

Terminology

'**Trans**' is an umbrella term describing people "whose gender is not the same as, or does not sit comfortably with, the sex they were assigned at birth".

'**Non-binary**' is an umbrella term for people whose gender identity doesn't sit comfortably with 'male' or 'female'. Non-binary identities are varied and can include people who identify with some aspects of binary identities, while others reject them entirely.

'**Transitioning**' is when a transgender person takes steps to live in the gender with which they identify. This might include 'socially transitioning' (telling friends and family, dressing differently, using different pronouns) and/or 'medically transitioning' (medical interventions such as hormone therapy or surgery).

'**Misgendering**' is when someone refers to a transgender person using terms linked to the gender they were assigned at birth, instead of their real gender.

To 'out' someone is to disclose information about someone's gender identity or sexuality without their consent.

KCISE

KCISE tells us:

- Transgender children are viewed as more vulnerable to abuse, and exploitation and can be targeted for bullying too.
- Mental health – keeping children's mental health safe where they have extra issues because of the transgender element.
- Transgender children are **MORE VULNERABLE STILL IF THEY DON'T HAVE A TRUSTED ADULT.**

RSE

The needs of a setting's LGBTQ+ pupils are appropriately met:

- All pupils understand the importance of equality and respect
- Teaching is sensitive, age-appropriate, and fully integrated into the programme of study.

EQUALITIES ACT 2010

1. **Sex and gender are protected characteristics.** To get protection from EA, the person doesn't need to have taken formal steps to have gender re-alignment (surgery or medication). Protection can apply if they change their attributes eg how they dress or present themselves / change their name.

2. The law is slightly trickier and not really developed around "gender fluid" or "non-binary" as this isn't specified under "sex". Case law continues to develop. Best be safe (in my view) and treat everyone the same

3. It is illegal to victimise, harass or discriminate on the basis of gender or sex. This is relevant to those:

- Going through - or proposing to go through - gender re-alignment.
- Perceived to have characteristics of gender reassignment.
- Who are (or are not) of a particular sex; or are perceived to be so.
- Are associated with any person in these categories.

QUESTION UNANSWERED AS YET – IS THERE A SOLID LINK BETWEEN AUTISM FOR EXAMPLE AND TRANSGENDER ISSUES (CHANGE BEING AN ISSUE) – IF SO, WILL CHILDREN IN THIS CATEGORY ALSO BE PROTECTED UNDER THE EA DISABILITY HEADING?

Public Sector Equality Duty (PSED)

This applies to maintained schools and academies and may apply to independent schools.

Settings must have '**due regard**' to the need to:

- Eliminate discrimination, harassment and victimisation and other conduct prohibited by the Equality Act 2010.
- Advance equality of opportunity, including between those who share a certain protected characteristic and those who don't.
- Foster good relations including between those who share a certain protected characteristic and those who don't.
- Remove or reduce disadvantages suffered by people because of a protected characteristic.
- Meet the needs of people with protected characteristics.
- Encourage people with protected characteristics to participate in public life and other activities.

UNHCR

Settings must make sure pupils under 18 are given the right to:

- Express their own views, feelings and wishes freely in all matters affecting them; and to have their views considered and taken seriously (Article 12).
- Freedom of expression of their thoughts and opinions, and freedom to think and believe what they choose (Articles 13 and 14).

UK GDPR

Data is a child's as soon as they are born. Once a child is deemed competent (**Gillick competency***) it is for them to decide what, if any data is shared.

Any information shared about gender is for them to decide (as are all SARS).

This differs from education records (in maintained schools) which are accessible by parents by right.

***Gillick competence** is from the case of Gillick v West Norfolk and Wisbech Area Health Authority.

Gillick decided that children under 16 are able to consent to their own medical treatment, without the need for parental permission or knowledge. A pupil will be 'Gillick competent' to make a decision if they have the necessary maturity and understanding to make the decision.

So: where children are competent, professionals should always respect their decisions eg

- use of names,
- how they want to dress AND
- in terms of Data Protection – if they are competent - that they have provided their permission to disclose information (including any SAR).

This is not just an age thing. This is individual children and individual decisions (a bit like MCA decision making for adults)

Assessing Gillick competence

There is no set of defined questions to assess Gillick competency. Professionals need to consider several things when assessing a child's capacity to consent, including:

- The child's age, maturity and mental capacity.
- Their understanding of the issue and what it involves - including advantages, disadvantages and potential long-term impact.

- Their understanding of the risks, implications and consequences that may arise from their decision.
- How well they understand any advice or information they have been given.
- Their understanding of any alternative options, if available.
- Their ability to explain a rationale around their reasoning and decision making.

If you hear about Fraser Guidelines these relate specifically to sexual health and contraception decisions not gender issues! <https://www.cqc.org.uk/guidance-providers/gps/gp-mythbusters/gp-mythbuster-8-gillick-competency-fraser-guidelines>

Confidentiality

Linked to the above – if a child who is competent tells a setting that they do not want this shared with their parents, currently legally it is that child's right to decide.

Is data relating to a child's gender identity considered 'special category data' for the purposes of UK GDPR? [Special category data](#) | [ICO](#)

Potentially as it reveals gender identity. It is recommended that settings so treat any information with absolute care and hold with high levels of security.

PRACTICAL ISSUES

Pronouns

Use the pronoun / name that the child wants. Talk to them about it. It is their decision. Failing to do so, even unintentionally, can breach EA.

Toilets / changing rooms

Settings do not have to allow children to use a toilet for the gender they identify with.

The Equality and Human Rights Commission (EHRC) published an [interim update to guidance](#) following the Supreme Court judgement (April 2025).

The watchdog said that transgender girls, should not be permitted to use the girls' toilet or changing facilities, with the same applying to transgender boys. The EHRC advise that "suitable alternative provisions may be required" for transgender school students, and that transgender people "should not be put in a position where there are no facilities for them to use".

Education settings have to provide separate facilities for boys and girls over 8 BUT, where there is a one person facility, this can be unisex. [Regulation 4 The School Premises \(England\) Regulations 2012](#).