

TOILETS

Despite clear legislation on the requirement to provide single-sex toilets in schools many local authorities across Scotland are replacing these with mixed-sex (gender-neutral) facilities, often without prior consultation with pupils or parents. It is one of the first requirements when schools sign up for LGBT Youth's Charter Award.

- ➔ [School Premises \(General Requirements and Standards\) \(Scotland\) Regulations 1967](#) states half the sanitary accommodation shall be for boys, and the other half for girls. There is no provision for unisex, mixed-sex or gender-neutral facilities.
- ➔ A [legal opinion](#) by Aidan O'Neill KC states there is an enforceable requirement for local authorities to provide separate toilets for boys and girls under their legal obligations to prohibit harassment related to sex (Equality Act schedule 3, s26 and s85(3)).
- ➔ Musselburgh Grammar abolished plans for shared toilets after seeking independent legal advice. However, many schools have forged ahead and there are numerous accounts of bullying, period shaming, sexual abuse and children not drinking so as to avoid the toilets. One girl suffered a head injury after a boy kicked in the cubicle door to photograph her.

As Gender Recognition Certificates are only available to those over the age of 18, there is no relevance to schools. Pupils remain of their birth sex and should be treated as such under the Equality Act.

Pupils may hold the protected characteristic of gender reassignment, but the right not to suffer discrimination on these grounds is not the same as a right of access to facilities provided for the opposite sex.

Workplaces:

- ➔ [The Workplace \(Health, Safety and Welfare\) Regulations 1992](#) states: "separate rooms containing conveniences are provided for men and women except where and so far as each convenience is in a separate room the door of which is capable of being secured from inside."

Public buildings:

- ➔ [The building standards technical handbook 2019: non-domestic](#) states: "Separate male and female sanitary accommodation is usually provided...Unisex sanitary accommodation may be provided where each sanitary facility, or a WC and wash hand basin, is located within a separate space, for use by only one person at a time, with a door that can be secured from within for privacy."

Case law:

- ➔ [FWS1 v Scottish Ministers](#) ruled that biological males are, by definition excluded from provision made for women. However, the lower court in [FWS2](#) later decided biological males with a GRC are included in the definition of woman. Equality Act exceptions should still allow their exclusion from women's single-sex spaces but this is complex and contested. **Until the appeal of FWS2 is resolved all we can say with certainty is that GRC holders may access opposite sex facilities.** Those without GRCs remain their birth sex; "gender identity" is irrelevant.

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