

24 February 2025

By email from: info@forwomen.scot
to: CabSecES2024@gov.scot

Dear Ms Gilruth,

With the Sandie Peggie v NHS Fife case featuring prominently in the media and discussed in Parliament we wish to draw your attention to the obvious parallel with the widespread failure of Scottish schools to ensure provision of separate sex facilities for pupils.

Just as a failure to uphold the Workplace (Health, Safety and Welfare) Regulations 1992 can give rise to discrimination and harassment under the Equality Act 2010 on grounds of sex, so too can a failure by local authorities to comply with the School Premises (General Requirements and Standards) (Scotland) Regulations 1967. These regulations expressly provide for a minimum number of separate toilet and washing facilities for girls and boys (where a certain proportion shall be urinals), and apply to all schools.

Over the last decade many local authorities have failed to meet the regulations and mixed-sex toilets in schools have become prevalent, introduced either as the only option provided when schools are refurbished or newly built, or by teachers following Scottish Government guidance¹ to allow children who assert a trans identity to use toilets designated for the opposite sex. Both of these breach the school premises regulations. It is also a matter of law that those without a Gender Recognition Certificate remain of their sex registered at birth² and since it is not possible for those under the age of 18 to apply for a GRC, no school child should be treated as anything other than their sex.

The consequences of these practices are that many children, particularly girls, feel too uncomfortable or embarrassed to use toilets shared with the opposite sex and are not drinking, going elsewhere during lunch break, or holding on until the end of the school day, all of which can cause health issues. Bullying is common and serious incidents reported include cubicle doors kicked in, camera use and sexual harassment of girls.

We published two reports³ last year based on a series of Freedom of Information requests which found that 53 of the 359 local authority secondary schools unlawfully have mixed-sex toilets, either exclusively or in combination with single sex provision. The situation in primary schools may be even worse, as indicated by just one council who stated over 40% of their primaries have mixed-sex toilets.⁴ Almost all schools with separate sex toilets follow the

¹ Page 27: [Supporting transgender young people in schools: guidance for Scottish schools](#)

² §56: [For Women Scotland v The Scottish Ministers \[2023\] CSIH 37](#)

³ [What's Happening in Your Child's Classroom?](#) and [What's Happening to Your Child's School Toilets?](#)

⁴ 29 out of the 70 primary schools in Argyll & Bute have mixed-sex toilets: Daily Mail, 22 August 2022, [Girls left 'humiliated' by gender neutral loos in schools](#)

Scottish Government trans guidance with at least 60% of schools allowing pupils to use toilets provided for the opposite sex. Only 13% resolved the issue by finding alternative private toilets where needed.

We warned of the extensive breaches of the Equality Act and school premises regulations in a letter to the First Minister, John Swinney, on 27 June 2024, of which you were also sent a copy.⁵ The response was inadequate⁶ and we are extremely disappointed no remedial action was taken. Perhaps if it had, the subsequent incident⁷ in a Dundee school where a teenage boy was charged after a hidden video phone was discovered in mixed-sex toilets could have been averted.

Many parents have raised complaints, not just about the toilet arrangements in their children's school, but also similar discrimination and harassment failings in changing rooms, overnight accommodation and sports, with several that may shortly be progressing towards the courts. It's not difficult to predict the forthcoming headlines unless immediate steps are taken to ensure compliance with the law.

We call on you to:

- Make an urgent unequivocal statement supporting the rights of pupils and staff to expect separate sex facilities in school.
- Immediately withdraw the Scottish Government guidance "Supporting transgender young people in schools: guidance for Scottish schools". Any replacement guidance should recognise other children's rights and the Cass Review. Activist groups that have misrepresented the law to schools such as LGBT Youth Scotland, Equality Network and Stonewall should not be involved in the drafting, and any new version should be subject to public consultation.
- Remind all local authorities of the school premises regulations and their non-harassment obligations under the Equality Act.
- Direct local authorities to review the new schools currently under construction to ensure separate sex toilets and changing rooms are provided. We estimate eight schools in the Phase 2 of the Scottish Government's LEIP⁸ are due for completion in 2025 with another nine in 2026. The floor plans of these new build schools, with one exception, all have mixed-sex facilities.
- Direct local authorities to initiate a programme to bring all schools that currently have mixed-sex facilities in line with the school premises regulations.

Copies go to First Minister, John Swinney MSP; Chair of the EHRC, Kishwer Falkner and EHRC Scotland Commissioner, Lesley Sawers.

Yours sincerely,

Trina Budge, Marion Calder and Susan Smith
Directors, For Women Scotland

⁵ [Letter from FWS to First Minister, John Swinney MSP, 27 June 2024](#)

⁶ [Scottish Government reply to FWS, 11 July 2024](#)

⁷ Telegraph, 20 December 2024, [Unisex loos policy allowed boy to secretly film schoolgirls, says mother](#)

⁸ [Learning Estate Investment Programme - Phase 2](#)