



## Appendix 3 - Equality impact assessment form

Directorate	Communities and Place (Public Protection and Streetpride)
Service area	Food Safety Team
Proposal	Review of Provision of Toilets in Commercial Premises Policy (Originally Written in in 2005). Reviewed in 2007 and 2018
Reason for proposal	Recent Legal Challenge to Relevant Legislation Case Law
Sign off (Director/Head of Service)	Doug Walkman
Date of assessment	25/10/2022

### The form

You need to attach the completed form to any report to help councillors and colleagues make their decisions by taking equality implications into account.

Name	Job title	Organisation	Area of expertise
Elizabeth Blaney	Service Manager	Derby City Council	Food and Health & Safety Regulation
Roisin Babe	Senior Environmental Health Officer	Derby City Council	Food and Health & Safety Regulation

### Step 1- setting the scene

Make sure you have clear aims and objectives on what you are impact assessing – this way you keep to the purpose of the assessment and are less likely to get side- tracked.

1. What are the main aims, objectives and purpose of the decision you want to make?	<p>There are various pieces of legislation which impact on the provision of toilets in commercial premises, such as Health and Safety and Building Regulations etc., these provide a basis on which regulatory decisions are made. However, British Standards provide guidance for officers to determine toilet numbers and types of installations.</p> <p>Section 20 of the Local Government (Miscellaneous Provisions) Act 1976 allow the Council to require the provision of toilet facilities in certain circumstances. However, as this legislation is over 40 years</p>
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	<p>old, the guidance and legislation is, often confusing and conflicting. There are also, other matters relating to toilet provision that require further guidance, such as whether takeaways with seating areas should provide toilets, or what constitutes a suitable location for toilets within food premises.</p> <p>In Derby City there had been several occasions, where it has been identified that it would be in the public interest to develop a policy on issues relating to toilet provision within commercial premises in Derby.</p> <p>A policy was introduced in October 2005 and reviewed in January 2007. This policy was reviewed in March 2019, but due to changing work priorities because of the Covid pandemic, there has been a significant delay in seeking its approval.</p>
<p>2. Why do you need to make this decision?</p>	<p>Press coverage of the decision in <i>Kingston-Upon-Hull City Council v Secretary of State for Business Innovation and Skills</i> has prompted a review of Derby City Council's policy.</p> <p>The outcome of the case (and various appeals) in essence means that in premises providing provision to eat/drink on the premises, with more than 10 seats, toilet provision must be provided for members of the public.</p> <p>This policy provides a common framework for officers from relevant Council Departments to be able to offer consistent advice to proprietors of new or existing commercial premises, as well as raising standards for the public.</p> <p>Existing premises will not be expected to upgrade to these standards unless significant structural alterations are being made.</p> <p>New premises/conversions after 1<sup>st</sup> January 2023, will be expected to comply fully with the revised standards in this policy, including the consideration of providing Changing Place provision.</p>
<p>3. Who delivers/will deliver the changed service/policy including any consultation on it and any outside organisations who deliver under procurement arrangements?</p>	<p>The Food and Safety Team within Public Protection and Streetpride have been using this policy since its original introduction in 2005.</p>

	<p>In has been reviewed in 2007 and 2018. This review has been carried out in conjunction with all other Derbyshire Authorities and four similar sized Unitary City authorities. This consultation has shown that there is a similar expected standard of toilet facilities in these other local authority areas.</p> <p>Since March 2019 – present, where applicable, businesses have been advised of the requirements of the existing policy and the proposed changes, which are due to come into effect on 1<sup>st</sup> January 2023.</p>
<p>4. Who are the main customers, users, partners, colleagues or groups affected by this decision?</p>	<p>Businesses who are new or making significant structural changes to their premises will ultimately be affected by this these policy amendments, as in some cases more onerous standards will be expected.</p> <p>The users of the facilities will be positively affected, as facilities will be available to members of the public, staff etc. at these premises. This is based on the number of seats and includes outdoor seating. It is not unreasonable to expect when you visit a premise for the purposes of staying at that premises to consume food or drink, to have access to a toilet should you need it.</p> <p>Conversely expectations of the members of the public need to be managed, in that if a shop or takeaway premises sells food or drink to takeaway and not consume on the premises provision is not required. Indeed, offering such facilities in these circumstances can have serious consequences for members of the public health and safety and can potentially compromise food and safety</p>

## Step 2 – collecting information and assessing impact

<p>5. Who have you consulted and engaged with so far about this change, and what did they tell you? Who else do you plan to consult with? – tell us here how you did this consultation and how you made it accessible for the equality groups, such as accessible locations, interpreters and translations, accessible documents.</p>	<p>We have held meetings with key members of the team and other stakeholders to discuss all aspects of this policy revision.</p> <p>This review has been carried out in conjunction with all other Derbyshire Authorities and four similar sized Unitary City authorities. This consultation has shown that there is a similar expected standard of toilet facilities in these other local authority</p>
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	<p>areas.</p> <p>Since March 2019 – present, where applicable, businesses have been advised of the requirements of the existing policy and the proposed changes, which are due to come into effect on 1<sup>st</sup> January 2023.</p> <p>The amendments to the policy will be communicated via the website and on-going contacts with commercial businesses, particularly those new premises or those undertaking major structural alterations.</p> <p>Derby City Councils Access Hub was consulted on the policy in November 2022.</p>
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6. Using the skills and knowledge in your assessment team or what you know yourself, and from any consultation you have done, what do you already know about the equality impact of the proposed change on particular groups? Also, use any other information you know about such as any customer feedback, surveys, national research or data. Indicate by a tick for each protected characteristic group whether this is a negative or a positive impact. Only fill in the mitigation box if you think the decision will have a negative impact and then you'll need to explain how you are going to lessen the impact.

People with protected characteristics	What do you already know?	Positive impact	Negative impact	Mitigation - what actions will you take to lessen impact?
<b>Age</b> – older and younger people	<p>It is not unreasonable to expect when you visit a premise for the purposes of staying at that premises to consume food or drink, to have access to a toilet should you need it. In addition, older and younger people may need to use toilet facilities more frequently.</p> <p>As a regulatory service, the revisions to this policy revision can only include requirements that can be legally required by the Food and Safety Team. However, the revision of this policy will benefit people of all ages, as in new premises and those premises undertaking significant structural alterations, their users of the facilities will be positively affected, as facilities will be available to members of the public, based on the number of seats provided. This is also includes outdoor</p>	✓		

People with protected characteristics	What do you already know?	Positive impact	Negative impact	Mitigation - what actions will you take to lessen impact?
	<p>seating.</p> <p>The acceptance of unisex facilities in the policy, may create some controversy surrounding mixed-sex facilities centred on children and safeguarding considerations. However, it is anticipated that children visiting these types of premises will be accompanied by a parent/ guardian.</p> <p>The stipulated criteria will also ensure there is fairness and consistency for business owners with the same provision being expected in similar premises in the City.</p>			
<p><b>Disability</b> – the effects on the whole range of disabled people, including Deaf people, hearing impaired people, visually impaired people, people with mental health issues, people with learning difficulties, people living with autism and people with physical impairments</p>	<p>Disabled people are likely to be more disproportionality affected by a toilet not being available. They are more likely to have impairments that mean they need to use the toilet more frequently. When no accessible toilets are provided this might mean many disabled people might decide not to visit commercial premises and could be disadvantaged in experiencing the same opportunities. The business though will also lose their custom. The purple pound is worth over £250 billion so makes good business sense to provide accessible toilets.</p> <p>The provision of accessible toilets is included in the policy for all premises, where food or drink is expected to be consumed on the premises, which also ensures there is fairness and consistency for business owners with the same provision being expected in similar premises in the City.</p> <p>Businesses will be encouraged to consider providing Changing Places facilities or signpost to the nearest available facility, unless they are required to provide one due to Building Regulation</p>		<p>✓</p>	<p>As this policy only comes into effect on 1<sup>st</sup> January 2023, there will be some historic premises where there is no provision for disabled people and other users. We will encourage provision to by working actively with proprietors.</p>

People with protected characteristics	What do you already know?	Positive impact	Negative impact	Mitigation - what actions will you take to lessen impact?
	<p>requirements.</p> <p>As a public body, Derby City Council, can exercise our legal Public Sector Equality Duty by encouraging businesses to display the 'Remember you cannot always tell if someone is a disabled person' in support of people with hidden impairments when using accessible toilets.</p>			
<p><b>Gender identity-</b> trans and those people who don't identify with a particular gender, for example, non-binary, genderfluid, genderqueer, polygender and those who are questioning their gender or non-gendered identity.</p>	<p>Evidence shows that gender neutral toilets are far more inclusive for the trans community as deciding which bathroom to use can be a source of distress for people who identify as non-binary/transgender.</p> <p>There is the option within the policy for gender neutral facilities to be provided, but is not obligatory as regulatory service, the revisions to this policy revision can only include requirements that can be legally required by the Food and Safety Team.</p>	✓		
<p><b>Marriage and Civil Partnership</b></p>	<p>Neutral impact created upon the protected characteristic.</p>	✓		
<p><b>Pregnancy and maternity</b> - women who are pregnant or who have recently had a baby, including breast feeding mothers</p>	<p>The provision of toilets in all premises, where food or drink is expected to be consumed on the premises, which also ensures there is fairness and consistency for business owners with the same provision being expected in similar premises in the City.</p> <p>The provision baby changing facilities are not legally requirements for commercial businesses, although we will actively encourage this provision in commercial premises.</p>		✓	<p>There will be some premises where no baby changing facilities will be provided, as they are not legally required. However, we will encourage provision to by working actively with proprietors.</p>

People with protected characteristics	What do you already know?	Positive impact	Negative impact	Mitigation - what actions will you take to lessen impact?
	<p>It is not advised by Building Regulations that disabled people should share baby changing facility within the accessible toilet as this causes all sorts of issues for disabled people. For example, extra nappy bins in the way, changing tables being left out making less space. In addition to having to wait whilst a parent/ other carer changes a nappy when a disabled person may be desperate due to their impairment, such as those with stoma bags who cannot wait.</p> <p>In addition, accessible toilet should not be used as storage facilities.</p> <p>If pull cords are provided, they should be 100mm above the floor surface.</p>			
<b>Race</b> - the effects on minority ethnic communities, including newer communities, Gypsies and Travellers and the Roma community	Neutral impact largely created upon the protected characteristic. However, gender neutral toilets have been of concern to some communities	✓		
<b>Religion or belief or none</b> - the effects on religious and cultural communities, customers and colleagues	Customers are generally not prevented from using this facility due to their religion or belief, but the acceptance of gender-neutral facilities in the policy, may have a negative impact upon some Islamic, Hindu, and Orthodox Jewish women, as they are forbidden to share toilets with male strangers, especially when menstruating.		✓	As mitigating action, where gender neutral facilities are provided business will be encouraged to provide signposting to other nearby facilities.
<b>Sex</b> - the effects on both men and women and boys and girls	As stated in one of the sections earlier, it is not unreasonable to expect when you visit a premise for the purposes of staying at that premises to consume food or drink, to have access to a toilet should you need it. In addition, older and younger people may need to use toilet facilities more frequently.	✓		

People with protected characteristics	What do you already know?	Positive impact	Negative impact	Mitigation - what actions will you take to lessen impact?
	<p>Women tend to use the bathroom more frequently than men because, on the whole, women have smaller bladders and women also have more reasons to use the toilet than men, including menstruation, menopause, pregnancy, incontinence etc. However older men often have prostate issues making the need for toilets essential</p> <p>Some women are very concerned about gender neutral toilets and currently there is a campaign against them. In terms of this policy, as long as same sex toilets are available and signposted nearby this is adequate.</p> <p>As a regulatory service, the revisions to this policy revision can only include requirements that can be legally required by the Food and Safety Team. However, the revision of this policy will benefit people of all sexes, as in new premises and those premises undertaking significant structural alterations, their users of the facilities will be positively affected, as facilities will be available to members of the public, based on the number of seats provided. This is also includes outdoor seating.</p>			
<p><b>Sexual orientation</b> - the effects on lesbians, gay men, bisexuals, pansexual, asexual and those questioning their sexuality</p>	<p>Neutral impact largely created upon the protected characteristic.</p>	<p>✓</p>		

**Important** - For any of the equality groups you don't have any information about, then please contact our Lead on Equality and Diversity for help. You can also get lots of information on reports completed from organisations' websites such as the Equality and Human Rights Commission, Stonewall, Press for Change, Joseph Rowntree Trust and so on. Please don't put down that the impact affects 'everyone the same' – it never does!



### Step 3 – deciding on the outcome

7 What outcome does this assessment suggest you take? – You might find more than one applies. Please also tell us why you have come to this decision?

<b>Outcome 1</b>	✓	<b>No major change needed</b> – the EIA hasn't identified any potential for discrimination or negative impact and all opportunities to advance equality have been taken
<b>Outcome 2</b>		<b>Adjust the proposal</b> to remove barriers identified by the EIA or better advance equality. Are you satisfied that the proposed adjustments will remove the barriers you identified?
<b>Outcome 3</b>		<b>Continue the proposal</b> despite potential for negative impact or missed opportunities to advance equality identified. You will need to make sure the EIA clearly sets out the justifications for continuing with it. You need to consider whether there are: <ul style="list-style-type: none"><li>• sufficient plans to stop or minimise the negative impact</li><li>• mitigating actions for any remaining negative impacts</li><li>• plans to monitor the actual impact.</li></ul>
<b>Outcome 4</b>		<b>Stop and rethink</b> the proposal when the EIA shows actual or potential unlawful discrimination

#### Why did you come to this decision?

We have included equality considerations in the revised policy.

If you have decided on **Outcome 3**, then please tell us here the justification for continuing with the proposal. You also need to make sure that there are actions in the Mitigation Box to lessen the effect of the negative impact. This is so important and may face a legal challenge in the future.

If you have decided on **Outcome 4** then if the proposal continues, without any mitigating actions, it may be likely that we will face a legal challenge and possibly a Judicial Review on the process - it is so important that the equality impact assessment is done thoroughly, as this is what the Judge will consider

### Equality impact assessment form– please read this section first before you do the assessment

This is our equality impact assessment form to help you equality check what you are doing when you are about to produce a new policy, review an older one, write a strategy or plan or review your services and functions. In fact, you need to do an equality impact assessment whenever a decision is needed about our services and functions that affects people and **before** that decision is made. This also includes quick Covid 19 related decisions.

We use the term 'policy' as shorthand on this form for the full range of policies, practices, plans, reviews, activities and procedures.

Policies will usually fall into three main categories...

- Organisational policies and functions, such as recruitment, complaints procedures, re-structures.

- Key decisions such as allocating funding to voluntary organisations, budget setting.
- Policies that set criteria or guidelines for others to use, such as criteria about school admissions, procurement methods, disabled facilities grants, on street parking bays.

So why do we need to do equality impact assessments? Although the law does not require us to do them now, the courts still place significant weight on the existence of some form of documentary evidence of compliance with the **Public Sector Equality Duty** when determining judicial review cases. This method helps us to make our decisions fairly, taking into account any equality implications, so yes we still need to complete them.

The Public Sector Equality Duty is part of the Equality Act 2010 and this Duty requires us as a public body to have '**due regard**' to eliminating discrimination, harassment and victimisation and any other conduct that is prohibited by or under the Act. It requires us to advance equality of opportunity and foster good relations between people who share a '**relevant protected characteristic**' and people who don't. The nine protected characteristics are age, disability, gender identity, marriage and civil partnership, pregnancy and maternity, race religion and belief, sex and sexual orientation.

Having 'due regard' means:

- removing or minimising disadvantages suffered by people due to their protected characteristics
- taking steps to meet the needs of people with certain protected characteristics where these are different from the needs of other people
- encouraging people with certain protected characteristics to participate in public life or in other activities where the participation is disproportionately low.

This completed form should be attached to any Corporate Leadership, Senior Leadership, Cabinet or Personnel Committee report to help decision makers take the equality implications into account when they make the decision. Equality impact assessments **must be done before** decisions are made.

You'll find that completing these assessments will help you to:

- understand your customers' and communities needs
- develop service improvements
- improve service satisfaction
- demonstrate that you have been fair and open and considered equality when working on re-structuring
- make sure you pay due regard to the requirements of the Public Sector Equality Duty.

Unless this is a quick Covid 19 decision, don't do the form by yourself. Get a small team together and make sure you include key people in the team such as representatives from our Equality Hubs and Forums and employee networks and you could invite trade union representatives too – the more knowledge around the table the better. You also need to decide how and who you will consult with to help inform the equality impact assessment. Our Lead on Equality and Diversity can help with useful contacts – we have a team of people who are used to doing these assessments and can help with information on barriers facing particular groups and remedies to overcome these barriers.

You'll need to pull together all the information you can about how what you are assessing affects different groups of people and then examine this information to check whether some people will be negatively or positively affected. Then you'll need to look at ways of lessening any negative effects or making the service more accessible – this is where your assessment team is very useful and you can also use the wider community. Against every negative impact you will need to complete the mitigation section to explain how you will lessen the impact.

Agree an equality action plan with your assessment team, setting targets for dealing with any negative effects or gaps in information you may have found. Set up a way of monitoring these actions to make sure they are done and include them in your service business plans.

Remember, we need to complete these assessments as part of our everyday business, so we get our equality responsibilities right and stay within the law – Equality Act 2010. If in doubt – it's better and safer to do an Equality Impact Assessment than not to bother! You never know when we may get a legal challenge and someone applies for Judicial Review.

When you have completed the assessment, get it signed by your Head of Service or Service Director and **send it to our Lead on Equality and Diversity for checking and to publish on our website.** It is a public document so must not contain any jargon and must be easy to understand.

### **Contact for help**

Ann Webster – Lead on Equality and Diversity

[ann.webster@derby.gov.uk](mailto:ann.webster@derby.gov.uk)

Tel 01332 643722 mobile 07812301144

[Sign Language Service](#)

We can give you this information in any other way, style or language that will help you access it. Please contact us on **01332 643722, 07812301144** or **[derby.gov.uk/signing-service/](https://www.derby.gov.uk/signing-service/)**

### **Punjabi**

ਇਹ ਜਾਣਕਾਰੀ ਅਸੀਂ ਤੁਹਾਨੂੰ ਕਿਸੇ ਵੀ ਹੋਰ ਤਰੀਕੇ ਨਾਲ, ਕਿਸੇ ਵੀ ਹੋਰ ਰੂਪ ਜਾਂ ਬੋਲੀ ਵਿੱਚ ਦੇ ਸਕਦੇ ਹਾਂ, ਜਿਹੜੀ ਇਸ ਤੱਕ ਪਹੁੰਚ ਕਰਨ ਵਿੱਚ ਤੁਹਾਡੀ ਸਹਾਇਤਾ ਕਰ ਸਕਦੀ ਹੋਵੇ। ਕਿਰਪਾ ਕਰਕੇ ਸਾਡੇ ਨਾਲ ਇੱਥੇ ਸੰਪਰਕ ਕਰੋ: **01332 64XXXX** ਜਾਂ **[derby.gov.uk/signing-service/](https://www.derby.gov.uk/signing-service/)**

### **Polish**

Aby ułatwić Państwu dostęp do tych informacji, możemy je Państwu przekazać w innym formacie, stylu lub języku. Prosimy o kontakt: **01332 64XXXX** lub **[derby.gov.uk/signing-service/](https://www.derby.gov.uk/signing-service/)**

### **Slovak**

Túto informáciu vám môžeme poskytnúť iným spôsobom, štýlom alebo v inom jazyku, ktorý vám pomôže k jej sprístupneniu. Prosim, kontaktujte nás na tel. č.: **01332 64XXXX** alebo na stránke **[derby.gov.uk/signing-service/](https://www.derby.gov.uk/signing-service/)**

### **Urdu**

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