

UK Government

Relationships and Sex Education 'RSE'

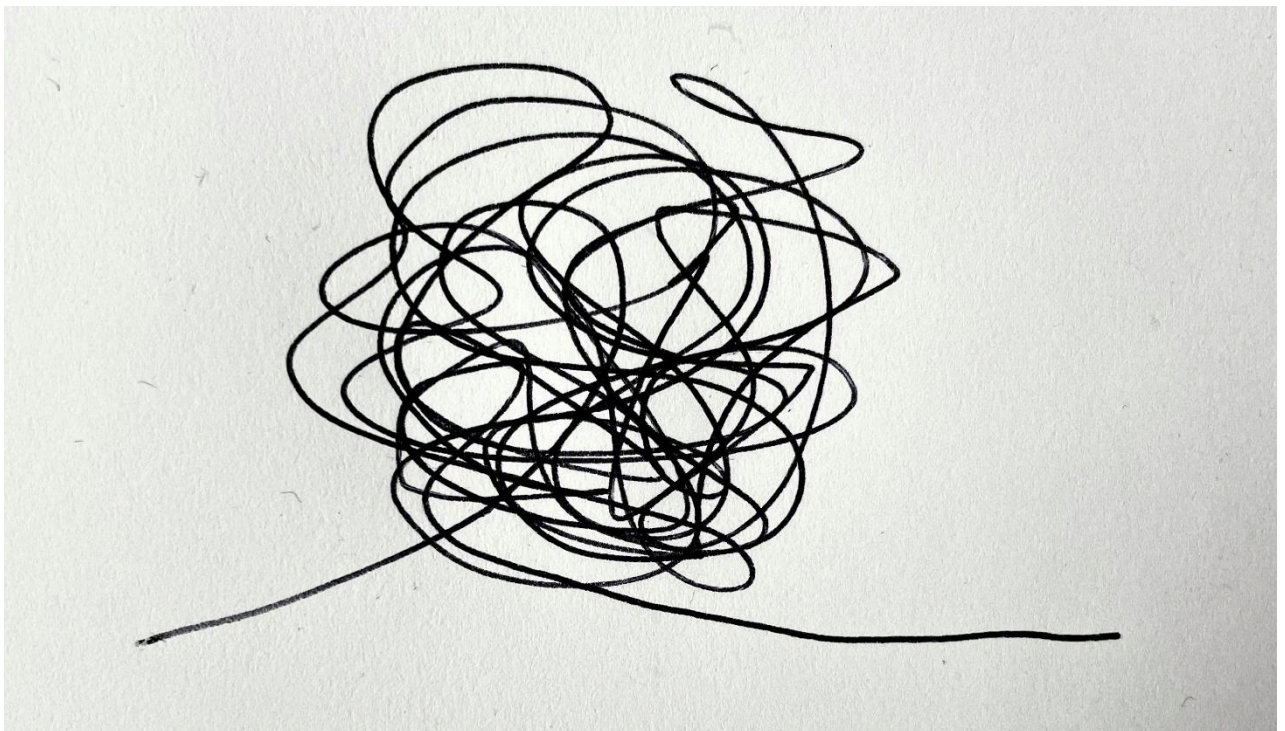
Draft Schools Guidance – May 2024

Section: Gender Reassignment

'The Tangled Knot'

A Commentary by

Robin Moira White



## **Introduction**

On 16 May 2024, UK Education Secretary Gillian Keegan published a draft revised 'Relationships and Sex Education' ('RSE') Guidance for UK schools.

This commentary considers the 'Gender Reassignment' section.

## **Executive summary**

I cannot remember reading four short paragraphs and 282 words from the government that contained such **misinformation, muddle, and sheer madness so tightly**.

It is hard to escape the conclusion that the current UK administration's death throes are producing convulsions that are either designed, calculated, or have the inevitable result of alienating the UK population as a whole.

Stamping down on minorities – in this case, trans children – has always appeared highly distasteful to the British public, and so this is proven.

This commentary takes the draft guidance line by line.

This commentary is hoped to be useful to those responding to the consultation on the draft, which is open until 11 July 2024.

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18 May 2024

## The Text

### Gender Reassignment

43. Pupils should also be taught the law about gender reassignment. Schools should be clear that an individual must be 18 before they can legally reassign their gender. This means that a child's legal sex will always be the same as their biological sex and, at school, boys cannot be legally classified as girls or vice versa.

44. If a child is questioning their gender, schools should refer to the guidance for schools and colleges on gender questioning pupils for more information.

45. Schools should not teach about the broader concept of gender identity. Gender identity is a highly contested and complex subject. It is a sense a person may have of their own gender, whether male, female or a number of other categories. This may or may not be the same as their biological sex. Many people do not consider that they or others have a separate gender identity.

46. If asked about the topic of gender identity, schools should teach the facts about biological sex and not use any materials that present contested views as fact, including the view that gender is a spectrum. Material suggesting that someone's gender is determined by their interests or clothing choices should not be used as it risks leading pupils who do not comply with sex stereotypes to question their gender when they might not have done so otherwise. Where schools decide to use external resources, they should avoid materials that use cartoons or diagrams that oversimplify this complex concept or that could be interpreted as being aimed at younger children. Schools should consult parents on the content of external resources on this topic in advance and make all materials available to them on request.

Preceding / introductory paragraphs of the draft guidance are sensible.

**Para 37** reminds schools of their legal duty under 149 of the Equality Act 2010, the public sector equality duty.

**Para 40 'Lesbian, Gay, Bisexual and Transgender Content'** sensibly states that:

***'Pupils should understand the importance of equality and respect and should learn about the protected characteristics, including sexual orientation and gender reassignment by the end of their secondary education.'***

But when we get to the specific paragraphs about gender reassignment, it all goes horribly wrong:

#### **Paragraph 43**

***'Pupils should also be taught the law about gender reassignment.'***

If taken at face value, this is an ambitious aim. I practice in this area of law, which is complex and subject to legal challenges.

If what is meant is to say that 'gender reassignment' is a protected characteristic, with the same type of protection of sex discrimination, making direct discrimination, indirect discrimination, victimisation and harassment unlawful and giving relevant examples, then why hasn't this been done?

Just as for the 'Gender Questioning Schools Guidance', failure to mention the relevant legal sources – the Equality Act 2010 and the Gender Recognition Act 2004 are significant omissions, of which more later...

***'Schools should be clear that an individual must be 18 before they can legally reassign their gender.'***

True, but misleading. Where is mention of the fact that 'gender reassignment' - the title of this section – applies without age restriction to pupils? The requirements of section 7(1) of the Equality Act 2010 are relatively easily fulfilled:

**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.**

So, a child using a changed name or pronouns or presenting as the opposite sex in dress or hairstyle/makeup ('other attributes of sex') with the requisite intention to transition will have the protection against discrimination that the Equality Act 2010 provides.

That is the law relevant to gender reassignment, but you wouldn't guess it from the defective and deficient guidance.

***'This means that a child's legal sex will always be the same as their biological sex.'***

We have now moved into the realm of the Gender Recognition Act 2004 which does indeed require waiting until aged 18. But what does '*biological sex*' mean? No help is given and it is nowhere defined in the law related to gender reassignment.

***'and, at school, boys cannot be legally classified as girls or vice versa.'***

Maybe so. But pupils with the protected characteristic of gender reassignment will have a clear case for discrimination if forced to dress, be identified or use facilities not appropriate to their gender.

#### Paragraph 44

***'If a child is questioning their gender, schools should refer to the guidance for schools and colleges on gender questioning pupils for more information.'***

Anyone looking to that 'guidance' for help will be sorely disappointed. It explains how to exclude, marginalise and discriminate against trans pupils - how to act unlawfully.

#### Paragraph 45

***'Schools should not teach about the broader concept of gender identity.'***

This is worse than the wording of the infamous s28, which banned the 'promotion' of homosexuality.

'Gender Identity' is now *'the concept that cannot speak its name'*. This is just madness. Where are pupils who think they may be trans, or who want to learn about those members of society who are trans, to turn? How is gender reassignment to be made sense of without understanding that some people assert a gender identity inconsistent with the sex they are assigned at birth?

***'Gender identity is a highly contested and complex subject.'***

Really? Organisations like the World Health Authority, the United Nations, the medical profession, the law of the UK, international treaties signed by the UK government, etc., all use the term.

It is only 'contested' by that small but vocal minority unsupportive of trans people – and those who would run a culture war.

***'It is a sense a person may have of their own gender, whether male, female or a number of other categories. This may or may not be the same as their biological sex.'***

So, it is not really that 'complex' as the above is a perfectly adequate, simple and easy-to-grasp explanation of 'gender identity'.

***'Many people do not consider that they or others have a separate gender identity.'***

We have seen 'many' before in the Gender Questioning Schools Guidance. Who? How many? 6, 60, 600, 6,000? How does this compare with the number of those who do have a gender identity? What number emerged from the national census? Where gender identity and sex assigned at birth are individuals inevitably not going to report an identifiable gender identity?

#### Paragraph 46

***'If asked about the topic of gender identity, schools should teach the facts about biological sex.'***

Which is rather like 'if asked about French, teach German'. And who's facts about biological sex are to be taught?

***'and not use any materials that present contested views as fact, including the view that gender is a spectrum.'***

Virtually every significant concept is contested: evolution; the big bang theory; Conservatism; Communism. So can schools not teach any view that is contested? Was my comment about madness justified?

Presumably, non-binary people and the law as set out by the tribunal in *Taylor v Jaguar Landrover* and *Re AA* (which say that the law on gender reassignment acknowledges that gender IS a spectrum including non-binary people and other complex gender identities, cannot be mentioned? How. Then, referring back to the first line of the first paragraph, is that law on gender reassignment to be taught? Another logical contradiction – more madness.

***'Material suggesting that someone's gender is determined by their interests or clothing choices should not be used as it risks leading pupils who do not comply with sex stereotypes to question their gender when they might not have done so otherwise.'***

I cannot recall seeing any such, although it is challenging to depict children without some stereotypical clothing or behaviour.

***'Where schools decide to use external resources, they should avoid materials that use cartoons or diagrams that oversimplify this complex concept or that could be interpreted as being aimed at younger children.'***

One might think that schools were adept in finding and using age-appropriate materials. If I were an educationalist, I might be especially insulted by this sentence.

***'Schools should consult parents on the content of external resources on this topic in advance and make all materials available to them on request.'***

About the only sentence I can agree with!

### **The elephant in the room**

Is there mention of the s149 public sector equality duty to promote relations between those who share a protected characteristic and those who do not if schools cannot even talk properly about the characteristic?

## **Summary**

This draft guidance is performative, dangerous madness deserving only of being thrown in the wastebin of history along with those who have produced, approved and promoted it.

Anyone who cares about children, schools, education, or the future of our society should respond vigorously to consultation.

**Robin Moira White**

18 May 2024

