

**Equality and Human Rights Commission
Technical guidance for schools in Scotland
30 September 2026**

1. NASUWT welcomes the opportunity to comment on the Equality and Human Rights Commission (EHRC) consultation on revised technical guidance for schools in Scotland.
2. NASUWT is The Teachers' Union and is the voice of the teaching profession.
3. Our aim is to improve and protect the status, morale and working conditions of the teaching profession so that teachers and headteachers can provide the best education and support to children and young people.
4. We are committed to ensuring that teachers and headteachers are recognised and rewarded as highly skilled professionals with working conditions that enable them to focus on their core role of leading teaching and learning.

GENERAL COMMENTS

NASUWT response to the EHRC Technical guidance for schools in Scotland consultation

Protected-characteristic focus

- age
- disability
- gender reassignment
- pregnancy and maternity
- race
- religion or belief
- sex
- sexual orientation

Views from children

- The response does not include any views from a child or children

Intended use of the guidance

- To better understand what a child's education provider should be doing in relation to the Equality Act 2010
- To inform the advice that I give to individuals
- To understand the law in a particular area
- To inform my campaigning on an area of interest
- To assist me in challenging the actions of an education provider

Information about protected characteristics

Is information missing?

- Disability: Yes, there is information missing
- Gender reassignment: Yes, there is information missing

- Sex: Yes, there is information missing

Tell us more about your response

The guidance needs clearer information about the application of gender reassignment to children. It should distinguish between a pupil questioning their gender, requesting a particular form of support or social transition and satisfying the statutory definition. Merely questioning gender will not necessarily satisfy that definition, while social steps may be relevant where they form part of a process of reassignment. No individual step, such as using a different name or pronoun, should be treated as automatically determinative.

The guidance should explain how sex and gender reassignment may operate concurrently and should not imply that one protected characteristic automatically overrides another.

While the guidance explores protected characteristics in isolation, the reality is most young people experience discrimination, harassment or disadvantage intersectionally. The current guidance does not explore the distinct experiences of groups such as Black girls or disabled girls as two examples. Examples should consider this intersectional understanding throughout.

Examples should show how disability, ASN, neurodivergence or mental health needs may overlap with gender questioning without stereotyping the pupil or treating ASN status as a substitute for an Equality Act assessment.

The final guidance should also address pupils with variations in sex characteristics. It should explain how the existing protected characteristics may apply without suggesting that intersex status is itself a separate protected characteristic or conflating it with gender reassignment.

Does the guidance clearly explain the important concepts?

- No

How could the definitions be improved?

The concepts are detailed but not always sufficiently clear for application to children in schools. The final guidance should distinguish consistently between 'gender questioning', 'trans', 'gender reassignment' and 'social transition'. A pupil may question their gender without meeting the section 7 definition, while a pupil taking or proposing social steps as part of a process of reassignment may meet it without medical treatment or legal recognition. Schools should be warned against intrusive enquiries and reliance on gender stereotypes in paragraph 3.250.

In section 3.123, where it sets out that '*schools should consider adopting a policy to make clear to both staff and pupils how to address a trans pupil*', it would be helpful to signpost or reference the current guidance or the content of the current guidance set out in the Scottish Government document, *Supporting transgender pupils in schools: guidance for education authorities and schools*. Suggesting schools embark upon an individual process to find a policy that should '*respect the rights of both trans pupils and others, including staff members and pupils whose beliefs either align or conflict with adopting the preferred pronoun of a trans pupil*' is a dereliction of national responsibility.

Section 3.128 needs to be reworded – this section in particular: '*when determining whether conduct was unwanted a court may take account of whether there was an objection, among other things. A serious one-off incident can amount to harassment.*' The guidance must take account of the power imbalance where harassment takes place, as well as societal structural inequalities, such as the internalised misogyny which many young women will have normalised and which will impact any objection made.

Clarity of schools' responsibilities

- Admissions: Yes, the explanation is clear
- Provision of education and access to benefits, facilities and services for pupils: No, the explanation is not clear
- Exclusions from school: No, the explanation is not clear
- Making reasonable adjustments for disabled pupils: No, the explanation is not clear
- Exceptions: No, the explanation is not clear

How could schools' responsibilities be explained more clearly?

The guidance should explain more clearly how Equality Act obligations operate alongside safeguarding, ASN, health and safety and other duties. The statements in 2.57 and onward are unhelpful to schools navigating a complex legal environment: *'[n]othing in the Act takes priority over any other statutory duties that schools may have...[s]chools are expected to take whatever action is necessary to ensure they fulfil their responsibilities, both under the Act and under any other legislation that applies to them.'* Further details would be welcome in 3.244 about the practical interaction with the Education (Additional Support for Learning) (Scotland) Act 2004.

It should make explicitly clear that the responsible body owns the school's Equality Act obligations: significant institutional decisions should not be transferred to an individual teacher or designated safeguarding lead.

For education and facilities, the guidance should provide a framework covering the individual circumstances, relevant evidence, safeguarding and equality considerations, lawful alternatives, institutional responsibility, reasons, recording and review. Examples are needed for names and pronouns, toilets and changing facilities, sport, boarding and record-keeping.

The exclusions and reasonable adjustments chapters should recognise both individual adjustment duties and legitimate safeguarding and health and safety considerations. The exceptions for communal accommodation and

competitive sport also require clearer, realistic examples rather than leaving each school to resolve acknowledged legal uncertainty alone, one example being section 2.43, setting out the decision makers' duty of inquiry.

Public Sector Equality Duty (PSED)

How clearly does the guidance explain the PSED?

- Quite clearly

How could the explanation be improved?

- Include more signposting to extra information about the specific PSED duties
- Include extra information on what the PSED is relevant to in schools.
- Other

The guidance must state expressly that the PSED is an institutional duty to have due regard to the statutory needs, not a duty to achieve a predetermined outcome. It should distinguish the PSED from a pupil's individual rights under the Act.

Practical examples should show how the duty informs both the formulation of a general policy and a significant decision concerning an individual pupil. An equality impact assessment may support and evidence compliance, but the guidance should not imply that a particular document or process is invariably mandatory.

Examples should cover gathering relevant evidence, considering overlapping protected characteristics, engaging affected pupils and the workforce, identifying alternatives and mitigations, recording the consideration given and monitoring the outcome. They should also show how schools can have due regard to fostering good relations where the interests or views of groups

appear to be in tension, without assuming that one protected characteristic automatically takes precedence.

In short, a clearer articulation of the relationship between the practical actions schools need to undertake and the PSED is needed, be that through curriculum design and delivery, relationships and behaviour policies, staff development, pupils participation or wider school improvement activity.

Definition of schools

Legal obligations and topics requiring clarification

Does the guidance clearly explain who has legal obligations?

- Yes

Should the guidance provide more clarity on any listed topics?

- Other

Third-party provision and the respective roles of the responsible body, senior leadership and safeguarding leads in significant safeguarding-related equality decisions.

Law at the start of the 2026 to 2027 academic year

- No

Tell us more about your answer

The draft does not take sufficient account of the UNCRC obligations on schools. Incorporation means that every child's UNCRC rights, in those areas where the UNCRC Act applies, are legal rights and public bodies can then be taken to court by children, or their families, if these rights have not been

respected. It is the case that four UNCRC articles are regarded as ‘core’ – in that they inform interpretation of all the other articles. These articles include Article 12 on children’s participation in decisions that affect their lives, alongside:

- Article 2 on non-discrimination;
- Article 3 on the need for public bodies to act in the best interests of the child; and
- Article 6 on ensuring children’s survival and development.

Article 3, on the need to act in the best interests of the child and all other children, and Articles 28 and 29, on the right of all children to education, are also relevant in this context.

UNICEF has also been clear that effective practice in schools involves ensuring that children respect the rights of others in the school.¹ Involving pupils in the development and monitoring of these expectations is an effective means by which schools can give effect to the provisions of Article 12. The impact of these legal requirements has not been well-articulated in the current draft guidance.

Equally, schools will be confused having to cross-reference information on seclusion and restraint within the draft EHRC guidance, alongside the Restraint and Seclusion in Schools (Scotland) Act and the Scottish Government guidance, *Physical intervention in schools – a relationships and rights based approach*. It would be better to signpost advice and avoid excessive detail which could lead to confusion.

All of this confusion is further complicated by the statement in 10.7 that: ‘As the Act applies to schools, it is not a breach to do something in relation to certain protected characteristics where it is required because of other

¹ https://www.unicef.org.uk/rights-respecting-schools/wp-content/uploads/sites/4/2015/06/RRSA_Measuring-our-impact_guide_280417.pdf

legislation or another measure. A school's action will not be unlawful where there is a specific statutory requirement to act in a particular way. This is the case even if it appears to breach the Act's provisions...where a statutory requirement is specific.'

Guidance examples

- The examples are helpful: Neither agree nor disagree
- The guidance needs more examples: Strongly agree
- The examples are realistic: Disagree
- The examples are accurate: Neither agree nor disagree

How could the examples be improved?

Examples should demonstrate the decision-making process rather than simply announce an outcome. They should identify the material facts, responsible institutional decision-maker, safeguarding and equality considerations, evidence obtained, alternatives considered, reasons, recording and review.

The guidance should include separate examples of:

- a pupil discussing gender-related feelings without asking the school to act;
- a request involving a name, pronouns or another aspect of social transition; and
- parental agreement or disagreement;

Examples should also cover pupils with overlapping disability, ASN or mental health needs and pupils with variations in sex characteristics.

Facilities examples should distinguish the duty to provide separate facilities from individual access and discrimination questions. They should not assume

that a staff changing room or accessible toilet is available or appropriate (see example in 5.69). Sport examples should distinguish curriculum participation from competition and address age, development, safety, fairness and alternatives. Boarding examples should consider schools without self-contained accommodation. A record-keeping example should distinguish recording sex where legally required from accurately recording a pupil's identity, request or agreed arrangement.

Information missing from the guidance

- Yes, some information is missing

What information should be added?

The guidance needs a practical framework for decisions in which safeguarding and equality considerations interact. It should explain who owns the decision, what information is relevant, and how the pupil's wishes, age and circumstances are to be considered.

The responsible body should retain institutional ownership. Individual staff should not be expected to resolve complex legal or safeguarding questions themselves.

Further information is needed on:

- the different legal status of legislation, statutory guidance and EHRC technical guidance;
- intersex pupils and variations in sex characteristics;
- overlapping protected characteristics;
- the division of responsibility among schools, local authorities and health and care bodies; and
- sensitive record-keeping and information sharing.

While referenced in section 1.19, it is hard to view the consultation as being undertaken in a way that is consistent with UNCRC aspirations regarding the voice of young people. The following is noted in the introductory section of the consultation process:

‘This survey is for respondents aged 16 and over. If you are aged under 16 and would like to contribute, please speak to a parent, guardian, or member of school staff.

‘You will need to indicate whether you are aged 16 or over at the start of the survey. If you select under 16, you will not be able to continue with the survey.’

Other support from the EHRC

The EHRC should publish a concise executive summary, role-specific checklists and accessible versions. Supporting materials should include realistic case studies, model questions and decision-recording templates covering the identification of the relevant duty, safeguarding and equality considerations, institutional responsibility, alternatives, reasons and review.

Training should be suitable for teachers, safeguarding leads, school leaders, governors and trustees. It should make clear that individual teachers require access to senior consultation and should not be left personally to resolve difficult institutional conflicts. Resources should be developed and tested with practising staff, safeguarding professionals, pupils and parents, equality specialists and recognised workforce unions.

Implementation support must also recognise workload, staffing, facilities, training and access to external services. Training and templates cannot substitute for adequate staffing, protected time, appropriate leadership support and access to relevant expertise.

UNCRC concerns raised within this consultation response are important given the status that the UNCRC has in Scotland, which it does not have elsewhere in the UK. The extent to which this draft guidance reflects, or does not reflect, existing Scottish Government guidance is also key and further work here is needed. Ultimately, this guidance is intended to help schools and local authorities to implement the Equality Act securely. Currently, this draft would struggle to meet that test.

Actions following finalisation

- Other.

Review and, where appropriate, update advice, training and support for members.

Tell us more about your response

NASUWT will consider the final guidance when advising and representing members and when making representations about school equality, safeguarding, ASN, behaviour and inclusion policies. The Union expects to review and, where appropriate, update its advice, training and support for members once the final text and its relationship with other legislative requirements is clear.

Any member guidance would distinguish schools' institutional obligations from the responsibilities of individual staff. It would address the immediate steps a member can take, matters requiring referral to senior leadership, the additional escalation available, appropriate recording, and circumstances requiring case-specific Union advice.

The extent of further action will depend on the amendments made following consultation and on the resolution of the legal and practical uncertainties identified in this response.

Accessibility and use of the consultation materials

Further comments

NASUWT supports clear and current guidance that helps schools prevent discrimination and secure safety, belonging and meaningful educational participation for all pupils. The final guidance must also be capable of safe and consistent implementation in real schools.

Schools must retain institutional ownership of significant decisions. Teachers should not be left unsupported to resolve conflicts and then bear personal responsibility if their decision is challenged. They need clear authority, access to senior consultation, appropriate time, reliable recording arrangements and support for reasonable decisions made through the school's safeguarding system.

The final guidance and supporting resources should be developed and tested with teachers, safeguarding leads, school leaders and recognised trade unions. The EHRC should publish its equality and implementation assessment and commit to prompt review when relevant legislation, statutory guidance or case law changes.

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