Merched Cymru — Consultation Response: EHRC Technical Guidance for Schools in Wales

Respondent details

Question	Response
Q1. Is this the nation's survey you wish to respond to?	Yes
Q2. Do you wish to take part in this research?	Yes
Q3. Are you aged 16 years or over?	Yes, I am aged 16 years or over
Q4. Have you read the Technical guidance for schools in Wales?	Yes
Q5. Response type	An organisation
Q6. Organisation type	Other: Women's and girls' rights organisation
Organisation name	Merched Cymru
Q8. Views from children	The response does not include any views from a child or children

Q7. Protected characteristics the organisation's work focuses on: age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex, sexual orientation.

Q9. How the guidance will be used:

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

Protected characteristics

Q10. Is any information missing in relation to the following protected characteristics?

Protected characteristic	Response
Disability	Yes, there is information missing
Gender reassignment	Yes, there is information missing

Protected characteristic	Response
Pregnancy and maternity	No answer given
Race	No answer given
Religion or belief	Yes, there is information missing
Sex	Yes, there is information missing
Sexual orientation	Yes, there is information missing

Tell us more about your response:

The information on the protected characteristic of sex is unclear and inadequate. That on the protected characteristic of gender reassignment is incomplete and misleading, using terminology associated with a particular belief system rather than the Equality Act. The later use of ‘trans boy’ and ‘trans girl’ further obscures the legal meaning of this characteristic and how it might affect a school’s actions. Gender reassignment does not change a person’s sex or require schools or other bodies to treat learners as though they were the opposite sex. This distinction has important safeguarding implications, as schools must know a child’s sex to apply safeguarding procedures properly.

Everyone with the protected characteristic of gender reassignment also has the protected characteristic of sex, which remains their biological sex. The terms ‘trans boy’ and ‘trans girl’ have no basis in law and imply a permanent, verifiable status. Their use therefore makes the guidance misleading and inaccurate. They are also ideologically loaded and are interpreted inconsistently by non-activist audiences, including the guidance’s intended principal users.

We recommend removing these terms. The guidance should instead define the protected characteristic of sex clearly: whether a person is male (a man or boy) or female (a woman or girl). It should also explain that sex is a biological characteristic that does not change, regardless of any other protected characteristic a person may have. The guidance should clearly state that the protected characteristic of gender reassignment does not change a child’s sex or require schools to treat a pupil as the opposite sex. It should also explain more clearly how the Equality Act interacts with safeguarding duties.

It should also make clear that, when assessing possible gender reassignment discrimination, the correct comparator is a person of the same sex who does not have that protected characteristic.

Clarity of the guidance

Q11. Does the guidance clearly explain the important concepts in the Equality Act 2010?

Answer: No

How we could improve the way we define important concepts:

There is currently no Welsh Government guidance on how schools should accommodate gender-questioning learners without harming the rights of learners, including the

vulnerable cohort with the protected characteristic of gender reassignment. It's therefore essential that this guidance provides clarity rather than further confusion. Research (e.g. Merched Cymru, 2024) indicates that many Welsh schools have relied on toolkits and guidelines from third parties that misrepresent the law. Although this issue has been seen as politically contentious, the EHRC's role as regulator is to provide accurate legal guidance, not attempt to reconcile unlawful or ill-advised policy positions. Suggesting that third party organisations should assist schools in this sensitive area is also unwise.

Schools must know each child's sex to apply safeguarding procedures properly. Clear definitions are needed to avoid conflating gender reassignment with sex and to ensure that all children are fully protected.

The EHRC should not undermine clinical safeguarding or treatment for children experiencing uncertainty about their identity, as doing so would breach learners' rights under the UNCRC. Schools are not qualified to diagnose gender dysphoria or assess a child's capacity to make decisions on social transition. Social transition is not a neutral act. In public discourse, 'Gillick competence' has been diluted and misrepresented as meaning that an adolescent's expressed wishes must always be implemented, as though learners have an unrestricted right to autonomy. Some Articles of the UNCRC have also been subject to a woolly, inaccurate reinterpretation to justify this approach. The draft guidance risks encouraging schools to follow a potentially harmful path even though it is not required under the Act.

Learners with the protected characteristic of gender reassignment should receive the same care, opportunities and protections as other learners. Treating them as exceptions undermines their UNCRC rights.

Q12. Are the explanations of schools' obligations clear in the following areas?

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

How we could explain schools' responsibilities more clearly:

Where sex and gender reassignment interact, the guidance creates uncertainty by

suggesting that sex-based rules may be relaxed or some pupils exempt. These rules protect all pupils and should not be set aside case-by-case.

Although the guidance correctly states that single-sex toilets, changing rooms and boarding accommodation are lawful and required by school premises regulations, it appears to prioritise one protected characteristic over others, especially sex, and confusingly suggests that ordinary sex-based rules may constitute gender reassignment discrimination. Schools may make reasonable accommodations where practicable, such as additional supervision or a private room, but practical limits must be recognised. The guidance is also unclear about equal opportunities for girls and boys in physical education. It proposes more mixed-sex sport, despite the detriment to female learners, and states that the interpretation of the section 195 sports exception is “not settled”.

It also claims, without evidence, that specifying numbers of girls and boys on mixed-sex teams would ensure fair, safe competition. This overlooks differences in strength and play, some girls’ discomfort with contact sport involving boys, religious beliefs regarding interaction between the sexes and the risk that expanding mixed-sex sport at the expense of single-sex provision would disadvantage girls.

The guidance presents “preferred pronouns” as a rights issue for “trans pupils”, although neither teachers nor pupils are legally required to use them. Schools need clear, biologically accurate language for safeguarding. Gender-affirmation policies fall outside the Equality Act and may affect the child concerned and other pupils’ rights to privacy, consent, boundaries, belief, safety and fair sport. These issues are covered by the UNCRC articles, so schools following the draft guidance may fail to give those rights due regard.

Q13. How clearly does the guidance explain the duties that the PSED places on schools?

Answer: Not very clearly

Q14. How could we improve the explanation of the PSED?

- Add more detail on who the PSED applies to
- 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
- Other (specified below)

The PSED section should state that schools must give equal due regard to the protected characteristics of sex and gender reassignment, without allowing the latter to erode sex-based protections. It should address the effects of policy changes on other pupils, school operation, safeguarding and discipline, and avoid unevidenced assumptions about the wishes, competence or best interests of pupils who identify as trans.

The guidance should recognise girls’ particular need for single-sex provision for safety, dignity, comfort and fairness in sport, and the unequal impact on them when sex-based

rules are weakened. Balancing rights must protect every pupil's safety, privacy, dignity, equality and freedom of belief. Proposed measures, including mixed-sex sport or compelled pronoun use, may not serve a child's long-term interests and may affect others' rights. The guidance should not exceptionalise pupils who identify as trans or imply that ordinary rules need not apply to them. It must consider what such policies teach and how they affect all children.

Q15. Is this an accurate definition of schools?

Answer: Yes

Q17. Does the guidance clearly explain who has legal obligations under the Equality Act 2010?

Answer: No

Q19. Does the guidance take account of the law as it applies for the start of the 2026/2027 academic year?

Answer: No

Despite clarifying the Supreme Court ruling and school premises regulations, the draft guidance is outdated because it assumes that treating a child as though they have changed sex is reasonable and in their best interests. This goes against the findings of the Cass Review. While England's Keeping Children Safe in Education (KCSIE) guidance reflects its recommendations, Welsh guidance has not kept pace. The last Welsh Government claimed that a review of all relevant policies would take place. Attempting to align new guidance with old education policy in Wales is not helpful.

Schools are not qualified to decide whether social transition or opposite-sex pronouns benefit a child or whether it will compound problems making it harder for them to access mainstream education. They cannot reliably assess or monitor the effects of such requests. Because social transition is, as Baroness Cass stated, an intervention rather than a neutral act and may harm the child or affect other learners, this guidance should not encourage schools to affirm it.

Child development is not a consideration in the Equality Act, and support for children distressed or confused about their sex falls outside the Act and schools' expertise. The Cass Review uses the term 'children with gender-related distress', while KCSIE uses 'children who are questioning their gender'. The EHRC should also adopt neutral language to avoid politicising vulnerable children who deserve thoughtful care.

The Equality Act does not address children's social transition or pronoun use. A child who identifies as trans should remain within ordinary safeguarding rules, which must protect all pupils. Gender distress may be temporary or persistent, and schools cannot predict which. Given associated mental-health needs and neurodiversity, non-clinicians must approach intervention cautiously. Many affected children are same-sex attracted so schools should avoid misinterpreting normal identity, personality and sexuality development as evidence of "being trans".

Guidance examples, breadth and depth

Q20. How much do you agree or disagree with the following statements?

Statement	Response
The examples in the guidance are helpful	Disagree
The guidance needs more examples	Neither agree nor disagree
The examples in the guidance are realistic	Disagree
The examples in the guidance are accurate	Strongly disagree

How we could improve the examples:

The guidance's examples of potential conflict between sex and gender reassignment are confusing and misleading. Although it partly reflects the For Women Scotland Supreme Court ruling, several examples are inconsistent with it and unhelpful to key audiences.

Example 4.68 states, "A boys' school admits a trans boy pupil," obscuring that the school is admitting a girl. A school cannot remain single-sex while routinely admitting pupils of the opposite sex as though they were the same sex. The ruling should be applied consistently to admissions as well as toilets, changing rooms and accommodation. Exceptional-admissions policies allow limited, transparent opposite-sex inclusion; they do not change the ordinary Equality Act meanings of "boy" and "girl."

Example 5.71 says that requiring a boy to use the boys' changing room is "unlikely to be justified" (with no explanation as to why) and may amount to indirect gender reassignment discrimination, although alternatives may be impracticable in many schools or contrary to his best interests.

Example 10.33 undermines the clear rules on single-sex boarding accommodation by suggesting, without explanation, that sharing with one's own sex may sometimes be inappropriate and that exclusion should be considered on a case-by-case basis.

Example 8.38 combines two protected characteristics that should be assessed separately.

Example 10.39 promotes mixed-sex sport without addressing potential disadvantages for girls.

Example 3.120 conflates pronoun use, unacceptable staff conduct and compliance with school rules and is not helpful. An example outlining a scenario where a learner is being bullied by fellow learners, using slurs about perceived trans status or sexual orientation, could be more useful to explain to schools of the need to act to prevent such bullying because it may constitute direct discrimination.

Q21. Is any information missing from the guidance?

Answer: Yes, there is a lot of information missing

Schools need clear guidance that safeguarding and the welfare of all children must inform every policy decision. Measures for one pupil must consider their effect on others'

education, inclusion, safety and wellbeing, taking account of age, sex, disability or ALN and vulnerability. The guidance should use accurate terms such as ‘gender-distressed’ or ‘gender-questioning’, rather than ‘trans’, which places children in an adult legal category and overlooks child and adolescent development and possible co-morbidities, and schools’ duties towards them.

It should not suggest that including children in facilities, sports or uniforms based on their sex is discriminatory. Schools should instead support distressed pupils, promote social inclusion with learners of their own sex, prevent bullying, work with parents and help them participate in ordinary school life.

The guidance should require accurate recording of biological sex and explain, with lawful examples, why clear sex-based language and rules matter for safeguarding. It must also recognise girls’ sex-based rights and needs, particularly where these may conflict with gender reassignment, such as in mixed-sex toilets. Schools may make reasonable accommodations where possible, but this should not be at the expense of safeguarding policies that protect all children.

It should be made clear that excluding a child from safeguarding procedures of their own sex because they identify as trans could be unlawful direct discrimination regardless of intention or parental consent.

Throughout the draft guidance whenever there is an interaction between the characteristics of sex and gender reassignment, sex is deprioritised (particularly in relation to women and girls and the need for single-sex provision) and bullying and mistreatment is discussed almost as if it is inevitable and cannot be addressed or prevented.

Q22. What other support could we offer to help schools understand and comply with the Equality Act 2010?

Schools should understand that protecting a child with the protected characteristic of gender reassignment does not require different policies on single-sex facilities, sports or uniforms. Sex-based policies lawfully exist for safety, privacy, dignity, fairness, behaviour and discipline, and no child should be placed outside these protections.

Social transition of children is contested and may harm the child or others; policies requiring deception are not in children’s best interests. After years of misleading Equality Act guidance, schools need confidence to support any struggling child without changing rules or treating one group as exceptional. Schools should not label a child ‘trans’, as this assumes permanence and may obscure the individual support needed.

The EHRC should give schools clear, accurate guidance on sex to correct the perception that gender reassignment carries greater weight. It should state that ‘gender identity’ is not a protected characteristic and that policies based on it may unlawfully discriminate, particularly against girls. Schools should also be reminded why sex matters, including the disproportionate impact on girls of policies that erode single-sex facilities, and should use clear language about which sex uses each facility.

Under the Equality Act, ‘girl’ and ‘boy’ retain their ordinary meanings and should be used accurately in guidance and policies. Children should not be expected to misstate

someone’s sex or navigate pronoun avoidance, which may cause anxiety and disproportionately affect autistic children and those with learning, speech or language difficulties. Safeguarding requires clear, sex-based rules for all pupils and recognition that sex is a stable protected characteristic, particularly because schools owe a duty of care to learners.

Next steps and feedback

Q23. What actions might your organisation take in response to the finalised guidance?

Answer: Other

We will review the information and advice we provide to those who contact us and when responding to policy consultations to reflect what is contained in the final technical guidance. Where we feel it needs to be amended or improved we may choose to advocate for that with policy makers and parliamentarians during the course of our work.

Q24. How much do you agree or disagree with the following statements?

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

Q25. Where did you learn about this consultation?

LinkedIn; EHRC newsletter; EHRC website; Other: Women's rights newsletter.

Q26. How did you read the guidance?

Both the webpages and the Microsoft Word document.

Q27. Further comments

Schools have a duty to educate children about facts, not ideology, while safeguarding them and maintaining the rules needed for behaviour management and well-being. The guidance and examples should reflect these duties rather than undermine them. Using the term ‘trans’ for children creates confusion by framing the issue as ‘trans rights’ rather than the care of vulnerable children and by implying that boys and girls can change categories or that ‘trans’ is a verifiable, innate condition.

Although parts of the technical guidance appear intended to align with the policy approach of current and previous Welsh Governments, the EHRC's role as regulator is to produce legally accurate guidance. Fudging at this stage is likely to confound an already complex environment of conflicting and confusing information, including misrepresentation of UNCRC articles. Doing what a child requests because they have a protected characteristic is not necessarily in their best interests, and may result in less favourable treatment because they are held to a different standard of behaviour, or if lower safeguarding standards are applied.

Schools need clarity to avoid inadvertently failing in their duties to all learners. Welsh Government – who previously took a different view on the meaning of sex in the Equality Act – need clarity and direction too. Given the widespread misunderstandings this new Wales-specific guidance is the appropriate place to address this. Where there is a mismatch between extant Welsh Government policy and the law, it's foolish to attempt to square the circle; otherwise the government guidance on how schools should respond to the needs of gender-distressed learners will become more confused. This would undermine the human rights of a range of children and young people, weaken safeguarding and put schools and local authorities at risk of legal action. It is more than reasonable for Welsh Government to be the party that is focused on reconciling and aligning its policies and guidance with the law.