



## Toilet provision for men and women

### Input to Technical Review

January 2021

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# Summary

- **The case for separate sex toilets is well established;** based on hygiene, security, dignity, privacy and deterrence of anti-social behaviour and crime.
- **Regulations already call for separate sex toilets.** They cover public toilets, toilets in workplaces, schools, licensed venues, and new or renovated buildings. They require toilets to be segregated by sex, unless they are provided as a unisex design (i.e. fully enclosed rooms).
- **The Equality Act allows single and separate services in many common situations,** including toilets. It does not require that people are able to access opposite sex services on the basis of their gender identity or gendered clothing.
- **Separate sex toilets are preferred by most people.** Providing an additional unisex option is also good practice.
- **People should be able to easily tell which toilets and washrooms they are permitted to use.** This requires clear policies and signage.
- **Some organisations are replacing their separate sex toilets with unisex (“gender neutral”) facilities, or replacing clear sign signage with ambiguous messages.** This disadvantages women and children in particular, and may be in breach of health and safety regulations.
- **Organisations are doing this because they feel unable to communicate clear sex-based rules.** Guidance from official sources and advocacy organisations to change sex for “gender identity” is unlawful and unworkable and creates uncertainty and potential for conflict. It undermines inclusion.
- **Toilets don’t need to be a battleground. Organisations should retain separate sex toilets, with clear rules and signage, and offer a unisex option where possible.** Many organisations do this already. Clear guidance on these principles would give confidence to all.

## Summary of recommendations

The Ministry of Housing Communities and Local Government should:

1. **Issue clear, simple principles** on the provision and communication of separate sex and unisex toilets. We offer a suggested set of principles (see page 53).
2. **Work with stakeholders, including organisations representing women, older people, parents, trans and disabled people as well as service providers, to develop a simple public communication resource** about what signs mean, what facilities people of either sex can use, and what they can expect from service providers.
3. **In particular, communicate to trans rights organisations, and medical and legal institutions supporting people with gender dysphoria**, that they should not advise their clients to use opposite-sex facilities as a means of diagnosis or gender identity validation.
4. **Issue guidance for relevant public institutions - they should not seek certification on diversity and inclusion from organisations that do not consider all nine protected characteristics in the Equality Act.**
5. **Call on the EHRC to revise its guidance and offer clear, workable guidance on separate-sex and unisex facilities in relation to the Equality Act.**

# 1. Introduction

## Sex Matters

1. Sex Matters is a not-for-profit organisation that campaigns and advocates for clarity about sex in language, policy and law, in order to safeguard everybody's human rights, health, safety and dignity.
2. The Ministry of Housing, Communities and Local Government is undertaking a technical review on increasing accessibility and provision of toilets for men and women, recognising that toilets, both in municipal and private-sector buildings, are an important facility for members of the public, in particular women, those with children, older people and disabled people.
3. This technical input is long, because the issue of who can use which toilets has become overly complicated in recent years due to ambiguous language and misleading guidance about what the law says. However, the solution is simple (and doesn't require a change in law or major building work): toilets don't have to be a battleground. Clear guidance, policies and signage about which toilets are single sex, and where there is a unisex option, lets everyone use the facilities in privacy and certainty.

## A call for clear language

4. The call for evidence states:

there needs to be proper provision of **gender-specific toilets** for both men and women, with a clear steer in building standards guidance.

and that the review will consider:

the merits of any best practice guidance on the provision of a **gender-neutral** toilet, as part of a wider balanced mix of **gender-specific** male and female toilets.

The government should avoid replacing sex with “gender”. Toilets are an area involving consent and partial undressing, where ambiguity should be avoided. Intentional or inadvertent use of confusing language and definitions undermines the ability to communicate clear rules, or to undertake assessments on the impacts of changes of policy.

5. In order to provide clarity in this area we urge the Ministry to use the term “sex”, (and associated with this “**single sex**”/ “**separate sex**”) in its review and in any proposed legislation or guidance. This reflects common usage, as well as the language of the Equality Act 2010 and relevant legislation such as the Workplace (Health, Safety and Welfare) Regulations 1992.
6. In UK law, and in general usage, “**sex**” is understood as binary, with a person’s biological sex - male or female - recorded when their birth was registered. Section 11(a) Equality Act 2010 provides that:

In relation to the protected characteristic of sex —

- (a) a reference to a person who has a particular protected characteristic is a reference to a man or to a woman;

And s.212(1) provides:

In this Act—

...“man” means a male of any age;

...“woman” means a female of any age.

7. Man / woman, ladies / gents, boy / girl and the standard dress / trousers symbol also relate to sex and are used in buildings regulations and standards (see Annex 1), and in everyday life. While the pictures depict a man wearing trousers and a woman wearing a skirt, it is clear they represent the two sexes, not requirements to wear stereotypically feminine or masculine clothing.
8. “**Unisex**” is the term used in building and other regulations for toilets and other facilities that can be used by people of either sex one at a time (or a parent with a

child or person with a carer), not shared with strangers.

9. **“Gender”** is not defined in UK law. It has for some time now been used as a euphemism, to avoid saying "sex". However while some people still interpret it this way, others view it as an identity, independent of anatomy. This causes confusion, ambiguity and the potential for conflict amongst users and providers of single-sex services.
10. The use of the term **“gender neutral”** for toilets and washrooms obscures whether a space is *unisex* (used by people of either sex, but not shared with strangers), or *mixed sex* (used by people of both sexes at the same time - e.g. a washing area). This makes a difference for privacy and comfort.
11. Language that replaces sex with gender is actively used as a means to promote the practical erosion of single-sex spaces.<sup>1</sup> The National Union of Students, which promotes “gender neutral” toilets, defines them as:

toilets and / or bathroom facilities which do not have gendered signage and which do not require the person using them to define into a gender.

This definition has the effect of labelling the other toilets as being places where people “define into a gender” rather than simply being single-sex environments for people to use the toilet and wash their hands. The NUS argues that there should be no single-sex toilets, only those organised by self-identified gender.<sup>2</sup>

12. **We recommend using “single sex” (male or female) “unisex” and “mixed sex”** for clarity when referring to spaces and the rules associated with them. A clear common lexicon would be helpful (see recommendations and glossary).

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<sup>1</sup> For example, an AHRC funded research project “Around the Toilet” which looks at these same questions produced a final research project “about what makes a safe and accessible toilet space” that does not use the word sex, apart from in the phrase “sex work” and therefore does not consider the possibility of single-sex toilets. Slater, J and Jones, C (2018) Around the Toilet

<https://aroundthetoilet.files.wordpress.com/2018/05/around-the-toilet-report-final-1.pdf>

<sup>2</sup> <https://www.nusconnect.org.uk/resources/gender-neutral-toilets-briefing>

## 2. Separate sex toilets

### Justification for separate sex toilets is well established

13. Toilets are public, but also hidden from view. This makes them easy grounds for anti-social behaviour and makes the people using them vulnerable, particularly women and children. The design of toilet and washroom facilities take a number of things into account, including:

- Availability/ queuing time
- Accessibility for different types of people (including men and women, unaccompanied children, families, people with different disabilities, ethnic and religious groups)
- Hygiene
- Privacy
- Comfort
- Minimizing the need for maintenance and cleaning
- Reducing the incidence of, and also the fear of, antisocial behaviour and crime.

The design solution chosen by providers will depend on specific factors such as the available space and age of the building, existing facilities, number and profile of users, degree of supervision of the space, and the incidence of antisocial behaviour. Regulations therefore need to allow design flexibility while maintaining standards and providing workable guidance to all.

14. It is a basic necessity for access, comfort, privacy and consent that people can easily tell which toilets and washrooms they are permitted to use, and that these provide adequate privacy, particularly from members of the opposite sex.

15. Communal separate sex toilets (and associated washrooms) are such a well-established solution to these needs that the reasons for them are not often spelled out. They include:

- **Efficiency and hygiene** - Urinals for men take up less space, reduce queues and keep the seats and floors of WCs cleaner. Urinals require single-sex rooms for everyone's privacy and dignity; men do not wish to be overlooked by women when they have their penis exposed, and women do not want to see. Both cubicles and urinals discourage dallying compared to completely closed rooms, reducing queuing times.
- **Supervision and safety** - The relative lack of privacy in cubicle toilets (with open spaces around the top and bottom of doors and partitions) is by design - it deters dallying and misuse, for example smoking, drug-taking, masturbation, sexual intercourse or assault. Such cubicles also make it easier to provide assistance to someone who has been taken ill, and are easier to clean. They do not on their own provide sufficient visual or sound privacy for most people's comfort - they require a further zone of privacy, which is provided by siting them within separate sex rooms.
- **Everyday privacy outside of the cubicle** - Most people feel more comfortable undressing and undertaking personal care in single-sex environments. Although sinks may be placed within individual toilets for privacy, this increases queuing time. For establishments where food is prepared or served, a lobby or circulation area is required between toilets and the rest of the building. These lobbies can contain sinks, mirrors, hand driers, sanitary protection dispensers, etc. According to regulations these communal areas may be single-sex or shared, but most people prefer single-sex washrooms. These provide an additional buffer of privacy for washing and changing (including by religious people, such as Muslim women removing and repinning a hijab, or people washing before prayers). Ordinary mishaps, such as toilet doors that fail to lock or having to rinse blood from clothing, are much less embarrassing when toilets are contained in a single-sex room.
- **Deterring voyeurism, indecent exposure, harassment** - Toilets are designed with privacy in mind (for example, the building regulations state

that windows should be covered and there should be a door or screen to the room itself). This reflects that spaces where people undress are attractive for those seeking to act out exposure (intentionally exposing genitals to cause alarm or distress), voyeurism (observing or recording someone in a private act without their consent for sexual gratification) or harassment. These are common crimes. The offenders are predominantly male and the victims predominantly female. The design of toilets seeks both to reduce the opportunity for these crimes and to provide reassurance to users that they are not being put in a vulnerable situation by ambiguous rules or design features that erode privacy and allow for plausible deniability about misbehaviour, or escalation into sexual harassment and crime.<sup>3</sup>

- **Safeguarding and propriety** - Rules put in place for privacy and propriety are there to protect everyone. Physical separation and clear rules reduce possibilities of awkwardness, harassment or accusations of it, opportunistic boundary-pushing and accidental-on-purpose incidents. The risks associated with mixed washrooms, and the benefit of fully separate spaces, increase in situations such as the night-time economy, public places used by both adults and children (including unaccompanied ones), places that are unsupervised and may be isolated, and work sites and other places where people may change clothing in the washroom area.<sup>4</sup>

## **Equality law allows separate sex facilities and building regulations often require them**

16. Detailed and specific laws, regulations and standards cover public toilets, toilets in workplaces, schools, licensed venues, and new or upgraded buildings. They

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<sup>3</sup>In relation to changing rooms it has been found that 90% of reported sexual assaults, harassment and voyeurism in swimming pool and sports-centre changing rooms happen in unisex cubicled facilities, which make up less than half the total. <https://www.thetimes.co.uk/article/unisex-changing-rooms-put-women-in-danger-8lwbp8kgk>

<sup>4</sup> See Greed, Clara (2019) Join the queue: Including women's toilet needs in public space. <https://doi.org/10.1177/0038026119854274>

set out requirements for toilets to be provided to meet the needs of both men and women, with designs that reflect the need to provide privacy and deter crime and anti-social behaviour (see Annex 1).

17. There is flexibility in these rules to reflect the different size and use of buildings, but all the relevant regulations and standards recognise the need for privacy between the sexes: **toilets should be provided within single-sex rooms (separate sex), except where they are provided as separate individual completely enclosed rooms (unisex).**
18. Regulations and standards that state the number of each type of facility express them in terms of male and female toilets and the expected number of male and female users. They are not expressed primarily in terms of numbers of “toilets with cubicles” and “toilets with urinals.” This is because the specification for the design of these spaces takes personal privacy and propriety into account, not just whether people stand up or sit down at that particular time.
19. Building regulations interact with the Equality Act 2010. Limiting any part of a workplace, or a public or private service access to one sex is direct discrimination on grounds of sex, and would normally be unlawful. The single / separate sex exceptions in the Equality Act set out common justifications for providing spaces only open to one sex. The Equality Act 2010 makes provision for **separate services for the sexes** (in Schedule 3, Part 7, Paragraph 26)
  - (1) A person does not contravene section 29 [which prohibits discrimination in the provision of services], so far as relating to sex discrimination, by providing separate services for persons of each sex if—
    - (a) **a joint service for persons of both sexes would be less effective,** and
    - (b) the limited provision is a proportionate means of achieving a legitimate aim. [Emphasis added]
20. The Equality Act also allows for the provision of **single-sex services** (in

Schedule 3, Part 7, Paragraph 27):

(6) The condition is that—

- (a) the service is provided for, or is likely to be used by, two or more persons at the same time, and
- (b) the circumstances are such that a person of one sex **might reasonably object** to the presence of a person of the opposite sex.

- 21. The single and separate sex exceptions in the Equality Act apply at the level of a service or a rule (is it justified and fair) not at the level of each individual user. It does not require a case by case assessment for each individual.
- 22. It is sometimes said that there is a “high bar” for using these exceptions. In fact the contrary is true: these exceptions are in extremely common use, everywhere that separate sex toilets are provided.<sup>5</sup>

## People generally prefer separate sex toilets

- 23. While regulations do not *require* separate sex toilets (they allow unisex toilets as long as they are completely enclosed), it is widely recognised that separate sex toilets and washrooms are preferable. For example British Standard BS 6465-4:2010 on public toilets states:

Separate facilities for men and for women should be provided in preference to unisex facilities, wherever possible. The exception is that at least one unisex accessible toilet needs to be provided. NOTE Many men and women seek privacy, and many women and children feel safer when using single-sex facilities.<sup>6</sup>

- 24. The British Toilet Association told the Communities and Local Government Committee in 2008:

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<sup>5</sup> <https://eupublishing.com/doi/abs/10.3366/scot.2020.0348> MBM Share

Losing Sight of Women's Rights (again): A Response to Cowan

<sup>6</sup> British Standards Institute (2010) BS 6465-4:2010

Although this is the norm at home, many people prefer not to use a unisex lavatory in a public place both on safety as well as hygiene grounds.<sup>7</sup>

25. It is recognised that users should be protected from encountering a member of the opposite sex by surprise in single sex toilets. BS 6465-4:2010 states:

Wherever possible, and budgets are available, toilet attendants and cleaners should be employed who are of the same sex as the users of the facility for which they are responsible. Where this is not possible, a sign should be displayed at the entrance to the toilets advising users that an opposite sex attendant might be present within the toilets. Staff should be advised to announce that they are intending to enter an opposite sex toilet to perform their duties before entering, to alert occupiers and to give them time to leave if they wish.<sup>8</sup>

26. International organisations such as UNICEF, WaterAid, Amnesty International and Plan International emphasise the need for secure private sex segregated toilet facilities particularly for women's inclusion around the world:

Privacy and safety considerations are vital to make sure that using the toilets does not increase the risk of violence against women and girls, or make users feel vulnerable in any way. Perception is important; if users think a facility is unsafe, it will put them off and force them to use potentially less hygienic alternatives.<sup>9</sup>

## **Women need greater toilet provision**

27. Women generally require a higher level of toilet provision than men. This is because women take longer to use the toilet for biological and clothing reasons,

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<sup>7</sup> Communities and Local Government Committee (2008) The Provision of Public Toilets  
<https://publications.parliament.uk/pa/cm200708/cmselect/cmcomloc/636/636.pdf>

<sup>8</sup> British Standards Institute (2010) BS 6465-4:2010

<sup>9</sup> WaterAid/UNICEF (2018) Female-friendly public and community toilets: a guide for planners and decision makers  
<https://washmatters.wateraid.org/publications/female-friendly-public-and-community-toilets-a-guide-for-planners-and-decision-makers>

and also have more reasons to use the toilet, including menstruation, more frequent urination during pregnancy, miscarriage, and a higher rate of urinary incontinence.

28. Women generally require twice as many appliances as men to achieve equal waiting time:
  - The average time that a woman spends in a toilet cubicle is 90 seconds.
  - The average time a man spends at a urinal is 35 seconds.
  - The average time a man spends in a toilet cubicle is 210 seconds, however most male toilet use will be for urination.
  - Overall, the average time taken to use the facilities is 1.5 minutes for a woman and 0.75 minutes for a man (where urinals are provided).<sup>10</sup>
29. In public spaces, women are more likely to be supervising small children than men are, although provision should account for both men and women being accompanied by their children, and needing nappy-changing facilities for babies.
30. Where men and women's toilets are provided in equal-sized rooms, women's toilets are usually underprovided, resulting in longer queues. Women's needs have also been under-recognised and under-prioritised by planning committees, architects and facilities managers, which are frequently male-dominated.<sup>11</sup> To address this, laws, regulations and standards specify the number of female and male toilets for different situations.
31. Any reduction in functional single sex female toilet provision is likely to be particularly detrimental to women. In order to assess whether provision of female toilets is adequate, providers, standard setters, and regulators need to be able to count them.

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<sup>10</sup> British Standards Institute (2010)

<sup>11</sup> Greed, Clara (1995) Public toilet provision for women in Britain: An investigation of discrimination against urination, Women's Studies International Forum, Volume 18, Issues 5–6.

## Separate sex toilets require unambiguous policies and signage

32. Providing separate-sex toilets (or changing room, showers, dormitories, etc) requires not only the physical existence of separate spaces, but also the application and communication of a sex-based rule. Toilets are a taboo subject, demonstrated by various euphemisms such as bathrooms, cloakrooms, restrooms or conveniences).<sup>12</sup> Because of this, and the fact that separate sex toilets are so well-established and until recently uncontroversial, service providers have often not written the rules and policies down. This is now proving a vulnerability.
33. Clear rules and policies provide three levels of protection:
  - **People are more likely to comply without intervention** if rules are clear, avoiding disputes, misbehavior and antagonism.
  - **If there is a dispute or a difficult situation, a clear policy enables everyone to be treated with dignity.** Policies can consider in advance how to deal with sensitive situations, in order to avoid argument, upset and uncertainty.
  - **Clear rules and policies are essential for effective training of frontline staff** to ensure that they are equipped to treat people fairly and with dignity, avoid putting themselves in compromised positions where they might be accused of harassment or assault, and are protected from assault or harassment themselves.
34. Clear signage tells users the rule: which spaces they are permitted to use and whether they will encounter people only of the same sex or of both sexes there, preventing ambiguity, uncertainty and conflict. They also allow staff to supervise and deal with queries and complaints, while treating everyone fairly and with respect.

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<sup>12</sup> Royal Society for Public Health (2019) Taking the Pi\*\* - the Decline of the Great British Public Toilet <https://www.rsph.org.uk/static/uploaded/459f4802-ae43-40b8-b5a006f6ead373e6.pdf>

35. In essence the signage communicates consent. By entering a space with the male or female sign on the door, a person is consenting to share a space with other people of the same sex. Having been told (by the sign) that it is a single-sex space they **might reasonably object** to the presence of a person of the opposite sex.
36. Signage indicating whether a facility is single-sex or unisex needs to be clearly understandable, including by people with lower levels of literacy, speakers of English as a second language, foreign tourists and young children.
37. British Standards (and the corresponding ISO standard) provide these signs.

### Figure 1: Toilet signs, British Standard

Figure A.3 Gentlemen's toilet



Figure A.2 Ladies' toilet



### 3. The call for “gender neutral” toilets

38. Single-sex toilets in a communal washroom can meet the needs of most people, but do not suit everyone. Parents with young children of the opposite sex, disabled people with carers of the opposite sex, and people who have gender dysphoria or identify as transgender or non-binary, are amongst the groups who benefit from the *additional* provision of unisex (i.e. single-user, enclosed-room) toilets in order to be able to access the facilities in a building.
39. For example, a report on “The Good Parliament” by Professor Sarah Childs in 2015 argued for the addition of gender-neutral toilets in Parliament, giving the example of a US restaurant which decided to provide a gender neutral toilet to cater for:

...single dads with daughters, single moms with sons, members of the LGBT communities, and adults with ageing parents who may be disabled.<sup>13</sup>

40. Many student unions have also made the case for “gender neutral toilets”, particularly focusing on students who identify as transgender or “non-binary”. For example, Cambridge Student Union’s LGBT+ campaign states:

For many people, having two options—male or female—is actually a no-option scenario. A lot of the time, the anxiety related to using either of these “options” causes trans people to put off using the loo until they get back to their accommodation.<sup>14</sup>

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<sup>13</sup> Childs, S (2016) The Good Parliament.

<http://www.bristol.ac.uk/media-library/sites/news/2016/july/20%20Jul%20Prof%20Sarah%20Childs%20The%20Good%20Parliament%20report.pdf>

<sup>14</sup> <https://www.lgbt.cusu.cam.ac.uk/why-gender-neutral/gender-neutral-bathrooms/>

## As an additional option

41. Providing a unisex alternative for people who don't want to use the appropriate single-sex toilet for any reason ought not be difficult. There is already a clearly understood symbol for unisex facilities (and building standards for these facilities - completely enclosed room with floor to ceiling doors, etc).
42. Many buildings already have some unisex accessible toilets which are open access and can meet occasional use by people with gender dysphoria. In larger buildings, or where there is high demand for accessible or gender neutral facilities, additional unisex (or family) facilities could also be considered.

**Figure 2: Options for everybody with clear signage at Victoria Station in London**



43. However many organisations are taking a more radical approach, removing existing single-sex toilets or introducing ambiguity about who is permitted to use them.

## Remodelling buildings to replace existing toilets

44. As the call for evidence notes, there is a trend that goes beyond providing a small number of unisex toilets alongside existing single-sex toilets. Instead it involves remodelling single-sex toilets and replacing them with “gender neutral” (i.e. mixed sex) facilities.
45. This approach of creating new, purpose-built mixed sex toilet and wash areas has been adopted by a number of schools. An analysis of media reports carried out by Transgender Trend suggest they are unpopular with children and parents.<sup>15</sup> For example, parents at Harbour Primary School in Newhaven, East Sussex:

“My daughter has said she doesn’t feel comfortable about it.”

“A lot of our children don’t want to use toilets of the opposite sex.”

A headmaster at Highgate school issued an apology after he unveiled new “gender neutral” toilets for pupils after they returned from summer holidays.

“I’m aware that this change has left a number of pupils particularly in Years 7 and 8 feeling less comfortable and happy at school...We will continue to support gender fluid and non gender binary pupils. However I have been asked whether the change which has impacted on many pupils is proportionate to the needs of a smaller number.”

Barrow Hall Primary School in Warrington changed its girls’ and boys’ units into gender neutral, sparking anger among parents:

“Some of the girls don’t want to use the toilets because the boys make a mess and some are even refusing to go at home.”

“I think there could be an issue here from experience I know that some

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<sup>15</sup> <https://www.transgendertrend.com/gender-neutral-toilets-schools/>

girls start their periods in primary school. Which is difficult for the girl but to share toilets with boys would I think make the situation more difficult.”

In Wales, a survey showed that some girls are missing school because of period-shaming from some boys, others are going all day without drinking water so they don't have to go to the toilet and some don't use the toilets because they fear sexual harassment. Muslim girls don't want to adjust their hijabs in front of boys, and some boys also try to avoid mixed-sex toilets.

46. They are also unpopular in workplaces. For example, when the Home Office in Westminster converted five male and five female toilets into ten unisex facilities, it was reported that female staff avoided using them because male colleagues leave their cubicle doors open while they are inside.<sup>16</sup>

47. At the Ministry of Defence, existing toilets were removed and 13 gender neutral toilets created. Comments included:

“I don't go anywhere near the new gender-neutral loos as they're too smelly.”

“None of my female colleagues feel comfortable using them.”

“There was nothing wrong with the old toilets. Not one person ever complained. I don't want to hear a man going to the toilet and I don't want to make eye contact with him after I have been there”.<sup>17</sup>

48. Although one mathematical model suggests that unisex toilets reduce queuing time, particularly for women (since they are queuing not only behind slower females, but faster males)<sup>18</sup> it did not take into account behavioural responses -

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<sup>16</sup>

<https://www.dailymail.co.uk/news/article-6065075/Female-Home-Office-employees-refusing-use-new-36-000-gender-neutral-toilets.html>

<sup>17</sup> <https://www.mirror.co.uk/news/uk-news/female-staff-shun-mods-new-21177430>

<sup>18</sup> Bovens, L., & Maracocci, A. (2020). The gender-neutral bathroom: A new frame and some nudges. *Behavioural Public Policy*, 1-24. doi:10.1017/bpp.2020.23

such as whether men take longer if using a WC than a urinal. As the comments above indicate, anecdotal reports suggest that where single-sex toilets are converted to mixed-sex, women often won't use them. They choose instead to queue for a smaller number of remaining female-only facilities elsewhere in the building (or for disabled accessible toilets with sinks inside), rather than queuing with male colleagues or strangers to use the unisex toilets and mingling in the shared sink areas. As a consequence, making all or a significant number of toilets mixed sex can, in practice, increase demand for a smaller number of facilities for women, while reducing their comfort and ease, and increasing their travel time within the building to get to a facility that they are willing to use.

## Replacing signage only

49. Some organisations do not undertake physical remodelling of existing stalls and urinals at all, but simply change their policy and/or signage to “inclusive” or “gender neutral”.
50. This approach was promoted initially by university students unions following NUS campaigns:

Manchester Students' Union decided to implement gender-neutral toilets after NUS LGBT conference 2007, where we learnt about their benefit. We put a motion to the Council Meeting in November which resolves to provide facilities for trans students, including one set of gender neutral toilets in the union. It was agreed that instead of building a new set or changing just one toilet, we would 'de-gender' some existing toilets by replacing the women's and men's signs with signs saying 'toilets' and 'toilets with urinals'.<sup>19</sup>

51. More recently this trend has been taken up outside universities. For example the Barbican Arts Centre, the Hayward Gallery, the Old Vic and the Tramway Arts

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<sup>19</sup> NUS LGBT+ [Gender Neutral Toilet Briefing](#)

Centre have adopted it.<sup>20</sup>

**Figure 3: “Inclusive” toilet signs in the Hayward Gallery**



52. It is unlikely the “with cubicles” and “with cubicles and urinals” approach meets building and workplace regulations and licensing requirements, unless there are additional male and female toilets that meet the total required number for users in relevant regulations. A toilet where men use the urinal in view of passing women or where women have to use limited privacy cubicles alongside men does not fulfil requirements for any of male, female or unisex toilets.
53. Given their prevalence in arts centres, they are perhaps best thought of as an edgy, interactive performance-art installation for people who want to experiment with the meaning of symbols and transgression of boundaries, rather than practical provision to meet compliance and accessibility requirements. For example, Sheila Cavanagh, author of “Queering Bathrooms: Gender, Sexuality, and the Hygienic Imagination”, argues for “gendered bathrooms”:

...with the big proviso that we should be uncertain about what the gender sign on the door means and who fits into it so we keep the gender sign but we don’t use it as a way to regulate or police who goes into which space...

<sup>20</sup> <https://www.glasgowtimes.co.uk/news/17770223.amp/>

I found that ideas about the sex of the body regardless of one's gender or sexual orientation was interestingly mapped on to bathroom design some people talked about how the urinals resembled large vaginas other people talked about how the overall toilets enclosed in by stall partitions resemble the anus and of course the stall stereotypically is something that women are supposed to back into and crouch on to whereas men tend to adopt a more active upright position in front of the urinal and so people started to ask questions like does this mirror a heterosexual missionary sex does this mirror of ideas about genitals ...I'd like people to start looking oddly and questioningly at the stick figures on the bathroom doors and to think about how gender segregated spaces impact upon those who don't fit conventional ideas about what it means to be a man or a woman and I would like people to start designing creative bathroom spaces not spaces that do away with gender per se but spaces that encourage us to be gendered in different ways or to open space up to those who are trans or gender variant or recognizably queer so that we don't continue to perpetuate what I would call an architecture of exclusion.<sup>21</sup>

54. Another approach is to change only the sign on the former women's toilets to "gender neutral" and leaving the men's as they are. (Figure 4 and 5)

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<sup>21</sup> Cavanagh, Sheila (2010) Queering Bathrooms: Gender, Sexuality, and the Hygienic Imagination. See interview <https://www.youtube.com/watch?v=wahE2b3aJh8>

**Figure 4: “All gender” toilets and male toilets**



**Figure 5: Ladies’ public toilets re-badged as unisex in Edinburgh**



55. A confusing approach is to add a “gender neutral” notice in addition to the existing single-sex signage on both toilets. (Figure 6)

**Figure 6: “Whatever” sign added to male toilets**



56. Another approach is to leave the signs as they are, but adopt a policy that anyone can use either toilet. (Figure 7)

**Figure 7: Oxford University - Do not challenge someone you think is using the wrong toilet**



57. All of these policies disadvantage women, as they result in making all toilets effectively mixed-sex (but without the design changes or clear signage needed for unisex privacy). And since most women won't feel comfortable entering rooms with urinals, half of the "inclusive" provision will in practice be inaccessible to them. Further, as they are mixed sex they are very likely to mean that the building is not in compliance with regulations.
58. Signs that state "cubicles" and "urinals", or "inclusive" or "whatever", or use the "Mercury" symbol ♀ are not understandable to all the people who need to be able to use toilets, in particular children, older people, people with lower levels of literacy and people with English as a second language.
59. Being faced with someone of the opposite sex in a space that has been

(mis)understood to be “single-sex” can be humiliating and frightening. A woman or girl in a cubicle on her own with her pants down who hears a man walk into a space she had understood to be female-only will be alarmed. A woman walking into an “inclusive toilet” and finding herself in an open room with men using urinals is likely to be shocked and upset.

60. Communal mixed-sex toilets and washrooms are particularly inappropriate in situations where adults and children mix, leading to signs excluding children from the “unisex” toilets (NB: a child seeking the toilet on their own may not be able to read this sign, which is posted above their eyeline and with difficult language.)

**Figure 8: Sign at a London theatre: “unisex” toilets not for children**



61. In some cases, such as the Barbican and the Tramway, single-sex toilets remain in other parts of the building, but in some cases these changes mean there are no single-sex toilets at all, or the single-sex toilets may be too far away to get to during a short interval.

## 4. The problem of ambiguous rules

62. **The reason why organisations are removing single-sex toilets altogether is not because of need, but because they either don't want to or feel unable to set, communicate and enforce sex-based rules.** Although building regulations tell them they must provide male and female toilets, and equality law allows them to do so, official and unofficial guidance on equalities, diversity and inclusion tell them that they cannot ask people their sex, or expect them to comply with sex-based rules if they declare an alternative gender identity. Without clear guidance, organisations do not feel confident in communicating clear rules based on sex, or training their staff to deal with people demanding to use opposite sex facilities, or others complaining.
63. Rather than clarifying the rules, service providers, employers and their associations seek to avoid conflict by removing sex-based rules and single-sex spaces altogether. This leaves women and girls with less provision, less privacy and less protection.
64. Where there are not clear rules and policies, toilets can become sites of ambiguity and conflict; between people who expect not to encounter adults of the opposite sex in a single-sex toilet, and members of the opposite sex who wish to use those facilities to validate their gender identity. Potential for mischief and malicious behaviour is increased. One person's concern about sharing a female only space with a male is viewed by another as harassment.
65. Surveys suggest such conflicts are increasingly commonplace. This reflects the fact that the number of people identifying as transgender in the UK has increased from some 5,000 in 2004 to an estimated 500,000 today. It is estimated that at least 80% of people who identify as transgender do not have genital surgery.<sup>22</sup>
66. Examples of these situations that have reached the public domain illustrate the

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<sup>22</sup> Fair Play for Women (2019) The vast majority of male-born transwomen still have a penis <https://fairplayforwomen.com/penis/>

dilemmas faced by those providing toilets and seeking to serve everyone with dignity and privacy.

## Conflicts and confusion in practice

67. Comedian Eddie Izzard wrote about his experience as “a twenty-three-year-old man”; at the time identifying as a cross-dresser/transvestite. (Izzard now identifies as “gender fluid” and prefers “she/her” pronouns.)

I'd been going to a Transvestite / Transsexual Help Group for about two months before I actually left my flat wearing makeup and a dress...I had a little bag I'd brought with me with my other clothing to change back into. So at the end of the afternoon, I came back on the Underground to Highbury Corner in Islington and went to the ladies' loos as planned. I'd expected to go in, quickly change my clothes, wipe off my makeup, then slip back out in boy mode so I could go home with no one knowing. What I wasn't expecting in the ladies' loos at about three o'clock in the afternoon were three teenage girls smoking cigarettes.



Izzard describes how the toilet doors wouldn't lock and writes about a confrontation he had with three thirteen-year-old girls, in which he says they intimidated him, and he ended up shouting at them: “You want to know why I'm wearing a dress? I'll tell you why,” before they screamed and ran away. Izzard evidently feels he was the victim in this interaction.<sup>23</sup>

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<sup>23</sup> <https://www.vulture.com/2017/06/eddie-izzard-memoir-believe-me.html>

68. In 2012 Susan Brook, who had been a part-time cross dresser for many years, and who intended to have surgery in future, went to the New Inn pub in Halifax. Brook went to the ladies' toilets, where a female customer said Brook should not use the ladies' toilets. Brook spoke to the landlord of the pub, but the landlord supported the female customer, offering the gents' toilets and later barring Brook from the pub after an argument over this. Brook sued the pub for discrimination. The publican did not defend the claim, but said he did not intend to pay the fine, and indeed did not.<sup>24</sup>



69. Amelia Pereira, guitarist for Bristol-based band Brasher, was due to perform at the Rockhouse in Andover. Pereira says a manager came over after a customer complained about Pereira using the ladies' toilets. The manager allegedly asked: "This is a bit of a touchy subject but have you had a full sex change?" She then told Pereira not to use the women's bathroom and offered the unisex accessible facilities instead. Pereira said: "I told her it was illegal for her to tell me which facilities I could and couldn't use. It is illegal for anyone to tell or suggest to any individual which facilities they can or cannot use in any establishment. It is discrimination, period."<sup>25</sup>



<sup>24</sup> <https://a-question-of-consent.net/2020/05/29/the-case-of-sb/>

<sup>25</sup> <https://www.mirror.co.uk/news/uk-news/transgender-musician-cancels-gig-after-21183203>

70. Morganna Snow was asked not to use the female toilets in “Fever”, a Gloucester nightclub, after up to 20 clubbers reportedly said they were “uncomfortable” sharing the facilities. Snow was offered use of the unisex accessible facilities instead but reported feeling “violated”. Snow said, “At the end of the day I think wherever you feel most comfortable should be where you are allowed to go.” A spokesman for Fever nightclub said Snow would have been allowed to use the women's toilets on producing a doctor's note. He said he stood by the decision made by nightclub staff and that it was taken to protect both Snow and other customers.<sup>26</sup>



71. Alex Stone, who is described as “fully transitioned”, was told by a toilet attendant not to enter the women’s toilet at Maverick’s nightclub in Huddersfield. Stone reports that the attendant “refused to let me in and said ‘You’re not a woman, go away’. I stood my ground and said I need to use the toilet but she blocked the way in.” Stone was offered use of the men’s toilet. “It was really horrible,” Stone said, and left the nightclub to urinate in the street instead.<sup>27</sup>



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<sup>26</sup>

<https://www.express.co.uk/news/uk/670837/Transgender-woman-Morganna-Snow-kicked-out-of-Gloucester-club-toilets-after-complaints>

<sup>27</sup> <https://www.examinerlive.co.uk/news/west-yorkshire-news/bar-staff-blocked-transgender-woman-17255753>

72. Sean Taylor, an engineer at Jaguar Land Rover, told his employer that he was gender-fluid and wished to come to work on some days dressed in a male style and on other days in a female style. He said that this was part of a transition, but he did not intend to undergo surgery. At an initial discussion it was suggested that he might use the unisex accessible toilets, but later after discussions with HR he was allowed to use any toilets he wished. Taylor later



sued his employer over harassment (comments from co-workers) and over the handling of the toilet situation. Although he was allowed to use whichever toilet he wanted, in all parts of a large industrial complex, he was concerned there would be “difficult conversations with local staff”. The Tribunal said JLR “put the onus on the Claimant to decide which toilets to use and to deal with any challenges made by colleagues unhappy with the choice”. It said that Jaguar Land Rover should have put in place measures to prevent these challenges.<sup>28</sup>

73. Author David Thomas chronicled his ongoing process of “male-to-female gender transition” in the *Daily Telegraph*. In June 2019, he wrote about using women’s toilets: “I’m scared of being spotted and embarrassed in what seems like a space where I won’t be welcome.” Thomas writes that he believes that in order to obtain a Gender Recognition Certificate he is required to use women’s toilets. Thomas later wrote a column about venturing into women's toilets. He says he



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<sup>28</sup>

<https://a-question-of-consent.net/2021/01/02/taylor-v-jaguar-landrover-a-landmark-case-or-losing-sight-of-the-landmarks-of-reality/>

generally stands up to pee because of prostate issues. “But I only do that if the cubicles have solid sides, so no one can look across and see my feet pointing in the wrong direction. I wouldn’t want to alarm them, or embarrass myself.” He does not consider whether women might be alarmed and frightened by the presence of a man in the women’s toilet, whatever direction his feet point in.<sup>29</sup>

74. 23-year-old James Hadley was asked by a bouncer at a pub in Lincoln to leave the men’s toilets because of being female. Hadley said “a short while after, I could hear two men outside the cubicle door. I could hear them talking about someone being in the ‘wrong’ toilets. I knew they meant me. The pub later said they asked Hadley to leave because Hadley was being sick. The pub said they “have no restrictions on their restrooms and are happy with their guests using whichever gender restroom they identify with.”<sup>30</sup>



75. Kay Browning, who has had a mastectomy as part of a gender transition, but has told newspapers of hopes to become a mother, was asked to leave the men’s toilets at “Remedies”, a Tiverton nightclub, and offered the option of using the unisex accessible toilet. Finding this offensive, Browning pursued legal action. The venue settled out-of-court, paying out £1,500 and agreeing that Kay could use the male toilets from that point on.



<sup>29</sup> <https://www.telegraph.co.uk/health-fitness/body/transgender-diary-trans-women-really-get-ladies-loos/>

<sup>30</sup> <https://www.mirror.co.uk/news/uk-news/transgender-woman-kicked-out-nightclub-7981968>

76. A bar manager at Bar Bloc in Glasgow received death threats after it was publicised that he had asked a female customer who tried to go into the male toilets to use the female toilet. When the customer “explained they were a transgender man”, the bar manager said “you look like a woman”. The bar later apologised to the customer by phone and in person, but after the customer posted online about the incident, “things started to blow up online”, with staff receiving dozens of death threats and hate messages after defending the workplace’s efforts to resolve the problem.<sup>31</sup>

## **Ambiguous rules create confusion and do not help anyone feel secure**

77. These stories reveal confusion about whether identifying as transgender gives someone the right to use opposite sex toilets. Can anyone who wants to use opposite-sex toilets? Does it depend on clothing? What about make-up or hairstyle? Does it depend on other people not noticing? Does having genital or other surgery make a difference? Is a doctor’s note required? How should staff react when someone complains that there is a member of the opposite sex unexpectedly in single-sex toilets? Should security staff direct someone of the opposite sex away from the facilities? Can a business legitimately offer the use of a unisex alternative? Does the amount of time a person has considered themselves transgender make a difference? How would a member of staff be able to tell the difference between a part-time crossdresser, someone in the process of transitioning and someone who considers themselves to be fully transitioned? How would other customers know? Would it make a difference to how comfortable they feel?
78. Stonewall report that almost half (48 per cent) of trans people who answered their survey don’t feel comfortable using public toilets, and a third (34 per cent)

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<sup>31</sup>

<https://www.glasgowtimes.co.uk/news/14721423.bar-bloc-staff-receive-death-threats-after-manager-tells-transgender-man-you-look-like-a-woman/>

have “been discriminated against” in a café, restaurant, bar or nightclub in the last year.<sup>32</sup> A survey by the LGBT organisation GALOP found that 44% of trans respondents used public toilets less because of the attitudes of other users.<sup>33</sup>

79. A survey undertaken by the Equality and Human Rights Commission and the National Centre for Social Research in 2019 found that the proportion of women who reported themselves to be comfortable with a “transgender woman” using women’s public toilet had decreased from 72% to 66%.<sup>34</sup>
80. A YouGov survey in 2020 found that 46% of respondents said that a “transgender woman” should be allowed to use women’s toilets. But when it was clarified that this could mean someone who has *not* had surgery the figure dropped to 31% (in both cases over 25% of people said ‘I don’t know’). Attitudes differ in particular by age: 46% of 18-25 year olds say that a male person who has not had surgery should be allowed to use the women’s toilets, but only 17% of those over 65 agree; 30% of women say they should be allowed and 22% of men.<sup>35</sup>
81. A qualitative online survey undertaken as part of the supporting work for setting up Sex Matters provides an insight into why many women prefer clearly female-only spaces, rather than inclusion based on gender identity. Over 700 people replied to the online survey, which was about concerns in the conflation of sex and gender more broadly. Nine out ten of those who responded were women.<sup>36</sup> Many talked about the importance of retaining single-sex spaces,<sup>37</sup> including toilets.<sup>38</sup>

“I have an elderly mother, a teenage daughter & I’m in my 40s. We are all

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<sup>32</sup> <https://www.stonewall.org.uk/lgbt-britain-trans-report>

<sup>33</sup> <http://www.galop.org.uk/wp-content/uploads/Trans-Hate-Crime-Report-2020.pdf>

<sup>34</sup>

<https://www.equalityhumanrights.com/en/our-work/news/new-research-reveals-positive-attitudes-towards-trans-gender-people>

<sup>35</sup> <https://docs.cdn.yougov.com/ai3h3xvf7o/Transgender%20data%202020.pdf>

<sup>36</sup> <https://gender-dissidents.net/tag/womens-rights/>

<sup>37</sup> <https://gender-dissidents.net/tag/single-sex-spaces/>

<sup>38</sup> <https://gender-dissidents.net/?s=toilets>

impacted by the loss of single sex protections for different, but entirely biologically female reasons... Loss of privacy, dignity, safety, recovery from trauma and the right to participate in public life – we all have reasons for the need of female only provisions across many aspects of our lives.”

“I believe women have the right to single sex spaces. It is patently unsafe to allow men who self ID as women into women’s toilets, prisons, hospital wards, refuges, changing rooms. If a third space is needed, it should not replace female space.”

“I have a medical condition that makes my periods extremely heavy – it’s not uncommon for me to faint from menstruation-induced anaemia, or to sit on a toilet, weeping and free-bleeding for half an hour, building the resolve to attempt to deal with it. When I’m on, I live in a constant state of anxiety that I’ll bleed on clothes or furniture and everyone will see it. Using public toilets already carries enough embarrassment and shame, without adding the fear that the people hearing me rustle in cubicles, or seeing me wash blood from my hands, or using the toilet I’ve just had to makeshift clean, are male.”

“as a rape victim, I don’t want people with penises in my changing rooms, in my toilets, in women’s prisons.

“[As a survivor of an attempted rape] I still get a terrible fright if someone approaches me from behind and I’m very cautious in lifts, car parks, the street etc. A non genuinely transitioned man accessing my safe space would totally close down so many things for me. Sports changing rooms, toilets in bars and restaurants and shops – especially if they are along long corridors / down in basements etc. The whole thing is terrifying.”

“I think that it is crucial for female only spaces to exist. I was raped in a changing room and I do not wish to see a woman with a penis in a changing room or in the showers of my gym.”

“As a woman I have to take a thousand different precautions to keep myself safe – but these are useless if men are free to use women’s spaces. Before lockdown, I hadn’t been to my nearest city, less than an hour away, for several months, because the last time I went there was a man in the public toilets in the central library. I don’t know where else to go to the loo safely!”

“I have experienced gender neutral toilets done badly – having to squeeze past men at urinals and walk through their urine to get to the cubicle and it is not nice for them or for me.”

“As a teacher, parent and Girlguiding leader this goes against all the safeguarding I have ever been taught. This matters to me because the safeguarding and single sex spaces exist for a reason”

82. A single solution is needed to the question of whether males are allowed to use women’s toilets (and vice versa), the answer cannot be ‘it depends’, and the answer must work for the worst case scenario, not only the best. As Alexander Kira laid out in “The Bathroom” toilets exist on a spectrum of tolerability. Hotel toilets are the most private, workplace toilets are the next best thing. Cinemas, shops and sports centres are places with some supervision, free-standing public toilets are the most isolated and least controlled.<sup>39</sup> Similarly people wanting to use toilets for the opposite sex may vary in acceptability to others. A large, aggressive, obviously male person in a bad wig being refused access to the women’s toilets in a pub is perhaps less sympathetic than a child with gender dysphoria being told it is inappropriate to use toilets for the opposite sex at school. One woman may feel comfortable in workplace toilets with a particular male colleague who transitioned, while another may not. A different male colleague transitioning or claiming that a ‘non-binary’ identity allows access to the ladies toilets may evoke a different response.

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<sup>39</sup> Kira, Alexander (1976) The Bathroom <https://www.amazon.co.uk/Bathroom-Alexander-Kira/dp/0670006122>

83. Some women may agree “you can pee next to me” as a sign of allyship with transgender people. This does not mean that others must feel comfortable with unexpected males in “female” spaces. Children and young people in particular should be taught about boundaries.

**Figure 9: MSP Mairi Black wears a “you can pee next to me” t-shirt**



84. The need for clear rules that work for everyone mean that access to single sex spaces cannot be negotiated, on an individual basis or on the basis of kindness or individual risk assessment. It is not a test of personality, commitment to transitioning or acceptance. The basic words and symbols which communicate male, female or unisex toilets must be able to be consistently understood accross different settings, ranging from the most to the least comfortable, and the most to the least vulnerable users.

## **The Equality Act does not require removal of clarity**

85. What has enabled the push to remove single-sex toilets is misunderstanding of how the Equality Act treats the protected characteristic of “gender reassignment”.

86. Both sex (being male or female, a man or a woman) and gender reassignment (undergoing or proposing to undergo some form of gender transition) are protected characteristics in the Equality Act 2010. The Act provides protection from discrimination for people with the protected characteristic (among others) of “gender reassignment” (s.4). This includes anyone who “is proposing to undergo, is undergoing or has undergone a process (or part of a process) for the purpose of reassigning the person's sex by changing physiological or other attributes of sex” (s.7).
87. The Equality Act does not use the terms “trans woman” or “transwoman”. A male person who self-identifies as a woman but has not obtained a Gender Recognition Certificate (GRC) to change the sex recorded on their birth certificate remains legally male and thus a man in the terms of the Equality Act.<sup>40</sup>
88. It is estimated that some 500,000 people in the UK may be covered by the broad characteristic of “gender reassignment” (perhaps more with growing numbers of young people identifying as “non-binary”). Some people take hormones and have breast and facial surgery. A very small number have genital surgery. The vast majority of these people remain clearly recognisable to others as their biological sex. A much smaller number (around 5,000) have used the provision of the Gender Recognition Act 2004 to change their legally recorded sex. Therefore, the vast majority (99%) of those who have the protected characteristic of “gender reassignment” nevertheless remain, in law, the sex they were born rather than the sex they identify as.
89. Since 2010, the protected characteristic of “gender reassignment” does not require medical treatment or supervision. It simply requires proposing to undergo, undergoing or having undergone a process “for the purpose of reassigning the person's sex by changing physiological or other attributes of sex.” There is as yet no case law that assists with what the “other attributes of sex” are taken to be for these purposes, but the expression may turn out to mean no more than

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<sup>40</sup> EHRC, July 2018, <https://www.equalityhumanrights.com/en/our-work/news/our-statement-sex-and-gender-reassignment-legal-protections-and-language>

changing how you wish to be addressed. Recent guidance from the Scottish government (in relation to women on Public Boards), for example, states:

[Living as a woman] would not require the person to dress, look or behave in any particular way.<sup>41</sup>

90. The Equality Act provides that it is unlawful to refuse a service, or to provide a less good service, because a person has the protected characteristic of (among others) gender reassignment. However this **does not mean** that people with this characteristic have the right to use single-sex spaces for the opposite sex. It is not direct discrimination on grounds of gender reassignment to say that a male person cannot use facilities provided for women only, because the reason for the treatment is the person's sex, not their gender reassignment. However the Equality Act may require that the venue considers whether additional provision is needed to accommodate people who may be disadvantaged by spaces with sex-based rules (to avoid a claim for indirect discrimination).
91. Similarly, building regulations do not say that toilets should be provided on the basis of "gender identity" or "gender expression", or that female toilets are intended for women together with transsexual males, and male toilets for men together with transsexual females.
92. Nevertheless, there is a move to redefine man and woman, male and female as self-identified genders, as expressed by the slogan "trans women are women, trans men are men". Many organisations have adopted policies out of line with the Equality Act and workplace health and safety law, which tell staff to allow people to use opposite-sex facilities based purely on self-identification. It seems likely that such organisations are completely unaware of their obligations under the Workplace (Health, Safety and Welfare) Regulations 1992.
93. There is little case law about transgender people and single-sex services, but what little there is supports the view that neither the Equality Act nor the Gender

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<sup>41</sup>

<https://www.gov.scot/publications/gender-representation-public-boards-scotland-act-2018-statutory-guidance/pages/2/>

Recognition Act confers the right to access spaces or services provided for the privacy of members of the opposite sex. In the case of *Croft v Royal Mail* [2003] it was noted that “acquiring the status of a transsexual does not carry with it the right to choose which toilets to use”.<sup>42</sup> The most commonly cited recent case, which is said to justify allowing people to use opposite sex facilities, is that of *Brook v Tasker*, the Halifax pub case already outlined above (para.68). This is sometimes called a “landmark” case, but in fact no legal arguments were heard as it was undefended, and as a first-instance case it would set no precedent anyway.<sup>43</sup>

94. Legal commentators have begun to consider this question. Julius Komorowki argues:

If persons of the other sex are admitted, they cease to be services segregated or exclusive on the basis of sex, and thus lose their exception from the obligations not to discriminate because of sex. ... the exclusion of trans persons legally of the opposite sex is not simply permissible but a necessary part of the statutory scheme.<sup>44</sup>

In other words if a service provider changes the rules to allow one person to use opposite sex services on the basis of gender identity, they have no basis to exclude anyone of the opposite sex (and in practice anyone caught in the wrong place might claim a gender identity).

95. Writing in the *Modern Law Review*, Rebecca Bull and Alesandra Asteriti note:

We have seen no evidence in Hansard to show that Parliament addressed the issue of women-only spaces in relation to whether males with the protected characteristic of gender reassignment should be granted access to female-only spaces. There is in short, no evidence, neither as a matter of statutory interpretation, nor of parliamentary record, that the EA was

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<sup>42</sup> Forstater (2020) *Croft v Royal Mail: between a Rock and a Hard Place*

<https://a-question-of-consent.net/2020/08/16/croft-v-royal-mail-between-a-rock-and-a-hard-place/>

<sup>43</sup> Forstater, M (2020) Revisiting the Brook case <https://a-question-of-consent.net/2020/05/29/the-case-of-sb/>

<sup>44</sup> Julius Komorowski (2020) ‘Sex and the Equality Act’ (2020) 65(1) *Law Society of Scotland Journal* <https://www.lawscot.org.uk/members/journal/issues/vol-65-issue-01/sex-and-the-equality-act>

designed to give as the 'default position' transwomen right to access to female only spaces.<sup>45</sup>

96. Guidance produced by the EHRC, ACAS and the GEO mis-states the law. Official guidance tells service providers to allow people to use single-sex services on the basis of, variously, "the gender role in which they present" (EHRC Code of Practice (2011), "acquired gender" (EHRC online guidance, 2019), or "the sex in which the transsexual person presents" (EHRC, 2018).<sup>46</sup>
97. As the case studies above illustrate, these formulations are impossible to apply consistently and clearly in practice, resulting in conflict and potential for humiliation on all sides. If they follow the guidance, organisations are forced to abandon rules and are left with no basis for turning any male away from women's facilities.

## **Private standards and guidance not in line with the law**

98. Taking advantage of this inadequate official guidance, "trans rights" organisations such as Stonewall, GIRES and Gendered Intelligence promote the idea that service providers and employers must allow the use of single-sex services on the basis of gender self-ID. This is inconsistent with the Equality Act, and buildings regulations, workplace health and safety laws and local licencing laws which require male and female or clearly unisex toilets (see Annex 1).
99. Roughly 250 Government departments and public bodies, including police forces, local councils and NHS trusts, are members of the Stonewall workplace diversity charter scheme, at an annual cost of some £600,000. Members include GCHQ, MI5, the Ministry of Defence, the Cabinet Office, the Department for Education, the Ministry of Justice, 57 local authorities, 47 emergency service providers,

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<sup>45</sup> Rebecca Bull and Alesandra Asteriti (2020) Gender Self-Declaration and Women's Rights: How Self Identification Undermines Women's Rights and Will Lead to an Increase in Harms: A Reply to Alex Sharpe, Modern Law Review, <https://www.modernlawreview.co.uk/asteriti-bull-sharpe/>

<sup>46</sup> There is currently a Judicial Review on the lawfulness of the EHRC Guidance <https://www.crowdjustice.com/case/action-against-unlawful-official-guidance/>

almost 30 police forces and more than 50 NHS organisations.<sup>47</sup>

100. The result is that organisations abandon clear rules for single-sex services and spaces, and instead adopt policies which tell people they can use opposite-sex facilities based on self-determined gender or gender presentation (i.e. clothing) on any given day. This puts staff and other users in a difficult position, promoting conflict and uncertainty.
101. One stark example of this is the Security Industry Authority (SIA), the organisation responsible for regulating the private security industry: security guards and door staff. In 2018 it published a guidance document “Trans customers: A guide for door supervisors”. The guidance says that security staff should allow customers of either sex and whatever they look like to choose which toilets to use. It suggests that telling a male person not to use the ladies is “harassment”, saying workers themselves may be held personally liable for it, and even suggesting that such actions may be a hate crime. In effect, it tells venues that employ security staff that they cannot communicate clear sex-based policies or expect staff to enforce them, and it tells training providers that it cannot train staff on how to sensitively engage with people who identify as trans while maintaining single-sex spaces. This is the exact opposite of what the regulator tasked with helping people feel secure should be doing.<sup>48</sup>
102. UK Active's “Guidance For Front Line Staff To Assist Trans People To Access Leisure Facilities” on changing room and toilet access tells front-line staff to assess whether an “individual wants to use a changing or toilet facility that is consistent with their gender appearance”. If the individual wants to use facilities inconsistent with their gender appearance it advises “it may not be appropriate, and may need further discussion with other facility users before this can happen.” In practice this is unworkable. It cannot be clearly and consistently communicated or applied. The guidance suggests:

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<https://www.telegraph.co.uk/news/2020/10/31/government-agencies-paying-thousands-become-diversitychampions/>  
<sup>48</sup><https://a-question-of-consent.net/2020/08/31/the-authority-that-regulates-security-in-pubs-clubs-says-who-needs-rules-when-it-comes-to-womens-privacy/>

In terms of educating other facility users, direct them to literature online, link them with a local LGBT association, or perhaps even consider running workshops at your facility for anyone to attend.<sup>49</sup>

This is of course impractical; people should not have to engage in a re-education programme in order to change or use the toilet with ordinary privacy.

103. Similar approaches have been taken by many employers, under the guidance of Stonewall and other advocacy organisations. For example, the Law Society in its “Transition and Change to Gender Expression Template”, published in August 2020, advises firms to allow individuals to “use the facilities that make you feel most comfortable”, including changing from day to day based on whether they are presenting in masculine or feminine attire. A group of female lawyers complained.

No consideration of women’s rights or interests has been undertaken and this is particularly important, as women are not well represented at partner level in law firms. Many women, whether for reasons of privacy, dignity, safety or for religious reasons or previous trauma from male violence, are not comfortable using mixed-sex facilities. It is surprising therefore that the impact on women has not been considered and no consultation undertaken with the broader membership.<sup>50</sup>

104. Sainsbury’s policy for staff states (wrongly) that as soon as someone begins a transition process, the law says they must be able to use any toilets they wish:

The law states that individuals who are making or have made a permanent change to their gender must be permitted to use the facilities designated to their acquired gender. It is a contravention of the Equality Act to force a

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<sup>49</sup> UK Active - Guidance For Front Line Staff To Assist Trans People To Access Leisure Facilities

<https://www.ukactive.com/wp-content/uploads/2018/11/ukactive-Transgender-Guide.pdf>

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<https://legalfeminist.org.uk/2020/10/07/sex-and-the-law-society-open-letter-to-the-simon-davies-president-of-the-law-society/>

trans person to use separate facilities.

Should you face objections from other colleagues, you should sit down in private with colleagues and discuss their concern. The transgender colleague is protected by law and preventing them from using the appropriate facilities is illegal and discrimination. Begin the conversation by explaining how the colleague has now made the decision to begin the gender transitioning process and that as colleagues we should all respect that.<sup>51</sup>

105. The Crown Prosecution Service, working with the trans advocacy organisations Gendered Intelligence and Stonewall, developed a pack named "LGBT+ Hate Crime Guidance for Schools". It suggested to pupils that upholding single sex spaces would amount to criminal behaviour. The pack, which has now been withdrawn following a legal challenge, encouraged schools to tell girls not to object to males entering single-sex spaces such as toilets and changing rooms.<sup>52</sup>
106. One of the teaching exercises features a video scenario where an adult male presenting in a feminine style enters the women's toilets. Two young women at the sinks whisper their discomfort: "What's he doing in here? This is the Ladies." The next time, the person uses the Gents, where two middle-aged men shout abuse and bang on the door. The class discussion guidance says: "Ask the students what happened in the clip. Thinking about how the girl in the clip was treated, can the class understand why she might have felt hesitant about going into the toilets?" By "girl", they mean the adult male.
107. This frames what happened as the fault of the girls for noticing that someone of the wrong sex was using their facilities, and responding with worry and discomfort, rather than that of the bullying and threatening men who seemed to think that gender non-conforming males should not be allowed to use men's spaces, and of a society that has decided to accommodate those men by telling

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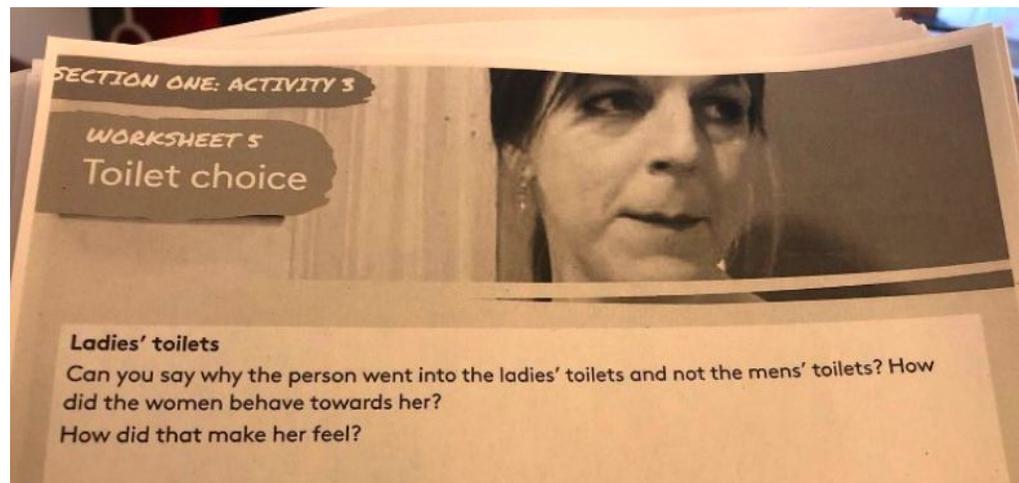
<sup>51</sup> Sainsbury's intranet, as reported: <https://grahamlinehan.substack.com/p/sainsburys-pull-the-old-switcheroo>

<sup>52</sup> <https://a-question-of-consent.net/2020/04/30/cps-guidance-undermining-consent-withdrawn/>

women and girls that they have to move over to make room for gender non-conforming males.

108. It also teaches young people that the only person whose feelings matter in this scenario is the adult male. The young women's feelings, their need for privacy and safety do not matter at all. This is an appalling message to give to young women and indeed to young men.

**Figure 10: CPS Schools Pack (withdrawn)**



109. The Royal College of GPs was paid by the advocacy group GIRES to host a "Gender Variance" module on the NHS e-learning for healthcare portal.<sup>53</sup> In a section on toilets, it says:

It is not acceptable to exclude a young person who has transitioned full time from the toilet facilities appropriate to their new gender. They can use these straightaway unless they choose otherwise. Some schools have only unisex facilities which overcomes the toilet issue altogether... Note that it is not acceptable to have both girls toilets and boys toilets and yet insist that a trans child only use the unisex toilet.<sup>54</sup>

This module was later withdrawn by the Royal College of GPs (over a

<sup>53</sup> <https://www.gires.org.uk/comments-regarding-the-gender-variance-elearning-course/>

<sup>54</sup> [http://cs1.e-learningforhealthcare.org.uk/public/GEV/GEV\\_01\\_001/story\\_html5.html?lms=1](http://cs1.e-learningforhealthcare.org.uk/public/GEV/GEV_01_001/story_html5.html?lms=1)

disagreement on a different issue).<sup>55</sup> In fact the Department for Education in its Technical Guidance on the Equality Act tells schools that it is appropriate to provide alternative (individual) facilities for changing for a child who identifies as transgender.<sup>56</sup>

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<sup>55</sup> <https://www.gires.org.uk/comments-regarding-the-gender-variance-elearning-course/>

<sup>56</sup> DFE (2015) Technical Guidance for Schools in England  
[https://www.equalityhumanrights.com/sites/default/files/technical\\_guidance\\_for\\_schools\\_england.pdf](https://www.equalityhumanrights.com/sites/default/files/technical_guidance_for_schools_england.pdf)

## **6. A workable solution that respects everyone's rights**

110. Providing a unisex alternative while retaining separate sex toilets does not erode privacy for men and women, boys and girls (in fact it supports it, by not encouraging ambiguous rules, and people trying to evade them). It ensures that everyone is able to access the facilities overall.

### **Single sex toilets with a unisex option where possible**

111. Single-sex toilets are places where sex-based rules apply for good reason. However these rules may be uncomfortable for people who don't wish to be associated with their own sex and who may face intrusive questions because of their appearance (particularly if they have taken steps such as hormone treatment or surgeries). People should not have to talk about their surgeries or diagnosis.
112. The provision of a unisex option where possible as an alternative to single sex facilities means that everyone retains their dignity and privacy when accessing toilets, without uncertainty, intrusive questions or potential conflict or hostility from others. Individuals should not face uncertainty about which facilities they are permitted to use. This is in line with current law, and unisex provision is already in place in many buildings.
113. Service providers, employers and others including security personnel, advisory bodies and employment tribunals all need clear guidance. Standard signs and words should mean the same thing in different places.

### **Is it adequate if the unisex option is accessible for disabled people?**

114. Many commercial and public toilets and workplaces already have some unisex

accessible toilets, as required by building regulations. These are generally open access on the basis of people determining their own needs. The British Standard for Accessible Buildings states

Disabled people should be able to find and use suitable toilet accommodation no less easily than non-disabled people.

115. Some disability rights activists argue that accessible toilets should be reserved exclusively for use by people with certain physical disabilities. However, this is not currently a requirement of either the building regulations, or the Equality Act.
116. People who identify as transgender (including those who identify as non-binary) may comprise up to 1% of the population. It is not reasonable to expect all buildings to offer a unisex toilet exclusively for their use (it would also tend to draw attention to something they may wish to be circumspect about). Others may also wish to use unisex toilets, for example parents accompanying a young child of the opposite sex.
117. Where a unisex accessible toilet is available to others on an open-access basis it would be discriminatory for a service provider or employer to apply an *additional* rule that transgender people are not allowed to use it or to allow staff to challenge them on why they are using the facilities.
118. There are campaigns to raise awareness of “invisible disabilities”, so that people are not challenged using the accessible toilets if they do not fit the perception that “disabled” means a wheelchair user. Other likely users of accessible toilets include, for example, older people, blind and partially sighted people and people with colostomies, artificial limbs, arthritis or incontinence. Where there are no separate family toilets, accessible unisex toilets are also likely to be used by family groups and people with luggage. Other potential users include autistic children and adults who find the sound of the hand dryer distressing, women using menstrual cups who need a toilet with a sink inside, people with paruresis (shy bladder syndrome) and pregnant women. In some buildings or parts of buildings where there is only a single toilet it is intended to be used by all.

119. Given that the average time that a non disabled person uses a toilet is 1 to 2 minutes, having an open access rule does not put accessible toilets out of action for disabled users. New buildings where there are toilets containing four or more stalls are also required to have disability accessible toilets in their single sex facilities. Unisex accessible toilets are particularly important where they are the only accessible toilet, and for disabled people with carers of the opposite sex. Regulations state that general baby-changing facilities should not be co-located in the unisex accessible toilets, because they tie up the facilities for longer, but they do not state that accessible facilities are intended or required to be for disabled people's exclusive use.<sup>57</sup>
120. Building regulations and British Standards guidance make clear that accessible toilets are not exclusive-use (and can be included in the count of general toilet facilities). However, perceptions vary. For example, in a recent Employment Tribunal case (*Taylor v Jaguar Land Rover* [2020]), referenced above, where a male employee who wore women's clothes to work on some days as part of a transition process, was offered the use of the unisex accessible toilets, the judge said:

...this was not appropriate advice. Firstly, telling a transitioning person to use the disabled toilets is, at the very least, potentially offensive to them because it suggests that their protected characteristic equates to a disability. Secondly, disabled toilets are for disabled people to use and should not be used by other people.<sup>58</sup>

It is not true that accessible toilets are only for use by disabled people. This is not required by the Equality Act, or by building regulations.

121. In some locations, due to the incidence of anti-social behavior, a single closed room offered by a unisex accessible toilet is at risk of vandalism and misuse. In

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<sup>57</sup> BS 8300  
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[https://assets.publishing.service.gov.uk/media/5fc8d559d3bf7f7f5c134ad3/Ms\\_R\\_Taylor\\_v\\_Jaguar\\_Land\\_Rover\\_Limited\\_-\\_1304471.2018\\_-\\_Reasons.pdf](https://assets.publishing.service.gov.uk/media/5fc8d559d3bf7f7f5c134ad3/Ms_R_Taylor_v_Jaguar_Land_Rover_Limited_-_1304471.2018_-_Reasons.pdf)

order to maintain the facility in usable condition for those who need it, it may be locked, either with a code or key obtainable from onsite staff (such as in some train stations) or a universal “radar” key available from local councils and disability organisations. However, this should be a last resort.

122. Facilities managers should understand the needs of disabled users and ensure that overall provision is adequate, and that accessible toilets are maintained, not misused or used for storage etc. At a site where there is high demand for unisex facilities, such as at a university with a large number of students identifying as “non-binary”, there may be greater need for facilities that can be used by people of either sex, in addition to existing unisex accessible toilets.

## **Can doctors give permission for some people to use opposite-sex facilities?**

123. Most people who identify as being on the broad “transgender” or “gender variant” spectrum do not seek medical treatment. However those who do are required to demonstrate a “role change” (previously known as the “real life test”) if they seek to undergo irreversible surgery. Doctors generally consider that what they are trying to achieve is to enable someone to “pass” as the opposite sex, or at least for people to be willing to accept them as a close approximation, in order to relieve severe emotional distress of being perceived and treated as their actual sex. Dr James Barrett of the NHS Charing Cross Surgery writes:

It is not necessary that those around the patient believe that they *are* that sex. Few patients pass this well in their new role, and many work with others who knew them before they changed gender role. Rather than being believed to be the assumed sex, the goal should be being taken as and treated as that sex. It is essential that the patient feels confident that this is occurring and comfortable with their new role. Someone tormented by daily doubts about whether they are accepted in their new role, however well they objectively pass in that role, is living under a great

stress which might prove unendurable in the longer term. It will in no way be altered by surgery to their genitals.<sup>59</sup>

124. Toilets have been used as part of the test of social acceptance, in particular people seeking to transition are expected to live in their “new social role at work”, which is assumed to mean using opposite-sex toilets and changing facilities at work. However, this can bring conflict with other employees, who may prefer not to share intimate space with a member of the opposite sex.
125. In one case that went to an employment tribunal, Royal Mail employee Nicolas Simpson was undergoing a medically supervised transition to become Sarah Croft. The Royal Mail offered use of the unisex disabled toilets “for the time being”. Management advised that it would offer access to the female toilet facilities at an unspecified time in the future, saying that it also had to consider the views and preferences of female employees, who had objected when consulted via the union. Croft argued that having to use the unisex facility was an obstacle to gaining social acceptance. The tribunal found in favour of Royal Mail, and this was upheld by the Employment Appeal Tribunal and the Court of Appeal. However, the Court of Appeal also said that although people transitioning are not immediately entitled to be treated as members of the opposite sex, “a permanent refusal of choice to someone presenting to the world as a woman could be an act of discrimination even if the person had not undergone the final surgical intervention”. It did not offer a view regarding when would be appropriate.
126. Dr James Barrett describes another variant of the “toilet test”: telling patients to ask a stranger for directions to the toilet, for example in a shopping centre, to see if they are directed to facilities for their birth sex or for the sex they wish to be perceived as. Dr Barrett writes about this test in relation to a “difficult group of male patients” who “pass poorly” (i.e. are clearly recognisable as men), and who say they have changed role but where doctors doubt the veracity of the role

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<sup>59</sup> Barrett, James (2007) *Transsexual and Other Disorders of Gender Identity: A Practical Guide to Management*

change:

They often take the view that it is their conviction of their own femininity that matters, and that non-acceptance by others amounts to an unacceptable prejudice that ought not to be allowed to influence the opinion of a gender identity clinic. These patients may wear an outfit bought entirely from female clothing shops, assembled so that the general impression is nonetheless masculine. They may insist that they are widely accepted as female but more often than not when no evidence supports this and the ‘public toilet test’ is put to them, they either openly admit that this is not the case, or conduct themselves thereafter as if they had made such an admission. These patients tend to be gynephilic secondary transsexuals<sup>60</sup> from a transvestite background, or patients with autogynephilia.”<sup>61</sup>

Some patients, Barrett writes, “base their claim of [living in a different gender role] upon wearing the appropriate underwear, proudly stating how long they have been in this habit”.

127. More recent best practice guidance for clinicians on the test of “living in role” does not explicitly mention toilets. Instead it says:

The quality of life in the new role is assessed through discussions about the patient’s ability to function in areas such as employment, voluntary work, education and training or some other stable, social and domestic lifestyle, and to adopt a gender-appropriate first name.<sup>62</sup>

Perhaps this reflects a recognition that clinicians had overstepped the mark by

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<sup>60</sup> This means heterosexual male cross dressers. Autogynephilia means having a sexual fetish involving dressing in clothes of the opposite sex.

<sup>61</sup> Barrett, James (2007) *Transsexual and Other Disorders of Gender Identity: A Practical Guide to Management*

<sup>62</sup> Royal College of Psychiatrists (2013) *Good practice guidelines for the assessment and treatment of adults with gender dysphoria*, College Report CR181, October 2013, London  
[https://www.researchgate.net/publication/278324819\\_Good\\_Practice\\_Guidelines\\_for\\_the\\_Assessment\\_and\\_Treatment\\_of\\_Adults\\_with\\_Gender\\_Dysphoria](https://www.researchgate.net/publication/278324819_Good_Practice_Guidelines_for_the_Assessment_and_Treatment_of_Adults_with_Gender_Dysphoria)

using members of the public's legitimate objection to sharing toilets with members of the opposite sex as involuntary aids in diagnosis and treatment. If unisex toilets are available, there is no possible justification for forcing people to break the rules and use toilets of the opposite sex to test whether they cause alarm or discomfort to others in order to access medical treatment or a change of legal status.

## **Does a Gender Recognition Certificate secure access to single sex facilities?**

128. Around 5,000 people in the UK hold a gender recognition certificate, which means that they have changed the sex recorded on their birth certificate and are regarded as belonging to that newly recorded sex for almost all legal purposes. That is a tiny fraction (less than 0.8%) of the around 1% of people who may regard themselves as transgender. The certificate is awarded on the basis of a medical diagnosis (but not necessarily surgery), a change of other paperwork and a statutory declaration. There is no test of whether a person “passes” visually as a member of the opposite sex.
129. The Gender Recognition Act (S.22) provides for privacy of information. This means that if a person obtains information about someone having a GRC in the course of their official duties, they are not allowed to share that information without the consent of the GRC holder. They could not, for example, tell other users of the toilet. This suggests that having a GRC is not of practical relevance to toilet access.
130. Trans activist organisations also agree that the Gender Recognition Act does not concern access to single sex services.<sup>63</sup> For example the Diversity Trust states:

The GRA reform is not about access to single-sex or women only services, it is about easier access to gender recognition.<sup>64</sup>

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<sup>63</sup> They argue that the Equality Act means that people can self identify into using toilets for the opposite sex

<sup>64</sup> Diversity Trust (2020) Statement on UK Government Response to the GRA Reform

131. The provision of a unisex, open-access option should provide for the privacy of anyone who does not wish to use toilets that correspond with their biological sex, and protect people who identify as transgender (whether they have a GRC or not) from being subjected to intrusive questions from staff or other users, or from causing others alarm or distress.

## **Do clear rules depend on intrusive policing?**

132. One common argument against clear rules is that they require intrusive policing. For example, in evidence submitted to the Women and Equality Select Committee, Dr Ruth Pearce says:

Presumably this would require some form of ID check based on genital identification or a chromosome test. Given that their concerns all appear to address women's single-sex spaces, this would disproportionately impact all women and girls, who would all require this new form of ID, while leaving men untouched by the proposals. Any such system would also leave trans men at liberty to use women's single-sex spaces while attempting to exclude trans women.<sup>65</sup>

133. Similarly the advocacy organisation Mermaids says:

If we legislate to police gender in toilets, then how and at what point do we decide who is and isn't a woman? Will all facilities require a gender checking attendant? Do tall, broad or deeper-voiced women face being challenged for ID to prove their gender? Will women with short hair who dress in traditionally-male clothing be asked to prove their sex? Will a woman be forced to show a stranger their body to pass a gender test? What, precisely, would happen if a woman were judged, in one way or another, to be a man? Will she be arrested or fined or removed from the

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<https://www.diversitytrust.org.uk/2020/06/statement-on-uk-government-response-to-gender-recognition-act-reform/>

<sup>65</sup> <https://committees.parliament.uk/writtenevidence/21023/pdf/>

premises? Will all women need to carry a mandatory 'woman certificate' or will only trans women be forced to carry proof that they have a GRC? <sup>66</sup>

134. Of course no such intrusive enforcement is required. Male and female toilets are commonplace, and have never required genital inspections or requirements to dress in a particular way. Everybody knows what sex they are, and can be expected to follow rules that are reasonable, clearly communicated and obviously intended for their privacy and that of others. Medical authorities and rights organisations should not give advice to the contrary. Workplaces have disciplinary processes, and other venues can ask people to leave if they don't follow clear rules. We should not assume that transgender people are less likely than others to be law-abiding and capable of following rules. But we should also not allow the language of gender to obscure the material reality of sex in situations where sex matters.<sup>67</sup>

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<sup>66</sup> 17 June 2020. Safety & Dignity: trans rights are no threat to single-sex spaces

<https://mermaidsuk.org.uk/news/safety-and-dignity/>

<sup>67</sup> None of these arguments are based on a claim that all transgender males are predators who are a risk to women. The existence of separate sex toilets and washrooms is not predicated on all males being predators, but on ordinary expectation of bodily privacy between individuals of opposite sexes, risk reduction and the need for clear rules which can be communicated. Evidence suggests that male to female transsexuals as a group (that is those under medical supervision and treatment) tend to exhibit male rather than female patterns of offending, even after transition. It cannot be assumed that the broader group of males who self identify as women will should be risk assessed as a group as if they were female. Dhejne, C. and Others (2011) "Long-Term Follow-Up of Transsexual Persons Undergoing Sex Reassignment Surgery: Cohort Study in Sweden" PLoS ONE 6(2): e16885 <https://journals.plos.org/plosone/article?id=10.1371/journal.pone.0016885>

# Recommendations

Toilets are ubiquitous, and critical to access to all kinds of services: schools and universities, workplaces, parks and sports venues, nightlife, cities and shopping centres, transport and workplaces. Thus they are covered by regulations and guidance from a range of local and national authorities and private standard setters, and within organisations can be the domain of architects and planners, human resources, facilities management and security functions at different times. People who identify as transgender in turn get advice from other sources such as doctors and specialist organisations.

But signs, words and symbols telling people which toilets they can use need to mean the same thing everywhere and to anybody - is this space single sex or mixed sex? Regaining clarity on this will require different agencies and organisations to be more explicit about their policies and check that they are in line with the law. There is a need for coordination, but also for leadership to create models of clarity and good practice.

**Recommendation 1: The Ministry of Housing Communities and Local Government should issue clear, simple guidance** to service providers and to support and advisory organisations, along these lines:

1. Site managers and planners should ensure there is sufficient provision for all users, and follow relevant legislation.
2. They should have clear policies about which toilets and associated washrooms are single-sex (male or female); unisex (to be used by either sex, one at a time or in limited groups such as families or disabled people with carers); or mixed-sex (rooms in general use by people of both sexes at the same time).
3. These policies and rules should be clearly communicated in signage, using standard symbols and simple words, and in information provided to visitors (including online) and in staff handbooks.
4. It is preferable to provide separate male and female toilet facilities, including separate washroom areas, wherever space allows.
5. In addition, it is good practice to provide a unisex alternative (sometimes termed “gender-neutral”).
6. Unisex options should be fully enclosed rooms with sink and mirror etc inside. Ordinary toilets with urinals, cubicles and shared sink areas should not be relabelled as “inclusive” or “gender neutral”.

7. Where unisex facilities are not adjacent to men's and women's toilets, signage near the entrance to the single-sex facilities could indicate where the nearest unisex facilities are.
8. A unisex accessible toilet that is open access can be used both by people with disabilities and others needing more space or privacy than offered by single-sex toilets.
9. Where there is high demand for unisex facilities, they should be provided separately from facilities intended to meet specific needs of disabled people, in order to avoid conflict and competition for limited facilities.
10. Train staff to communicate policies and treat everyone with respect while communicating clear rules.

**Recommendation 2: The Ministry for Communities and Local Government should work with other stakeholders, including women, older people, parents, trans and disabled people, and with service providers, to develop a communication resource for the public and service providers about what signs mean, what toilets people of either sex can use, and what they can expect from service providers.**

**Recommendation 3: The Ministry for Communities and Local Government should communicate this to trans rights organisations, and medical and legal institutions dealing with transitioning people** (such as NHS and private gender identity clinics and the Gender Recognition Panel), so that they understand that they should not advise their clients to use opposite-sex facilities as a means of diagnosis of gender identity validation, as this undermines the privacy of others and puts them in conflict with service providers who need to be able to communicate clear rules.

**Recommendation 4: The Ministry for Communities and Local Government should issue guidance for relevant public institutions under its mandate - they should not seek advice or certification from organisations that do not consider all nine protected characteristics in the Equality Act** in their approach to diversity and inclusion. They should not engage organisations that encourage people to use facilities provided for the privacy of members of the opposite-sex; recognising this as an abuse of consent.

**Recommendation 5: The The Ministry of Housing Communities and Local Government should call on the EHRC to revise its guidance and offer clear, workable guidance on separate-sex and unisex facilities in relation to the Equality Act.**

## Glossary

<p><b>Sex</b></p>	<p>Being male (i.e. a man or boy) or female (i.e a woman or girl)</p> <p>A person's sex is observed at birth and recorded on their birth certificate</p> <p>A small minority of people change their legally recorded sex via a Gender Recognition Certificate. This does not determine what toilets someone should use</p>
<p><b>Male toilets</b></p>	<p>Toilets designated for men May contain urinals as well as WCs Labelled using , gentlemen, men, male, boys etc</p>
<p><b>Female toilets</b></p>	<p>Toilets designated for women Only contain WCs, also contain sanitary towel disposal units (for adult toilets) Labelled using , ladies, women, female, girls etc</p>
<p><b>Unisex toilets</b></p>	<p>Toilets designated for either sex Must be a fully enclosed room A unisex facility is intended to be used by one person at a time (or a family group or person with a carer) but not shared with strangers</p>
<p><b>Single-sex washroom</b></p>	<p>A shared circulation space enclosing or giving access to several toilets (and urinals for men). Contains sinks, mirrors, hand dryers etc.. Intended only for male or female use</p>
<p><b>Mixed-sex washroom</b></p>	<p>A shared circulation area containing sinks etc.. giving access to several toilets, and open to both sexes. The space is shared with strangers of either sex The toilets themselves may be sex segregated, or unisex</p>

# Annex 1 : Laws and official guidance on provision of separate sex and disability accessible toilets.

These words relate to sex across legislation and standards

Word/symbol pair		For example used in
Male	Female	<ul style="list-style-type: none"> <li>• The Equality Act 2010</li> <li>• The Workplace (Health, Safety and Welfare) Regulations 1992</li> <li>• Local authority policies under Local Government (Miscellaneous Provisions) Act 1976</li> <li>• British Standard BS 6465</li> </ul>
Man	Woman	<ul style="list-style-type: none"> <li>• The Equality Act</li> <li>• The Workplace (Health, Safety and Welfare) Regulations 1992</li> <li>• The HSE Approved Code of Practice</li> </ul>
Boy	Girl	<ul style="list-style-type: none"> <li>• School Premises Regulations 2012 (SPR)</li> <li>• Education (Independent School Standards) (England) (ISS)</li> </ul>
Gents/ Gentlemen	Ladies	<ul style="list-style-type: none"> <li>• Common usage</li> <li>• Used by some local authorities in their policies under Local Government (Miscellaneous Provisions) Act 1976</li> </ul>
		ISO, British Standards - symbols for male and female toilets and washroom

## The Workplace (Health, Safety and Welfare) Regulations 1992

Regulation 20 set out requirements for sanitary conveniences. It requires that they are clean, well lit and ventilated and that:

(20 c) **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.

Older buildings, previously covered by The Factories Act 1961, are covered by Schedule I, part 2, which states:

In workplaces where females work, there shall be at least one suitable water closet for use by females only for every 25 females.

In workplaces where males work, there shall be at least one suitable water closet for use by males only for every 25 males.

Regulation 21 requires that washing facilities are sex segregated:

(21 h) **separate facilities are provided for men and women**, except where and so far as they are provided in a room the door of which is capable of being secured from inside and the facilities in each such room are intended to be used by only one person at a time.

However, facilities that are provided for washing hands, forearms and face only may be mixed.

Regulation 24 covers facilities for changing clothing where relevant. The facilities:

(2)... shall not be suitable unless they include **separate facilities for, or separate use of facilities by, men and women where necessary for reasons of propriety** and the facilities are easily accessible, of sufficient capacity and provided with seating.

Regulation 2(3) makes it clear that there should be provision suitable for everyone. This includes people with disabilities.

## The HSE Approved Code of Practice

The Code of Practice gives practical guidance on compliance with the law. This guidance has legal status: if an employer follows the advice they are doing enough to comply with the law in respect of those specific matters on which the Code gives advice. They may use alternative methods, but if prosecuted they will need to show that they have complied with the law in some other way or a Court will find them at fault.

Paragraph 192 states that

In toilets used by women, suitable means for the disposal of sanitary dressings should also be provided.

Paragraph 196 states that

Facilities should be arranged to ensure adequate privacy for the user. In particular:

- Each toilet should be in a separate room or cubicle, with a door that can be secured from the inside;
- It should not be possible to see urinals, or into communal shower or bathing areas, from outside the facilities when any entrance or exit door opens;
- Windows to toilets, showers or bathrooms should be of opaque material or have blinds or curtains unless it is not possible to see into them from outside;
- The facilities should be fitted with doors at entrances and exits unless other measures are taken to ensure an equivalent degree of privacy.

Paragraph 197 provides details of the minimum number of toilets and washbasins that should be provided for different numbers of staff.<sup>68</sup>

**Number of toilets and washbasins for mixed use (or women only)**

Number of people at work	Number of toilets	Number of washbasins
1-5	1	1
6-25	2	2
26-50	3	3
51-75	4	4
76-100	5	5

**Numbers of toilets used by men only**

Number of people at work	Number of toilets	Number of urinals
1-15	1	1
16-30	2	1
31-45	2	2
46-60	3	2
61-75	3	3
76-90	4	3
91-100	4	4

It states that more facilities may be necessary if, for example, breaks are taken at set times or workers finish work together and need to wash before leaving.

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<sup>68</sup> [https://www.hse.gov.uk/simple-health-safety/workplace-facilities/health-safety.htm#\\_How\\_many\\_toilets](https://www.hse.gov.uk/simple-health-safety/workplace-facilities/health-safety.htm#_How_many_toilets)

## The Building Regulations (2010) Part M

Building Regulations 2010 for England and Wales (SI 2010/2214) concern most new buildings, conversions and extensions in England and Wales [Similar regulations cover Scotland and NI]

Schedule 1 Part M concerns access to and use of buildings. It states

M1: Reasonable provision shall be made for people to

- (a) Gain access to; and
- (b) Use the buildings and its facilities

Sanitary conveniences are mentioned in Part M, and covered in more detail in the “Approved Documents” which provide practical guidance. Approved Documents are intended to provide guidance for some of the more common building situations. However, there may well be alternative ways of achieving compliance with the requirements.

The Approved Documents state that overall performance goal of part M is that

People, **regardless of disability, age or gender [NB: they mean sex]**, should be able to:

- gain access to buildings and to gain access within buildings and use their facilities, both as visitors and as people who live or work in them.

The Approved Documents (Volume 2 for non-dwellings) states that

In principle, suitable sanitary accommodation should be available to everybody, including sanitary accommodation designed for wheelchair users, ambulant disabled people, people of either sex with babies and small children or people encumbered by luggage.

It states that the provision of toilet accommodation will satisfy the requirement of Part M (5.7)

- 1) Where there is space for only one toilet in a building, it is of a wheel chair accessible unisex type, but of greater width to accommodate a standing height wash basin;
- 2) at least one wheelchair-accessible unisex toilet is provided at each location in a building where sanitary facilities are provided for use by customers and visitors to a building, or by people working in the building;
- 3) at least one WC cubicle is provided in separate-sex toilet accommodation for use by ambulant disabled people;
- 4) where there are four or more WC cubicles in separate-sex toilet accommodation, one of these is an enlarged cubicle for use by people who need extra space, in addition to any provision under 5.7(c).

Further detailed specifications are provided for wheelchair-accessible unisex toilets. It states

For wheelchair users in particular, a self-contained unisex toilet is always the preferred option since, if necessary, a partner or carer of a different sex can enter to give assistance. Wheelchair accessible unisex toilets should always be provided in addition to any wheelchair accessible accommodation in separate-sex toilet washrooms. Wheelchair-accessible unisex toilets should not be used for baby changing.

## Regulations on school buildings

There are separate (but largely similar) standards for school premises for state schools and private schools:

- School Premises Regulations 2012 (SPR)
- Education (Independent School Standards) (England) Regulations 20101 (ISS)

The Department for Education provides joint non-statutory guidance covering both sets of regulations.

The relevant regulations are

### ISS Regulation 23A

(1) Subject to sub-paragraph (2), the standard in this paragraph is met if the proprietor ensures that—

- a) suitable toilet and washing facilities are provided for the sole use of pupils;
- b) separate toilet facilities for boys and girls aged 8 years or over are provided except where the toilet facility is provided in a room that can be secured from the inside and that is intended for use by one pupil at a time;
- c) suitable changing accommodation and showers are provided for pupils aged 11 years or over at the start of the school year who receive physical education.

(2) Where separate facilities are provided under sub-paragraph (1) (a) for pupils who are disabled, they may also be used by other pupils, staff, supply staff, volunteers and visitors, whether or not they are disabled.

### SPRs Regulation 4

(1) Subject to paragraph (3), suitable toilet and washing facilities must be provided for the sole use of pupils.

(2) Separate toilet facilities for boys and girls aged 8 years or over must be provided except where the toilet facility is provided in a room that can be secured from the inside and that is intended for use by one pupil at a time.

(3) Where separate facilities are provided under paragraph (1) for pupils who are disabled, they may also be used by other pupils, teachers and others employed at the school, and visitors, whether or not they are disabled.

(4) Suitable changing accommodation and showers must be provided for pupils aged 11 years or over at the start of the school year who receive physical education.

The joint guidance states that

Where there is unisex provision (under ISS 23A (1) (b) or SPR 4 (2)), **the privacy of the occupant needs to be ensured** and this will be achieved by, for example, having adequate enclosure and a full height door.

Toilets and washing facilities for staff may also be used by visitors. They should be

separate from those provided for pupils, except where they are designed for use by those who are disabled.

## Local Government Licensed Places of Entertainment

The Local Government (Miscellaneous Provisions) Act 1976 gives local authorities powers to require that licenced venues provide “sanitary appliance” (water closets, other closets, urinals and wash basins). “Relevant place” includes places used for the holding of any entertainment, exhibition or sporting event to which members of the public are admitted either as spectators or otherwise, the sale of food or drink to members of the public for consumption at the place, a betting office.

The Local Government (Miscellaneous Provisions) Act 1976 does not specify the numbers of sanitary facilities to be provided and therefore for guidance Local Authorities refer to British Standard BS 6465: Part 1: 2006 Sanitary installations. It covers the recommended scale of provision of sanitary and associated appliances in new buildings and buildings undergoing major refurbishment.<sup>69</sup>

For example for restaurants and other places where seating is provided for eating and drinking.

<b>Sanitary appliance</b>	<b>For male customers</b>	<b>For female customers</b>
WC	2 for up to 150 males Plus 1 for every additional 250 males or part thereof 2 for up to 50 males if urinals are not provided	2 for up to 30 females; Plus 1 for every additional 30 females up to 120 plus 1 for every additional 60 females or part thereof
Urinals	1 per 60 males or part thereof to 120 males; Plus 1 for every additional 100 males or part thereof	
Wash basins	1 per WC plus 1 per 5 urinals or part thereof	1 per WC

Many councils adopt a lesser standard small cafes (e.g. with under 25 seats ) for 1 WC(Shared) and for 25-50 seats 1 Male 1 WC 1 Female 1 WC 1 and 1 wash basin.

Similar tables are provided for other types of establishment. In the absence of more reliable information it should be assumed that the customers will be 50% male and 50% female.

<sup>69</sup> <https://www.thenbs.com/PublicationIndex/documents/details?Pub=BSI&DocID=290851>

However for pubs it is stated that a ratio of 75% male to 25% female customers may be used.  
More detail on the provision of toilets is provided in the British Standard BS

## **National Standards for accessible buildings BS 8300**

12.6 Disabled people should be able to find and use suitable toilet accommodation no less easily than non-disabled people.

12.6.3 Toilets must be well signposted.

12.6.1 Toilets must be designed so that they can be used independently.

Where there is only one accessible WC in a building, it should be of unisex corner design, suitable for both wheelchair users and ambulant-disabled people

12.6.1 When more than one unisex accessible corner WC compartment is planned, a choice of layouts suitable for left-hand and right-hand transfer should be provided to cater for people who are paralysed or have limited mobility on one side or the other.

12.6.1 As well as being accessible to people in wheelchairs, a well-designed toilet must be easy to use for a wide range of other people, including those who cannot bend, those with limited strength, impaired balance, impaired vision and those who make involuntary movements.