



Gender Reassignment

Equality Act 2010

The **Equality Act 2010** (“the Act”) increased the protection provided in relation to discrimination because of gender reassignment. It is now unlawful for schools to treat pupils less favourably on this ground, although protection from discrimination on this ground was already provided in relation to school staff.

Section 7 provides as follows:

- (1) A person has the protected characteristic of gender reassignment if the person is proposing to undergo, is undergoing or has undergone a process (or part of a process) for the purpose of reassigning the person’s sex by changing physiological or other attributes of sex.*
- (2) A reference to a transsexual person is a reference to a person who has the protected characteristic of gender reassignment.*
- (3) In relation to the protected characteristic of gender reassignment –
 - (a) a reference to a person who has a particular protected characteristic is a reference to a transsexual person;*
 - (b) a reference to a persons who share a protected characteristic is a reference to transsexual persons.**

What does the definition mean?

The DfE has issued guidance - *Equality Act 2010 – Advice for School Leaders, School Staff, Governing Bodies and Local Authorities* which can be found via the following link:

<http://www.education.gov.uk/aboutdfe/policiesandprocedures/equalityanddiversity/a0064570/the-equality-act-2010>

Paragraph 3.4 of the guidance refers to the definition given in section 7 of the Act and goes on to say:

“This definition means that in order to be protected under the Act, a pupil will not necessarily have to be undertaking a medical procedure to change their sex but must be taking steps to live in the opposite gender, or proposing to do so.”

The Equality and Human Rights Commission has also issued guidance – *What equality law means for you as an education provider: schools* which can be found via the following link:

<http://www.equalityhumanrights.com/publication/what-equality-law-means-you-education-provider-schools>



Annex A of the guidance gives further information about the protected characteristic as follows:

“Gender reassignment is a personal process (rather than a medical process) which involves a person expressing their gender in a way that differs from or is inconsistent with the physical sex they were born with.

This personal process may include undergoing medical procedures or, as is more likely for school pupils, it may include choosing to dress in a different way as part of the personal process of change.

A person will be protected because of gender reassignment where they:

- *Make their intention known to someone – it does not matter who this is, whether it is someone at school or at home or someone like a doctor:*
 - *Once they have proposed to undergo gender reassignment they are protected, even if they take no further steps or they decide to stop later on*
 - *They do not have to have reached an irrevocable decision that they will undergo gender reassignment, but as soon as there is a manifestation of this intention they are protected*
- *Start or continue to dress, behave or live (full-time or part-time) according to the gender they identify with as a person*
- *Undergo treatment related to gender reassignment, such as surgery or hormone therapy, or*
- *Have received gender recognition under the Gender Recognition Act 2004.*

It does not matter which of these applies to a person for them to be protected because of the characteristic of gender reassignment.

This guidance uses the term ‘transsexual person’ to refer to someone who has the protected characteristic of gender reassignment.”

What does the protection from discrimination cover?

Protection is given from direct and indirect discrimination and victimisation, including discrimination based on perception and on association. The DfE guidance states that:

“Schools need to make sure that all gender variant pupils, or the children of transgender parents, are not singled out for different and less favourable treatment from that given to other pupils. They should check that there are no practices which could result in unfair, less favourable treatment of such pupils.”



What action is required by a school?

The DfE guidance states that although relatively rare for pupils, particularly very young pupils, to want to undergo gender reassignment but that there is evidence that the number of cases is increasing. The guidance rightly points out that where such a situation arises it will need to be handled sensitively.

Much of the guidance available deals with combating bullying. The DfE has published specific guidance on bullying, which includes bullying related to transgender and can be accessed via the following weblink:

<http://media.education.gov.uk/assets/files/pdf/p/preventing%20and%20tackling%20bullying%20%20%20advice%20for%20headteachers%20staff%20and%20governing%20bodies%20december%202011.pdf>

The DfE also point to the Gender Identity Research and Education Society (GIREs) website as a useful source of guidance. GIREs “Guidance on Combating Transphobic Bullying in Schools” refers to the guidance as a toolkit intended to equip schools with the knowledge of how to prevent or deal with transphobic bullying effectively. It can be accessed via the following link: <http://www.gires.org.uk/assets/Schools/TransphobicBullying-print.pdf>

The issues arising are however much wider and include dealing with how the pupils need should be met from a practical and pastoral perspective. A simple example of a practical consideration would, for example be, how the school will deal with use of toilets and changing facilities. The GIREs toolkit, although referred to as a bullying toolkit, does have more than anti-bullying advice, including information about everyday situations which might arise although, whilst the advice is useful it is not exhaustive.

The Church’s guidance

During the passage of the Gender Recognition Bill the CBCEW prepared a Briefing paper. Whilst the Briefing was prepared specifically to respond to the proposal to allow legal recognition of the acquired gender there is reference to the Church’s view of its response to transsexual people. The relevant paragraph, which gives the Catholic perspective on gender reassignment is as follows:

“Transsexual people are fully entitled to help and support from the community, and as people suffering and in need have a special claim to help from the Christian community. In their interests and the promotion of the common good of society, there is a natural response to ease their suffering by providing appropriate medical and psychological help and support, and for those who chose to do so, to ease their life in society when they chose to live permanently as a member of the opposite sex.”



Conclusion

A school of course owes a duty of care to its pupils and is responsible for its pupils' health, safety and welfare. It must therefore, and in accordance with the Church's teachings, look to ensure that its actions are in the best interest of all its pupils. A school is likely to encounter situations where a pupil raises issues concerning gender reassignment very rarely and is therefore unlikely to have sufficient expertise to deal with the complex issues that arise as a result.

It is suggested that should such matters arise a school should seek relevant professional advice, including from medical experts, before any decision can be made as to what measures may need to be put in place to meet the needs of the pupil, fellow pupils and the school and wider community.

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