

GCC and GHLL would like to remind all educational settings of the recent **draft DfE publication 'Gender Questioning Children: Non-Statutory Guidance for Schools and Colleges in England'** which was released on **19 Dec 2023**. There is a consultation on this guidance which is open now for response and will close on **12th March 2024**. The guidance will apply to all schools and further education sector institutions.

The draft guidance has been published alongside a consultation on the proposals. The Government says it wants responses from parents, teachers, headteachers, pupils and clinicians. It is likely to also receive feedback from lawyers and other interested stakeholders.

It is important to read the proposed guidance and respond to the consultation on [the DfE's website](#) (select 'Guidance document' for the draft guidance). The guidance is framed around 5 key principles:

1. Schools have statutory safeguarding duties and need to promote the welfare of all children.
2. School and colleges should be respectful places and bullying is not to be tolerated.
3. Parents should not be excluded from decisions apart from in exceptionally rare circumstances.
4. Schools have legal duties around a child's biological sex.
5. There is no general duty to allow a child to socially transition.

Many of these, in the context of current legislation, are not going to be controversial because they link to existing pieces of guidance and/or legislation such [as Keeping Children Safe in Education](#). It is important to note that the draft guidance is **non-statutory** which means schools and colleges do not have a legal duty to follow it. They do however have a legal duty to comply with the [Equality Act](#) which, by way of reminder, makes it unlawful for schools to discriminate against transgender pupils and prospective pupils in relation to admissions arrangements and offers.

Gender issues in schools/colleges remain a significantly untested area in the courts and the guidance being published may mean that those who hold strong views on either side of this political debate use the final guidance being published to challenge the position taken by the DfE.

Stonewall have produced a guide for schools and colleges - Guidelines to respond to the consultation produced by LGBTQ+ organisations including Gendered Intelligence, LGBT Foundation, Mermaids, and the Trans Learning Partnership <https://www.stonewall.org.uk/our-work/campaigns/support-trans-youth-respond-government-consultation> and are encouraging individuals, as well as schools/colleges and organisations to complete the feedback after thoroughly reading the guidance. The caveat being that this should be in 'their own words' as copying and pasting will be less likely to count.

The consultation runs until 12 March and responses can be provided [here](#).

Meanwhile **do not change your policies in response to the draft guidance** but be aware of and be prepared to review and update current policies, procedures and training to reflect the guidance when published in final form.