



20<sup>th</sup> February, 2020

The Rt. Hon Matt Hancock MP,  
Secretary of State for Health,  
House of Commons,  
London,  
SW1A 0AA

*My dear Matt* —

**Use of single sex wards in NHS hospitals reference the Equality Act of 2010  
and NHS Annex B**

I write to congratulate you very warmly indeed on your re-election and re-appointment as Secretary of State for Health where you have already done a wonderful job for the NHS.

I now turn to the subject of the use of single sex wards and NHS hospital guidelines pertaining to that issue.

As you will of course be aware, NHS guidelines (viz Annex B attached) go considerably further than the 2010 Gender Equality Act to which it refers. The Act specifically excludes hospitals. I suggest that the NHS guidelines not only fail to make that exclusion clear but make it wrongly appear that the Act demands NHS Hospitals inclusion.

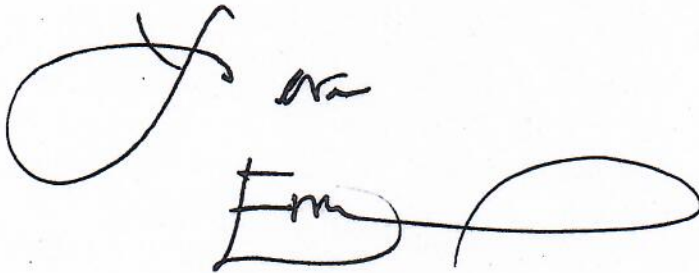
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London  
SW1A 0PW

The Rt. Hon Matt Hancock MP

I do not think it right that the NHS should abrogate to itself Parliament's right and duties of the creation and passing of UK law. Indeed, I think it entirely wrong that the NHS has apparently done so.

I would welcome an early comment from yourself on the large discrepancy that is obvious to those of us who are Parliamentarians since these NHS guidelines are causing distress and upset to many patients and NHS professionals.

A handwritten signature in black ink, consisting of a large, stylized 'N' followed by a smaller 'a' and a long horizontal stroke ending in a loop.

**Baroness Nicholson of Winterbourne**

cc: Sir Simon Stevens  
Chief Executive NHS England

## Comparison between the Equalities Act and NHS Guidelines Annex B

'Annex B: Delivering same-sex accommodation for trans people and gender variant children' misrepresents the legislation it purports to reflect.

The second paragraph of Annex B starts

"Under the Equality Act 2010, individuals who have proposed, begun or completed reassignment of gender enjoy legal protection against discrimination. A trans person does not need to have had, or be planning, any medical gender reassignment treatment to be protected under the Equality Act: it is enough if they are undergoing a personal process of changing gender."

As is clear, instead of quoting the Equality Act 2010 this Guideline paraphrases section 7 (1), which states

"7 (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."

Whilst the need to be proposing to, in the process of, or having completed transition is included, the Guideline omits "by changing physiological or other attributes of sex."

In order to qualify for the protected characteristic of Gender Reassignment within the meaning of the Act the individual must be intent or actively embarked on a process of physiological change. While the Act indicates that this should include surgery, the minimum requirement should be that the individual is taking cross-sex hormones; or can provide evidence to prove that they are planning so to do.



With regard to “changing ... other aspects of sex” since sex is biological this refers to making some kinds of anatomical change.

The Equality Act 2010 as passed into law never intended that individuals could simply self-ID as the sex they are not. Instead the Act established qualifying criteria. Individuals wanting to claim protection from discrimination by virtue of Gender Reassignment had either to be changing aspects of their physiology, or able to prove an established intention so to do.

Proof that the authors of the NHS Guidance have misunderstood Section 7 (1) of the Equality Act 2010 comes in the second half of the second paragraph.

“In addition, good practice requires that clinical responses be patient-centred, respectful and flexible towards all transgender people whether they live *continuously or temporarily* in a gender role that does not conform to their natal sex.”

Section 7 offers nothing whatsoever about living in a gender role. It’s making physical changes (or at least evidence-based intention to do so) A man could wear a frock, rouge and nail gel every day of the week for ten years without qualifying for the protected characteristic of Gender Reassignment according to the Equality Act 2010.

It must be concluded that the NHS Hospital Guidelines contained in its Appendix B are significantly divorced from both the wording and intent of the legislation it claims to reflect.

Baroness Nicholson of Winterbourne  
27.01.2020

# Annex B: Delivering same-sex accommodation for trans people and gender variant children

Transgender, or trans, is a broad, inclusive term referring to anyone whose personal experience of gender extends beyond the typical experiences of their assigned sex at birth. It includes those who identify as non-binary.

Under the Equality Act 2010, individuals who have proposed, begun or completed reassignment of gender enjoy legal protection against discrimination. A trans person does not need to have had, or be planning, any medical gender reassignment treatment to be protected under the Equality Act: it is enough if they are undergoing a personal process of changing gender. In addition, good practice requires that clinical responses be patient-centred, respectful and flexible towards all transgender people whether they live *continuously or temporarily* in a gender role that does not conform to their natal sex. General key points are that:

- Trans people should be accommodated according to their presentation: the way they dress, and the name and pronouns they currently use.
- This may not always accord with the physical sex appearance of the chest or genitalia.
- It does not depend on their having a gender recognition certificate (GRC) or legal name change.
- It applies to toilet and bathing facilities (except, for instance, that pre-operative trans people should not share open shower facilities).
- Views of family members may not accord with the trans person's wishes, in which case, the trans person's view takes priority.

Those who have undergone transition should be accommodated according to their gender presentation. Different genital or breast sex appearance is not a bar to this,



since sufficient privacy can usually be ensured through the use of curtains or by accommodation in a single side room adjacent to a gender appropriate ward. This approach may be varied under special circumstances where, for instance, the treatment is sex-specific and necessitates a trans person being placed in an otherwise opposite gender ward. Such departures should be proportionate to achieving a 'legitimate aim', for instance, a safe nursing environment.

This may arise, for instance, when a trans man is having a hysterectomy in a hospital, or hospital ward that is designated specifically for women, and no side room is available. The situation should be discussed with the individual concerned and a joint decision made as to how to resolve it. In addition to these safeguards, where admission/triage staff are unsure of a person's gender, they should, where possible, ask discreetly where the person would be most comfortably accommodated. They should then comply with the patient's preference immediately, or as soon as practicable. If patients are transferred to a ward, this should also be in accordance with their *continuous* gender presentation (unless the patient requests otherwise).

If, on admission, it is impossible to ask the view of the person because he or she is unconscious or incapacitated then, in the first instance, inferences should be drawn from presentation and mode of dress. No investigation as to the genital sex of the person should be undertaken unless this is specifically necessary to carry out treatment.

In addition to the usual safeguards outlined in relation to all other patients, it is important to take into account that immediately post-operatively, or while unconscious for any reason, those trans women who usually wear wigs, are unlikely to wear them in these circumstances, and may be 'read' incorrectly as men. Extra care is therefore required so that their privacy and dignity as women are appropriately ensured.

Trans men whose facial appearance is clearly male, may still have female genital appearance, so extra care is needed to ensure their dignity and privacy as men.

Non-binary individuals, who do not identify as being male or female, should also be asked discreetly about their preferences, and allocated to the male or female ward according to their choice.



Trans men and non-binary individuals can become pregnant and should be treated with dignity while using maternity services.

Further advice on providing services to trans people can be found in [Providing services for transgender customers](#) on GOV.UK.

### **Particular considerations for children and young people**

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Gender variant children and young people should be accorded the same respect for their self-defined gender as are trans adults, regardless of their genital sex.

Where there is no segregation, as is often the case with children, there may be no requirement to treat a young gender variant person any differently from other children and young people. Where segregation is deemed necessary, it should be in accordance with the dress, preferred name and/or stated gender identity of the child or young person.

In some instances, parents or those with parental responsibility may have a view that is not consistent with the child's view. If possible, the child's preference should prevail even if the child is not Gillick competent.

More in-depth discussion and greater sensitivity may need to be extended to adolescents whose secondary sex characteristics have developed and whose view of their gender identity may have consolidated in contradiction to their sex appearance. It should be borne in mind that many trans adolescents will continue, as adults, to experience a gender identity that is inconsistent with their natal sex appearance, so their current gender identity should be fully supported in terms of their accommodation and use of toilet and bathing facilities.

It should also be noted that, although rare, children may have conditions where genital appearance is not clearly male or female and therefore personal privacy may be a priority.