

Several aspects of the guidance lack sufficient explanation, fail to adequately prioritise biological sex-based protections, or risk undermining safeguarding and women's rights. (forwomen.scot) emphasise 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 supports this, stating that mixed-sex facilities may breach equality law if they disproportionately disadvantage one sex. (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 – 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. 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 – 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. 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. The EHRC should explicitly define "same sex" as referring to biological sex, 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 – 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. 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 – 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. 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 notes that 94% of refuge users in Wales cited male violence as their reason for seeking safety, making female-only spaces non-negotiable. (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 – 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. Also state that low frequency of demand does not diminish the legitimacy of maintaining single-sex spaces.

13.6.6 – 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.