

11 March 2025

By email from: [info@forwomen.scot](mailto:info@forwomen.scot)  
to: [CabSecES2024@gov.scot](mailto:CabSecES2024@gov.scot)

Dear Ms Gilruth,

Thank you for your response of 07 March 2025. You are correct that the Scottish Government 'Supporting Transgender Pupils in Schools' guidance states, on page 26, that "Toilet facilities for boys and girls must be provided in schools".<sup>1</sup> However, the guidance tellingly omits any mention of the applicable law, the School Premises (General Requirements and Standards) (Scotland) Regulations 1967 which states not just that toilets must be provided in schools, but mandates half the sanitary accommodation must be for girls and the other half for boys (where not more than one third of the appliances for boys shall be WCs and the remainder shall be urinals).

There are two ways in which schools are breaching the School Premises Regulations. The first occurs during refurbishment, or new school construction, where urinals are removed from the boys toilet accommodation to allow the creation of mixed-sex communal facilities containing only WC cubicles. Freedom of information responses show 53 secondary schools currently, and unlawfully, provide mixed-sex toilets for pupils.<sup>2</sup> A search of council planning documents shows a further 17 Scottish Government funded new build schools with mixed-sex toilets that are due for completion within the next two years. A full list of these schools is provided at the end of this letter. We note this issue was not addressed in your response and would reiterate the request in our letter of 24 February for you to take urgent steps to remedy this clear breach of the legislation.

The second way a breach occurs is when schools follow the advice in the Government guidance to allow pupils to "use the facilities they feel most comfortable with" (page 27) thereby creating mixed-sex facilities. Our research shows at least 60% of secondary schools do so, with the following image depicting a typical response from a local authority. Only 13% of schools correctly resolve any pupil's distress at using the toilets designated for their sex by providing alternative single-user toilets rather than allowing access to toilets provided for the opposite-sex.<sup>3</sup>

---

<sup>1</sup> Scottish Government: [Supporting Transgender Pupils in Schools](#)

<sup>2</sup> For Women Scotland: [What's Happening to Your Child's School Toilets?](#)

<sup>3</sup> For Women Scotland: [What's Happening in Your Child's Classroom?](#)

**4. Does the school allow a child who identifies as a different gender to their sex to:**

*Use toilets defined according to their new gender, rather than their biological sex?*

Yes. 'Supporting Transgender Pupils in Schools: Guidance for Scottish Schools' would be followed.

*Use changing rooms according to their new gender, rather than their biological sex?*

Yes. 'Supporting Transgender Pupils in Schools: Guidance for Scottish Schools' would be followed.

*Take part in sporting activities according to their new gender, rather than their biological sex?*

Yes. 'Supporting Transgender Pupils in Schools: Guidance for Scottish Schools' would be followed.

It is a matter of law that those without a Gender Recognition Certificate remain of their sex registered at birth and have no right of access to services or facilities provided for the opposite sex. This is clearly specified at §56 in the ruling by the Court of Session Inner House in *For Women Scotland v Scottish Ministers*.<sup>4</sup> This was not appealed by the petitioners or cross-appealed by the Scottish Ministers and is now final and settled law in Scotland. The only point under appeal and currently awaiting judgment by the UK Supreme Court relates to the status of GRC holders and, no matter the judgment, it has no bearing in schools since those under the age of 18 cannot apply for a GRC.

To be clear, a child claiming to identify as the opposite sex, having a “gender identity”, or holding the protected characteristic of gender reassignment is insufficient to place that child within the category of the opposite sex in law. While alternative accommodations may be made for them this cannot include allowing access to toilets designated solely for use by the opposite sex.

It is beyond doubt that the Government school guidance is inconsistent with the rule of law on this point and we question if the Scottish Ministers are carelessly misrepresenting the law or deliberately acting in contempt of the Inner House.

Each of these two types of breaches of the School Premises Regulations creates mixed-sex toilets and it is this which gives rise to consequential breaches of the Equality Act - not under the single-sex exceptions - but under the legal duty of local authorities to prevent discrimination and harassment related to pupils' protected characteristic of sex.<sup>5</sup>

A legal opinion from Aidan O'Neill KC confirmed the non-harassment duty and concluded there is “an enforceable legal obligation on both local authority and private co-educational schools in Scotland to make provision for separate toilets for boys and girls both in the interests of respect for privacy, preserving decency, preventing trauma and/or ensuring health and safety particularly of girl pupils; and to avoid creating what girl pupils in particular might perceive and experience as an intimidating, hostile, degrading, humiliating or offensive environment for them”.<sup>6</sup>

<sup>4</sup> §56: [For Women Scotland v The Scottish Ministers \[2023\] CSIH 37](#)

<sup>5</sup> Equality Act 2010: [section 85\(3\)](#) and [section 26](#)

<sup>6</sup> §3.1: Aidan O'Neill KC, [The Equality Act 2010 and the provision, on a sex-segregated basis, of toilets for school pupils in schools in Scotland](#)

In addition, Dr Claire Methven O'Brien, Commissioner for the Scottish Human Rights Commission, has noted that the failure to ensure provision of single-sex toilets means schools are failing to meet their obligations under a number of international treaties including the UN Convention on the Rights of the Child, CEDAW, the Istanbul Convention, the Human Rights Act and the Beijing Declaration.<sup>7</sup>

We do not think it is fair or reasonable for the Scottish Government to expect a young child and their family to pursue expensive and onerous legal action in order to enforce their fundamental right to single-sex facilities at school. The responsibility ultimately lies with the Scottish Government to fulfill its obligations. A Scottish Minister lodged a motion today which stated "the Scottish Government fully upholds the Equality Act 2010, and requires all public bodies to comply with the law, and welcomes the role of the Equalities and Human Rights Commission in providing codes of practice and guidance".<sup>8</sup> These are oft repeated words yet are simply meaningless unless backed up by deeds. We therefore repeat the calls from our previous letter for you to take immediate steps to ensure school toilet provision is brought in line with the law.

Copy goes to First Minister, John Swinney MSP; John Wilkes, Head of Scotland and Kishwer Falkner, Chair of the Equality and Human Rights Commission; Jan Savage, Executive Director, Scottish Human Rights Commission

Yours sincerely,

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

---

<sup>7</sup> Dr Claire Methven O'Brien: [Letter to Scotland's First Minister International Women's Day 2025](#)

<sup>8</sup> Shirley-Anne Somerville: [Amendment to the motion Protecting single-sex spaces in the public sector](#)

## **SECONDARY SCHOOLS WITH MIXED-SEX TOILETS**

1. Alford Academy - Aberdeenshire
2. Ellon Academy - Aberdeenshire
3. Fraserburgh Academy - Aberdeenshire
4. Inverurie Academy - Aberdeenshire
5. Kemnay Academy - Aberdeenshire
6. Mackie Academy - Aberdeenshire
7. Mearns Academy - Aberdeenshire
8. The Gordon Schools - Aberdeenshire
9. Westhill Academy - Aberdeenshire
10. Arbroath Academy - Angus
11. Brechin High School - Angus
12. Forfar Academy - Angus
13. Lochgilphead High School - Argyll and Bute
14. Rothesay Academy - Argyll and Bute
15. Alloa Academy - Clackmannanshire
16. Dalbeattie Learning Campus - Dumfries and Galloway
17. Kirkcudbright Academy - Dumfries and Galloway
18. Moffat Academy - Dumfries and Galloway
19. North West Community Campus - Dumfries and Galloway
20. St Joseph's College - Dumfries and Galloway
21. Harris Academy - Dundee
22. Robert Burns Academy - East Ayrshire
23. James Gillespie's High School - Edinburgh
24. Liberton High School - Edinburgh
25. Portobello High School - Edinburgh
26. Queensferry High School - Edinburgh
27. Trinity Academy - Edinburgh
28. Wester Hailes Education Centre - Edinburgh
29. Grangemouth High School - Falkirk
30. Larbert High School - Falkirk
31. Levenmouth Academy - Fife
32. Lochgelly High School - Fife
33. Madras College - Fife
34. Viewforth High School - Fife
35. Waid Academy - Fife
36. Lossiemouth High School - Moray
37. Garnock Community Campus - North Ayrshire
38. Largs Academy - North Ayrshire
39. Bertha Park High School - Perth and Kinross
40. Blairgowrie High School - Perth and Kinross
41. Breadalbane Academy - Perth and Kinross
42. St John's RC Academy - Perth and Kinross
43. Berwickshire High School - Scottish Borders
44. Jedburgh Grammar - Scottish Borders
45. Kelso High School - Scottish Borders
46. Mid Yell Junior High School - Shetland

47. Marr College - South Ayrshire
48. Queen Margaret Academy - South Ayrshire
49. Wallace High School - Stirling
50. Dumbarton Academy - West Dunbartonshire
51. Sinclair Academy - West Lothian
52. West Calder High School - West Lothian
53. Winchburgh Academy - West Lothian

**NEW SCHOOLS FUNDED BY SCOTTISH GOVERNMENT LEARNING ESTATE  
INVESTMENT PROGRAMME (PHASE 2) WITH MIXED-SEX TOILETS /  
NON-COMPLIANCE WITH REGS**

**Opening 2025:**

1. Monifieth High School - Angus
2. East End Campus - Dundee
3. Broadford Primary School - Highland
4. Mayfield Primary School Campus - Midlothian
5. Perth High School - Perth & Kinross
6. Galashiels Academy - Scottish Borders
7. Peebles High School - Scottish Borders

**Opening 2026:**

8. Dumfries High School - Dumfries & Galloway
9. Liberton High School - Edinburgh
10. Wester Hailes Education Centre - Edinburgh
11. Inverkeithing High School - Fife
12. Gaelic Primary School - Glasgow
13. Nairn Academy - Highland
14. Paisley Grammar Community Campus - Renfrewshire
15. Callander Primary School - Stirling
16. Faifley Campus - West Dunbartonshire

**Opening 2027:**

17. Penicuik High School - Midlothian