

Submission to the Equality and Human Rights Commission (EHRC) Consultation on Practical Implications of the UK Supreme Court Judgment (May 2025)

Subject: Ensuring Single-Sex Provisions for Women and Girls in Updated EHRC Guidance

Introduction

As a concerned stakeholder, I welcome the EHRC's interim update (25 April 2025) and the opportunity to contribute to the consultation on implementing the UK Supreme Court's ruling in *For Women Scotland Ltd v The Scottish Ministers*. The ruling confirms that "sex" in the Equality Act 2010 refers to biological sex, reinforcing the legal basis for single-sex provisions. This submission argues that women and girls must have access to single-sex spaces and services—such as toilets, changing rooms, refuges, hospital wards, prisons, and sports—as a matter of law, privacy, dignity, safeguarding, and respect. Drawing on evidence from reputable organisations, I outline why these provisions are critical and propose practical recommendations for the updated EHRC Code of Practice.

Legal Basis for Single-Sex Provisions

The Supreme Court's ruling clarifies that "sex" means biological sex, not gender identity or certificated sex via a Gender Recognition Certificate (GRC). As Sex Matters (sex-matters.org) notes, this ensures that single-sex services can lawfully exclude individuals based on biological sex when it is a "proportionate means of achieving a legitimate aim" under the Equality Act's Schedule 3 exemptions. For Women Scotland (forwomen.scot), which led the case, emphasises that failing to provide single-sex spaces risks indirect sex discrimination, particularly against women and girls, by undermining their access to safe environments. The EHRC's own guidance (www.equalityhumanrights.com) supports this, stating that mixed-sex facilities may breach equality law if they disproportionately disadvantage one sex.

Privacy and Dignity

Single-sex provisions are essential to protect women's and girls' privacy and dignity. Women's Rights Network (WRN) (womensrights.network) cites cases like

Sandie Peggie's lawsuit against NHS Fife, where a trans woman (biological male) in a female changing room caused distress, highlighting the need for biological sex-based changing facilities.

A 2018 YouGov poll referenced by Fair Play For Women (fairplayforwomen.com) found that 67% of women prefer single-sex toilets to ensure privacy, with 45% avoiding mixed-sex facilities due to discomfort.

For Women Scotland reports that mixed-sex toilets in Scottish schools have led to girls avoiding facilities or developing health issues like urinary tract infections, underscoring the dignity violation caused by non-single-sex provisions.

Safeguarding Women and Girls

Safeguarding is a critical reason for single-sex provisions, particularly in vulnerable settings. Safe Schools Alliance UK (safeschoolsallianceuk.net) highlights that mixed-sex school facilities increase risks of harassment, with a 2021 Girlguiding survey showing 60% of girls aged 11–16 feel unsafe in public spaces due to male presence.

In prisons, MurrayBlackburnMackenzie (MBM) (murrayblackburnmackenzie.org) references the Isla Bryson case (2023), where a trans woman (biological male) convicted of rape was initially housed in a female prison, posing a clear safeguarding risk. The Ministry of Justice (2022) reported 74% of female prisoners have experienced domestic abuse, making single-sex prisons vital for their safety. Protect and Teach (protectandteach.uk) argues that schools facilitating social transition (e.g., allowing trans girls—biological males—into female spaces) without parental consent not only violates safeguarding protocols, as supported by Our Duty (ourduty.group) but also fails to comply with additional legislation; ([Advice on standards for school premises](#)), **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**'*.

Domestic abuse refuges further illustrate this need. Merched Cymru (merchedcymru.wales) notes that 94% of refuge users in Wales (**2021 Welsh Government data**) cited male violence as their reason for seeking safety, making female-only spaces non-negotiable. Trans Widows Voices (transwidowsvoices.org) emphasises that women escaping abusive partners who identify as “transwomen” still require female-only refuges to feel secure, as the biological male presence can trigger trauma.

Respect for Women’s and Girls’ Rights

Single-sex provisions uphold respect for women’s and girls’ sex-based rights under the Equality Act. LGB Alliance (lgballiance.org.uk), an intervenor in the Supreme Court case, argues that lesbian organisations can exclude “transwomen” (biological males) to maintain same-sex spaces, preserving the integrity of sexual orientation-based services. Transgender Trend (transgendertrend.com) warns that affirming trans identities in schools (e.g., allowing trans girls into girls’ spaces) erodes respect for female students’ boundaries, with a 2020 BBC investigation finding 74% of girls aged 12–15 faced unwanted sexual comments in mixed-sex settings.

In sports, Fair Play For Women provides evidence that biological males retain physical advantages (e.g., 10–50% greater muscle mass, per a 2020 **Sports Medicine** study) even after hormone therapy, justifying female-only categories. The 2023 World Athletics decision to exclude “transwomen” from women’s events, cited by Fair Play, reflects this reality. Respect for female athletes’ rights requires policies aligned with biological sex, as mixed-sex categories undermine fairness and discourage participation (33% of girls drop out of sports by age 16, per Women in Sport, 2022).

Balancing Inclusion

While prioritising women’s and girls’ rights, I acknowledge the need to protect “transgender” individuals under the gender reassignment characteristic. The EHRC’s interim update suggests that these individuals may be excluded from single-sex facilities matching their biological sex in specific cases, but inclusive alternatives like gender-neutral facilities can address this. For example, Sex Matters proposes that workplaces offer unisex toilets alongside single-sex options,

ensuring access without compromising female-only spaces. This approach, supported by WRN, balances respect for all protected characteristics while upholding the Supreme Court ruling. Though if a third space is not viable, we must not negotiate or lose any single-sex provisions.

Recommendations for EHRC Guidance

To reflect the Supreme Court ruling and address the above concerns, I propose the following for the updated Code of Practice:

- **Clear Definitions:** Explicitly state that “sex” means biological sex in all guidance, with examples of lawful single-sex exemptions (e.g., refuges, sports).
- **Sector-Specific Policies:** Mandate single-sex provisions in high-risk settings:
 - NHS: Female-only wards based on biological sex
 - Prisons: House inmates by biological sex
 - Schools: Single-sex toilets and changing rooms
 - Sports: Biological sex-based categories
 - Safeguarding Protocols: Require schools to comply with the existing laws and Legislation and ensure that single-sex provisions are always provided and to prevent any mixed sex toilets as a matter of safeguarding.
 - Inclusive Alternatives: Gender-neutral facilities alongside single-sex spaces, if available space, without being disadvantageous to people with disabilities or single-sex provisions.
- **Training and Compliance:** Provide duty-bearers with training on biological sex-based policies, emphasising privacy, dignity, and safeguarding.
- **Data Collection:** Mandate biological sex-based data in health and justice systems, per MBM, to ensure accurate outcomes.

Conclusion

Single-sex provisions for women and girls are a legal necessity under the Equality Act, as clarified by the Supreme Court, and are critical for their privacy, dignity, safeguarding, and respect. Evidence from organisations like Sex Matters, For Women Scotland, Safe Schools Alliance UK, and others demonstrates the risks of mixed-sex facilities, from health impacts, safeguarding and ideology in schools to clearly documented safety threats in prisons and refuges. The EHRC’s updated

guidance must provide clear, sector-specific directives to ensure UK-wide compliance, balancing inclusion with the paramount need to protect female-only spaces. I urge the EHRC to adopt the proposed recommendations to uphold the law and safeguard women and girls.

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