



## SINGLE-SEX TOILETS AND CHANGING FACILITIES

### WHAT DOES THE LAW SAY?

**Schools Premises Regulations (2012) ISS Regulation 23A section B** states:

'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'.

In **June 2017, the Department of Education issued guidance on 'Gender separation in mixed schools'** which states:

'It is permissible for toilet and boarding accommodation facilities to be separate as they are captured under existing statutory exceptions. Separate toilet and washing facilities must be provided for boys and girls aged 8 years and over pursuant to Regulation 4 of the School Premises (England) Regulations 2012, which falls within the exemption provided for in Schedule 22 of the Equality Act 2010'.

The Equality and Human Rights Commission publication *Technical Guidance for Schools in England*, states that **it may be discriminatory to insist a transgender young person use the facilities of their birth sex**. Schools should avoid putting pupils who identify as transgender in humiliating or uncomfortable positions as far as is reasonably practicable.

**However**, exemptions to the Equality Act 2010 **allow for the provision of single-sex facilities in order to achieve a legitimate aim**. These exemptions apply to **scenarios such as changing rooms (EA2010 Schedule 3 part 7) and sleeping arrangements (EA2010 Schedule 23)**.

Guidance from lobby groups suggests that pupils who identify as transgender must be allowed to use facilities designated for the opposite sex if they wish and often suggest that 'gender neutral' (mixed-sex) toilet facilities are a best practice solution which works for all. This guidance **unlawfully discriminates against one protected characteristic (sex) in favour of another (gender reassignment)**.

### WHY DO PUPILS NEED SINGLE-SEX TOILETS?

#### PRIVACY AND DIGNITY

It is **essential that children and teenagers feel that their personal boundaries are respected and protected**. Puberty and adolescence are times when a child **may feel particularly self-conscious or insecure**. They **may feel uncomfortable in situations where they may be or feel exposed** (such as in toilets, changing rooms and in shared accommodation). It is vital that schools are sensitive to this.

Privacy and dignity are important values which feature heavily in the policies and practices of the NHS and in the Health & Social Care sector. The majority of existing policies regarding privacy and dignity refer to **single-sex provision as highly significant in the protection of privacy and dignity**.

## SAFETY FROM SEXUAL HARASSMENT AND ASSAULT

A 2017 study from the National Education Union and UK Feminista reports that 'sexual harassment is highly prevalent in schools, and overwhelmingly involves boys targeting girls'. The study found that 'over half (58%) of female students in mixed sex schools have experienced or witnessed sexual harassment at school'.

Data collected by Freedom of Information request by The Sunday Times showed that 'unisex changing rooms are more dangerous for women and girls than single-sex facilities'. 'almost 90% of reported sexual assaults, harassment and voyeurism...happen in unisex facilities'. It is clear that mixed-sex facilities **do not adequately safeguard females from harm**.

In May 2018, the Department of Education published advice to schools on 'sexual violence and sexual harassment between children in schools and colleges' which states:

'...schools and colleges should carefully consider how they are supporting their pupils with regard to their sex, sexuality and if appropriate gender reassignment. Provisions within the Equality Act allow schools and colleges to **take positive action, where it can be shown that it is proportionate, to deal with particular disadvantages affecting one group**. A school or college, could, for example, consider taking **positive action to support girls if there was evidence they were being disproportionately subjected to sexual violence or sexual harassment**'.

In light of the above, ensuring the safety of female students can most definitely be considered a legitimate aim of single-sex facilities. **Schools must consider their moral and legal responsibilities regarding the safety of female students if they decide against providing single-sex facilities.**

## PERIOD STIGMA

A survey by Plan International UK found that:

- 48% of girls feel **embarrassed** by their period, with the figure rising to 56% of 14-year-olds.
- 10% said they had been subjected to comments about being '**dirty**' or '**disgusting**'
- 18% had faced **abuse** about leaking
- 15% had been **teased** about sanitary wear.
- 66% reported **missing school** because of their period
- 40% **struggled to catch up** on school work as a result.

Providing female students with single-sex toilet and sink facilities where they can **manage menstruation without being subjected to period stigma** (which may adversely impact their attendance and academic progress) can also be considered a legitimate aim of single-sex facilities.

## WHAT IS THE SOLUTION?

There are **solutions which satisfy both the EHRC guidance and the Equality Act exemptions**.

A school may provide toilet/sink/changing facilities which are **single-sex** (separate male and female toilets/changing) and **also provide a number of self-contained, floor-to-ceiling, lockable toilet and sink facilities which can be used by either sex**.

This solution achieves the legitimate aim of **providing safe, single-sex spaces for female pupils**, whilst also **not discriminating against transgender pupils** by insisting they use the facilities which correspond to their biological sex. Instead, they are able use the self-contained facilities which are **open to any pupil of either sex** – all of which should contain sanitary waste facilities.

