

Change 13.6: Updated content on communal accommodation

This content explains the application of the Equality Act 2010 (the Act) to communal accommodation in respect of the protected characteristics of sex and gender reassignment. **Updated content**

13.6.1 The Act does not prohibit sex discrimination or gender reassignment discrimination where a person does anything in relation to admitting persons to communal accommodation, or providing any benefit, facility or service linked to the accommodation (Sch 23 paragraph 3(1)). This exception applies if the criteria set out in paragraphs 13.6.4 to 13.6.6 are satisfied.

13.6.2 'Communal accommodation' is residential accommodation which includes dormitories or other shared sleeping accommodation which, for reasons of privacy, should be used only by persons of the same sex (Sch 23 paragraph 3(5) to (6)). It can also include:

- shared sleeping accommodation for men and for women
- ordinary sleeping accommodation
- residential accommodation, all or part of which should only be used by persons of the same sex because of the nature of the sanitary facilities serving the accommodation

13.6.3 A benefit, facility or service is linked to communal accommodation if it cannot be properly and effectively provided except to those using the accommodation. It can only be refused to a person if they can lawfully be refused use of the accommodation (Sch 23 paragraph 3(7)).

13.6.4 This exception only applies if the communal accommodation is managed in a way that is as fair as possible to both women and men (Sch 23 paragraph 3(2)).

13.6.5 When excluding a person from use of communal accommodation because of sex or gender reassignment, the service provider, person exercising public functions or association must consider:

- whether and how far it is reasonable to expect that the accommodation should be altered or extended or that further accommodation should be provided, and
- the relative frequency of demand for the accommodation by persons of each sex (Sch 23 paragraph 3(3))

13.6.6 Excluding a person from use of communal accommodation provided for their own biological sex because of gender reassignment will only be lawful if it is a proportionate means of achieving a legitimate aim (Sch 23 paragraph 3(4)). The matters which a service provider, person exercising public functions or association should consider are similar to those set out in paragraphs 13.2.1 to 13.2.23.

Change 13.6: Updated content on communal accommodation

This content explains the application of the Act to communal accommodation in respect of the protected characteristics of sex and gender reassignment.

50. 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 content on communal accommodation is clear. - required

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

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

Example Response:

The updated guidance on communal accommodation addresses the interplay between the protected characteristics of sex and gender reassignment, which is welcome given the need for clarity following recent legal developments. However, several aspects of the guidance lack sufficient explanation, fail to adequately prioritise biological sex-based protections, or risk undermining safeguarding and women's rights. My comments focus on ensuring that the guidance is robust, practical, and aligned with the principle that single-sex spaces are essential for privacy, safety, and dignity, particularly for women and girls. 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. 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.

13.6.1 – Exception for Sex and Gender Reassignment Discrimination in Communal Accommodation

The guidance states that the Equality Act does not prohibit discrimination based on sex or gender reassignment in relation to communal accommodation, provided certain criteria (13.6.4 to 13.6.6) are met. However, it is unclear how this exception balances the rights of biological women to single-sex spaces with the inclusion of individuals with the protected characteristic of gender reassignment. The lack of explicit guidance on prioritising biological sex-based protections risks creating ambiguity for service providers, particularly in sensitive settings such as domestic violence shelters or prisons. The EHRC should provide clearer examples of how this exception applies in practice, particularly in contexts where women's safety and privacy are paramount. The guidance should explicitly state that biological sex-based protections take precedence in communal accommodation where privacy and safeguarding concerns are significant, in line with the Supreme Court's ruling on the immutability of biological sex.

13.6.2 – Definition of Communal Accommodation: The definition of communal accommodation includes shared sleeping or sanitary facilities that **“should be used only by persons of the same sex”** for reasons of privacy. However, the guidance does not sufficiently address how to determine when accommodation “should” be single-sex, nor does it clarify whether “same sex” refers to biological sex or self-identified gender. This ambiguity could lead to inconsistent application, potentially compromising women's rights to safe, single-sex spaces. The EHRC should explicitly define **“same sex” as referring to biological sex, consistent with the Supreme Court ruling**. Additionally, the guidance should include a non-exhaustive list of settings (e.g., women's refuges, hospital wards, school dormitories) where single-sex accommodation is presumed necessary unless exceptional circumstances apply, with a clear justification process outlined.

13.6.3 – Linked Benefits, Facilities, or Services: The guidance states that benefits, facilities, or services linked to communal accommodation can only be refused if the person can lawfully be refused use of the accommodation itself. This provision is unclear about how service providers can navigate competing demands, such as ensuring women's access to single-sex services (e.g., counselling in a refuge) while addressing gender reassignment considerations. Without clear boundaries, service providers may inadvertently undermine women's rights to access safe, sex-specific services. The EHRC should clarify that service providers can refuse access to linked services based on biological sex where necessary to protect privacy, safety, or dignity, particularly for vulnerable groups such as women fleeing domestic abuse. **Case studies or scenarios illustrating lawful refusals would enhance clarity.**

13.6.4 – Fair Management of Communal Accommodation: The requirement to manage communal accommodation “as fairly as possible to both women and men” is vague and does not account for the disproportionate safeguarding risks faced by women in shared spaces. The guidance does not explain how fairness is assessed when biological sex-based protections conflict with gender reassignment inclusion, potentially leading to outcomes that prioritise inclusion over safety. The EHRC should provide a framework for assessing “fairness” that explicitly prioritises biological sex-based protections in high-risk settings. This could include a risk assessment template that considers the specific needs of women and girls, such as privacy, trauma-informed care, and protection from male violence. 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.

13.6.5 – Considerations for Exclusion: The guidance requires service providers to consider whether accommodation should be altered or extended and the relative frequency of demand by each sex. However, it does not address the practical or financial feasibility of such alterations, particularly for small organisations like women’s shelters. Additionally, the focus on “frequency of demand” risks sidelining the needs of women in less frequent but high-stakes situations, such as emergency accommodation. The EHRC should acknowledge the resource constraints faced by smaller providers and clarify that biological sex-based exclusions do not require extensive alterations if they are necessary to protect women’s safety and dignity. The guidance should also state that low frequency of demand does not diminish the legitimacy of maintaining single-sex spaces.

13.6.6 – Exclusion Based on Gender Reassignment: The guidance states that excluding a person from communal accommodation provided for their biological sex due to gender reassignment must be a “proportionate means of achieving a legitimate aim.” The EHRC should include the referenced paragraphs or provide a clear summary of the factors to consider. The guidance should explicitly state that protecting biological women’s safety, privacy, and dignity is a legitimate aim that can justify exclusion in communal accommodation. Practical examples, such as excluding a trans-identifying male from a women’s refuge to ensure the safety of female residents, would provide clarity.

The EHRC must provide clearer, more robust guidance to ensure that biological sex-based protections are not compromised by vague or overly flexible interpretations of fairness or proportionality. Clarify “Same Sex” as Biological Sex: Explicitly define “same sex” as referring to biological sex throughout the guidance, in line with the Supreme Court ruling. Include a clear statement that biological sex-based protections take precedence in communal accommodation where privacy, safety, or dignity are at risk, particularly for women and girls. Provide Practical Examples, case studies or scenarios illustrating how service providers can lawfully apply the exceptions, especially in high-stakes settings like women’s shelters or prisons. I urge the EHRC to revise the guidance to address the concerns raised, incorporate the recommendations provided, and align more closely with the Supreme Court’s ruling on the immutability of biological sex. Thank you for considering my submission. I look forward to further clarity in the final guidance.