

Change 13.2: Updated section on separate and single-sex services for men and women - Changes we are consulting on in chapter 13

This section has been updated to provide guidance on how separate or single-sex services can be provided for men and women. It also sets out when providing these services is likely to be lawful.

Updated content - Services for particular groups

13.2.1 The Equality Act 2010 (the Act) contains specific exceptions (discussed in this section) which allow service providers and, in certain cases, those exercising public functions (s.31(3)), to provide services:

- separately and / or differently for women and men
- exclusively for women
- exclusively for men
- to people of a particular age group (in certain circumstances)

13.2.2 If a service is generally provided only for persons who share a protected characteristic, a person who normally provides that service can (Sch 3 paragraph 30):

- insist on providing it in a way they normally provide it
- refuse to provide the service to people who do not share that protected characteristic, if they reasonably think it is impracticable to provide it
- Separate services for women and men

13.2.3 The Act (Sch 3 paragraph 26(1)) does not prohibit sex discrimination where a service provider (including a person providing a service in the exercise of public functions (s.31(3)) offers separate services for men and women in specific circumstances. It is lawful to provide separate-sex services if:

- a joint service for women and men would be less effective, and
- providing the service separately to women and men is a proportionate means of achieving a legitimate aim

13.2.4 If these conditions do not apply, the provision of separate-sex services is likely to be unlawful sex discrimination.

13.2.5 The Act (Sch 3 paragraph 26(2)) also does not prohibit sex discrimination where a service provider (including a person providing a service in the exercise of public functions) provides separate services for each sex in a different way, if:

- a joint service for persons of both sexes would be less effective, or
- the extent to which the service is required by one sex makes it not reasonably practicable to provide the service other than separately and differently for each sex, and
- the limited provision of the service is a proportionate means of achieving a legitimate aim

Example - 13.2.6 A domestic violence support unit is set up by a local authority for women and men separately as they are aware that service users feel safer and more comfortable attending a single-sex group. There is less demand for the men's group, which meets less frequently.

13.2.7 The Act (Sch 3 paragraph 26(3)) also does not prohibit sex discrimination where a service provider (including a person providing a service in the exercise of public functions) does anything in relation to the provision of separate services, or services provided differently for women and men, for the reasons set out in paragraph 13.2.5.

Example - 13.2.8 A local authority allocates funding for a primary care trust to contract with a voluntary sector organisation to provide counselling for women who have had a mastectomy.

13.2.9 Read paragraphs 13.3.1 to 13.3.20 for the considerations relevant to whether a separate-sex service, or anything done in relation to it, is a proportionate means of achieving a legitimate aim.

Single-sex services

13.2.10 The Act (Sch 3 paragraph 27) does not prohibit sex discrimination where a service provider (including a person providing a service in the exercise of public functions) provides a service exclusively to one sex, if doing so is a proportionate means of achieving a legitimate aim and at least one of the conditions in paragraphs 13.99 to 13.109 applies.

13.2.11 Condition 1: Only people of that sex need the service.

13.2.12 Condition 2: A service that is provided jointly for both sexes is not sufficiently effective without providing an additional service exclusively for one sex.

Example -13.2.13 A gym provides weightlifting classes to all its customers, but few women join the class, so it also provides an additional single-sex weightlifting class for women to encourage women to use the service.

13.2.14 Condition 3: A service provided for men and women jointly would not be as effective, and the demand for the services makes it not reasonably practicable to provide separate services for each sex.

Example -13.2.15 A support unit for women who have experienced domestic or sexual violence can be established, even if there is no men's unit established because there is insufficient demand to make it reasonably practical to provide a separate service for men.

13.2.16 Condition 4: The service is provided at a hospital or other place where users need special care, supervision or attention.

Example - 13.2.17 A hospital chooses to provide a single-sex hospital ward for women patients to protect their safety, privacy and dignity. The hospital supports this decision by noting that the ward in question does not fit its criteria for the small number of circumstances where mixed-sex accommodation may be acceptable.

13.2.18 Condition 5: The service is for, or is likely to be used by, more than one person at the same time and a woman might reasonably object to the presence of a man, or vice versa.

It is likely to be reasonable for a woman to object to the presence of a man if she will be getting undressed or in a vulnerable situation when she is using the service.

Example - 13.2.19 Women-only communal changing rooms in a sports facility.

13.2.20 Condition 6: The service is likely to involve physical contact between the service user and another person and that other person might reasonably object if the service user is of the opposite sex.

In this condition, limited and non-intimate physical contact is unlikely to justify single-sex provision. For instance, the fact that in first aid training there may be some physical contact between participants in the classes is unlikely to warrant the provision of single-sex sessions.

Example - 13.2.21 A female carer only provides intimate personal care to female clients as she is uncomfortable providing this type of care to men in a domestic environment.

13.2.22 Where a service provider (including a person providing a service in the exercise of public functions) does anything in relation to the provision of single-sex services, this will be lawful provided that one of conditions 1 to 6 is met, and that providing the service on a single-sex basis is a proportionate means of achieving a legitimate aim.

13.2.23 Read paragraphs 13.3.1 to 13.3.20 for the considerations relevant to whether a single-sex service, or anything done in relation to it, is a proportionate means of achieving a legitimate aim.

Change 13.2: Updated section on separate and single-sex services for men and women

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Change 13.2: Updated section on separate and single-sex services for men and women

This section has been updated to provide guidance on how separate or single-sex services can be provided for men and women. It also sets out when providing these services is likely to be lawful.

38. To what extent do you agree or disagree with the following statement:

The explanation of the legal rights and responsibilities set out in the updated section on separate and single-sex services for men and women is clear. - required

- ☐ Strongly Agree
- ☐ Agree
- ☐ Disagree
- ☐ Strongly Disagree
- ☐ Do not know

39. Is there anything you would change to make the explanation of the legal rights and responsibilities in this update clearer?

Example Response:

The updates in Chapter 13.2 aim to clarify the circumstances under which separate and single-sex services can be lawfully provided under the Equality Act 2010, referencing exceptions in Schedule 3, paragraphs 26 and 27. The inclusion of examples and conditions is helpful in illustrating practical applications. However, the guidance does not consistently emphasise the importance of biological sex as the basis for these exceptions, which is critical following the Supreme Court ruling. This risks ambiguity, particularly in contexts where safeguarding and women's rights are paramount, such as domestic violence services, healthcare, and intimate care settings.

Additionally, the guidance does not adequately address how service providers should navigate competing rights (e.g., sex vs. gender reassignment) or respond to potential challenges from individuals who identify as a different gender. This omission could undermine the ability of providers to confidently maintain single-sex services where they are justified. I urge the EHRC to strengthen the guidance by explicitly reinforcing the primacy of biological sex in these provisions and providing clearer instructions on balancing rights. Include guidance on how service providers can address challenges from individuals with the protected characteristic of gender reassignment while maintaining lawful single-sex services. Emphasise that safeguarding, privacy, and dignity for women and girls are legitimate aims that justify single-sex provisions in most cases.

Separate-Sex Services (Paragraphs 13.2.3–13.2.9) The guidance outlines when separate-sex services are lawful, citing conditions such as a joint service being less effective and the provision being a proportionate means of achieving a legitimate aim (Sch 3, para 26). The example of a domestic violence support unit (13.2.6) is appropriate, as it recognises the need for single-sex spaces where users feel safer. **However, the guidance does not sufficiently clarify how service providers should assess “effectiveness” or “proportionality” in practice, which could lead to inconsistent application.**

For instance, paragraph 13.2.5 notes that separate-sex services may be unlawful if the conditions are not met, but it does not provide tools or criteria for providers to evaluate these conditions robustly. This is particularly concerning in contexts like prisons, shelters, or sports, where

biological sex is critical for safety and fairness. The example of funding for women's mastectomy counselling (13.2.8) is positive but does not address whether such services could be challenged by individuals identifying as women who are biologically male. Provide a clear framework for assessing "effectiveness" and "proportionality," including factors like user safety, privacy, and trauma-informed care. Include additional examples specific to high-risk settings (e.g., women's prisons, sports facilities) to demonstrate lawful separate-sex provisions. Clarify that separate-sex services based on biological sex are lawful when safeguarding or fairness is at stake, even if challenged on gender identity grounds.

Single-Sex Services (Paragraphs 13.2.10–13.2.22)

The guidance on single-sex services (Sch 3, para 27) lists six conditions under which such services are lawful, including when only one sex needs the service, a joint service is less effective, or privacy and dignity require single-sex provision. The examples provided (e.g., women-only weightlifting classes, domestic violence support units, hospital wards, and communal changing rooms) are relevant and highlight the importance of single-sex spaces for women's safety and comfort. However, the guidance falls short in several areas: **Ambiguity in Condition 5 (13.2.18):** The condition that "a woman might reasonably object to the presence of a man" is framed subjectively, which could invite legal challenges. For example, it does not explicitly state that objections based on biological sex are inherently reasonable in contexts like changing rooms or intimate care. This risks service providers erring on the side of inclusivity to avoid litigation, potentially compromising women's safety.

Limited Scope of Examples: The examples focus on traditional settings (e.g., gyms, hospitals) but do not address emerging issues, such as single-sex services in schools, workplaces, or online platforms, where biological sex protections are increasingly contested. **Condition 6 (13.2.20):** The restriction that "limited and non-intimate physical contact" is unlikely to justify single-sex provision is overly prescriptive. For example, in self-defense classes or therapy groups, even non-intimate contact may be distressing for women with trauma histories, yet the guidance dismisses this possibility. Strengthen Condition 5 by stating that objections to the presence of the opposite biological sex are presumed reasonable in contexts involving privacy, vulnerability, or trauma (e.g., changing rooms, shelters). Expand examples to include schools, workplaces, and online

support groups, emphasising biological sex protections.

Revise Condition 6 to acknowledge that even non-intimate physical contact may justify single-sex provision in trauma-informed settings, with examples like self-defense classes or group therapy.

The consultation notes that the EHRC is seeking feedback on some updates but not others, yet it is unclear why certain parts of Chapter 13.2 are excluded from feedback. For instance, the conditions for single-sex services (13.2.11–13.2.20) are critical to safeguarding, and women's rights. The guidance does not sufficiently emphasise safeguarding and women's rights as core justifications for single-sex and separate-sex services. The Supreme Court ruling underscores the importance of biological sex, yet the guidance does not explicitly prioritise this in contexts like domestic violence shelters, prisons, or healthcare. This could lead to misinterpretation by service providers, particularly under pressure to accommodate gender identity.

Explicitly state that safeguarding women and girls based on biological sex is a primary legitimate aim under the Equality Act 2010. Provide guidance on how to prioritise biological sex-based protections in high-risk settings while complying with anti-discrimination laws. Include a dedicated section on safeguarding considerations, with examples of best practices for maintaining single-sex services in sensitive contexts.

I urge the EHRC to revise the guidance to address these concerns, ensuring that service providers can confidently maintain single-sex and separate-sex services where they are critical for safety, privacy, and dignity.