

28 April 2022

By email from: info@forwomen.scot
to: cabsecsjhlhg@gov.scot
cc: scotland@equalityhumanrights.com,
falknerk@parliament.uk

Dear Ms Robison,

We note that in your statement to Parliament on 03 March 2022 you made the following comments:

“the 2010 act does not apply exceptions specifically to toilets and changing rooms. Trans people can and do use those now, whether they have a GRC or not, and they have been using them for many years.”

“trans people do not need to have legal gender recognition or a certificate in order to access facilities that align with their gender.”

“On what Ruth Maguire outlined could be said of the current process—which trans people have used for years, with no evidence of widespread harm—although we may refer to facilities such as toilets and changing rooms as single-sex spaces, they are not legally defined as such under the Equality Act 2010 and, of course, GRCs are not necessary to access them.”

Contrary to your statements, the Equality Act does define and apply single-sex exceptions at [Schedule 3, Part 7, Para 27\(6\)](#) which encompasses the provision of toilets and changing rooms where they are used by more than one person at the same time and where people might reasonably object to the presence of members of the opposite sex. This section of the Act is applied as an everyday norm and such provision of single-sex toilets has been commonplace for over a hundred years. Service providers opting to use these exceptions provide two separate facilities, with distinct signage for male and female service users. Para 29 confirms this is not discrimination on grounds of gender reassignment.

Furthermore, the [Building Standards Handbook](#) recommends separate male and female sanitary accommodation in non-domestic buildings, and both the [Workplace \(Health, Safety and Welfare\) Regulations 1992](#) and the legislation covering toilet provision in schools [School Premises \(General Requirements and Standards\) \(Scotland\) Regulations 1967](#) mandate separate single-sex provision.

It is quite clear that single-sex toilet provision is covered by numerous laws and is the standard throughout schools, workplaces and public buildings. These are provided on the

basis of the protected characteristic of “sex” in the Equality Act which the recent court ruling in [For Women Scotland v The Scottish Ministers](#) has clarified that where provisions are made for women they, by definition, exclude those who are biologically male.

It is unclear why you would confusingly state that although we may refer to toilets and changing rooms as single-sex spaces, trans people can access the facilities that align with their gender - as this would clearly mean the spaces are no longer single-sex. There is no legal basis to provide facilities for “gender”, however that may be defined. Gender has no place in the Equality Act and where the single-sex exceptions are justifiably used they are on the basis of sex: those of the opposite sex, including those with the additional protected characteristic of gender reassignment, are legally excluded. The vast majority of trans people respect the application of this law.

The societal change we discussed in our meeting of 18 January referred to the erosion and undermining of women’s and girls’ services as exemplified by your statement, whereby providers follow the messages from the Scottish Government that perhaps single-sex services can be based on self-identification of sex or “gender”. This has led to worrying policy changes by public bodies and even signs appearing in women’s toilets and changing rooms with instructions not to challenge anyone who looks like they do not belong there. This inevitably leads to women feeling unable to speak up or seek support in challenging the presence of somebody who is very obviously male, and ultimately results in women and children self-excluding from these spaces.

By way of contrast we were pleased that some single-sex services are supported by the Government, namely those around intimate and trauma related care. You quite rightly pointed out that the Equality Act Explanatory Notes give an example of a group counselling session for female victims of sexual assault whereby trans people can be legally excluded. However, [para 738](#) of the Explanatory Notes also specifies the example of “separate male and female changing rooms to be provided in a department store” which makes your statement that trans people can use these spaces in line with their gender erroneous.

With regard to the misinformation given to Parliament on the use of the single-sex exceptions for toilets and changing rooms, we would be grateful if the public record is corrected accordingly. It is important to women that the Government indicates it is fully supportive of all our rights in the Equality Act.

A further comment made to Parliament has astounded many women with its absurdity, namely: “There is no evidence that predatory and abusive men have ever had to pretend to be anything else to carry out abusive and predatory behaviour.”

We would hope it is self-explanatory that this is clearly false; all predatory men pretend to be trustworthy members of society in order to gain access to victims. Predatory men will do absolutely anything, including train to be priests, teachers or charity workers, etc, just to be in a position to abuse women and girls.

In their evidence to a Westminster committee the [British Association of Gender Identity Specialists](#) said “It has been rather naïvely suggested that nobody would seek to pretend transsexual status in prison” and cited “a plethora of prison intelligence information

suggesting that the driving force was a desire to make subsequent sexual offending very much easier, females being generally perceived as low risk in this regard". Indeed, it was very recently [reported](#) in The Times that trans inmates in Scottish prisons "reverted back" to male after serving sentences in female prisons.

When you made the identical comment at our meeting in January we suggested it was an incredibly naive view. We pointed out that when the UK Government are proposing to limit the ability of sex offenders to change their name it is extraordinary that Scotland is moving in the opposite direction by providing such men with birth certificates recording a new name and sex, and with additional privacy protections to prevent disclosure of previous identity.

Once again, we note that women's well-evidenced concerns have not been listened to, and we request that the inaccuracy in the official record be corrected on this point.

A copy of this letter has also been sent to Baroness Falkner and EHRC Scotland.

Kind regards,

Trina Budge
Co-director, For Women Scotland