

## **Change 13.3: New section on justification for separate and single-sex services - Changes we are consulting on in chapter 13**

This section sets out the considerations that should be given to all potential service users when deciding whether separate and single-sex services are a proportionate means of achieving a legitimate aim. It also sets out circumstances in which mixed-sex services may be necessary, and the potential legal implications of providing only mixed-sex services.

Updated content 13.3.1 When providing a separate or single-sex service, a service provider (including a person providing a service in the exercise of public functions) must be able to demonstrate that doing so is a proportionate means of achieving a legitimate aim.

13.3.2 An example of a legitimate aim for providing a separate or single-sex service could be ensuring the safety of women or the privacy and dignity of women and / or men. The service provider (including a person providing a service in the exercise of public functions) must show that providing the service only to one sex or separately to both sexes is a proportionate way to achieve the aim.

13.3.3 When considering whether providing a separate or single-sex service is proportionate, the service provider (including a person providing a service in the exercise of public functions) should consider all potential service users and whether there is a fair balance between:

- the benefits of offering the service as a separate or single-sex service, and
- the needs of those who are accessing it, and
- the impact on those who are excluded from accessing it

13.3.4 When considering the benefits of offering a separate or single-sex service, the service provider (including a person providing a service in the exercise of public functions) should think about whether women's safety, privacy and / or dignity would be at risk in the service if it was shared with men.

Taking the example of offering a single-sex service for women, the service provider should consider factors such as:

- whether women are likely to be in a state of undress

- whether there will be limited ability for women to leave or to choose an alternative service
- whether the service is provided as a result of, or connected with, male violence against women
- whether the physical differences between men and women are relevant to the experience of the service and put women at a particular disadvantage

Where factors like these are present, the benefits of offering a separate or single-sex service will be likely to outweigh other considerations in the balancing exercise.

13.3.5 The needs of potential service users include the specific needs of people with different protected characteristics, such as older people, disabled people and those who observe particular religious practices. For example, Muslim people may have a particular need for separate-sex services to observe the requirements of their faith.

Example - 13.3.6 A swimming class provider runs classes at a swimming centre that caters to the local community, including Muslim people. The swimming class provider operates a mix of services with some separate-sex classes, which are used predominantly by Muslim women and men, as well as mixed-sex classes which are open to everybody. The swimming class provider has considered the impact of the mix of its services across different protected characteristics and determined that its balanced mix of services is proportionate. The provision made is therefore likely to be lawful.

13.3.7 The impact on those who will be excluded from the service includes both the impact on people of the opposite biological sex generally and the particular impact on trans people of the opposite biological sex. In separate or single-sex services, a trans man will be excluded from the men-only service because his biological sex is female, and a trans woman will be excluded from the women-only service because her biological sex is male. Trans people are likely to be disadvantaged by this, by comparison to people who are not trans.

13.3.8 The service provider (or person providing a service in the exercise of public functions) should consider whether the disadvantage to trans people, and any other people who may be disadvantaged, outweighs the benefits of achieving the legitimate aim. They should also consider whether there is a less intrusive option than excluding trans people which would be proportionate (read 13.4.4 to 13.4.8).

13.3.9 Having carried out this balancing exercise, the service provider (including a person providing a service in the exercise of public functions) may conclude that arrangements or adaptations can be made to meet the needs of all service users, or that it remains proportionate to maintain only a separate or single-sex service.

13.3.10 In many cases, it will be proportionate to take a holistic approach to service provision by providing a mix of services which may include both separate or single-sex services and mixed-sex services. The mix of services in terms of the size of the separate or single-sex services and of the mixed-sex services should reflect the needs and relative numbers of service users with different needs.

Example - 13.3.11 A service provider operates a shopping centre and decides to renovate the centre. It initially intends to only provide separate-sex toilets to improve the safety and comfort of users. This disadvantages trans people because it means that a trans person cannot access a toilet catered towards their acquired gender. The service provider therefore decides to also provide toilets in individual lockable rooms which can be used by people of either sex.

Example - 13.3.12 A community group is opening a small advice centre. It decides to provide separate-sex toilets for women and men, and it repurposes the accessible toilet to be used as a mixed-sex toilet for anybody who does not wish to use the toilet for their biological sex. This is likely to be proportionate given the size and resources of the centre and takes into account the needs of all the potential service users.

Example - 13.3.13 A local gym organises weightlifting induction classes designed to teach users of the gym proper techniques and safety measures. The classes are in high demand and are well attended. A small number of women request women-only classes, as they feel uncomfortable in the mixed-sex service. The gym amends its schedule to offer one induction class a fortnight to cater to this request, which it considers to be proportionate to the needs of service users and the relative demand. This is likely to be lawful because it has balanced the needs of different service users and provided a proportionate mix of services.

13.3.14 However, it may be that offering alternative arrangements is not reasonably possible for the service provider (including a person providing a service in the exercise of public functions) or that doing so would undermine the service that is being provided. This may be because of the type of service being

provided, the needs of the service users, the physical constraints of any building, or because of the disproportionate financial costs associated with making those arrangements.

**Example - 13.3.15** In the example in paragraph 13.3.13, the women who have requested women-only classes also ask for single-sex changing rooms. The gym is in a small, shared studio space which provides mixed changing facilities with private cubicles for changing. The cubicles have floor to ceiling lockable doors and there have been no complaints about inappropriate conduct in the changing rooms. The service provider determines that providing single-sex changing rooms is impractical because of space constraints and the disproportionate cost. Since the existing changing rooms enable users to change in privacy, the current arrangement is likely to be proportionate and lawful.

**Example - 13.3.16** A women's centre provides a gym predominantly used by Jewish women who have religious objections to sharing a gym with men. The gym considers whether to open the gym to men on certain days, or to open the gym on a mixed-sex basis on certain days.

**13.3.17** However, the centre decides to offer the gym only to women because the overwhelming demand for the service is from Jewish women and there are numerous other gyms in the area that cater to men and trans people. This service would exclude men and trans women, but it is likely to be proportionate and lawful.

**13.3.18** It is good practice to record the reasons why a decision has been taken to provide or not to provide a separate or single-sex service, along with any supporting evidence.

**13.3.19** If a service provider (or a person providing a service in the exercise of public functions) admits trans people to a service intended for the opposite biological sex, then it can no longer rely on the exceptions set out at paragraphs 13.2.3 to 13.2.22. This means that if a service is provided only to women and trans women or only to men and trans men, it is not a separate-sex or single-sex service under the Equality Act 2010. A service like this is very likely to amount to unlawful sex discrimination against the people of the opposite sex who are not allowed to use it. A service which is provided to women and trans women could also be unlawful sex discrimination or lead to unlawful harassment against women who use the service. Similar considerations would apply to a service provided for men and trans men.

13.3.20 Similarly, if a service provider (including a person providing a service in the exercise of public functions) decides only to provide a service on a mixed-sex basis, without any separate or single-sex option, this could be direct or indirect sex discrimination against women who use the service or lead to unlawful harassment against them. This is most likely in contexts like those referred to in paragraph 13.3.4.

#### Change 13.3: New section on justification for separate and single-sex services

Progress

84%

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

The explanation of the legal rights and responsibilities set out in the new section on justification for separate and single-sex services the clear. - required

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

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

### Example Response:

The new section is **a step toward clarifying the justification for separate and single-sex services, particularly in recognising legitimate aims such as women's safety, privacy, and dignity (13.3.2, 13.3.4).** However, the guidance risks diluting these protections by overemphasising the needs of people who identify as trans, without sufficient regard for the disproportionate impact on women, especially in contexts involving male violence, physical differences, or vulnerability (e.g., undress or limited ability to leave, 13.3.4). The balancing exercise (13.3.3, 13.3.8) must prioritise biological sex-based protections where evidence demonstrates heightened risks to women in mixed-sex settings. Additionally, the guidance's examples

(e.g., 13.3.11, 13.3.12, 13.3.15) **often suggest mixed-sex provisions as a default compromise, which may undermine the ability of service providers to maintain single-sex spaces without clear justification.** This risks indirect discrimination against women (13.3.20) and could lead to harassment or safety concerns, particularly in sensitive contexts like toilets, changing rooms, or services for survivors of male violence.

**13.3.1–13.3.2: Legitimate Aim and Proportionality:** The emphasis on demonstrating proportionality for single-sex services is appropriate, but **the guidance should explicitly state that women’s safety, privacy, and dignity are *presumptive legitimate aims* in contexts involving undress, male violence, or significant physical differences (13.3.4).** This would provide clearer legal certainty for service providers. Without this, the requirement to “demonstrate” proportionality risks discouraging providers from offering single-sex services due to fear of legal challenge, particularly from trans individuals or advocacy groups. Add a statement affirming that single-sex services are presumed proportionate in high-risk contexts (e.g., domestic abuse shelters, prisons, or sports) unless evidence suggests otherwise. This aligns with the Equality Act 2010 exceptions (Schedule 3, Part 7) and the Supreme Court’s clarification on biological sex.

**13.3.3–13.3.4: Balancing Exercise and Benefits of Single-Sex Services**

**Feedback:** The balancing exercise (13.3.3) requires consideration of all potential service users, but the guidance does not sufficiently prioritise the needs of women, particularly those with protected characteristics (e.g., survivors of male violence, religious women). The factors listed in 13.3.4 (e.g., undress, inability to leave, male violence) are critical, but the guidance implies these are merely considerations rather than compelling justifications. This could weaken protections for women in vulnerable settings. Strengthen 13.3.4 by **stating that the presence of any listed factor (e.g., undress, male violence) creates a *strong presumption* in favour of single-sex services.** Clarify that the impact on women’s safety and dignity should take precedence over the perceived or possible disadvantage to trans people in such cases, given the objective evidence of risk (e.g., studies on male violence patterns).

**13.3.5–13.3.6: Needs of Different Protected Characteristics**

**Feedback:** The inclusion of religious needs (e.g., Muslim women requiring separate-sex services) is welcome, but the guidance does not address the

intersection of sex and religion adequately. For example, Jewish or Muslim women may face significant barriers in mixed-sex settings, yet the example in 13.3.6 assumes a “balanced mix” of services without explaining how to prioritise competing needs. This risks diluting protections for women who rely on single-sex spaces for cultural or religious reasons. Clarify that single-sex services may be prioritised for groups with intersecting protected characteristics (e.g., sex and religion) where mixed-sex services would exclude them entirely. Provide an example where a single-sex service is maintained exclusively for religious women without requiring mixed-sex alternatives if demand and resources justify it.

**13.3.7–13.3.8: Impact on Trans People:** The guidance’s focus on the disadvantage to trans people (13.3.7–13.3.8) risks overshadowing the primary aim of protecting women’s safety and dignity. For example, 13.3.7 states that trans people are “likely to be disadvantaged” by exclusion from services matching their acquired gender, but it does not equally emphasise the potential harm to women (e.g., harassment, loss of privacy) in mixed-sex settings. This imbalance could pressure service providers to prioritise trans inclusion over women’s rights, contrary to the Equality Act’s provisions.

**Revise 13.3.7–13.3.8 to explicitly state that the impact on trans people must not override objective evidence of harm to women in single-sex spaces.** Add that service providers are not required to provide mixed-sex alternatives if doing so undermines the legitimate aim (e.g., safety in a women’s refuge). Reference 13.3.19 to reinforce that admitting trans people to opposite-sex services negates the single-sex exception and risks unlawful discrimination against women.

**13.3.9–13.3.13: Mixed-Sex Services and Proportionality:** The examples (e.g., 13.3.11–13.3.13) promote mixed-sex services (e.g., unisex toilets, mixed-sex classes) as a default solution, which may not always be proportionate or safe. For instance, repurposing an accessible toilet as a mixed-sex option (13.3.12) could disadvantage disabled men and women who rely on accessible facilities. Similarly, the gym example (13.3.13) assumes one women-only class is sufficient, without addressing whether this meets demand or adequately protects women’s comfort. **Clarify that mixed-sex services are not a default requirement and that single-sex**

**services may be the only proportionate option in certain contexts** (e.g., rape crisis centres). Add guidance on assessing demand for single-sex services to ensure provision matches need. For 13.3.12, note that repurposing accessible toilets risks indirect discrimination against people with disabilities and should be avoided unless additional accessible facilities are provided.

**13.3.14–13.3.17: Practical Constraints and Single-Sex Services:** The examples (13.3.15–13.3.17) appropriately recognise practical constraints (e.g., space, cost) but do not sufficiently address scenarios where single-sex services are essential regardless of constraints. For instance, the women’s gym example (13.3.16–13.3.17) justifies single-sex provision due to religious demand, but the guidance should extend this to other contexts (e.g., domestic abuse shelters) where women’s safety is non-negotiable. Expand 13.3.14 to list scenarios where single-sex services are non-negotiable (e.g., prisons, shelters) due to overwhelming evidence of risk in mixed-sex settings. For 13.3.16–13.3.17, **clarify that the availability of alternative mixed-sex services elsewhere does not negate the need for single-sex provision if demand is high or specific needs (e.g., trauma) are unmet.**

**13.3.19–13.3.20: Legal Implications of Mixed-Sex Services:** These paragraphs are a strong addition, correctly highlighting that admitting trans people to opposite-sex services negates the single-sex exception and risks unlawful sex discrimination or harassment (13.3.19). Similarly, 13.3.20 warns that exclusive mixed-sex provision may lead to discrimination against women. However, the guidance lacks practical advice on how service providers can defend single-sex services against legal challenges, particularly from trans advocacy groups. Strengthen 13.3.19–13.3.20 by providing a clear framework for service providers to document and justify single-sex services, including reference to evidence (e.g., crime statistics, user feedback). Add a warning that prioritising trans inclusion over women’s safety may breach the Public Sector Equality Duty (PSED) to eliminate discrimination and harassment against women.