

Draft Policy Statement Hygiene Facilities City of Edinburgh Council – For Women Scotland response

About FWS

For Women Scotland is a not-for-profit organisation working to protect women and children's rights. We secured the landmark UK Supreme Court judgment providing clarity on the definition of sex as a biological term in the Equality Act 2010.

Legal Accuracy

Paragraph 1.1 of the draft policy contains an inaccurate statement about the Supreme Court judgment. It is not correct that the court ruled “the term sex refers to a person's sex assigned at birth only”. The court ruled that sex means biological sex (see paras 171 and 264 of the [judgment](#)). This is not the same as ‘sex assigned at birth’, which is a nonsensical phrase – the sex of a newborn baby is observed, not assigned by a doctor.

Paragraph 1.2 repeats this error and also introduces confusing terminology which is not part of either the Supreme Court ruling or the Equality Act 2010. Only those people with a Gender Recognition Certificate have an “acquired” gender. It is unclear what “affirmed” gender is, and we're not at all sure which of the male or female toilets are associated with the affirmed gender of “non-binary” people.

It may be better to clarify that people with the protected characteristic of gender reassignment have the presumed right of access to the facilities in line with their biological sex. If some are not comfortable using those facilities, or have been excluded (in rare case-by-case situations), then alternative facilities may be required.

Hygiene Facilities

An article in the [Sunday Post](#) provides a timely illustration of the need for separate sex facilities. Research revealed almost 100 sexual crimes against women and girls at Scottish swimming pools and leisure centres over a two year period, including rape, sexual assault and voyeurism. Every recorded offence was at a venue with mixed sex, village-style shared changing with individual cubicles. Not one was recorded at a centre with separate sex facilities.

Women and girls should never be put in a position where their safety, privacy and dignity is treated as secondary in public facilities. It is paramount that the Council's review of facilities does not lead to a reduction in the availability of separate sex provision and priority should be given to returning any existing mixed sex facilities to separate sex. The recent case of [DE and FG v West Lothian Council](#) confirmed that mixed sex facilities amounted to indirect sex discrimination under the Equality Act and, until this is resolved, the council remains at risk of litigation.

We agree with the first two points in section 2.1 of the draft policy, ie. where single-sex facilities are required by law they must be provided, and facilities with multiple cubicles and a shared sink area must be designated as single-sex. As part of the review, it would be prudent to check that the number of sanitary appliances provided in a building separately for

each sex has not fallen below the numbers stipulated in section 3.12 of the [Building Standards Technical Handbook \(Non-domestic\)](#).

The third point is less clear. Cubicles are not rooms. A self-contained room with a toilet and sink with a lockable door accessed from an open public area, and designated for use by either sex is fine. However, cubicles within a room – regardless of whether they contain a sink and have floor to ceiling partitions – is a mixed sex facility and carries heightened risks for women and girls. In the above case, at para 47, the court found that the shared waiting area outside such cubicles to be an integral part of the toilet space. Many parents would consider it unsafe to allow their young daughter to go to the toilet by herself and potentially be alone in a room with several men. It would also make it difficult for a mother to use the toilet herself, as this is often done with the cubicle door slightly open to keep an eye on the baby in a buggy or toddlers waiting outside. It is entirely foreseeable that some users, in particular women and girls, would experience such mixed sex toilets as discriminatory or amounting to harassment (hostile environment, etc) on the basis of sex.

We would also stress two further health and safety issues which merit significantly more consideration. Firstly, fully enclosed cubicles present a safety risk for all users. It is not possible to visibly check whether someone is inside, how many people are inside, nor to be sure if a person inside can hear or is able to respond to a knock on the door. Opportunities are greatly increased for drug and alcohol use, sexual activities and pushing others into cubicles and locking the door behind them. It is harder for calls for help to be heard. Importantly, people often retreat to the toilets when feeling unwell which means, statistically, toilets are places of high risk for emergencies. Yet without safety gaps around cubicles a person who has collapsed and in need of medical attention can go unnoticed for a considerable period of time. Unfortunately, this has already tragically happened, including at [Edinburgh City Chambers](#).

Secondly, a recent study (reported in the [Telegraph](#)) on bacteria in various hospital toilets in Lanarkshire found that self-contained toilets used by both men and women carried the most germs, with a far higher microbial burden – including drug resistant superbugs – than either of the single-sex male or female toilets. This is primarily due to aerosolised droplets from toilet flushing contaminating the sink and hand dryer enclosed within the cubicle/room. The researchers said “the findings were a warning against replacing single-sex lavatories with unisex [mixed sex] models”. Lavatories for women were found to carry far fewer microbes than those for men which, although common knowledge for most people, indicates the benefit to women’s health of maintaining separate sex toilets with sinks outside the cubicles.

It follows on from these health and safety issues that it is best practice to incorporate accessible larger cubicles within each of the separate male and female facilities where possible, with additional self-contained accessible rooms elsewhere for when more space is required or an opposite sex carer is attending. If there is capacity to refurbish separate sex toilets in this way it may be possible to reallocate a proportion of existing self-contained accessible rooms for wider public use.

For the final two points in section 2.1, we appreciate the benefit to those people with the protected characteristic of gender reassignment by providing additional gender-neutral facilities where proportionate and practical. It should, however, be made clear what is meant

by “gender-neutral”. As above, additional self-contained rooms to be used by either sex is to be welcomed, but we often find the term gender-neutral refers to mixed sex facilities with cubicles, and this should be avoided.

Clear Signage and Complaints Policy

For many years numerous trans activist groups have wrongly advised their members and organisations, including local authorities, that men who self-identify as women are permitted to use women-only toilets. This has continued since the Supreme Court ruling and we are also aware of men who have publicly stated their intention not to comply with the law. As a result, women occasionally encounter men in the toilets and some have self-excluded or changed their practices in using public toilets as a result. Clear signage asking the public not to attempt to use toilets for the opposite sex and indicating the provision of alternative single-user/gender-neutral toilets would be helpful. Training for staff on the correct legal position, how to resolve complaints, and a sign with information on how to report any men using the women-only facility would go a long way to restoring public confidence.



*For Women Scotland
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