

Derby City Council - Provision of Toilets in Commercial Premises

Context

In terms of toilet provision, legislation provides a basis on which enforcement decisions are made and British Standards provide guidance to determine the number and type of toilet facilities businesses will need. When determining toilet facilities, businesses will also need to consider other matters such as when they will need to provide customer toilets, suitable locations for toilets within food businesses and the provision of wheelchair accessible facilities.

It has been identified that it would be useful to have a policy relating to toilet provision within commercial premises in Derby. This policy provides a framework for council officers to offer consistent advice to new and existing businesses across the city.

This policy has been adopted by Derby City Council and came into force in October 2005. It was reviewed and revised in January 2007, November 2018 and March 2019. The March 2019 amendments become effective on 1st January 2023. There has been a delay due the Covid Pandemic.

Background

Under Section 20 of the Local Government (Miscellaneous Provisions) Act 1976 the Council has the power to require the provision of sanitary facilities in relevant places, which includes places used for "the sale of food or drink to members of the public for consumption on the premises".

The Act does not specify the numbers of sanitary facilities to be provided. The **British Standard BS 6465-1:2006 for Sanitary Installations** is the primary guidance referred to by local authorities. The guidance relevant to commercial premises is summarised in the tables below:

British Standard Specification for Pubs, Bars and Nightclubs		
Sanitary Appliance	Male	Female
WC	2 for up to 150 males; plus 1 for every additional 200 males or part thereof, 2 for up to 40 males if urinals are not provided	2 for up to 25 females; plus 1 for every additional 25 females or part thereof up to 200 females; plus 1 for every additional 35 females or part thereof
Urinal	1 for every 50 males up to 200 males; plus 1 for every additional 70 males or part thereof	N/A
Wash Basin	1 per WC, plus 1 per 5 urinals or part thereof	1, plus 1 per 2 WCs or part thereof
British Standard Specification for Restaurants and Food Courts		
Sanitary Appliance	Male	Female
WC	2 for up to 150 males; plus 1 for every additional 250 males or part thereof, 2 for up to 50 males if urinals are not provided	2 for up to 30 females; plus 1 for every additional 30 females up to 120, plus 1 for every additional 60 females or part thereof
Urinal	1 per 60 males or part thereof up to 120 males; plus 1 for every additional 100 males or part thereof	N/A
Wash Basin	1 per WC, plus 1 per 5 urinals or part thereof	1 per WC

Other factors may need to be considered in some unique food premises, where the British Standards calculations would not be reasonable due size or available space. In these circumstances, the policy will provide a clear framework for consistent advice and decision making.

Required Provision in Derby City Council Commercial Premises

<p>Premises with less than 10 covers¹</p>	<ul style="list-style-type: none"> • Such as takeaways and sandwich shops that the main activity (i.e.,95%) is food to go <u>are not required to provide public toilets</u> if food or drink is to be consumed off the premises. • However, there are several takeaways and sandwich shops in Derby where minimal seating is provided for customers to eat their sandwiches on the premises. • In these circumstances they are permitted to do this, if there is a toilet e.g., a staff toilet that customers can reasonably and safely access if requested.
<p>Premises with between 11 and 25 covers¹</p>	<ul style="list-style-type: none"> • Should provide at least one wheelchair accessible³ unisex² toilet. This should be provided with a WC, wash basin with hot and cold water or water at a suitably controlled temperature.
<p>Premises with between 26 and 50 covers¹</p>	<ul style="list-style-type: none"> • Should provide at least one toilet for each sex, one of which should be a wheelchair accessible unisex toilet². Each toilet should contain a WC and wash basin with hot and cold water or water at a suitably controlled temperature.
<p>Premises between 51 and 100 covers¹</p>	<ul style="list-style-type: none"> • Should provide at least separate male and female toilet and a unisex² wheelchair accessible toilet². • The female toilet should contain two WC's and two wash basins. • The male toilet should contain one WC, one urinal and two wash basins. • Each of the wash basins should be equipped with hot and cold water or water at a suitably controlled temperature. • If unisex² toilets are being provided the same numerical criteria must be met i.e., 3 unisex WCs plus 1 unisex wheelchair accessible³ toilet.
<p>Premises with covers¹ above 100</p>	<ul style="list-style-type: none"> • Should confirm to the standards specified in the British Standard tables above.

¹ A cover means a seat and outdoor seating should be included in the calculation of toilets required

² Please refer the 'Equality and Human Rights Commission Guidance on the Provision of Separate an Single Sex Provision'
Ideally the unisex accessible toilet should not be a shared baby change facility or a storage facility.
If pull cords are provided these should be 100mm from floor level.

³ Where space allows consideration should be given to the provision of a Changing Place facility. This may be legally required under Building Regulations.
Further information is available at <https://www.changing-places.org/>

Existing Premises

There will be some commercial premises within the City that were in existence prior to the Local Government (Miscellaneous Provisions) Act 1976. For these premises, if they have 25 or more covers and providing there is one wash basin and WC for each sex (or two separate unisex WC's and washbasins), this should be deemed adequate. These premises will not be expected to upgrade facilities required in **BS 6465-1:2006**.

The purpose of this policy is to improve standards of toilet facilities within the district. Any exceptions will be considered and agreed on an individual basis by the Food and Safety Team Service Manager.

Refurbishment of Existing Premises

If any establishment undergoes extension or the toilet facilities are relocated, the premises will need to be brought up to the standard as specified in **BS 6465-1:2006**. This will involve either planning consent or Building Regulations consent and the relevant departments are aware of this policy.

There may be exceptions to this in some premises where it is impossible to meet **BS 6465-1:2006**. In these circumstances, if the covers are below 100 the provision based on covers in the table above will be considered by the Food and Safety Team Service Manager, on an individual basis.

New Premises

It is proposed that all newly built food premises and new conversions to food establishments should comply with the standards laid down in **BS 6465-1:2006**.

The general expectation will be that separate male and female facilities should be provided.

<https://www.gov.uk/government/news/all-public-buildings-to-have-separate-male-and-female-toilets>

Design

Food legislation requires that toilets must not lead directly into rooms in which food is prepared, treated, or processed. A lobby area should be provided (there is no longer a legal requirement for it to be ventilated but is good practice) and food should not be stored in that space.

Building Regulations do not include this requirement, so there may be premises where toilets open into a food room. In these circumstances, a risk-based approach must be taken as to whether enforcement action is appropriate. These will have to be considered on an individual basis by the Food and Safety Team Service Manager.

Further guidance is contained in Appendix 1.

Toilets for Disabled People

The Building Regulations will require **newly constructed** food premises with customer toilet facilities to have at least one unisex disabled people's toilet. **Extended or altered premises** with customer toilets will be expected to have a disabled people's facility. Factors to consider:

- where there is only one toilet in a building, it should be wheelchair- accessible unisex type;
- provision of a unisex accessible toilet can count as part of the overall toilet provision for the building;
- the size and layout of fittings of the accessible toilet provision should be in accordance with **BS 8300-2:2018**; and
- attention must be drawn to the Equality Act 2020. Further guidance is contained in Appendix 2.
- All premises will be encouraged to display signage on unisex accessible toilets -

'REMEMBER YOU CANNOT ALWAYS TELL IF SOMEONE IS A DISABLED PERSON'

Changing Place Provision

Some newly constructed (or altered or extended) premises will also be expected under **British Standard 8300:2000**, to provide Changing Places. These will tend to be larger buildings and complexes such as:

- major transport termini or interchanges, e.g. large railway stations and airports;
- motorway services;
- sport and leisure facilities, including large hotels;
- cultural centres, such as museums, concert halls and art galleries;
- stadia and large auditoria;
- shopping centres and shop mobility centres;
- key buildings within town centres, e.g., town halls, civic centres and main public libraries;
- educational establishments; and
- health facilities, such as hospitals, health centres and community practices.

Further information is available at <https://www.changing-places.org/>

Shopping Centres

Where provision is made within shopping centres for customer toilets, it is acceptable for a restaurant or café to rely on these facilities, provided they are available throughout the opening hours of the café/restaurant. When deciding whether the centre's customer toilets are acceptable, **the distance a customer must travel to access the facility must be considered reasonable.**

Staff Toilets

All workplaces require staff toilets to comply with the ***Workplace (Health Safety and Welfare) Regulations 1992***. Where possible, separate facilities should be provided for staff so that they can access toilets 'without undue delay'.

Where separate toilet provision has not been made, each case should be assessed on an individual basis as to whether a staff toilet will be required, or whether to designate a customer toilet solely for staff use. In small establishments where it is impractical to provide separate toilets, a higher degree of control over toilet availability can be exercised and it would generally be acceptable for shared use to occur. If a workplace has disabled employees, then they have a legal responsibility under the Equality Act to make sure they can access an accessible toilet.

Structural Requirements for Food Businesses

Toilet Provision is specified in ***Regulation (EC) 852/2004 Annex II Chapter 1*** ***Regulation (EC) 852/2004 Annex II Chapter 1*** states that:

- an adequate number of flush lavatories are to be available and connected to an effective drainage system. Lavatories are not to open directly into rooms in which food is handled;
- an adequate number of washbasins is to be available, suitably located and designated for cleaning hands; and
- toilets are to have adequate natural or mechanical ventilation.

Appendix 1 – LACORS Toilets opening Directly into Food Rooms Guidance

Food Safety regulations require that toilets must not lead directly into rooms in which food is prepared, treated, or processed. A lobby area should be provided. It is likely that officers will find premises that do not meet this standard and will need to assess each case on an individual and risk-based approach.

General Principles

Open food. It Toilets should not open directly into a room where open food is prepared and handled.

Food in sealed containers. It is unclear if where ‘food is handled’, is intended to apply to food in sealed containers. There is probably very little risk associated with a toilet opening directly out onto a warehouse or storeroom area that is used only for food in sealed containers Local Authority Enforcement Policies that support a risk-based approach to enforcement could be used to support a flexible way of dealing with these circumstances. Possible solutions could include consideration of self-closing arms for doors.

Rooms where food is served and eaten. As a general principle a toilet should not open out directly onto a room or part of a room where food is served and eaten. Local authority Enforcement Policies that support a risk-based approach might be used to endorse decisions *if appropriate* in existing buildings, especially in the context of disabled facility provision.

Extract ventilation. All rooms containing a toilet should be provided with adequate measures to prevent odours entering other rooms. Adequate extract ventilation is likely to be particularly important in any circumstances where a toilet opens directly into an area near to where either food is eaten, or sealed foods are stored.

Other considerations. Officers should consider other requirements that may be relevant, for example, Health and Safety Legislation Building Regulations, associated approved codes of practice and conditions of any public entertainment licences that may apply to premises. Where relevant, in the case of multi outlet businesses, liaison with the Primary Authority should also be considered.

Scrutiny at the planning stage. Where possible the design of new food premises and alterations to existing premises should always be scrutinised at the planning stage. This may be possible through liaison with planning / building control colleagues or through notification direct from the proprietor.

Scenarios

Scenario 1: *A storeroom or warehouse containing only food in sealed containers e.g., bottles, cans etc / or raw vegetables / or frozen food in freezers?*

The focus group’s view was that ideally a toilet should not open directly onto a storeroom or warehouse containing food in sealed containers, but this approach would be difficult to justify both legally and in terms of the level of risk this would represent.

Scenario 2: *A restaurant dining area where open food is served and consumed?*

It was felt that for reasons of aesthetics, a toilet should not open directly onto a restaurant dining area where open food is served and consumed. There was some discussion concerning whether

a flexible approach might be adopted where necessary, especially in the context of disabled facility provision in existing buildings.

Scenario 3: A hospital ward where patients are served food and eat food in bed

authorities should accept that in many hospitals a toilet will open directly onto a hospital ward where patients are served food. The Group recognised that this may be necessary for reasons of practicality in the hospital environment to allow proximity and easy access for convalescing patients, disabled patients, and medical staff if necessary.

Further Discussion – general points

Advisers agreed that the level of risk that might be associated with the three scenarios outlined above is likely to be low. It was also recognised that provision of appropriate extract ventilation from a toilet may be much more important in terms of minimising any risk of odours/ contamination than the provision of an intervening space or lobby.

Some existing premises, including major multiple outlet garages /motorway service stations and supermarkets, provide toilet facilities (particularly disabled toilet facilities) which open into adjacent or nearby dining areas and food storage /retailing areas. Although there may have been some grey areas, most local authorities have previously approved or at least accepted these developments. It was felt that the potential confusion and expense which might be involved in changing these decisions without any clear logic in terms of public health benefit would be difficult to justify. It was also suggested that local authority Enforcement Policies should refer to a risk-based approach to enforcement, which could be used to support some flexibility in these kinds of situations.

Reports/DL/Toilets opening directly into food rooms -guidance

Appendix 2 – Equality Act 2020

To meet obligations under the Equality Act 2010, facilities being offered must provide equal access to toilets for disabled customers/visitors/employees, to the same standard as non-disabled people.

The Equality Act does not recognise 'minimum standards. An individual disabled person or carer could argue that there has been no 'reasonable adjustments', as required by law, **as it relates to them**. Also, what is 'reasonable' changes over time and adjustment is an ongoing obligation.

Being Reasonable

A business should pay close attention to how 'reasonable' is judged in courts and described in the Equality Act. Many businesses underestimate the extent of their duty to make adjustments and do what is reasonable in all of the circumstances. Citing 'too expensive' or 'disruptive' without evidence of a thorough assessment and providing strong reasoning would be unwise.

Making Adjustments

Businesses must take positive steps to remove barriers to disabled people and make reasonable adjustments. They must think ahead and plan to remove barriers – not wait until a person has had difficulties or feels they have been discriminated against.

Having no usable toilet facilities is also highly likely to prevent substantial income generation from disabled people and their families because they would be unable to visit or visit for the same length of time as non-disabled people might. The spending power of disabled people is worth £250 billion so it makes good business sense to have accessible premises

Existing premises with customer toilets but no current facility for disabled people should consider the installation of a unisex toilet for use by disabled customers as you could be sued by a disabled person in the Courts for failing to make a reasonable adjustment or caused disability discrimination.

Further advice on facilities for disabled people is available from the City Council's Lead on Equality and Diversity, Ann Webster ann.webster@derby.gov.uk

We can give you this information in any other way, style or language that will help you access it. Please contact us on **01332 640779** or **derby.gov.uk/signing-service/**

Punjabi

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Polish

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Slovak

Túto informáciu vám môžeme poskytnúť iným spôsobom, štýlom alebo v inom jazyku, ktorý vám pomôže k jej sprístupneniu. Prosím, kontaktujte nás na tel. č.: **01332 640779** alebo na stránke **derby.gov.uk/signing-service/**

Urdu

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