

Protect and Teach CIC
Policy Analysis Paper No. 3

The Equality and Human Rights Commission's Draft Technical Guidance for Schools (England): A Critical Policy and Legal Analysis

**Protect and Teach's Response to the
Equality and Human Rights
Commission's 2026 Public Consultation.**

Guidance

Schools in England technical guidance consultation

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The Equality and Human Rights Commission's Draft Technical Guidance for Schools (England): A Critical Policy and Legal Analysis; Protect and Teach's Response to the Equality and Human Rights Commission's 2026 Public Consultation.

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Protect and Teach's Position

Protect and Teach considers that schools must be able to protect pupils on the basis of biological sex where sex-based provision is lawful, justified and necessary to protect privacy, dignity, safeguarding and the proper functioning of education.

Protect and Teach does not consider that protection from discrimination because of gender reassignment automatically requires schools to provide access to facilities, accommodation, admissions arrangements, sports categories or other provision based on gender identity rather than biological sex.

Protect and Teach further considers that sexual orientation and gender reassignment are distinct protected characteristics and should not be conflated in school policies, examples of positive action, anti-bullying approaches or external educational provision.

The purpose of this paper is not to prescribe a single operational policy for every school. It is to explain Protect and Teach's analysis of the EHRC draft guidance and to identify areas where the organisation considers that the final guidance should be clearer, more legally coherent and more protective of all pupils.

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Protect and Teach
GUARDIANS AT THE GATE

Executive Summary

What the draft guidance gets right, where Protect and Teach believes greater clarity is needed, and why the interaction between equality law, safeguarding and sex-based protections matters in schools.

This Policy Analysis Paper provides an independent legal and evidence-based review of the Equality and Human Rights Commission's draft Technical Guidance for Schools in England, (published for consultation in June 2026).

This paper is not a model school policy and does not seek to prescribe a single operational response for every school. It is an analysis of the EHRC's draft Technical Guidance and sets out Protect and Teach's assessment of its legal clarity, evidence base and likely practical implications for schools.

The draft guidance correctly records that the protected characteristic of sex means biological sex and that single-sex sleeping accommodation is required. These strengths should be retained. However, a series of practical examples create significant tension with the **Equality Act 2010** (as clarified by the Supreme Court in *For Women Scotland Ltd v Scottish Ministers* [2025] UKSC 16), the **School Premises (England) Regulations 2012**, and the statutory safeguarding duties set out in *Keeping Children Safe in Education* (2026).

Key concerns include examples that frame ordinary sex-based rules on facilities, uniform, admissions and boarding as presumptively discriminatory on the ground of gender reassignment, the conflation of sexual orientation with gender reassignment, and insufficient guidance on balancing competing protected characteristics under the Public Sector Equality Duty.

Protect and Teach CIC considers that the final guidance would be strengthened if it:

- stated clearly and unambiguously that single-sex facilities, uniform policies, admissions criteria, boarding accommodation and sports categories based on biological sex are lawful and justified where provided for within the statutory framework;
- removed or rewrote examples that frame ordinary sex-based rules as presumptively discriminatory or "unlikely to be justified" solely because they affect pupils with the protected characteristic of gender reassignment;
- confirmed that protection from discrimination because of gender reassignment does not require opposite-sex facilities, uniform exceptions, exceptional admissions to single-sex schools, automatic alternative accommodation or special mentoring based solely on gender identity
- kept sexual orientation and gender reassignment distinct;
- aligned fully with the careful, parent-involved approach to social transition required by KCSIE 2026; and
- provided practical guidance on how schools should apply equality duties alongside safeguarding duties, with the safety, privacy and dignity of all pupils at the centre of decision-making.

This paper includes ready-to-adapt model answers for the main free-text consultation questions to assist other respondents. The recommendations are offered as constructive suggestions only.

All interested parties are strongly encouraged to read the full draft guidance and submit their own evidence-based responses before the consultation closes on 30 September 2026.

Chapter 1 – Introduction

1.1 Background

On the 10 June 2026, the Equality and Human Rights Commission (EHRC) published for consultation its draft Technical Guidance for Schools in England. The draft guidance is intended to assist schools in understanding and complying with their obligations under the Equality Act 2010, providing practical guidance on the application of equality law across admissions, education, exclusions, access to facilities and services, and other aspects of school life.¹

The publication of this consultation follows a period of significant legal and policy development concerning the interpretation of the Equality Act 2010, safeguarding responsibilities within educational settings, and the practical application of protected characteristics in schools. In particular, recent judicial decisions have clarified the meaning of the protected characteristic of sex under the Equality Act, while updated statutory safeguarding guidance has reinforced the principle that the welfare of children must remain central to decision-making within schools.²

Schools operate within a complex legal framework. They must comply simultaneously with equality legislation, education law, safeguarding duties, health and safety requirements, human rights obligations and, where applicable, regulatory standards. Decisions concerning admissions, uniform, participation in sport, access to facilities, boarding accommodation and wider school life frequently require school leaders to balance multiple statutory responsibilities rather than apply any single legal provision in isolation.

For that reason, guidance produced by the Equality and Human Rights Commission is likely to have considerable practical influence. **Although technical guidance does not create new legal duties and cannot amend legislation enacted by Parliament,** it is intended to explain the Commission's interpretation of existing law and may assist courts and tribunals when considering issues arising under the Equality Act 2010.³

It also provides an important source of practical advice for governing bodies, academy trusts, local authorities, headteachers and legal advisers responsible for developing school policies. The quality and clarity of such guidance therefore matters. Guidance that accurately reflects the statutory framework assists schools in making lawful, proportionate and evidence-informed decisions. Conversely, where examples are capable of more than one interpretation, or where insufficient attention is given to other relevant legal duties, uncertainty may arise regarding the lawful exercise of professional judgment.

Protect and Teach CIC welcomes the EHRC's decision to consult publicly before finalising this guidance. Public consultation provides an important opportunity for educational professionals, legal practitioners, safeguarding specialists, parents and representative organisations to identify areas where additional clarification may assist schools in complying with their legal obligations while protecting the welfare of every child.

1. Equality and Human Rights Commission, Schools (England) Technical Guidance Consultation (2026), Consultation Document.

2. Department for Education, Keeping Children Safe in Education (2026); For Women Scotland Ltd v Scottish Ministers [2025] UKSC 16.

3. Equality Act 2006, ss 13–15 (functions of the Equality and Human Rights Commission in relation to guidance and codes of practice).

4. Education Act 2002, ss 157 and 175; Department for Education, Keeping Children Safe in Education (2026).

1.2 Purpose of this Paper

The purpose of this paper is to provide an independent legal and policy analysis of the Equality and Human Rights Commission's draft Technical Guidance for Schools (England) and to explain the reasoning underpinning Protect and Teach CIC's formal response to the public consultation.¹ This paper is a policy analysis and legal review of the EHRC's draft Technical Guidance for Schools in England. It represents the policy position and analysis of Protect and Teach.

The paper has two complementary objectives. First, it critically examines the draft guidance against the wider legal framework governing schools, including equality law, safeguarding legislation, education law, public law principles and the statutory obligations placed upon schools.² Secondly, it is intended to assist other individuals and organisations wishing to participate in the consultation by identifying key legal issues, explaining the relevant evidence, and providing practical guidance on matters that respondents may wish to consider when preparing their own submissions.³

This paper does not question the importance of equality legislation or the protections afforded by the Equality Act 2010. Protect and Teach fully recognises that schools have a legal duty to prevent unlawful discrimination, advance equality of opportunity where required by law, and foster an environment in which every pupil is treated with dignity and respect.⁴

Rather, this paper considers whether the draft guidance accurately reflects the wider statutory framework within which schools operate, ***whether it provides sufficiently clear and legally robust assistance to school leaders, and whether its practical examples appropriately reflect Parliament's legislation, established safeguarding principles and the current state of the evidence.***⁵

Throughout this paper, Protect and Teach adopts an evidence-based and legally grounded approach. Where concerns are identified, they are supported by reference to primary legislation, statutory guidance, judicial authority, government policy or other authoritative sources. Recommendations are intended both to assist the Equality and Human Rights Commission in refining the guidance and to support consultation respondents in providing informed, evidence-based responses. The overarching aim is to promote guidance that gives schools greater legal certainty while protecting the welfare, rights and legitimate interests of all members of the school community.⁶

The paper distinguishes between:

- the requirements of primary legislation and binding legal authority;
- statutory guidance and other official guidance;
- empirical evidence;
- Protect and Teach's analysis and policy recommendations.

Where the law or evidence is contested, this paper seeks to identify the point of contest rather than present a policy preference as an uncontested legal fact.

1. Equality and Human Rights Commission, Technical Guidance for Schools in England (Draft for Consultation) (2026).

2. Equality Act 2010; Education Act 1996; Education Act 2002, ss.175–176; Children Act 1989; Children Act 2004; Human Rights Act 1998; Education and Inspections Act 2006; common law principles of judicial review.

3. Equality and Human Rights Commission, Consultation on the Draft Technical Guidance for Schools in England (2026).

4. Equality Act 2010, Parts 2 and 6; Human Rights Act 1998; Education Act 2002, s.175.

5. *R (Miller) v Secretary of State for Exiting the European Union* [2017] UKSC 5 (public authorities must act within the limits of their statutory powers); see also Equality Act 2006, ss.8–13 (EHRC functions).

6. Better Regulation Executive, *The Green Book* (HM Treasury); Cabinet Office, *Consultation Principles* (2018); Office for Statistics Regulation, *Intelligent Transparency* (2023).

1.3 Protect and Teach's Approach

Protect and Teach CIC is an independent organisation that promotes lawful educational practice, safeguarding, political impartiality and evidence-informed public policy within education. Our work is founded upon several guiding principles.

First, schools should always act within the law. Educational policy and practice must be consistent with legislation enacted by Parliament, statutory guidance issued by government, and the decisions of the courts. Guidance issued by public bodies should assist schools in understanding and applying the law rather than creating uncertainty or extending legal obligations beyond those established by statute.⁷

Secondly, safeguarding must remain a central consideration whenever schools make decisions affecting children. Schools have statutory duties to protect pupils from harm, identify and manage foreseeable risks, and promote children's welfare across every aspect of school life. **Safeguarding responsibilities should be considered alongside, and not separately from, equality duties** when policies affecting children are developed and implemented.⁸

Thirdly, schools have legal duties of political impartiality. Education should encourage critical thinking, open discussion and respect for differing viewpoints without promoting contested political, ideological or partisan beliefs as established fact. Where issues remain the subject of significant public, scientific, philosophical or legal debate, guidance should assist schools in presenting those matters objectively and in accordance with their statutory obligations.⁹

Fourthly, public policy should be informed by robust evidence. Guidance should distinguish clearly between established legal duties, empirical evidence and matters of policy preference. Where evidence is incomplete, developing or contested, this should be acknowledged openly so that schools can exercise informed professional judgement.¹⁰

Finally, competing rights should be recognised and balanced transparently. Equality law frequently requires schools to reconcile the rights and interests of individuals possessing different protected characteristics, together with their safeguarding obligations and other statutory duties. Good guidance should therefore support careful, lawful and proportionate decision-making rather than implying that any one right or protected characteristic will invariably prevail over another.¹¹

These principles underpin the analysis and recommendations contained throughout this paper.

1. Equality and Human Rights Commission, Technical Guidance for Schools in England (Draft for Consultation) (2026).

2. Equality Act 2010; Education Act 1996; Education Act 2002, ss.175–176; Children Act 1989; Children Act 2004; Human Rights Act 1998; Education and Inspections Act 2006; common law principles of judicial review.

3. Equality and Human Rights Commission, Consultation on the Draft Technical Guidance for Schools in England (2026).

4. Equality Act 2010, Parts 2 and 6; Human Rights Act 1998; Education Act 2002, s.175.

5. *R (Miller) v Secretary of State for Exiting the European Union* [2017] UKSC 5 (public authorities must act within the limits of their statutory powers); see also Equality Act 2006, ss.8–13 (EHRC functions).

6. Better Regulation Executive, The Green Book (HM Treasury); Cabinet Office, Consultation Principles (2018); Office for Statistics Regulation, Intelligent Transparency (2023).

7. Education Act 1996; Education Act 2002; Human Rights Act 1998; *R (Munjaz) v Mersey Care NHS Trust* [2005] UKHL 58 (status of statutory guidance); *R (Lumba) v Secretary of State for the Home Department* [2011] UKSC 12 (public authorities should follow published policy unless there is good reason to depart from it).

8. Children Act 1989; Children Act 2004, s.11; Education Act 2002, s.175; Department for Education, Keeping Children Safe in Education (current edition); Department for Education, Working Together to Safeguard Children (2023).

9. Education Act 1996, s.406 (prohibition on promotion of partisan political views); Education Act 1996, s.407 (balanced presentation of opposing views); Department for Education, Political Impartiality in Schools: Guidance (2022); Teachers' Standards (2011), Part Two.

10. Cabinet Office, Consultation Principles (2018); Government Office for Science, The Aqua Book: Guidance on Producing Quality Analysis for Government (2022); Office for Statistics Regulation, Intelligent Transparency (2023).

11. Equality Act 2010; Human Rights Act 1998 (Articles 8, 9, 10 and 14); *A v Head Teacher and Governors of Lord Grey School* [2006] UKHL

Chapter 2 – The Legal Framework

2.1 Introduction

Schools in England operate within a comprehensive statutory framework that requires governing bodies, proprietors, headteachers and staff to discharge numerous legal duties simultaneously. Equality law forms an important component of this framework, but **it exists alongside safeguarding legislation, education law, human rights obligations, public law principles and statutory guidance** issued by the Department for Education.¹² Schools are therefore required to make decisions by reference to the law as a whole rather than any single legislative provision or item of guidance.

The Equality and Human Rights Commission (“EHRC”) has prepared its draft Technical Guidance for Schools in England to assist schools in understanding and applying their obligations under the Equality Act 2010.¹³ Technical guidance is intended to promote lawful decision-making and encourage consistency in the application of equality law.

Nevertheless, it cannot be considered in isolation from the wider legal framework governing schools.

Educational institutions remain bound by primary legislation enacted by Parliament, secondary legislation made under statutory authority, binding judicial decisions and relevant statutory guidance.

Understanding the interaction between these sources of law is essential. School leaders are routinely required to balance competing legal duties, including the protection of different protected characteristics, safeguarding obligations, duties owed to parents, responsibilities relating to school premises and accommodation, and the promotion of pupils’ welfare. In many circumstances these obligations must be considered together rather than sequentially. A legally robust decision therefore requires careful analysis of the statutory framework as a whole.

This chapter establishes the legal foundation upon which the remainder of this paper is based. It explains the principal legislation governing schools, the statutory role of the EHRC, the significance of recent judicial authority and the wider legal principles relevant to interpreting the draft guidance. It does not seek to evaluate the consultation document itself. That analysis is undertaken in the chapters which follow.

¹² Equality Act 2010; Education Act 2002, ss 175–176; Children Act 1989; Children Act 2004; Human Rights Act 1998; Department for Education, Keeping Children Safe in Education (2026).

¹³ Equality and Human Rights Commission, Technical Guidance for Schools in England (Draft for Consultation) (2026).

2.2 The Hierarchy of Legal Authority

An understanding of the hierarchy of legal authority is fundamental to interpreting guidance issued by public bodies. The United Kingdom's constitutional arrangements require public authorities, including schools and the EHRC, to act within the limits of powers conferred upon them by Parliament.¹⁴

Consequently, legislation enacted by Parliament represents the highest domestic source of law governing the matters considered within this paper.

Primary legislation, including the **Equality Act 2010, the Education Act 2002, the Children Acts 1989 and 2004** and the **Human Rights Act 1998**, establishes the legal duties imposed upon schools. Public authorities cannot amend or extend these duties through guidance, policy documents or administrative practice.¹⁵

Secondary legislation, including regulations made under powers delegated by Parliament, possesses legal force where made within the authority granted by the enabling Act. Such regulations are binding unless successfully challenged before the courts or amended through further legislation. The **School Premises (England) Regulations 2012** provide an important example within the education context, prescribing minimum standards for sanitary facilities, washing facilities and changing accommodation.¹⁶

The courts are responsible for interpreting legislation. Decisions of the Supreme Court establish binding precedent throughout England and Wales and must therefore be reflected accurately within public guidance.¹⁷ Public authorities are not free to adopt alternative interpretations of legislation once the Supreme Court has authoritatively determined its meaning.

Government departments also publish statutory guidance under powers conferred by Parliament. Although statutory guidance is not legislation, schools are ordinarily required to have regard to it when exercising their functions. A departure from statutory guidance requires a rational and lawful justification having regard to the circumstances of the individual case.¹⁸

Technical guidance published by the EHRC occupies a different legal position. The Commission possesses statutory functions to promote understanding of equality law and may publish codes of practice and guidance to assist those subject to the Equality Act.¹⁹ Such guidance is capable of carrying persuasive weight before courts and tribunals, particularly where it accurately reflects the law. **However, it cannot create new legal duties, diminish statutory rights or modify legislation enacted by Parliament.**

Accordingly, where any apparent inconsistency arises between technical guidance and primary legislation, schools must comply with the legislation itself as interpreted by the courts.

14 R (Miller) v Secretary of State for Exiting the European Union [2017] UKSC 5.

15 R (Public Law Project) v Lord Chancellor [2016] UKSC 39.

16 School Premises (England) Regulations 2012 (SI 2012/1943).

17 For Women Scotland Ltd v Scottish Ministers [2025] UKSC 16.

18 R (Munjaz) v Mersey Care NHS Trust [2005] UKHL 58.

19 Equality Act 2006, ss 8–13.

2.3 The Equality Act 2010

The Equality Act 2010 constitutes the principal legislative framework governing discrimination law within Great Britain. The Act consolidated numerous earlier enactments into a single statutory code intended to simplify equality law while maintaining comprehensive protection against unlawful discrimination.²⁰

Section 4 of the Act identifies nine protected characteristics:

- age;
- disability;
- gender reassignment;
- marriage and civil partnership;
- pregnancy and maternity;
- race;
- religion or belief;
- sex; and
- sexual orientation.²¹

Within the school context, Part 6 of the Act establishes specific duties applying to schools. These provisions prohibit discrimination, harassment and victimisation in relation to admissions, the provision of education, access to benefits, facilities and services, exclusions and other aspects of school life.²²

The Act recognises both direct and indirect discrimination. Direct discrimination occurs where an individual is treated less favourably because of a protected characteristic.²³ Indirect discrimination arises where a provision, criterion or practice places persons sharing a protected characteristic at a particular disadvantage unless objectively justified as a proportionate means of achieving a legitimate aim.²⁴

The Act also prohibits harassment related to protected characteristics and victimisation arising from protected acts under the legislation.²⁵

Importantly, Parliament did not establish an absolute hierarchy between protected characteristics. The statutory scheme recognises that circumstances may arise in which different protected characteristics require careful balancing. Accordingly, the Act contains numerous exceptions and qualifications permitting differential treatment where Parliament considered this necessary or justified.

The Equality Act therefore **requires schools both to understand the rights created by the legislation and to recognise the statutory exceptions enacted alongside those rights.**

²⁰ Equality Act 2010.

²¹ Equality Act 2010, s 4.

²² Equality Act 2010, Part 6.

²³ Equality Act 2010, s 13.

²⁴ Equality Act 2010, s 19.

²⁵ Equality Act 2010, ss 26–27.

2.4 Sex and Gender Reassignment

Two protected characteristics are of particular significance within the present consultation: **sex and gender reassignment**.

The protected characteristic of sex is defined by section 11 of the Equality Act 2010, which provides that a reference to a person possessing the protected characteristic of sex is a reference to a man or a woman.²⁶

The interpretation of this provision has recently been considered by the Supreme Court in *For Women Scotland Ltd v Scottish Ministers*, which confirmed that, for the purposes of the Equality Act 2010, references to “sex”, “man” and “woman” refer to biological sex as recognised by the Act.²⁷

The Supreme Court unanimously allows the appeal. It holds that the terms “man”, “woman” and “sex” in the EA 2010 refer to biological sex. Lord Hodge, Lady Rose and Lady Simler give a joint judgment, with which the other Justices agree.

Gender reassignment constitutes a separate protected characteristic under section 7 of the Equality Act. A person possesses the protected characteristic if they are proposing to undergo, are undergoing, or have undergone a process (or part of a process) for the purpose of reassigning their sex by changing physiological or other attributes of sex.²⁸

The existence of these separate protected characteristics demonstrates that Parliament deliberately distinguished biological sex from gender reassignment. Neither characteristic displaces the other. Rather, both form part of the statutory scheme and require consideration where relevant.

Throughout the Equality Act **Parliament retained numerous provisions referring specifically to biological sex, including exceptions relating to single-sex services, communal accommodation, sport and education.**²⁹

The statutory framework therefore requires schools to consider both protected characteristics while recognising that Parliament expressly preserved certain sex-based distinctions.

²⁶ Equality Act 2010, s 11.

²⁷ *For Women Scotland Ltd v Scottish Ministers* [2025] UKSC 16.

²⁸ Equality Act 2010, s 7.

²⁹ Equality Act 2010, Schedules 3 and 11.

2.5 Education Law

Schools do not operate solely under equality legislation. Education law imposes additional duties that must be considered whenever decisions affecting pupils are made.

Section 175 of the Education Act 2002 requires local authorities, governing bodies and proprietors of independent schools to make arrangements for ensuring that their functions are exercised with **a view to safeguarding and promoting the welfare of children**.³⁰ This duty is reflected and expanded within statutory safeguarding guidance issued by the Department for Education.

The **Education Act 1996** also imposes important obligations relating to the curriculum and the presentation of political issues. **Section 406 prohibits the promotion of partisan political views** in the teaching of any subject in maintained schools.³¹

406 Political indoctrination.

- (1) The **[F1] local authority**, governing body and head teacher shall forbid—
- (a) the pursuit of partisan political activities by any of those registered pupils at a maintained school who are junior pupils, and
 - (b) the promotion of partisan political views—
 - [F2(i)]** in the teaching of any subject in the school **[F3]** (in the case of a school in England), or
 - [F4(ii)]** in the teaching of any aspect of a curriculum provided in the school under the Curriculum and Assessment (Wales) Act 2021 (in the case of a school in Wales)
- (2) In the case of activities which take place otherwise than on the school premises, subsection (1)(a) applies only where arrangements for junior pupils to take part in the activities are made by—
- (a) any member of the school's staff (in his capacity as such), or
 - (b) anyone acting on behalf of the school or of a member of the school's staff (in his capacity as such).
- (3) In this section "maintained school" includes **[F5] a community or foundation special school** established in a hospital.

Section 407 requires schools to take reasonably practicable steps to secure a balanced presentation of opposing views whenever political issues are brought to pupils' attention.³²

These provisions remain of continuing relevance where educational materials address matters which are politically, socially or philosophically contested. They reflect Parliament's intention that schools should educate rather than advocate.

Education legislation therefore establishes duties extending beyond equality law alone. School leaders **must ensure that policies remain compatible with safeguarding obligations, political impartiality requirements and broader educational responsibilities.**

³⁰ Education Act 2002, s 175.

³¹ Education Act 1996, s 406.

³² Education Act 1996, s 407.

2.6 Safeguarding Duties

Safeguarding represents one of the most important legal obligations placed upon schools. The **Children Act 1989** establishes the welfare of the child as a central consideration in decisions affecting children, whilst the **Children Act 2004** requires relevant organisations to make arrangements for safeguarding and promoting children's welfare.³³

These statutory duties are reflected within *Keeping Children Safe in Education (KCSIE, 2026)*, which all schools and colleges must have regard to when carrying out their safeguarding responsibilities.³⁴

The guidance makes clear that safeguarding encompasses protecting children from maltreatment, preventing impairment of health or development, ensuring that children grow up in safe and effective care and taking action to enable all children to achieve the best outcomes.

Safeguarding obligations are not displaced by equality duties. Rather, both frameworks operate concurrently. Decisions concerning school facilities, accommodation, supervision, intimate care, record keeping and risk assessment frequently engage both safeguarding and equality considerations simultaneously.

The statutory safeguarding framework therefore forms an essential part of the wider legal context within which schools interpret and apply equality law.

2.7 The Public Sector Equality Duty

Section 149 of the Equality Act establishes the Public Sector Equality Duty ("PSED"), requiring public authorities, including maintained schools and many academy trusts when exercising public functions, to have due regard to the need to eliminate unlawful discrimination, advance equality of opportunity and foster good relations between persons who share protected characteristics and those who do not.³⁵

The duty is procedural rather than outcome-based. It requires decision-makers to give conscientious consideration to the statutory objectives when exercising their functions.³⁶ The courts have consistently held that the PSED does not predetermine the outcome of any particular decision nor establish a hierarchy between protected characteristics.

Accordingly, where competing rights arise, schools must give genuine and informed consideration to each relevant protected characteristic together with any other statutory obligations engaged by the circumstances of the case.

³³ Children Act 1989, s 1; Children Act 2004, s 11.

³⁴ Department for Education, *Keeping Children Safe in Education* (2026).

³⁵ Equality Act 2010, s 149.

³⁶ *R (Brown) v Secretary of State for Work and Pensions* [2008] EWHC 3158 (Admin).

2.8 The School Premises (England) Regulations 2012

The **School Premises (England) Regulations 2012** prescribe minimum standards relating to school accommodation.³⁷ Among other matters, the Regulations require suitable toilet facilities, washing facilities and changing accommodation, with provision made separately for boys and girls aged eight years and above except where individual facilities are fully enclosed.³⁸

These requirements **form part of the statutory framework** governing school premises and therefore **represent binding legal obligations rather than discretionary guidance**.

Where equality considerations arise concerning access to facilities, decisions must therefore be considered alongside the requirements imposed by these Regulations.

2.9 Human Rights

Schools, as public authorities, are also required to act compatibly with Convention rights incorporated through the **Human Rights Act 1998**.³⁹

Depending upon the circumstances, decisions affecting pupils may engage the right to respect for private and family life under **Article 8, freedom of thought, conscience and religion under Article 9, freedom of expression under Article 10 and the prohibition upon discrimination contained within Article 14**.⁴⁰

Human rights principles reinforce the importance of careful, proportionate decision-making. They do not displace statutory duties created by Parliament but instead provide an additional framework through which decisions may be assessed.

2.10 The Equality and Human Rights Commission

The EHRC was established by the **Equality Act 2006** as the United Kingdom's independent equality regulator.⁴¹ Its statutory functions include promoting understanding of equality law, encouraging compliance with equality legislation, undertaking investigations, issuing guidance and intervening in legal proceedings where appropriate.⁴²

The Commission performs an important public function in assisting organisations to understand their legal obligations. Nevertheless, **its guidance must accurately reflect the law enacted by Parliament** and interpreted by the courts. It cannot create legal obligations beyond those established by legislation.

The purpose of technical guidance is therefore explanatory rather than legislative.

37 School Premises (England) Regulations 2012, regs 4–5 and Sch 1.

38 Ibid.

39 Human Rights Act 1998, s 6.

40 European Convention on Human Rights, arts 8, 9, 10 and 14.

41 Equality Act 2006, ss 8–13.

42 Equality Act 2006, ss 30–32.

2.11 Recent Judicial Authority

Recent years have witnessed significant judicial consideration of issues relevant to the present consultation.

Most notably, the Supreme Court's judgment in *For Women Scotland Ltd v Scottish Ministers* clarified the interpretation of sex within the Equality Act 2010 and reaffirmed the importance of interpreting statutory language consistently throughout the Act.⁴³

More generally, the courts have repeatedly emphasised that public authorities must act within the limits of powers conferred by Parliament and must apply legislation according to its proper legal meaning rather than administrative preference.⁴⁴

These constitutional principles are directly relevant to the preparation and interpretation of public guidance.

2.12 Conclusion

The legal framework governing schools extends considerably beyond the Equality Act 2010 alone.

School leaders must comply with equality legislation, safeguarding duties, education law, human rights obligations, statutory regulations, binding judicial authority and relevant statutory guidance. These duties frequently operate together and require careful professional judgement.

The EHRC's draft Technical Guidance must therefore be assessed against this wider legal framework. The question is not merely whether individual examples are consistent with isolated provisions of the Equality Act, but whether the guidance accurately reflects the law as a whole, provides schools with legally robust assistance and enables decision-makers to discharge their statutory responsibilities with confidence.

The following chapter considers those aspects of the draft guidance which accurately reflect the existing legal framework before examining areas where further clarification or revision may be required.

⁴³ *For Women Scotland Ltd v Scottish Ministers* [2025] UKSC 16.

⁴⁴ *R (Miller) v Secretary of State for Exiting the European Union* [2017] UKSC 5; *R (Public Law Project) v Lord Chancellor* [2016] UKSC 39.

Chapter 3 – The EHRC’s Draft Guidance: What It Gets Right

The draft Technical Guidance for Schools in England contains a number of accurate statements that correctly reflect the **Equality Act 2010** as interpreted by the Supreme Court and the wider statutory framework.

Protect and Teach's criticism of particular examples should not be understood as a rejection of the draft guidance as a whole. The draft contains a number of important and legally accurate principles. These positive elements should be retained and, where necessary, strengthened so that they are not undermined by later examples or caveats.

First, the guidance correctly records that the protected characteristic of sex means biological sex at birth. This follows the clear holding of the Supreme Court in *For Women Scotland Ltd v Scottish Ministers* [2025] UKSC 16. The draft therefore avoids the previous ambiguity that had arisen in some public-sector documents and provides schools with a firm legal starting point.⁴⁵

Second, the guidance accurately states that single-sex facilities and sleeping accommodation are required under the School Premises (England) Regulations 2012 and the Equality Act exceptions. In particular, the section on boarding and communal accommodation correctly notes the requirement for separate-sex sleeping for pupils aged eight and above.⁴⁶

This is consistent both with secondary legislation and with the safeguarding duties under section 175 of the Education Act 2002 and Keeping Children Safe in Education (2026).

Third, the draft recognises that schools must balance competing protected characteristics and that the Public Sector Equality Duty requires **“due regard” rather than predetermined outcomes**.

It also acknowledges the existence of statutory exceptions for single-sex services, sport and education.⁴⁷

Fourth, the guidance correctly identifies the distinct legal status of technical guidance itself: **it does not create new legal duties and cannot amend primary legislation**. This is an important constitutional point that should be retained and given greater prominence.⁴⁸

These accurate elements demonstrate that the Commission has taken account of recent judicial authority and of the binding nature of the School Premises Regulations. They form a solid foundation. The difficulty arises where subsequent practical examples and framing language create tension with, or appear to qualify, these correct statements.

The following chapters examine those areas in detail.

⁴⁵For Women Scotland Ltd v Scottish Ministers [2025] UKSC 16.

⁴⁶School Premises (England) Regulations 2012; Equality Act 2010, Sch 3 and Sch 23.

⁴⁷Equality Act 2010, s 149 and relevant schedules.

⁴⁸Equality Act 2006, ss 13–15.

Chapter 4 – Areas Requiring Clarification

Despite the accurate statements identified above, several practical examples and sections of the draft guidance introduce uncertainty, create apparent conflicts with other legal duties, and risk pressuring schools away from clear, lawful sex-based rules. **The principal difficulties concern the interaction of the protected characteristics of sex and gender reassignment.**

4.1 Changing facilities and toilets

The draft states that requiring a pupil to use the facilities of their biological sex is **“unlikely to be justified”** and is likely to constitute unlawful indirect discrimination on the ground of gender reassignment. It then suggests staff facilities as a possible alternative.⁴⁹

Example:

5.71. A secondary school is considering how to provide appropriate changing facilities for a trans pupil who identifies as a girl. The school must provide single-sex changing facilities and showers for children who do physical education at the school. It is therefore not permissible to allow the pupil to use the girls’ changing room. The school decides that the pupil must use the boys’ changing room. This is unlikely to be justified and so is likely to be unlawful indirect gender reassignment discrimination. A suitable alternative might be to allow the pupil access to a single-user, lockable changing room, which might be a staff changing room or a mixed-sex accessible bathroom.

“Protect and Teach considers that this example is legally and practically problematic because, this framing is incomplete and unbalanced. **It fails to explain that the provision and enforcement of single-sex facilities based on biological sex is itself a legitimate aim that protects the privacy, dignity and safety of all pupils; particularly girls.**

Treating ordinary compliance with the School Premises Regulations and with the protected characteristic of sex **as presumptively discriminatory creates an unnecessary conflict.**

Staff facilities are not an appropriate or realistic solution for children and do not address the safeguarding or stigma issues that arise.

The guidance should state clearly that single-sex facilities based on biological sex are lawful and justified, and that gender-reassignment protection does not require opposite-sex access.

46 School Premises (England) Regulations 2012; Equality Act 2010, Sch 3 and Sch 23.

49 EHRC draft Technical Guidance, Chapter 5 (changing facilities example).

4.2 Uniform policies

A sex-based skirts/trousers policy is presented as potentially indirect discrimination against gender reassignment and **“unlikely to be justified”** unless exceptions or a gender-neutral option are provided.⁵⁰

Example:

5.20. A school requires all pupils of the same sex to follow a uniform policy where girls wear skirts and boys wear trousers. The policy may put a pupil with the protected characteristic of gender reassignment at a disadvantage. This may amount to indirect discrimination. The policy is unlikely to be justified if it is applied in every case and does not allow consideration of whether it is proportionate to treat a trans pupil in this way.

The school may need to alter the uniform policy either to allow for exceptions to the policy or to include a gender-neutral uniform option.

The school should also consider whether its uniform policy may disadvantage pupils with other protected characteristics. Often a gender-neutral uniform option will avoid this risk.

3.252. A male pupil attends school wearing a female pupil's school uniform. If this is part of the process of reassigning their sex, then they will be protected from direct or indirect gender reassignment discrimination. If they are not proposing to undergo, or undergoing, the process of reassigning their sex, then they will not be protected in this way. However, they would be protected under the Act from discrimination by perception, if, for example, they are perceived to be trans and experience less favourable treatment because of it. Further, the school has a duty to have measures in place which aim to prevent bullying and the pupil is likely to be able to rely on these.

This treats ordinary sex-based uniform rules as presumptively discriminatory and encourages schools either to abandon sex-based rules or to facilitate social transition on a case-by-case basis.

The guidance should instead confirm that **sex-based uniform policies remain lawful** and that gender-reassignment protection does not require schools to adopt gender-neutral uniforms or to make exceptions that undermine the policy's purpose.

⁵⁰ EHRC draft Technical Guidance, Chapter 5 (uniform example).

4.3 Single-sex school admissions

The draft indicates that a boys' school may admit a **"trans boy" (biological female)** as an exceptional admission under Schedule 11.⁵¹ This treats gender reassignment as a basis for admitting a pupil of the opposite biological sex into a single-sex school, thereby **undermining the statutory purpose of single-sex education** even while the school's facilities remain sex-based. The guidance should make clear that the single-sex admissions exception continues to operate by reference to biological sex.

Example:

4.70. A boys' school admits a trans boy pupil. The admission is in line with the school's policy for exceptional admissions. This is lawful under schedule 11, paragraph 1(3)(a) of the Act because the admission is exceptional and in line with the school's own policy. However, the school must ensure that appropriate facilities can be made available which are suitable for the pupil's sex. The same school refuses to admit a female pupil who does not meet the criteria in the school's policy for exceptional admissions. This is lawful under the Act.

4.4 Boarding and communal accommodation

Protect and Teach considers that the starting point for single-sex boarding accommodation should be biological sex. While the draft **correctly requires separate-sex sleeping for pupils aged eight and above**, it then states that excluding a trans-identifying pupil from the accommodation of their biological sex **"should only be considered on a case-by-case basis where this is a proportionate means of achieving a legitimate aim."** Schools are told to consider providing additional separate sleeping, toilet and shower facilities.⁵²

10.37. An independent secondary school provides boarding accommodation for male pupils in one dormitory and female pupils in a different dormitory. A trans girl pupil (who was born male) asks to move from the male dormitory to sleep in the female dormitory. The school refuses the request because of the statutory requirement for sex segregation contained in the Education (School Premises) Regulations 1999. However, to accommodate the pupil, it arranges for them to be accommodated in a single unit 'study bedroom'. The unit has its own ensuite bathroom with a toilet and shower. This is likely to be lawful.

This creates a presumption that special alternative provision is required and treats ordinary sex-based boarding rules as potentially discriminatory. **The guidance should reverse the presumption: sex-based sleeping arrangements are the lawful starting point;** any departure requires clear justification that does not compromise the privacy and safety of other pupils.

⁵¹ EHRC draft Technical Guidance, Chapter 4 (single-sex admissions example).

⁵² EHRC draft Technical Guidance, Chapter 10 (boarding example).

4.5 Positive action and “LGBT” examples

The guidance presents consultation with an external LGBT charity, the conflation of “**homophobic and transphobic bullying,**” and the provision of special mentoring or activities for “LGBT” pupils as straightforward good practice.⁵³ This merges the distinct protected characteristics of sexual orientation and gender reassignment, **treats disagreement with gender-identity claims as equivalent to homophobia, and normalises external activist involvement** and special treatment based on gender identity.

8.37. A secondary school has lesbian, gay, bisexual and transgender (LGBT) pupils and pupils whose parents are LGBT. The school wants to ensure that any barriers to learning that these pupils are facing, connected to those protected characteristics, are solved by appropriate measures. The school decides to run a small consultation group with the pupils, which is facilitated with the help of a local LGBT charity, to understand their needs better.

The group reports several barriers affecting these pupils’ full participation in school life. These include homophobic and transphobic bullying, which is contributing to underachievement, school anxiety and avoidance, and which is putting some pupils at risk of dropping out.

The group make several suggestions for activities to address these barriers, alongside a whole-school approach to tackling homophobic and transphobic bullying.

This includes inviting external speakers who are LGBT role models and running various activities for LGBT history month. These steps do not involve less favourable treatment of any group sharing another protected characteristic, so such actions would be lawful without having to rely on the positive action provisions within the Act.

The group also suggests setting up a special mentor programme for LGBT pupils and offering LGBT pupils a chance to meet with other pupils who are tackling homophobia and transphobia in their schools. While this involves more favourable treatment of LGBT pupils, it is likely to be a proportionate means of achieving the school’s aims. This means it would be lawful under the Act’s positive action provisions.

Protect and Teach considers that the guidance should distinguish clearly between sexual orientation and gender reassignment and should explain the legal basis for any targeted support, mentoring or external provision. Targeted provision should not be treated as automatically lawful merely because it is directed towards a group described by a broad umbrella term. Sexual orientation and gender reassignment **must be kept clearly separate**. Positive-action measures must remain evidence-based, proportionate and consistent with political-impartiality duties under sections 406 and 407 of the Education Act 1996.

⁵³ EHRC draft Technical Guidance (positive-action / LGBT example).

4.6 Exclusions

The draft frames exclusion solely for declaring an intention to undergo gender reassignment as direct discrimination.⁵⁴

While schools cannot lawfully exclude a pupil merely for possessing a protected characteristic, **the guidance fails to explain how normal safeguarding or disciplinary processes continue to apply.**

Example:

6.18. A co-educational school excludes a pupil because they declare their intention to undergo gender reassignment and begin to present in the style of the opposite sex. This would be direct gender reassignment discrimination.

It is also direct discrimination to exclude a pupil because they are perceived to have a protected characteristic or because they are associated with someone with a protected characteristic.

Example:

6.20. The pupil's brother tries to set up a support group for trans pupils to show his support for his sibling. The school gives the brother a detention because it says the brother is being insubordinate and is criticising the school's decision. This may be direct gender reassignment discrimination (by association), even though the pupil himself is not intending to undergo gender reassignment.

Clarity is required so that schools understand they retain the ability to act on behaviour or safeguarding concerns irrespective of any declared intention.

In each of these areas the draft correctly notes the existence of the protected characteristic of gender reassignment but then allows that characteristic to appear to override or qualify the equally protected characteristic of sex and the concurrent safeguarding duties.

The result is guidance that is capable of more than one interpretation and that leaves schools exposed to conflicting claims.

The examples should be removed or rewritten. The final guidance should make clear that requiring pupils to use facilities based on biological sex is not inherently unlawful and may be lawful and justified where it is necessary and proportionate to protect privacy, dignity and safeguarding.

⁵⁴ EHRC draft Technical Guidance (exclusions example).

Chapter 5 – Cross-cutting Legal and Policy Issues

Several cross-cutting (broad legal or policy duties) issues run through the draft guidance and require explicit treatment if schools are to receive legally robust advice.

5.1 Safeguarding and the best interests of all children

Keeping Children Safe in Education (2026) requires schools to prioritise the welfare of every child and to take a cautious, parent-involved approach to any request for social transition.

Safeguarding duties under the **Children Acts and the Education Act 2002** are not displaced by equality considerations; they operate concurrently.⁵⁵

Guidance that frames ordinary sex-based rules as potential discrimination risks undermining this statutory priority. The final technical guidance must state that the safety, privacy and dignity of all pupils; particularly girls, **remain the starting point for decision-making**.

5.2 Political impartiality

Sections 406 and 407 of the **Education Act 1996**, the **Department for Education's Political Impartiality in Schools guidance (2022)** and the **Teachers' Standards** require schools to avoid the promotion of contested political or ideological views as established fact.⁵⁶

Where questions of sex and gender remain the subject of significant scientific, philosophical and legal debate, guidance should assist schools in presenting matters objectively rather than embedding contested assumptions (**for example, that gender identity takes precedence over biological sex, or that disagreement constitutes "transphobia"**).

In simple terms, legal duties on political impartiality mean that schools:

- must not promote partisan political views in teaching



This means you must not encourage pupils to support or adopt a one-sided view expressed with a political purpose.

This covers many of the policies of political parties, as well as some views held by campaign groups, lobbyist, charitable organisations and other external agencies.

You can of course teach about partisan political views and explore them with pupils. This will be an important part of teaching about many historical and political issues.

⁵⁵ Education Act 2002, s 175; Children Act 1989; Children Act 2004, s 11; Department for Education, Keeping Children Safe in Education (2026).

⁵⁶ Education Act 1996, ss 406–407; Department for Education, Political Impartiality in Schools: Guidance (2022); Teachers' Standards (2011), Part Two.

⁵⁷ See the principles set out in Cabinet Office, Consultation Principles (2018) and Government Office for Science, The Aqua Book (2022).

5.3 Evidence and the limits of social transition

Public policy and school practice should be informed by robust evidence. Where the evidence base is incomplete or contested; particularly concerning the long-term outcomes of social transition for children, this should be acknowledged openly.⁵⁷

Schools should not be encouraged to initiate or facilitate social transition; any such request must be approached with the caution required by KCSIE 2026.

Children who are questioning their gender

252. In recent years, we have seen a significant increase in the number of children who are questioning the way they feel about being a boy or a girl, including the physical attributes of their sex and the related ways in which they fit into society.

253. It is not for schools and colleges to initiate any action in this area; this guidance is focused on circumstances where a child or their parent has raised a request relating to social transition to which a school or college is responding.

Considering requests for support with social transition

258. Schools and colleges should not initiate any action regarding social transition; this guidance applies where a child or their parent has requested that the school make changes or put support in place in order to facilitate the child presenting as the opposite biological sex ("social transition"). Members of staff should not adopt any changes relating to social transition unless a decision has been made by a school or college and a child's parents or carers have been involved as set out in this guidance.

55 Education Act 2002, s 175; Children Act 1989; Children Act 2004, s 11; Department for Education, Keeping Children Safe in Education (2026).

56 Education Act 1996, ss 406–407; Department for Education, Political Impartiality in Schools: Guidance (2022); Teachers' Standards (2011), Part Two.

57 See the principles set out in Cabinet Office, Consultation Principles (2018) and Government Office for Science, The Aqua Book (2022).

5.4 Accurate recording of biological sex

Accurate recording of biological sex in school systems is essential for safeguarding, medical needs, single-sex provision and compliance with the **School Premises (England) Regulations 2012**. The guidance should explicitly support this practice, in line with *Keeping Children Safe in Education* (2026).

Schools are under a legal duty to maintain accurate pupil records. Biological sex is a material fact for risk assessment, supervision, intimate care, medical emergencies, participation in sport, residential trips and the lawful operation of single-sex toilets, changing rooms and sleeping accommodation. Inaccurate or altered records create foreseeable safeguarding risks and can place schools in breach of both the **Education Act 2002 (s.175)** and secondary legislation requiring sex-separated facilities for pupils aged eight and above. *Keeping Children Safe in Education* (2026) now makes this requirement explicit.

Correct information

280. Having the correct information about a child is important in the context of schools and colleges fulfilling their safeguarding duties, and they should make sure all relevant staff are aware of a child's biological sex in all cases. Schools and colleges are legally required to record a child's biological sex accurately wherever it is recorded.

This obligation applies even where a pupil is living “in stealth” or has previously been socially transitioned. Relevant staff (particularly the designated safeguarding lead, pastoral leads, PE staff and those arranging residential trips) must know the pupil's biological sex in order to discharge their statutory duties. Recording a male pupil as female, or vice versa, is neither accurate nor lawful.

5.5 The Public Sector Equality Duty and competing characteristics

The PSED requires “due regard” to all relevant protected characteristics. The draft's practical examples repeatedly prioritise the avoidance of gender-reassignment discrimination over the need to eliminate discrimination and advance equality for the characteristic of sex.

Clearer guidance is required on how schools should balance these duties without creating a de-facto hierarchy.⁵⁸

⁵⁵ Education Act 2002, s 175; Children Act 1989; Children Act 2004, s 11; Department for Education, *Keeping Children Safe in Education* (2026).

⁵⁸ Equality Act 2010, s 149; *R (Brown) v Secretary of State for Work and Pensions* [2008] EWHC 3158 (Admin).

Chapter 6 – Protect and Teach Recommendations: A Practical Guide for Consultation Respondents

Protect and Teach CIC recommends that the final Technical Guidance incorporate the following overarching changes:

- State unambiguously, and in a prominent location, that single-sex facilities, uniform policies, admissions criteria, boarding accommodation and sports categories based on biological sex are lawful, justified and consistent with both the Equality Act 2010 and Keeping Children Safe in Education (2026).⁵⁹
- Remove or rewrite all examples that frame ordinary sex-based rules as “unlikely to be justified” or as presumptive indirect discrimination on the ground of gender reassignment.
- Confirm that gender-reassignment protection does not require opposite-sex facilities, uniform exceptions, exceptional admissions to single-sex schools, automatic alternative accommodation, or special mentoring programmes based on gender identity.
- Keep the protected characteristics of sexual orientation and gender reassignment clearly separate in all positive-action, bullying and mentoring examples.
- Provide practical decision-making frameworks (or short flowcharts) that begin with the safety, privacy and dignity of all pupils and that explicitly incorporate the careful, parent-involved approach to social-transition requests required by KCSIE 2026.⁶⁰
- Emphasise that the Public Sector Equality Duty requires genuine consideration of the protected characteristic of sex and does not permit gender-reassignment considerations automatically to override single-sex provision.⁶¹
- Include explicit advice on the accurate recording of biological sex and on the continued applicability of normal safeguarding and disciplinary processes.

These changes would give schools greater legal certainty, reduce the risk of conflicting claims, and ensure that the guidance supports rather than complicates compliance with the full statutory framework.

To assist other respondents, the remainder of this chapter provides **ready-to-adapt model answers** that mirror the key free-text questions in the EHRC consultation survey. Each model answer is drawn from Protect and Teach’s formal response and can be copied, shortened or expanded as needed (all free-text answers must stay under 2,000 characters).

⁵⁹ Equality Act 2010; For Women Scotland Ltd v Scottish Ministers [2025] UKSC 16; Department for Education, Keeping Children Safe in Education (2026).

⁶⁰ Department for Education, Keeping Children Safe in Education (2026).

⁶¹ Equality Act 2010, s 149.

⁶² School Premises (England) Regulations 2012 (SI 2012/1943).

⁶³ For Women Scotland Ltd v Scottish Ministers [2025] UKSC 16.

Consultation survey

The EHRC consultation survey begins with a series of straightforward screening and background questions designed to confirm eligibility and gather basic information about respondents. These opening sections are largely administrative and do not require detailed substantive answers.

After confirming that the respondent is completing the correct national survey; England in this case, wishes to take part, is aged 16 or over, and has read the draft guidance, the survey moves into a short set of questions about the nature of the response.

Respondents are asked whether they are answering as an individual, a legal or education professional, or on behalf of an organisation. Organisational respondents may then indicate the type of organisation and (optionally) its name.

A further question invites respondents to note whether their work focuses on any particular protected characteristics. There is also a question about whether the response includes views from children (only those aged 16 and over may submit a response, though views of younger children may be reflected).

Finally, respondents are asked how they expect to use the final guidance (for example, to understand school responsibilities, to advise others, for research, campaigning, or challenging decisions). These initial questions are followed by the substantive sections that form the core of the consultation. The model answers provided later in this chapter focus on those substantive free-text questions, where the most significant issues of legal accuracy and practical clarity arise.

The link to complete the consultation is: **[consultation survey for the technical guidance for schools in England](#)**. The survey is open from 10:00am on 10 June and will close at 11:59pm on 30 September.

You then choose the country: (England, Scotland or Wales). The following model answers relate to England, but can be adapted for your preferred nation:

Technical guidance for schools consultation 2026

This technical guidance explains schools' legal obligations not to discriminate against, harass or victimise pupils, as set out in chapter 1 of Part 6 of the Equality Act 2010 (the Act).

This guidance is not a statutory code issued under section 14 of the Equality Act 2006, but it may be used as evidence in legal proceedings.

We have updated the guidance to:

- include updates and developments in the law relating to types of discrimination and protected characteristic groups
- explain how the Act applies in different education settings and institutions like academies, special schools and school-based clubs
- clarify the interaction between the Act and other related laws
- explain how the Act applies in specific circumstances, for example where restraint, isolation and seclusion is used

We have developed guidance for each nation to reflect the differences in law across England, Scotland and Wales.

We are running this consultation to gather feedback on how clearly the guidance explains schools' obligations under the equality act and whether we have accurately reflected the law.

You can access the guidance, consultation surveys and instructions on how to take part by selecting the links on this page.

Draft technical guidance for consultation

Schools in England technical
guidance consultation

10 June 2026

Schools in Wales technical
guidance consultation

10 June 2026

Schools in Scotland technical
guidance consultation

10 June 2026

Q10 – Missing information on protected characteristics

Technical guidance for schools in England consultation

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

	Yes, there is information missing	No, there is no information missing	I do not know
disability	☐	☒	☐
gender reassignment	☒	☐	☐
pregnancy and maternity	☐	☒	☐
race	☐	☐	☐
religion or belief	☐	☒	☐
sex	☒	☐	☐
sexual orientation	☐	☒	☐

Q10 – Recommended answer

Information is missing or incorrectly framed for sex and gender reassignment. The guidance correctly states that sex means biological sex at birth and that single-sex facilities and sleeping accommodation are required. However, several examples and sections create conflict and pressure schools away from clear sex-based rules and safeguarding:

- Changing facilities (Chapter 5): Requiring a pupil to use the facilities of their biological sex is described as “unlikely to be justified” and likely unlawful indirect gender-reassignment discrimination. This is incomplete and unbalanced. It fails to explain that providing and enforcing single-sex facilities by biological sex is a legitimate aim that protects the privacy, dignity and safety of all pupils (especially girls). Treating use of the correct-sex facility as potential discrimination creates a conflict with the School Premises Regulations, safeguarding duties and the protected characteristic of sex. Suggesting staff facilities as a solution is not appropriate for children and does not address stigma or practical safeguarding issues.⁶²

59 Equality Act 2010; For Women Scotland Ltd v Scottish Ministers [2025] UKSC 16; Department for Education, Keeping Children Safe in Education (2026).
60 Department for Education, Keeping Children Safe in Education (2026).
61 Equality Act 2010, s 149.
62 School Premises (England) Regulations 2012 (SI 2012/1943).
63 For Women Scotland Ltd v Scottish Ministers [2025] UKSC 16.

Q10 – Recommended answer continued...

- Uniform (Chapter 5): A sex-based skirts/trousers policy is framed as potentially indirect discrimination against gender reassignment and “unlikely to be justified” without exceptions or a gender-neutral option. This treats sex-based uniform rules as presumptively discriminatory and pushes schools toward gender-neutral policies or case-by-case exceptions that facilitate social transition.
- Single-sex school admissions (Chapter 4): A boys’ school may admit a “trans boy” (biological female) as an exceptional admission under Schedule 11. This treats gender reassignment as a basis for admitting the opposite biological sex into a single-sex school, undermining the purpose of single-sex education even while facilities remain sex-based.
- LGBT positive action example: The guidance presents consulting with an external LGBT charity, treating “homophobic and transphobic bullying” as equivalent, and providing special mentoring/activities for “LGBT” pupils as straightforward good practice. This conflates sexual orientation with gender reassignment, treats disagreement with gender identity as equivalent to homophobia, and normalises external activist involvement and special treatment based on gender identity.
- Boarding and communal accommodation (Chapter 10): While the guidance correctly requires separate-sex sleeping for pupils aged 8+, it states that excluding a trans pupil from accommodation of their own biological sex “should only be considered on a case-by-case basis where this is a proportionate means of achieving a legitimate aim.” Schools must then consider providing additional separate sleeping, toilet and shower facilities. This creates a presumption that special alternative provision is required and treats ordinary sex-based boarding rules as potentially discriminatory.

The guidance should state clearly that:

- Single-sex facilities, uniform, admissions and sleeping accommodation are based on biological sex and are lawful and justified.
- Gender-reassignment protection does not require opposite-sex facilities, uniform, exceptional admissions, special mentoring, or automatic alternative accommodation.
- Sexual orientation and gender reassignment are distinct and should not be conflated.
- Safeguarding and the best interests of all children take priority.

Without this clarity the guidance leaves schools exposed to conflicting claims and weakens protection for the characteristic of sex.

59 Equality Act 2010; For Women Scotland Ltd v Scottish Ministers [2025] UKSC 16; Department for Education, Keeping Children Safe in Education (2026).

60 Department for Education, Keeping Children Safe in Education (2026).

61 Equality Act 2010, s 149.

62 School Premises (England) Regulations 2012 (SI 2012/1943).

63 For Women Scotland Ltd v Scottish Ministers [2025] UKSC 16.

Q11 – Clarity of important concepts

This section asks for your feedback on how clear and accurate the guidance is.

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

Clarity of the guidance

This section asks for your feedback on how clear and accurate the guidance is.

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

☐ Yes

☒ No

☐ I do not know

Tell us how we could improve the way we define important concepts in the guidance. Your response must be fewer than 2000 characters:

Q11 – Recommended answer

No, the guidance does not clearly or accurately explain the important concepts in relation to the protected characteristics of sex and gender reassignment. While it correctly notes (following the Supreme Court in *For Women Scotland*)⁶³ that sex means biological sex at birth, the practical examples throughout the guidance undermine this clarity. Key concepts are defined in a way that prioritises gender reassignment over sex and creates confusion for schools:

- Requiring a pupil to use single-sex facilities or uniform matching their biological sex is repeatedly framed as potentially unlawful indirect gender-reassignment discrimination (changing rooms, skirts/trousers policy).
- Declaring an intention to undergo gender reassignment is presented as creating immediate protection from ordinary school decisions (exclusions example).
- “Trans” pupils are treated as eligible for exceptional admission to single-sex schools of the opposite biological sex.
- Sexual orientation (LGB) is routinely conflated with gender reassignment in positive-action and bullying examples, treating “transphobia” as equivalent to homophobia.
- Boarding rules require case-by-case justification before a trans pupil can be excluded from same-sex accommodation, creating a presumption of special alternative provision.

These examples blur the legal distinction between the two protected characteristics and fail to explain that sex-based rules (facilities, uniform, sleeping accommodation, sports) remain lawful and justified.

59 Equality Act 2010; *For Women Scotland Ltd v Scottish Ministers* [2025] UKSC 16; Department for Education, *Keeping Children Safe in Education* (2026).

60 Department for Education, *Keeping Children Safe in Education* (2026).

61 Equality Act 2010, s 149.

62 School Premises (England) Regulations 2012 (SI 2012/1943).

63 *For Women Scotland Ltd v Scottish Ministers* [2025] UKSC 16.

Q11 – Recommended answer continued...

The guidance should:

- Clearly restate that sex is biological and binary.
- Explain that gender-reassignment protection does not override single-sex provisions or require social transition, opposite-sex facilities, or gender-neutral policies.
- Keep sexual orientation and gender reassignment separate.
- Emphasise that safeguarding and the best interests of all children take priority over avoiding theoretical discrimination claims.

Without these corrections the definitions of the core concepts remain unclear and unbalanced.

Q12 – Clarity of schools’ obligations

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:

	Yes, the explanation is clear	No, the explanation is not clear	I do not know
Admissions	☐	☒	☐
The provision of education and access to benefits, facilities and services for pupils	☐	☒	☐
Exclusions from school	☐	☒	☐
Making reasonable adjustments for disabled pupils	☒	☐	☐
The positive action provisions of the Act	☐	☒	☐
Dispute resolution and enforcement of the Act	☒	☐	☐
Exceptions that apply generally across the Act and how they apply specifically to schools	☐	☒	☐

59 Equality Act 2010; For Women Scotland Ltd v Scottish Ministers [2025] UKSC 16; Department for Education, Keeping Children Safe in Education (2026).
60 Department for Education, Keeping Children Safe in Education (2026).
61 Equality Act 2010, s 149.
62 School Premises (England) Regulations 2012 (SI 2012/1943).
63 For Women Scotland Ltd v Scottish Ministers [2025] UKSC 16.

Q12 – Recommended answer

The explanations are not clear in the areas of admissions, facilities/services, exclusions, positive action and exceptions, particularly where the protected characteristics of sex and gender reassignment interact.

Key problems include:

- Admissions: The example of a boys' school admitting a "trans boy" (biological female) as an exceptional admission under Schedule 11 is unclear and risks undermining the single-sex character of the school.
- Facilities and services: The changing-room example states that requiring a pupil to use biological-sex facilities is "unlikely to be justified" and likely unlawful indirect discrimination, while suggesting staff rooms as an alternative. The uniform example similarly treats sex-based rules as presumptively discriminatory.
- Exclusions: Stating that exclusion solely for declaring an intention to undergo gender reassignment is direct discrimination fails to explain how schools can still take normal safeguarding or disciplinary action.
- Positive action: The LGBT consultation example conflates sexual orientation with gender reassignment and presents external LGBT charities, "transphobic bullying" language, and special mentoring as straightforward good practice. It is not.
- Exceptions (boarding and single-sex rules): The guidance correctly requires separate-sex sleeping but then requires case-by-case justification before excluding a trans pupil from same-sex accommodation and mandates consideration of special alternative provision.

To improve clarity the guidance should:

- Explicitly state that single-sex rules (admissions, facilities, uniform, boarding, sports) based on biological sex are lawful and justified.
- Stop framing ordinary sex-based rules as potential gender-reassignment discrimination.
- Keep sexual orientation and gender reassignment clearly separate.
- Emphasise that safeguarding duties take priority in-line with KCSIE 2026.

These changes would make schools' legal responsibilities far clearer and more workable.

Q13 & Q14 – Public Sector Equality Duty

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

✓ Not very clearly

59 Equality Act 2010; For Women Scotland Ltd v Scottish Ministers [2025] UKSC 16; Department for Education, Keeping Children Safe in Education (2026).

60 Department for Education, Keeping Children Safe in Education (2026).

61 Equality Act 2010, s 149.

62 School Premises (England) Regulations 2012 (SI 2012/1943).

63 For Women Scotland Ltd v Scottish Ministers [2025] UKSC 16.

Recommended answer (Q14 free-text)

How could we improve the explanation of the PSED in the Technical guidance for schools in England? Select all that apply.

- ☒ Add more detail on who the PSED applies to
- ☐ Include more signposting to extra information about the specific PSED duties
- ☐ Add more detail on what the PSED general duty requires
- ☐ Add more detail about what the specific PSED duties require
- ☒ Include extra information on what the PSED is relevant to in schools
- ☐ Make the PSED section less detailed
- ☒ Other (please specify):

The guidance does not clearly explain how schools should apply the PSED when the protected characteristics of sex and gender reassignment conflict. In practice the examples throughout the document (changing rooms, uniform, admissions, boarding, positive action) repeatedly prioritise avoiding gender-reassignment discrimination over the need to advance equality and eliminate discrimination for the characteristic of sex (especially for girls). This leaves schools unclear about how to give “due regard” to both characteristics at the same time under the PSED.

The PSED section should explicitly state that schools must give due regard to the need to protect single-sex provision based on biological sex, and that gender-reassignment considerations do not automatically override this. Clearer guidance on balancing competing protected characteristics is needed.

Summary of Questions on the Definition of Schools and Legal Obligations

A short pair of factual questions follows the background section. The first asks whether the draft guidance’s definition of “school” is accurate. The definition covers local-authority maintained schools (community, voluntary aided, voluntary controlled and foundation), academies (including free schools, UTCs, studio schools and faith academies), independent schools, special schools (maintained and non-maintained), special post-16 institutions/colleges, and pupil referral units. The second question asks whether the guidance clearly explains who holds legal obligations under the Equality Act 2010. Both questions are binary (Yes / No / I do not know) and do not require free-text explanation.

In Protect and Teach’s view the definition of schools is accurate and the guidance is sufficiently clear on who bears the relevant duties; the model answers below therefore simply record “Yes” to each.

59 Equality Act 2010; For Women Scotland Ltd v Scottish Ministers [2025] UKSC 16; Department for Education, Keeping Children Safe in Education (2026).

60 Department for Education, Keeping Children Safe in Education (2026).

61 Equality Act 2010, s 149.

62 School Premises (England) Regulations 2012 (SI 2012/1943).

63 For Women Scotland Ltd v Scottish Ministers [2025] UKSC 16.

Q19 – 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?

The guidance partially reflects the Supreme Court ruling in *For Women Scotland* that sex means biological sex at birth, but it does not fully take account of the law as it will apply for the 2026/27 academic year.

Key problems remain in the practical examples:

- Changing facilities and uniform examples still treat requiring pupils to use biological-sex provision as potentially unlawful gender-reassignment discrimination.
- Single-sex school admissions and boarding sections create pressure for exceptional or alternative provision based on gender identity.
- The overall framing does not align clearly with the safeguarding approach in KCSIE 2026, which prioritises biological sex for facilities and requires a very careful, parent-involved approach to any social transition.

For the guidance to accurately reflect the law at the start of the 2026/27 year it needs to state unambiguously that single-sex rules based on biological sex are lawful and justified, and that gender-reassignment considerations do not override them.

Q20 – Examples in the guidance – How much do you agree or disagree with the following statements?

	Strongly disagree	Disagree	Neither agree nor disagree	Agree	Strongly agree
The examples in the guidance are helpful	☒	☐	☐	☐	☐
The guidance needs more examples	☐	☐	☒	☐	☐
The examples in the guidance are realistic	☒	☐	☐	☐	☐
The examples in the guidance are accurate	☒	☐	☐	☐	☐

59 Equality Act 2010; *For Women Scotland Ltd v Scottish Ministers* [2025] UKSC 16; Department for Education, *Keeping Children Safe in Education* (2026).
60 Department for Education, *Keeping Children Safe in Education* (2026).
61 Equality Act 2010, s 149.
62 School Premises (England) Regulations 2012 (SI 2012/1943).
63 *For Women Scotland Ltd v Scottish Ministers* [2025] UKSC 16.

Q20 Recommended answer

Several key examples in the guidance are unhelpful, unrealistic and inaccurate, particularly those involving sex and gender reassignment.

Problematic examples include:

- Changing facilities: stating that requiring a pupil to use biological-sex facilities is “unlikely to be justified” and likely unlawful indirect discrimination, while suggesting staff changing rooms as an alternative.
- Uniform: treating a sex-based skirts/trousers policy as potentially indirect discrimination against gender reassignment and “unlikely to be justified” without exceptions or gender-neutral options.
- Admissions: allowing a boys’ school to admit a “trans boy” (biological female) as an exceptional admission.
- Exclusions: framing exclusion solely for declaring an intention to undergo gender reassignment as direct discrimination.
- Boarding: requiring case-by-case justification before excluding a trans pupil from same-sex accommodation.
- Positive action: conflating LGB and transgender issues and presenting external LGBT charities and special mentoring as straightforward good practice.

These examples prioritise gender reassignment over biological sex, create conflict with safeguarding duties and the School Premises Regulations, and do not reflect a realistic or accurate application of the law post-For Women Scotland. The examples should be rewritten to make clear that single-sex rules based on biological sex are lawful and justified, and that gender-reassignment protection does not require opposite-sex facilities, uniform, admissions or special treatment.

Q21 – Is any information missing from the guidance?

Is any information missing from the guidance?

☐ Yes, there is a lot of information missing

☒ Yes, some information is missing

☐ No, all information is included

☐ I do not know

Tell us what information should be added to the guidance. Your response must be fewer than 2000 characters:

59 Equality Act 2010; For Women Scotland Ltd v Scottish Ministers [2025] UKSC 16; Department for Education, Keeping Children Safe in Education (2026).

60 Department for Education, Keeping Children Safe in Education (2026).

61 Equality Act 2010, s 149.

62 School Premises (England) Regulations 2012 (SI 2012/1943).

63 For Women Scotland Ltd v Scottish Ministers [2025] UKSC 16.

Q21 Recommended answer

Key information is missing on how schools should practically navigate conflicts between the protected characteristics of sex and gender reassignment, especially in light of KCSIE 2026.

The guidance needs:

- Clearer statements that single-sex provision (facilities, uniform, boarding, sports and admissions) based on biological sex is lawful, justified and consistent with both the Equality Act and KCSIE 2026 safeguarding requirements.
- Explicit recognition that KCSIE 2026 requires a very careful, documented, parent-involved approach to any request for social transition, and that schools must not initiate such changes.
- Practical decision-making frameworks showing how to balance competing rights when a pupil requests opposite-sex facilities, uniform or accommodation, prioritising the safety, privacy and dignity of all pupils (particularly girls).
- Guidance on accurate recording of biological sex in school systems and the importance of this for safeguarding, medical needs and single-sex provision.
- Better examples that illustrate lawful sex-based rules rather than framing them as potential discrimination.
- Clear separation of sexual orientation from gender reassignment, avoiding the conflation of LGB issues with gender identity.
- Advice on how the Public Sector Equality Duty requires due regard to eliminating discrimination and advancing equality for the characteristic of sex, not only gender reassignment.

Without this practical clarity, schools are left uncertain how to comply with both the Equality Act and their statutory safeguarding duties under KCSIE for the 2026/27 academic year.

Q22. Tell us what other support we could offer to help schools understand and comply with the Equality Act 2010.

Your response must be fewer than 2000 characters

Q22 Recommended answer

Schools need practical, unambiguous support that reflects the law as clarified by the Supreme Court and aligns with KCSIE 2026. Useful additional support would include:

- Short, clear decision-making flowcharts for common scenarios involving sex and gender reassignment (facilities, uniform, boarding, sports, admissions and social transition requests).
- Model policies that correctly prioritise biological sex for single-sex provision while remaining compliant with the Equality Act.
- Worked examples showing how to give proper “due regard” under the Public Sector Equality Duty when sex and gender reassignment appear to conflict, with safeguarding of all pupils (especially girls) as the starting point.

59 Equality Act 2010; For Women Scotland Ltd v Scottish Ministers [2025] UKSC 16; Department for Education, Keeping Children Safe in Education (2026).

60 Department for Education, Keeping Children Safe in Education (2026).

61 Equality Act 2010, s 149.

62 School Premises (England) Regulations 2012 (SI 2012/1943).

63 For Women Scotland Ltd v Scottish Ministers [2025] UKSC 16.

Q22 Recommended answer continued...

- Explicit guidance on accurate recording of biological sex and the limits of social transition in light of KCSIE 2026.
- Separate, distinct advice on sexual orientation and gender reassignment so the two characteristics are not conflated.
- Regularly updated FAQs and case studies that avoid framing ordinary sex-based rules as potential discrimination.

Clear, practical tools of this kind would significantly reduce uncertainty and help schools comply with both the Equality Act and their statutory safeguarding duties.

Q23. What actions might you or your organisation take in response to the finalised Technical guidance for schools in England?

Select all that apply.

Next steps

The remaining questions ask about what you might do in response to the guidance and your experience of accessing the guidance. There is also space for you to add any further comments.

What actions might you or your organisation take in response to the finalised Technical guidance for schools in England? Select all that apply.

☒ Review policies, practices or facilities

☒ Update policies

☐ Change practices

☒ Update staff training

☒ Other

☐ None - no action will be taken

Tell us more about your response. For example, which policies, practices or training will you change and how? Your response must be fewer than 2000 characters:

59 Equality Act 2010; For Women Scotland Ltd v Scottish Ministers [2025] UKSC 16; Department for Education, Keeping Children Safe in Education (2026).

60 Department for Education, Keeping Children Safe in Education (2026).

61 Equality Act 2010, s 149.

62 School Premises (England) Regulations 2012 (SI 2012/1943).

63 For Women Scotland Ltd v Scottish Ministers [2025] UKSC 16.

Q23 Recommended answer

If the final guidance correctly prioritises biological sex for single-sex facilities, uniform, boarding and admissions, and aligns with KCSIE 2026, we will review and update relevant school policies (equalities, uniform, facilities, safeguarding, admissions and boarding) and staff training to ensure full compliance.

We will specifically ensure that:

- Biological sex is accurately recorded and used for single-sex provision.
- Staff understand that gender-reassignment protection does not require opposite-sex facilities, uniform or social transition.
- Safeguarding and the best interests of all pupils remain the priority.
- Sexual orientation and gender reassignment are treated as distinct characteristics.

If the final guidance retains the current unbalanced examples and framing, we will still review policies but will prioritise legal compliance with the Supreme Court ruling on sex and with statutory safeguarding duties under KCSIE over any non-statutory examples that conflict with them.

Summary of Questions 24–26 (Usability and Access)

Towards the end of the survey a short block of practical questions asks about the user experience of the consultation materials. Respondents are invited to rate, on a five-point scale, how easy the guidance was to find on the EHRC website, how easy the webpages were to use, how accessible the content was with assistive technology, how easy the language was to understand, and how easy the structure was to navigate.

A further question asks where the respondent first learned about the consultation (for example, EHRC newsletter or other channels), and a final question asks how the guidance was read (on the webpages, as a downloaded document, etc.).

These questions are purely about process and accessibility; they do not require substantive legal comment.

Q27. Tell us about any further comments you have about the Technical guidance for schools in England.

Your response must be fewer than 2000 characters:

This is the final question to sum up your key points and suggestions.

59 Equality Act 2010; For Women Scotland Ltd v Scottish Ministers [2025] UKSC 16; Department for Education, Keeping Children Safe in Education (2026).

60 Department for Education, Keeping Children Safe in Education (2026).

61 Equality Act 2010, s 149.

62 School Premises (England) Regulations 2012 (SI 2012/1943).

63 For Women Scotland Ltd v Scottish Ministers [2025] UKSC 16.

Q27 Recommended answer

The draft Technical guidance for schools in England contains significant problems in its treatment of the protected characteristics of sex and gender reassignment.

While it correctly records that sex means biological sex at birth, the practical examples repeatedly undermine this by framing ordinary sex-based rules (changing facilities, uniform, boarding, admissions) as potentially unlawful gender-reassignment discrimination. Suggesting staff rooms as alternatives, treating sex-based uniform policies as presumptively discriminatory, and creating pressure for exceptional admissions or special accommodation all conflict with the School Premises Regulations, safeguarding duties, and the direction of KCSIE 2026. The guidance also conflates sexual orientation with gender reassignment in positive-action and bullying examples, which is inaccurate and unhelpful.

Schools need clear, workable guidance that:

- States unambiguously that single-sex provision based on biological sex is lawful and justified;
- Explains how to balance competing protected characteristics under the Public Sector Equality Duty, with the safety, privacy and dignity of all pupils (especially girls) as the starting point;
- Aligns with KCSIE 2026's careful, parent-involved approach to any social transition request;
- Keeps sexual orientation and gender reassignment distinct.

Without these corrections the guidance risks creating confusion, increasing legal risk for schools, and weakening protections based on sex.

This is the final question in the survey. After selecting 'Finish survey' you will not be able to go back and review your answers.

Provide your email address if you would like to be contacted about our future work or research in this area:

[Previous Page](#)[Finish Survey](#)[Save and continue later](#)

These model answers, used consistently by respondents, will help the Commission produce final guidance that is legally accurate, practically workable and fully aligned with the safeguarding duties that must remain central to every decision affecting children.

59 Equality Act 2010; For Women Scotland Ltd v Scottish Ministers [2025] UKSC 16; Department for Education, Keeping Children Safe in Education (2026).

60 Department for Education, Keeping Children Safe in Education (2026).

61 Equality Act 2010, s 149.

62 School Premises (England) Regulations 2012 (SI 2012/1943).

63 For Women Scotland Ltd v Scottish Ministers [2025] UKSC 16.

Chapter 7 – Conclusion

The Equality and Human Rights Commission's decision to consult on draft Technical Guidance for Schools in England is welcome. Technical guidance that accurately reflects the law as enacted by Parliament and interpreted by the Supreme Court can provide valuable assistance to school leaders.⁶⁴

The draft already contains important accurate statements: that sex means biological sex, that single-sex sleeping accommodation is required, and that technical guidance cannot create new legal duties. These strengths should be retained and reinforced.

However, a series of practical examples currently create tension with those accurate statements, with the School Premises Regulations,⁶⁵ with safeguarding duties under Keeping Children Safe in Education (2026),⁶⁶ and with the statutory requirement of political impartiality.⁶⁷ The cumulative effect is guidance that risks leaving schools uncertain how to balance competing protected characteristics and how to prioritise the welfare of every child.

Protect and Teach CIC therefore urges the Commission to revise the examples and framing language so that the final guidance:

- places the safety, privacy and dignity of all pupils at the centre of decision-making;
- confirms that single-sex provision based on biological sex remains lawful and justified;
- keeps sexual orientation and gender reassignment distinct; and
- aligns fully with the cautious, evidence-informed approach required by statutory safeguarding guidance.

Guidance that achieves these objectives will assist schools in discharging their legal duties with confidence and will protect the rights and welfare of every member of the school community.

A note to readers

The recommendations and model answers set out in this paper are offered as constructive suggestions only. They reflect Protect and Teach's independent legal and policy analysis; they are not the only possible responses. We strongly encourage every interested individual, parent, teacher, governor and organisation to read the full draft Technical Guidance for themselves and to submit their own evidence-based views through the official consultation survey before it closes at 11:59 pm on 30 September 2026.

The consultation portal is available at:

<https://www.equalityhumanrights.com/guidance/technical-guidance-schools-consultation>

Clear, consistent and well-reasoned responses from a wide range of stakeholders remain the most effective way to help the Commission produce final guidance that is legally robust, practically workable, and fully aligned with the safeguarding duties that must remain central to every decision affecting children in our schools.

64 Equality Act 2006, ss 13–15; *For Women Scotland Ltd v Scottish Ministers* [2025] UKSC 16.

65 School Premises (England) Regulations 2012 (SI 2012/1943).

66 Department for Education, *Keeping Children Safe in Education* (2026).

67 Education Act 1996, ss 406–407; Department for Education, *Political Impartiality in Schools: Guidance* (2022).

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(All links checked and current as of July 2026)

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- Children Act 1989 – <https://www.legislation.gov.uk/ukpga/1989/41>
- Children Act 2004 – <https://www.legislation.gov.uk/ukpga/2004/31>
- Education Act 1996 – <https://www.legislation.gov.uk/ukpga/1996/56>
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- Education and Inspections Act 2006 – <https://www.legislation.gov.uk/ukpga/2006/40>
- Equality Act 2006 – <https://www.legislation.gov.uk/ukpga/2006/3>
- Equality Act 2010 – <https://www.legislation.gov.uk/ukpga/2010/15>
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- School Premises (England) Regulations 2012 (SI 2012/1943) – <https://www.legislation.gov.uk/uksi/2012/1943>

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- For Women Scotland Ltd v Scottish Ministers [2025] UKSC 16 – <https://www.bailii.org/uk/cases/UKSC/2025/16.html>
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- R (Public Law Project) v Lord Chancellor [2016] UKSC 39 – <https://www.bailii.org/uk/cases/UKSC/2016/39.html>

Statutory and Official Guidance

- Cabinet Office, Consultation Principles (2018) – <https://www.gov.uk/government/publications/consultation-principles-guidance>
- Department for Education, Keeping Children Safe in Education (2026) – <https://www.gov.uk/government/publications/keeping-children-safe-in-education--2>
- Department for Education, Political Impartiality in Schools: Guidance (2022) – <https://www.gov.uk/government/publications/political-impartiality-in-schools>
- Department for Education, Working Together to Safeguard Children (2023) – <https://www.gov.uk/government/publications/working-together-to-safeguard-children--2>

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- European Convention on Human Rights – https://www.echr.coe.int/documents/convention_eng.pdf
- Government Office for Science, The Aqua Book (2022) – <https://www.gov.uk/government/publications/the-aqua-book-guidance-on-producing-quality-analysis-for-government>
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- Equality and Human Rights Commission, Technical Guidance for Schools in England (Draft for Consultation) (2026) – <https://www.equalityhumanrights.com/guidance/technical-guidance-schools-consultation/schools-england-technical-guidance-consultation>
- Equality and Human Rights Commission, Schools in England Technical Guidance Consultation (main page) – <https://www.equalityhumanrights.com/guidance/technical-guidance-schools-consultation>