality law should not be read or given effect in such a way as to compel a person to engage in expressing a message with which they disagree, unless justification is shown for doing so.²⁸ This amounts to a law against compelled speech or expression.

- A school also must not compel a pupil to express their beliefs if the pupil would prefer not to. This right not to express a view is also protected under Article 8 (the right to a private and family life).

Forced to take a stand

An openly lesbian teacher repeatedly talks to her class about her partner and the child they have adopted. The walls of her classroom bear many pro-gay marriage posters created by pupils in some of her lessons. She provides pupils with a list of statements to which they are expected to indicate their agreement or disagreement publicly in front of her and the rest of the class. Many of the statements are about the morality of same-sex relationships.

A number of pupils in the class hold socially conservative views but do not want to express them in front of the class or to the teacher for fear of upsetting the teacher and being perceived as homophobic.

A school must not compel a pupil to express their beliefs if the pupil would prefer not to.

Facilitating debate

A teacher holds regular debates and discussions on ethical issues. All pupils have to suggest points on both sides of a debate and discuss the strength of the arguments. Sometimes fictional characters are used and pupils have to argue on their behalf. Pupils are free to disclose their personal view if they wish to but this is not the focus. All pupils can be fully engaged in the lesson without any need to disclose what they think.

Compelled speech

A teacher delivers a lesson where pupils are given a list of 23 countries that allow marriages between people of the same sex. They are asked to use a school atlas to locate these countries and then identify one country that does not. The teacher supplies a list of foreign embassies in the UK and tells students to find the one for the country they have selected. They are required to write and send a letter to the ambassador, urging a change in the law.

This is an example of compelled speech.



5. Schools must balance the rights of transgender pupils with the rights of others

A person cannot apply for a *Gender Recognition Certificate* to legally change their sex until they are 18 (even though they may legally change their name before the age of 18)²⁹

- However, there are a growing number of cases of young people under the age of 18 who identify as *transgender* – some as young as nine – being given drugs to facilitate '*transition*'.

A person identifying as the opposite sex can be protected by the Equality Act without changing legal sex or starting medical '*transition*'

- The *protected characteristic* of *gender reassignment* applies to someone who is "*proposing to undergo*" a process or part of a process to 'change' their sex. This can be by changing physiological or "*other attributes of sex*". It could involve simply 'living in the opposite sex' through choice of clothes and name.³⁰

A school may be able to make reasonable accommodation for staff for whom using a new legal name for a child creates a conscience issue

- In most cases a pupil will not legally change their name. However, a school will still want to ensure that its policy and practice on recording and using a pupil's preferred name is not discriminatory or otherwise unlawful. Various factors will inform whether this is the case. If a child does change their legal name then the school must record that name, and unless the parents and child say otherwise, use it in all circumstances. However, this should not prevent a school making *reasonable accommodation* for staff and pupils for whom it is a conscience issue to call a pupil by a name which denotes a gender change.



Schools can turn down requests to accommodate a pupil's transgender status

- A school is not necessarily unlawfully discriminating if it turns down a request by a pupil to accommodate their transgender status on a particular matter. It depends on what has been asked and in what circumstances. Trans activists often claim that equality law requires that transgender pupils automatically be permitted to wear the uniform of the opposite sex. However, there is no case law supporting this claim.
- In many cases, policies restricting which toilets or changing rooms transgender pupils can use are likely to amount to justified **indirect discrimination**. Schools are under a number of different duties, including safeguarding and respecting the rights and privacy of other pupils. Indeed, there are regulations in England which require schools to provide separate toilet facilities for girls and boys.³¹
- There are also exceptions in the **Equality Act 2010** that **may** permit restrictions relating to sex and gender reassignment:
 1. In use of communal accommodation and facilities or services linked to that accommodation, e.g. at events away from school;³²
 2. In participation in competitive sport;³³
 3. In maintaining separate or single-sex services such as toilets or changing rooms.³⁴Although these exceptions do not relate directly to where the Equality Act deals with education provision, they can still inform how schools seek to balance differing rights and justify their policies. It would be difficult to justify placing less value on a pupil's privacy while in school than when they are outside school.

Schools have a safeguarding duty towards all pupils – they must deal with bullying, and respect all pupils' privacy rights and beliefs

- This includes dealing with gratuitous or sarcastic use of names and pronouns in addressing gender-confused pupils. Schools should also have appropriate regard to freedom of expression for pupils and staff who cannot in good conscience use female pronouns when addressing a man (or vice versa). Helpfully, the Equality Act has taken account of the importance of free speech (see section 1 of this guide).
- The law also requires the Equality Act to “*be read and given effect in a way which is compatible*” with the **European Convention on Human Rights** in so far as it is possible to do so. The Convention protects freedom of expression and freedom of thought, conscience and belief (see section 4 of this guide).³⁵

Reasonable accommodation

Parents apply to a school for a place for their child, identifying him as male on the application forms. They subsequently explain that the child will be presenting as a girl. The school informs teachers of the change.

The child's new form tutor will be required to call the register twice daily using the child's preferred name, which is obviously a girl's. She does not feel able to do so because of her deeply-held religious beliefs. Before term starts she requests that the school make a reasonable accommodation by assigning her as tutor to a different group. This is agreed. The school has sensitively accommodated both the teacher and the pupil.

Gender-neutral toilets



In order to accommodate transgender pupils, a secondary school decides to make **all** its toilets 'gender neutral', removing urinals and requiring pupils of both sexes to use cubicles within the same room. Many girls begin to avoid using the toilets.

The school's actions are not required by the Equality Act and could be breaching duties to other pupils. If the school is in England, it could also be breaching other legislation that requires separate facilities to be provided for boys and girls.

Trans rights put first

A secondary school adopts a policy recommended by a transactivist organisation. This allows pupils to shower and change after PE in the changing room of the sex they identify with, rather than that of their biological sex. Pupils who are not happy with a member of the opposite sex using their facilities are told they 'can always get changed after other pupils have finished'. However, as these pupils fear they will be bullied and labelled 'transphobic' for waiting, they feel compelled to shower and change with everyone else.

This approach could put the school in breach of its duty of care towards pupils and force them into a situation that breaches their privacy rights.

Regulations in England require schools to provide separate toilet facilities for girls and boys.

Accommodating everyone

A secondary school makes provision for a pupil who self-identifies as transgender by allowing the pupil to use an alternative toilet. Separate changing facilities are also offered to the pupil as an alternative (if wanted) to changing with other pupils of the same biological sex.

Unlawful compulsion

A secondary school pupil decides to 'transition' to present as the opposite sex. The pupil's tutor arranges to welcome them back into the tutor group under their new name. A large 'welcome back' banner with the pupil's new name hangs at the front of the room with balloons. Other pupils in the class are required to sign a welcome back card that bears the pupil's new name and has a clear reference to their assumed gender.

One pupil in the class views signing the card as an assertion that the transitioning child's sex is different from what it is as a matter of biological fact. She quietly raises her concerns with the tutor when other pupils are not present. The tutor states that her attitude is transphobic, breaches the school's equality policy and places her in detention.

This infringes the child's right to freedom of expression.

Use of pronouns

Jessica 'transitions' over the holidays from a girl to a 'boy' and wants to be called Jack. Her closest friend Ellie doesn't want to cause upset, so on grounds of conscience she opts not to use either name, or any pronouns. Jessica demands that the school disciplines Ellie for not calling her Jack, but in the circumstances the school decides not to take any action. Had it done so, this would have been an instance of compelled speech (see 4. *Schools cannot compel thought and expression*).



Glossary of terms

British values

- The requirement for schools in England to “actively promote” British values was introduced by the UK Government in September 2014. They are defined as: “democracy, the rule of law, individual liberty, and mutual respect and tolerance of those with different faiths and beliefs”.³⁶

The Christian Institute v The Lord Advocate (Scotland)

- View online: bit.ly/CI-V-LA

Direct discrimination

- When a school treats a pupil less favourably than it treats (or would treat) another pupil because of a **protected characteristic** this is direct discrimination (see **Equality Act 2010**).
- It is not possible to justify direct discrimination, so it will always be unlawful unless it comes within an exception in the Equality Act.
- In order for someone to show that they have been directly discriminated against, they must compare what has happened to them to the treatment a person without their protected characteristic is receiving or would receive.

Discrimination by association

- When a school treats a pupil less favourably because of their association with another person who has a **protected characteristic** this is direct discrimination by association. This might occur when a school treats a pupil less favourably because their parent or friend has a protected characteristic.

Education Act 1996

- View online: bit.ly/EA-1996

Equality Act 2010

- View online: bit.ly/EA-2010

European Convention on Human Rights

- View online: bit.ly/EC-Human-Rights

Gender reassignment

- Gender reassignment is a **protected characteristic** under the **Equality Act 2010**, which a person has if he is proposing to undergo, is undergoing or has undergone a process (or part of a process) for the purpose of 'reassigning' his sex by changing physiological or other attributes of sex.
- This protected characteristic of gender reassignment may apply even if a person does not hold a **Gender Recognition Certificate** and whether or not they are under medical supervision.

Gender Recognition Certificate

- A Gender Recognition Certificate is an official certificate issued under the Gender Recognition Act 2004 to a person who has applied to change their legal sex. The application for a certificate is issued by a panel and the effect of a certificate is that *"the person's gender becomes for all purposes the acquired gender (so that, if the acquired gender is the male gender, the person's sex becomes that of a man and, if it is the female gender, the person's sex becomes that of a woman)."*³⁷

Harassment

- Harassment will occur when a school engages in unwanted behaviour related to a relevant **protected characteristic** (see **Equality Act 2010**) that has the purpose or effect of:
 1. violating a pupil's dignity, or
 2. creating an intimidating, hostile, degrading, humiliating or offensive environment for the pupil.
- The word "unwanted" means 'unwelcome' or 'uninvited'. It is not necessary for the pupil to say that they object to the behaviour for it to be unwanted.

Human Rights Act 1998

- View online: bit.ly/HRA-1998

Independent School Standards

- View online: bit.ly/DFE-ISS

Indirect discrimination

- Indirect discrimination can occur when a school applies a provision, criterion or practice in the same way for all pupils or a particular pupil group that has the effect of putting pupils sharing a **protected characteristic** (see **Equality Act 2010**) at a particular disadvantage. What matters is whether the school's action disadvantages such pupils compared with pupils who do not share that characteristic.
- 'Disadvantage' is not defined in the Equality Act. It can take many different forms, such as denial of an opportunity or choice, deterrence, rejection or exclusion.
- Indirect discrimination may be justified if the school can show that the provision, criterion or practice is justified as a *"proportionate means of achieving a legitimate aim"*.
- To be legitimate, the aim of the provision, criterion or practice must be legal and non-discriminatory and represent a real, objective consideration. For example, the aim might be to monitor academic and other standards or ensure the safety of all pupils.
- Even if the aim is legitimate, the means of achieving it must be proportionate. Proportionate means 'appropriate and necessary', but 'necessary' does not mean that the provision, criterion or practice is the only possible way of achieving the legitimate aim.
- The more serious the disadvantage caused by the discriminatory provision, criterion or practice, the more weighty the justification must be.

LGBT

- Lesbian, Gay, Bisexual, Transgender

Protected characteristics

- The **Equality Act 2010** protects people from discrimination for reasons of age, disability, **gender reassignment**, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex, and **sexual orientation**. These nine categories are called the protected characteristics.

Public Sector Equality Duty (PSED)

- This is a duty placed by the **Equality Act 2010** on public authorities or others exercising a public function to have 'due regard' to the need to eliminate unlawful discrimination, to advance equality of opportunity and to foster good relations between people who have particular **protected characteristics** and those who do not.

Reasonable accommodation

- This is the idea that where there are competing interests, reasonable practical adjustments may be made to ensure that the interests of all are respected and upheld. In many cases, sensible adjustments can be made to avoid conflicts or discrimination arising.
- The courts have accepted that there is scope to consider the reasonable accommodation of religious beliefs as part of the assessment of proportionality. This is most likely to arise in considering whether **indirect discrimination** can be justified as a proportionate means of achieving a legitimate aim. For example, where a case is made for balancing the interests of religious belief against another **protected characteristic**. The outcome will depend on the particular circumstances.

Relationships and Sex Education (RSE)

- In England from September 2020, pupils of all ages will have compulsory lessons in either Relationships Education (primary schools) or Relationships and Sex Education (secondary schools). Parental rights of withdrawal will be limited.
- Relationships Education will mean teaching young children about “different types” of relationships, which could include homosexuality, **transgenderism** and same-sex marriage.
- RSE would include teaching on “sex, sexuality, sexual health and gender identity”. Department for Education guidance says schools “are free to determine” how they address **LGBT** content but it should be “fully integrated into their programmes of study” when taught.³⁸

Sexual orientation

- Sexual orientation is the attraction towards persons of the opposite sex (heterosexual), same sex (homosexual) or either sex (bisexual). It is a **protected characteristic** under the **Equality Act 2010**.

Transgender(ism)

- Someone who believes their 'real gender' is different to their biological sex. Frequently shortened to 'trans'.

Transition

- The process of changing lifestyle to 'live as someone of the opposite sex'.
- For those in school, this is likely to include changes in clothing, names and pronouns, and may also include medication to prevent puberty. In the UK, hormones of the opposite sex are not usually given until 16 and **gender reassignment** surgery is only allowed for those over the age of 18.

References

- ¹ Equality Act 2010, Section 89(2)
- ² Equality Act 2010, Section 85(2)
- ³ The duty on schools not to discriminate applies to the protected characteristics of disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex and sexual orientation.
- ⁴ Equality Act 2010, Section 85(10)
- ⁵ Equality Act 2010, Section 212(5)
- ⁶ Equality Act 2010, Section 149
- ⁷ For example, the Education (Independent School Standards) Regulations 2014, Part 2, para. 5(a); *Promoting fundamental British values as part of SMSC in schools: Departmental advice for maintained schools*, Department for Education, November 2014
- ⁸ Independent School Standards 2014, Part 2, para. 5(b)(vi)
- ⁹ *Improving the spiritual, moral, social and cultural (SMSC) development of pupils: supplementary information – Departmental advice for independent schools, academies and free schools*, November 2014, para. 18
- ¹⁰ *The Independent School Standards: Guidance for independent schools*, Department for Education April 2019, para. 2.16
- ¹¹ Human Rights Act 1998, Section 6. 'Public authority' includes any person exercising a public function.
- ¹² The UK's reservation in relation to Article 2 Protocol 1 states that "the principle affirmed in the second sentence of Article 2 [ECHR] is accepted by the United Kingdom only so far as it is compatible with the provision of efficient instruction and training, and the avoidance of unreasonable public expenditure".
- ¹³ *Lautsi v Italy* (2012) 54 EHRR 3 at para. 63
- ¹⁴ *Ibid* at para. 62
- ¹⁵ Guide on Article 2 of Protocol No. 1 to the European Convention on Human Rights: Right to education, European Court of Human Rights at para. 60
- ¹⁶ *The Christian Institute v The Lord Advocate* (Scotland) [2016] UKSC 51, 2016 SLT 805
- ¹⁷ *Ibid* at para. 71
- ¹⁸ *Loc cit*
- ¹⁹ *Ibid* at para. 73
- ²⁰ *Loc cit*
- ²¹ Education Act 1996, Section 406(1)
- ²² Education Act 1996, Section 407(1)
- ²³ In Part 2 of the Independent School Standards (contained in the schedule to the Education (Independent School Standards) Regulations 2014) at para. 5(c) and (d).
- ²⁴ *Smith v Trafford Housing Trust* [2012] EWHC 3221 at para. 65; *Raabe, R (on the application of) v Secretary of State for the Home Department* [2013] EWHC 1736 at para. 221; and *Lee v Ashers Baking Company Ltd and others (Northern Ireland)* [2018] UKSC 49 at para. 41 where the United Kingdom Supreme Court held that belief in same sex marriage is a political opinion for the purposes of a claim under Northern Ireland's Fair Employment and Treatment Order.
- ²⁵ *The Independent School Standards: Guidance for independent schools*, Department for Education, April 2019, pages 24-25
- ²⁶ *Commodore Royal Bahamas Defence Force and others v Laramore Bahamas* [2017] UKPC 13
- ²⁷ For example, *RT (Zimbabwe) and others v Secretary of State for the Home Department* [2012] UKSC 38
- ²⁸ *Lee v Ashers Baking Company Ltd and others (Northern Ireland)* [2018] UKSC 49
- ²⁹ Gender Recognition Act 2004, Section 1(1)
- ³⁰ Equality Act 2010, Section 7 states: "A person has the protected characteristic of gender reassignment if the person is proposing to undergo, is undergoing or has undergone a process (or part of a process) for the purpose of reassigning the person's sex by changing physiological or other attributes of sex."
- ³¹ School Premises (England) Regulations 2012 rule 4(2) provides in relation to all maintained schools in England that: "Separate toilet facilities for boys and girls aged 8 years or over must be provided except where the toilet facility is provided in a room that can be secured from the inside and that is intended for use by one pupil at a time." The Education (Independent School Standards) Regulations 2014, Part 5, para. 23(1)(b) has a requirement in similar terms applying to independent schools and academies.
- ³² Equality Act 2010, Schedule 23, para. 3
- ³³ Equality Act 2010, Section 195
- ³⁴ Equality Act 2010, Schedule 3, paras. 26-28
- ³⁵ Human Rights Act 1998, Section 3 and *Lee v Ashers Baking Company Ltd and others (Northern Ireland)* [2018] UKSC 49
- ³⁶ *Promoting fundamental British values as part of SMSC in schools: Departmental advice for maintained schools*, Department for Education, November 2014, page 5
- ³⁷ Gender Recognition Act 2004, Section 9. View online: bit.ly/GRA-2004
- ³⁸ *Relationships Education, Relationships and Sex Education (RSE) and Health Education: Statutory guidance for governing bodies, proprietors, head teachers, principals, senior leadership teams, teachers*, Department for Education, 2019, page 15, para. 37



Equipped for equality

A guide to what schools can and can't do
in the name of equality and human rights

Christian teachers, parents and pupils are increasingly facing difficulties as the education system becomes more secular. Pressure groups with their own agendas are approaching schools offering advice, training and resources. Often this is backed up with vague appeals to the 'Equality Act' to make schools feel they have no alternative but to follow the advice given.

This short guide sets out to debunk the myths surrounding what schools in England, Wales and Scotland are required to do because of the Equality Act 2010. It also spells out the protections both the Equality Act and the Human Rights Act 1998 afford to religious pupils and parents.

This guide is written primarily for parents and pupils, although others will find it very useful.