

For immediate release

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Schools in Scotland must provide separate toilets for boys and girls, says equality commission

Sex Matters issues new briefing for Scottish head teachers following recent update to EHRC schools guidance

Campaign group Sex Matters has published a new briefing for Scottish nursery, primary and secondary head teachers on sex and gender based on updated guidance from the Equality and Human Rights Commission (EHRC) on the Equality Act 2010.

The EHRC's technical guidance on schools was published in 2014 but has been found to be inaccurate in its presentation of what the Equality Act says in relation to pupils who identify as transgender.

The updated guidance makes clear that schools in Scotland are required to provide separate toilets for boys and girls. This relates to children's sex, which is not changed by having the protected characteristic of gender reassignment.

Maya Forstater, Executive Director of Sex Matters, said:

"Scottish schools have been getting mixed messages about how to manage single-sex facilities from the government and from transactivist lobby groups for a number of years. The Scottish Government has already withdrawn and revised its guidance for schools once because it encouraged schools to ignore the rules on single-sex toilets.

"Our briefing means that Scottish head teachers can finally be confident that they are getting sound advice taken directly from the equality watchdog's legal guidance.

"Following the EHRC's update, the Scottish Government needs to urgently revise its guidance for schools again to make clear that single-sex facilities mean just that."

Representing the Scottish Government defending an appeal by the grassroots group For Women Scotland over its interpretation of the Equality Act, Ruth Crawford KC yesterday told judges in the Inner House that the Scottish Government recognises that transgender people without a gender-recognition certificate have no entitlement to use opposite-sex facilities.

This aligns with the EHRC guidance, but conflicts with the Scottish Government's own guidance to schools, which was published in 2021 after previous guidance was withdrawn following concerns that it was unlawful.

The Sex Matters briefing for head teachers notes that the Equality Act requires that schools do not unlawfully discriminate based on sex (being male or female, a boy or a girl) or on the basis of “gender reassignment” (for a child: proposing to undergo transition). The update from the EHRC corrects inaccuracies in the 2014 guidance that relate to what schools must do to avoid “gender reassignment” discrimination.

Examples of unlawful direct gender-reassignment discrimination might include excluding a pupil because they identify as transgender or repeatedly insulting a boy who identifies as transgender by saying he looks silly. But an example which suggested that it would be direct gender-reassignment discrimination not to refer to a female pupil as a boy has been removed.

Sex Matters is calling for members of the public to send the EHRC briefing to their local head teachers, and for the Scottish Government to revise its own guidance.

The EHRC is the national regulator on the Equality Act 2010: its technical guidance provides “an authoritative, comprehensive and technical guide to the detail of the law”.

Journalists who would like to interview anyone quoted here, please contact Press Officer Sally Parkin at press@sex-matters.org or 07956 316 248.

To subscribe to the Sex Matters weekly memo on news about sex and gender, or to receive our press notices, please [sign up here](#).

Notes for editors

The Scottish Government published guidance for schools in 2019 together with LGBT Youth Scotland which stated that there is no law which says that single-sex toilets and other facilities should be used only by people of that sex.

It stated that children should be allowed to choose whether to use male or female facilities based on their gender identity and that if other pupils feel uncomfortable “they can be allowed to use a private facility such as an accessible toilet, or to get changed after the trans young person is done”. <https://www.lgbtyouth.org.uk/media/1293/supporting-transgender-young-people-digital-version.pdf>

This was withdrawn after criticism. Ministers determined that the “guidance that risked potentially excluding other girls from female-only spaces was not legal.” <https://forwomen.scot/03/12/2019/lgbt-youth-scotland-foi/>

New guidance published in 2021 still suggested that pupils should be allowed to chose to use male or female facilities but said: “If a young person raises a concern regarding sharing facilities with a transgender young person and it is established that they will experience disadvantage as a result, then the school should seek to respect the rights of all.”

<https://www.gov.scot/binaries/content/documents/govscot/publications/advice-and-guidance/2021/08/supporting-transgender-young-people-schools-guidance-scottish-schools/documents/supporting-transgender-pupils-schools-guidance-scottish-schools/supporting-transgender-pupils-schools-guidance-scottish-schools/govscot%3Adocument/supporting-transgender-pupils-schools-guidance-scottish-schools.pdf>

Links:

Sex Matters briefing for head teachers:

<https://sex-matters.org/take-action/update-schools-on-ehrc-guidance/>

EHRC updated technical guidance:

<https://www.equalityhumanrights.com/en/our-work/news/technical-guidance-schools-updated>

Scottish Government's guidance for schools:

<https://www.gov.scot/binaries/content/documents/govscot/publications/advice-and-guidance/2021/08/supporting-transgender-young-people-schools-guidance-scottish-schools/documents/supporting-transgender-pupils-schools-guidance-scottish-schools/supporting-transgender-pupils-schools-guidance-scottish-schools/govscot%3Adocument/supporting-transgender-pupils-schools-guidance-scottish-schools.pdf>

About Sex Matters

Sex Matters is a human-rights organisation co-founded in 2021 by Maya Forstater, who is its director, to campaign for sex-based rights. It lobbies for clarity on sex in law and institutions; publishes research, guidance and analysis; supports and mobilises people to speak up; and holds organisations accountable.

About Maya Forstater

Maya Forstater is co-founder and executive director of Sex Matters. In 2019 she lost her job as a researcher with the European arm of American think-tank Center for Global Development, after tweeting and writing about sex and gender. She was the claimant in the landmark test case which established that the protected characteristic of belief in the Equality Act covers gender-critical beliefs. Her website is forstater.com and she tweets @MForstater.

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