

John Somers

Director of Equality, Inclusion and Human Rights

cc: Scottish Government Legal Directorate

Joe Griffin, Permanent Secretary

Sarah Albon, Health and Safety Executive

Kishwer Falkner, EHRC

By email only

2nd July 2025

Single Sex Facilities: Letter Before Action

Dear Mr Somers,

1. Thank you for your letter of 27th June 2025. We are pleased to hear that the Short Life Working Group is working **“towards a state of readiness to take all necessary steps to implement the ruling”**.
2. We were also pleased to read in the Herald that the government accepts that public bodies have **a duty to comply with the law** and that work is **proceeding at pace** to implement the ruling.¹
3. This suggests that the Scottish Government now recognises that it cannot wait for the EHRC to finalise its guidance before taking necessary steps to bring its own policies in line with the law.
4. A particularly straightforward and urgent step is to recall the **policies on single-sex facilities** in the workplaces controlled by the Scottish Government, and provide clarity to staff and visitors that separate-sex facilities are provided on the basis of biological sex.

¹ [EHRC warns SNP ministers over sex definition ruling](#)

Sex Matters is a human-rights charity promoting clarity about sex in law, policy and language
sex-matters.org | info@sex-matters.org

Trustees: Naomi Cunningham (chair), Tim Allan, Michael Biggs, Rebecca Bull, Charlotte Cadden, Julia Casimo, Emma Hilton, Kate Owen, Anya Palmer, Claire Weir | CEO: Maya Forstater

5. As we have previously explained, policies based on gender self-ID are unlawful. A man entering and using a toilet or changing room intended for women is unwanted conduct relevant to a protected characteristic (sex) and it has the effect of creating an intimidating, hostile, degrading, humiliating or offensive environment for women. It is therefore a breach of section 26 of the Equality Act 2010.
6. Furthermore the Workplace (Health, Safety and Welfare) Regulations 1992 place an overriding duty on employers to ensure that their workplaces comply with health and safety regulations, which include providing “suitable and sufficient sanitary conveniences” as separate rooms 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). As an employer, the Scottish Government is required by law to protect its employees, and others, from harm, taking action following the principle of “so far as is reasonably practicable”.
7. In relation to toilets in **Scottish Government buildings**, the facts are:
 - 7.1. The Scottish Government estate is made up of 66 owned and leased sites, including offices, stores and buildings in the field.
 - 7.2. They are well-provisioned with toilet facilities, with a total of 1,016 available across the core estate,² for a directly employed staff headcount of around 8,917 full-time equivalent. Even taking into account contractors and visitors, the number of toilets provided is well above the requirements set by building standards.³
 - 7.3. Toilets are generally provided as a mixture of unisex (“gender neutral”) superloos and traditional separate-sex cubicles/urinals, as part of the commitment to meeting the needs of all staff including “providing the best support possible for all trans members of staff”.⁴
 - 7.4. Of the total number of toilet facilities, 18% are provided as “superloos”; that is as a toilet and wash-hand basin in a separate room, lockable from the inside, intended for use by one person at a time.⁵ The work to develop gender-neutral toilets has been undertaken under the **Transforming Our Workplaces** programme since 2016 followed by the “**Smarter Workplaces Programme**”.⁶
 - 7.5. There are 18 smaller sites which are listed as not having superloos. These are mainly small fisheries offices and field-monitoring sites.⁷ It is not clear whether they have a gender-neutral accessible toilet (or may not have toilets at all, some of them are fish

² [14th April FOI response](#)

³ [Technical Handbook 2020](#)

⁴ [Scottish Government Trans and Non Binary Equality and Inclusion Policy](#)

⁵ [14th April FOI response](#)

⁶ [Workplaces Equality Impact Assessment 2022](#)

⁷ [14th July FOI response table](#)

traps and stores). The Scottish Government states that all accessible toilets across the core estate are gender-neutral.

8. The problem is not lack of infrastructure, but that the Scottish Government has been, and continues to operate an unlawful policy on toilets in its workplaces. The Trans and Non Binary Equality and Inclusion Policy says: "Trans staff should choose to use the facilities they feel most comfortable with".⁸ That is male staff who identify as trans or non-binary can use the "women's" facilities and female staff who identify as trans or non-binary can use the "men's". This policy is clearly unlawful.
9. As far as we can see there is nothing to stop the Scottish Government immediately bringing the policy on toilets into line with the law, by making a statement that **all facilities designated as male or female within the Scottish Government estate are to be interpreted as meaning biological sex, and that gender-neutral options are widely available.** This would be in line with the Supreme Court judgment and the action taken by the Scottish Parliament.⁹ It is clearly a reasonably practical step in order to address the risk of individuals using opposite-sex toilets and other facilities.
10. Please confirm, therefore, that you will take this step **within 7 days of the date of this letter.**
11. To the extent that the Scottish Government does not immediately stop the unlawful practices set out in this letter we may decide to commence proceedings without further warning.
12. If it would be useful to discuss anything contained in this letter, we should be very happy to arrange a meeting to do so. You can email me at [REDACTED] We look forward to hearing from you within the timescale set out above.

Kind regards



Maya Forstater
CEO

⁸ [Trans and non-binary policy 2023](#)

⁹ [Scottish Parliament: update on facilities](#)