

11 July 2025

Dear ,

ATISN 24801 Definition of Woman

Information requested

Thank you for your request which I received on 13 June 2025. You asked for:

1) Current legal position

Please supply any circulars, guidance notes, correspondence, ministerial directions or legal advice issued since 16 April 2025 that explain whether trans women are regarded as women for the purposes of each of the following devolved instruments:

Equality Act 2010 (Statutory Duties) (Wales) Regulations 2011

National Training Framework & Ask & Act guidance (2016)

Rights, Respect, Equality anti-bullying guidance (2019)

Quality Statement for Women & Girls' Health (2022)

Violence against Women, Domestic Abuse & Sexual Violence National Strategy 2022-26

Women's Health Plan for Wales 2024-34

2) Sector-specific policies and data

a. Education

Copies of any communications (April 2024 → present) to local authorities, governing bodies or independent schools on the application to trans pupils of:

Education (School Premises) Regulations 1999 (segregated washrooms);

Independent School Standards (Wales) Regulations 2024 (boarding accommodation);

School Toilets: Good Practice Guidance 2012; and

Supporting Learners with Healthcare Needs 2017.

Please indicate whether, in practice, trans girls aged eight and over may use facilities designated "girls"

b. Health and adult social care

For Health Boards:

the current Delivering Same-Sex Accommodation (DSSA) policy;

any breach or incident logs (January 2024 → present) that involve the placement of trans women; and

any post-judgment guidance or legal advice on reconciling DSSA requirements with trans patients' rights.

c. Equality monitoring

The most recent workforce/pay-gap reports published under the 2011 Welsh duties, stating whether holders of a Gender Recognition Certificate are recorded by acquired or birth sex.

Monitoring data (April 2024 → present) on trans women's access to:

- Housing-Support-Grant-funded refuges;
- Sport Wales female-only programmes; and
- NHS Wales female wards or bays.

3) Forward policy and guidance

Is the Welsh Government preparing interim guidance (potentially jointly with EHRC Wales) to confirm that public bodies may continue to apply the AEA v EHRC inclusion-by-default model unless or until legislation changes? If so, please provide the anticipated timetable; if not, please explain why.

Please disclose any Cabinet papers or ministerial submissions (redactions for legal privilege understood) that consider future policy options for harmonising devolved single-sex duties with CEDAW's trans-inclusive approach.

Our response

The information you requested is enclosed.

- 1) In relation to legal advice, an exemption will apply to this information as it is privileged information between lawyer/client (Section 42 FOIA).

No circulars, guidance notes, correspondence, ministerial directions have been provided since 16 April in relation to the devolved instruments identified.

2) Education

The following correspondence has been issued since April 2024 (please see attached):

- CSE Letter to ADEW - Education School Premises Regulations 1999
- Request for Information - Gender Neutral Toilet Provision – Education School Premises Regulations 1999
- CSE Note - Supreme Court Ruling – Education School Premises Regulations 1999

Please note, CSE Note on the Supreme Court Ruling is subject to Legal Professional Privilege and that therefore it is appropriate to apply an exemption as it is privileged information between lawyer/client (Section 42 FOIA). The document is a summary of legal advice. It was created by officials drawing on Legal Services advice both to education and LGBTQ+ and gender policy officials. Officials condensed this into a note for the Cabinet Secretary for Education to share with her in advance of a

plenary debate. The full document was checked and subsequently approved by legal services on 29.04.25.

The wider public interest in favour of maintaining the exemption consists of the following:

- The wider public benefit of ensuring frankness of legal advice to Ministers in a manner which serves the wider understanding and application of law
- The advice is in relation to a very recent ruling to which additional guidance from the EHRC is forthcoming and at time of advice was unavailable. Therefore legal advice may develop when further guidance from EHRC in relation to the ruling is available, including in relation to its application in schools. Releasing this document could therefore confuse public understanding of interpretation of the ruling and how it may or may not apply to schools in Wales.
- The advice does not refer to the use of public funds and does not have direct financial implications
- The advice refers to policy in development and may lead to confusion or misunderstandings of public policy where positions are under consideration and subject to change.

The wider public interest in favour of disclosure consists of the following:

- There is an assumption in favour of disclosure of information that falls under the capture in order to show accountability and transparency.
- There is high public interest in the legal ruling demonstrated by a high level of media focus, and disclosure illustrates the immediate consideration of potential implications of the ruling on the part of the Welsh Government.

Therefore on balance we consider that the Section 42 exemption should apply.

trans girls aged eight and over and the use of facilities designated “girls”

The consultation on the updated guidance anti-bullying guidance, Rights, Respect, Equality, includes questions relating to amendments to the Education (School Premises) Regulations 1999 (“the 1999 Regulations”). We propose to make very limited amendments to the 1999 Regulations so that schools are allowed (but not required) to provide gender neutral toilets. This is alongside the existing requirement for schools to provide sex separate toilets for learners aged 8 and above. This maintains the requirement to provide single sex toilets and alongside this gives flexibility for schools to provide a range of toilet provision that will help ensure all learners are safe and comfortable using a toilet in school.

- The Education (School Premises) Regulations currently specify separate washrooms for male and female pupils over the age of 8.
- The provision and design of toilets, changing rooms and washing facilities for pupils is a matter for the school and local authority.

- All children and young people need access to a school toilet that they comfortable to use.
- Many schools in Wales make gender neutral toilets available to learners for a range of reasons. This can include to address behaviours that can impact health and wellbeing, for example, bullying or smoking.

This flexibility of choice means that learners who do not feel comfortable in sex separate toilets are provided with a toilet that they able to use. This can be provided as a choice open to all learners. This provision can be particularly beneficial for learners who are trans, non-binary or gender questioning.

Health and Adult Social Care

Please find attached a copy of Free to lead , Free to care (2008) and please use attached link to access the [Welsh Health Building Note: Adult in-patient facilities \(WHBN 04-01\)](#). These documents make up the current DSSA Policy

It is not Welsh Government policy to routinely collect data on the failure to provide single-sex accommodation in the NHS Wales estate and there has not been any post-judgment guidance or legal advice on reconciling DSSA requirements with trans patients' rights.

Equality Monitoring

Please find linked below the most recent workforce/pay-gap reports published under the 2011 Welsh duties:

[Public Sector Equality Duty](#)

Welsh Government's data, which can also be found in its Employer Equality Report, is presented on this page, along with external links to PSED open data published by public bodies in Wales listed under Schedule 19 of the Act. Please note that this page includes only links that have been provided by public bodies themselves. Welsh Government does not hold responsibility for public body data or for content published on external sites

We do not hold any monitoring data from April 2024 on trans women's access to Housing-Support-Grant-funded refuges, NHS Wales female wards or bays or for Sport Wales. You would need to contact this organisation directly to ascertain their female-only programmes

- 3) Welsh Government is not providing any interim guidance. We will take the time to consider the judgment and the forthcoming Statutory Guidance from the Equality and Human Rights Commission (EHRC) carefully and take the steps required to meet our obligations under the Equality Act 2010 as clarified by the ruling.

The EHRC released an interim update on their website in relation to the Supreme Court ruling on Friday 25 April 2025. EHRC have indicated that they intend to publish updated statutory guidance once they have carried out and considered consultation responses. The consultation was released on 20 May 2025 and closed on 30 June 2025.

The EHRC have changed the interim update now reads:

“In relation to workplaces, requirements are set out in the Workplace (Health, Safety and Welfare) Regulations 1992. These require suitable and sufficient facilities to be provided including toilets and sometimes changing facilities and showers. Toilets, showers and changing facilities may be mixed-sex where they are in a separate room lockable from the inside. Where changing facilities are required under the regulations, and where it is necessary for reasons of propriety, there must be separate facilities for men and women or separate use of those facilities such as separate lockable rooms.”

There are no Cabinet papers or ministerial submissions to disclose that consider future policy options for harmonising devolved single-sex duties with CEDAW's trans-inclusive approach.

Next steps

If you are dissatisfied with the Welsh Government's handling of your request, you can ask for an internal review within 40 working days of the date of this response. Requests for an internal review should be addressed to the Welsh Government's Freedom of Information Officer at: Information Rights Unit, Welsh Government, Cathays Park, Cardiff, CF10 3NQ or Email: Freedom.ofinformation@gov.wales

Please remember to quote the ATISN reference number above.

You also have the right to complain to the Information Commissioner. The Information Commissioner can be contacted at:

Information Commissioner's Office,
Wycliffe House,
Water Lane,
Wilmslow,
Cheshire,
SK9 5AF

However, please note that the Commissioner will not normally investigate a complaint until it has been through our own internal review process.

Yours sincerely