

**REPORT TO GARIOCH AREA COMMITTEE
– 27 SEPTEMBER 2022**

COMMITTEE REVIEW PROCESS STAGE 1 /

STAGE 1 REFERRAL: Toilet Provision in Schools across Garioch

1 Executive Summary/Recommendations

1.1 This report offers a detailed assessment of the provision of toilets within Schools across Garioch following a request from Garioch Area Committee at its meeting on 7 June 2022 and answers the associated questions within the agreed framework of the Stage 1 process. Members are asked to consider whether or not they wish to make recommendations to Education and Children's Services Committee.

1.2 The Committee is recommended to:

1.2.1 Consider whether this Stage 1 scrutiny report and recommendations provides the Committee with sufficient assurances on this matter; and

1.2.2 Where the Committee feels that the report does not provide adequate reassurance, request the delivery of a Stage 2 workshop for the Committee to allow for further exploration of the issue and identification of potential improvement actions.

2 Decision-Making Route

2.1 Members, having considered and approved a Procurement Approval report on the provision of toilets at Cluny School on 25 February 2020 and subsequent requests for further information from the service, in relation to non-sex specific toilet provision in schools, as per item 2 of the Garioch Area Statement of Outstanding Business requested that, in terms of the Committee Review Process, a Stage 1 report be submitted to this meeting to allow additional scrutiny on toilet provision within Garioch Schools, highlighting specific areas, as detailed below:-

1. Detail of all the toilet provision within schools in Garioch
2. Outline the current council policy in relation to school toilets
3. The legislative position in relation to school toilets
4. The consultation process for any changes to single sex provision
5. Information about retrofitting (where changes have been made that do not comply with 1967 school premises regulations)
6. Confirmation of requirement to produce an Equalities Impact Assessment as per the Equalities Act 2010
7. Provide any other relevant information relating to toilet provision in schools in Garioch

2.2 [Part 4A of the Scheme of Governance](#) sets out how scrutiny at Aberdeenshire Council is carried out. The Committee Review Process (CRP) is a three-stage process.

3 Discussion

- 3.1 The School Premises (General Requirements and Standards) (Scotland) Regulations 1967 is the most current legislation in place for identifying the required accommodation in Schools. There is broad recognition that the Regulations are dated, and the Scottish Government are seeking to update them. A [public consultation](#) exercise Updating the School Premises (General Requirements and Standards) (Scotland) Regulations 1967 was carried out from the 17th July 2017- 9th October 2017.
- 3.2 Comment from the Scottish Government in the [analysis of responses](#) published on 26th February 2018 on the public consultation exercise on updating the Regulations stated the following;
- “That additional consideration given to children and young people not identifying with their biological gender was broadly welcomed as was the potential provision of gender-neutral toilet and washing facilities. The need for gender specific facilities was an area of continuing debate.”*
- “Flexibility should be permitted within this Regulation to allow the provision of separate toilet facilities for boys and girls except where they are provided for use by one pupil at a time.”*
- 3.3 The Regulations do not refer to non-sex specific toilets and education authorities cannot comply with their duty under that legislation by introducing such facilities. This would be the case even where banks of self-contained toilets were provided, e.g., with a lockable door, ceiling to floor walls, wash hand basin, toilet and sanitary facilities. Regulation 15 of the Regulations details toilet provision in schools. The Regulations state that in every school which is not designed exclusively for girls half the sanitary accommodation shall be for boys and not more than one third of the appliances for boys shall be water closets and the remainder shall be urinals in accordance with the number of pupils per school.
- 3.4 Any amendment to the Regulations would have to comply with associated umbrella legislation, such as the Equality Act 2010, Human Rights Act 1998, Period Products (Free Provision) (Scotland) Act 2021 as well as government policy and related principles.
- 3.5 The Equality Act 2010 requires all decisions to take into consideration the 9 protected characteristics with robust equality impact assessments to support the decision-making process. In the case of non-sex specific toilets, it has been identified that there is a direct conflict between the protective characteristic of gender reassignment and of sex.
- 3.6 In August 2021, the Scottish Government published [“Supporting transgender young people in schools: guidance for Scottish schools”](#). This guidance aims to provide information for head teachers and support staff to ensure facilities are available for transgender young people. The guidance provides the following considerations:
- A transgender young person should not be made to use the toilet or changing room of their sex assigned at birth.

