

Guidance

Separate and single-sex service providers: a guide on the Equality Act sex and gender reassignment exceptions

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Equality and Human Rights Commission

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About this guide

Who this guide is for

This guide is for service providers (anyone who provides goods, facilities or services to the public) who are looking to establish and operate a separate or single-sex service.

Separate or single-sex service providers are those who provide a service where some element or all of the service is available:

- only to one sex, or
- separately to each sex, or
- differently to people of each sex.

These could include but are not limited to:

- separate or single-sex toilets
- domestic violence refuges
- separate or single-sex changing rooms
- hospital wards

We refer to these services as separate or single-sex services throughout.

What this guide covers

As the regulator for the Equality Act, we provide guidance on the law to help organisations comply with their legal obligations.

This guide covers the exceptions in the Equality Act relating to sex which allow: services to be provided, or a policy to be applied:

- only to one sex
- separately to people of each sex.
- differently to people of each sex

It also covers the provisions in the Equality Act relating to gender reassignment which allow providers of separate or single-sex services to exclude, modify or limit access to trans people.

This guide provides information on:

- what the law says
- how to decide when to use the exceptions
- practical steps you can take.

Language we use in this guide

We have used plain English to help explain legal terms. This does not change the meaning of the law.

The Act uses the term 'transsexual' for individuals who have the protected characteristic of gender reassignment. We recognise that some people consider this term outdated, so in this guidance we use the term 'trans' to refer to a person who has the protected characteristic of gender reassignment.

We use the term 'biological sex' because this is how legal sex is defined under the Equality Act for people who do not have a Gender Recognition Certificate.

We use the term separate or single-sex services to describe those who provide a service where some, or all of the service is available:

- only to one sex
- separately to each sex
- differently to people of each sex.

Summary

- The Equality Act allows for the provision of separate or single sex services in certain circumstances under ‘exceptions’ relating to sex.
- To establish a separate or single-sex service, you must show that you meet at least one of a number of statutory conditions (set out in this [section](#) of the guide) **and** that limiting the service on the basis of sex is a [proportionate means of achieving a legitimate aim](#). For example, a legitimate aim could be for reasons of privacy, decency, to prevent trauma or to ensure health and safety. You must then be able to show that your action is a proportionate way of achieving that aim.
- There are circumstances where a lawfully-established separate or single-sex service provider can prevent, limit or modify trans people’s access to the service. This is allowed under the Act. However, limiting or modifying access to, or excluding a trans person from, the separate or single-sex service of the gender in which they present might be unlawful if you cannot show such action is a proportionate means of achieving a legitimate aim. This applies whether the person has a Gender Recognition Certificate or not.
- When considering how your service is provided to trans people, you must balance the impact on all service users and show that there is a sufficiently good reason for excluding trans people or limiting or modifying their access to the service. Some service providers may find it helpful to have a policy for how services are provided to trans people. Where this is the case we recommend you develop a policy but this is not a legal requirement. If you do have a policy you should be prepared to consider whether particular circumstances justify departing from the policy.

What the Equality Act says about the protected characteristics of sex and gender reassignment

Under the Equality Act 2010, 'sex' is understood as binary, being a man or a woman. For the purposes of the Act, a person's legal sex is their biological sex as recorded on their birth certificate. A trans person can change their legal sex by obtaining a Gender Recognition Certificate. A trans person who does not have a Gender Recognition Certificate retains the sex recorded on their birth certificate for the purposes of the Act.

The Equality Act protects individuals from discrimination and harassment on the basis of a protected characteristic. Protected characteristics include sex (being a man or a woman) and gender reassignment (being an individual who is 'proposing to undergo, is undergoing or has undergone a process or part of a process to reassign their sex'). There is no requirement for a trans person to have any kind of medical supervision or intervention in order to be protected from gender reassignment discrimination. A person does not need a Gender Recognition Certificate to be protected under the characteristic of gender reassignment.

There are two types of discrimination, indirect and direct discrimination.

It is generally against the law to discriminate against someone because of a protected characteristic. However, there are certain circumstances when services can be provided either:

- exclusively to one sex, or
- differently to each sex or
- separately to each sex.

Service providers must meet a number of conditions to lawfully establish a separate or single-sex service. These conditions are set out under exceptions relating to sex in the Act.

There are circumstances where a lawfully-established separate or single-sex service provider can exclude, modify or limit access to their service for trans people. This is allowed under provisions relating to gender reassignment in the Act.

When you can provide a separate or single-sex service

The Equality Act allows you to provide separate-sex services (para 26) and single-sex services (para 27).

Separate sex services

A separate-sex service is one which is provided to both sexes, but separately or differently.

You can only provide a separate-sex service if a joint service would be less effective and providing that separate service is a proportionate means of achieving a legitimate aim. For example, a legitimate aim could be the health and safety of others. You must then show that your action is a proportionate way to achieve that aim. This requires that you balance the impact on all service users of providing services separately.

For example, a charity provides separate homeless hostels for men and women.

The Equality Act also allows a service provider to provide separate services in a different way for each sex. You can only provide a separate service differently if first, a joint service for people of both sexes would be less effective, and second, the extent to which the service is required by one sex makes it impractical to provide the service other than separately and differently for each sex. You must then be able to show that the limited provision is a proportionate way of achieving a legitimate aim.

Single sex services

If you are providing a service to one sex only (and not to the other), you must be able to meet one of the following conditions:

1. Only people of that sex need the service.

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2. Providing the service jointly to both sexes would not be sufficiently effective.

Example: if women of a particular religion or belief will not use the local swimming pool at the same time as men, women-only swimming sessions could be provided as well as mainly-mixed sessions.

3. The level of need for the services makes it not reasonably practicable to provide separate services for each sex.

Example: a women-only support unit for women who have experienced domestic or sexual violence can be set up, even if there is no parallel men-only unit because of insufficient demand.

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

Example: single-sex wards in hospitals and nursing homes.

5. The service 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).

Example: separate male and female changing rooms.

6. A person might reasonably object to the service user being of the opposite sex because the service involves physical contact.

Example: sports sessions involving a high degree of physical contact or any service involving intimate personal health or hygiene.

You must also be able to show that providing the service on a single-sex basis is a proportionate means of achieving a legitimate aim. Again, proportionality requires that you balance the impact on all service users of providing services only to one sex.

Points to consider

You must be able to demonstrate that providing a separate or single-sex service is a proportionate means of achieving a legitimate aim. It is therefore good practice to record the reasons why you have taken the decision to provide a separate or single-sex service, along with any supporting evidence. For example, you have chosen to provide a single-sex hospital ward because patients have told you they have legitimate concerns about staying on a mixed ward, e.g. privacy. If this is the reason for your decision, it would be good practice to support this with evidence, such as a patient survey.

Gender reassignment provisions in the Equality Act (Schedule 3, para. 28)

If you have met the conditions set out above and have established a separate or single-sex service, you should consider your approach to trans people's use of the service. In considering your approach and when taking decisions you must meet the conditions set out under the gender reassignment provisions.

Under these provisions, your approach must be a proportionate means of achieving a legitimate aim. This will depend upon the nature of the service and may link to the reason the separate or single-sex service is needed. For example, a legitimate aim could be the privacy and dignity of others. You must then show that your action is a proportionate way to achieve that aim. This requires that you balance the impact upon all service users.

Example: A group counselling session is provided for female victims of sexual assault. The organisers do not allow trans women to attend as they judge that the clients who attend the group session are likely to be traumatised by the presence of a person who is biologically male.

Example: A domestic abuse refuge offers emergency accommodation to female survivors. Feedback from survivors indicates that they would feel uncomfortable sharing accommodation with trans women for reasons of trauma and safety. The provider decides to exclude trans women from the refuge. It compiles a list of alternative sources of support in the local area which can be provided to trans women who approach the centre for help.

Example: A leisure centre introduces some female only fitness classes. It decides to exclude trans women because of the degree of physical contact involved in such classes.

Example: A gym has separate-sex communal changing rooms. There is concern about the safety and dignity of trans men changing in an open plan environment. The gym therefore decides to introduce an additional gender-neutral changing room with self-contained units.

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Example: A small cafe with limited space and facilities for public use has separate lockable, self-contained male and female toilets with hand basins in single units. To ensure they are fully inclusive, and to make the most effective use of the available facilities, the cafe decides to make them all gender neutral.

Example: A community centre has separate male and female toilets. It conducts a survey in which some service users say that they would not use the centre if the toilets were open to members of the opposite biological sex, for reasons of privacy and dignity or because of their religious belief. It decides to introduce an additional gender-neutral toilet. It puts up signs telling all users that they may use either the toilet for their biological sex or to use the gender neutral toilet if they feel more comfortable doing so.

If the toilets you provide for service users are also used as staff toilets, you will also need to take account of the Workplace (Health, Safety and Welfare) Regulations 1992 which require employers to provide a certain number of toilets and to provide separate toilet and washing facilities for men and women in some circumstances. Guidance can be found on the [Health and Safety Executive website](#).

Separate and single-sex service providers: taking decisions

When taking decisions, you should consider the following:

1. Treat all individuals with dignity and respect

When making and applying decisions, treat all individuals with dignity and respect.

2. Be aware that trans people may need access to services relating to their biological sex.

Example: A trans man is refused an appointment for breast screening and is told that screening is provided for females only. This is likely to be unlawful.

In such cases, discuss with the trans person the best way to enable them to access the service that meets their needs.

3. Develop and apply a policy

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Some service providers may find it helpful to have a policy for how services are provided to trans people. Where this is the case we recommend you develop a policy. However, in some situations you might need to consider whether the particular circumstances justify departing from the policy. Your policy should set out clear criteria that allow you to consider particular circumstances.

4. Consider the rights and needs of trans people alongside the rights and needs of other service users.
5. You must seek to balance the different interests and needs of those who use, or wish to use, your service.

You should consider the impact on and needs of all service users. Think about how your actions will affect both trans people and other service users. Consider less restrictive options where possible.

Example: A women's clothes shop has changing areas for customers to try on garments in cubicles. The shop decides that it is not necessary to exclude trans women as the privacy and decency of all users can be assured by the provision of those separate cubicles.

It is most likely to be proportionate to exclude, modify or limit trans people's access where a service provider has limited resources and physical space to alter the way the service is provided or if they are dealing with groups with particular needs; for example, female victims of male sexual assault who may feel unable to participate in the presence of someone they perceive as male.

6. Record the evidence base and rationale for decision-making

You should document reasons and evidence for your policy. Where a decision is taken to depart from the general policy in a specific case, then the reasons for this should be recorded.

Answer the following questions if you are considering limiting access to, or excluding trans people from, your service:

- 1. What are the reasons why you think you might need to modify or limit access or exclude trans people from your service?**

Remember that you have to show there is a good reason based on evidence. For example, dignity, privacy, preventing trauma or ensuring the health and safety of others.

- 2. Would modifying or limiting access or excluding trans people from your service actually help you to achieve this?**

If it wouldn't, it might be unlawful to exclude trans people, or modify or limit their access to your service.

- 3. You will need to balance the interests of trans people with those of other service users. Does the reason for limiting access or excluding trans people from your service outweigh any discriminatory effects of the treatment? (i.e. the impact on trans people of exclusion is outweighed by the impact on other users if they were included)**

If it doesn't, it might be unlawful to exclude a trans person from the single sex service of the gender in which they present or limit their access to the service.

If it does, it is likely to be lawful to exclude a trans person from the single sex service of the gender in which they present or modify or limit their access to the service. You should always balance and take account of the needs of different groups.

Separate or single-sex services: practical steps you can take

- Make staff aware that a trans person may not wish to provide you with sensitive personal information and that is their right.

You do not need personal information such as a Gender Recognition Certificate to make a decision. You only need to decide if your action is a proportionate means of achieving a legitimate aim. There is a risk of acting unlawfully whether the person has a Gender Recognition Certificate or not. The exceptions outlined in this guidance therefore do not depend on whether or not an individual has a Gender Recognition Certificate.

A person does not need to have Gender Recognition Certificate to be protected under the characteristic of gender reassignment. You therefore should not ask for one when deciding whether to treat someone differently or exclude trans people from your service. Asking for one could also be a breach of someone's right to privacy.

If a person does disclose personal information, such as their Gender Recognition Certificate or application for a Gender Recognition Certificate, you must be aware of their data privacy rights. In some circumstances it is a criminal offence to share personal information relating to a person's possession of a Gender Recognition Certificate without their permission.

You should also not make assumptions about whether or not a person is trans based on gender stereotypes, such as those based on appearance or clothing.

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- Identify potential solutions which minimise discriminatory effects.

When anticipating potential scenarios and developing solutions, always make sure you balance the needs of trans people and other service users. It is recommended that you discuss with trans service users the best way to enable them to access the service they need.

- Use the information you have gathered and consider how you can best meet the needs of future trans service users.

It will be helpful to use this information to develop a policy for providing your service to trans people. Developing policies may also require confidential discussions with service users. Staff should be trained on how to apply the policy consistently. Your policy could set out how you will deal with requests by trans people to use the service and should be accessible to everyone so all service users know what to expect from the service. However, in some situations you might need to consider whether the particular circumstances justify departing from the policy. Your policy should set out clear criteria that allow you to consider particular circumstances.

- Take steps to minimise the impact on trans people if you decide exclusion is the only option.

For example, you could create a list of specialist services that you could signpost trans people to and identify the appropriate contacts for these services.

- Depending on your service, it may be appropriate in particular circumstances to communicate your decisions. We recommend you explain:
 - Why you have taken your decision, including an explanation of the evidence you used to make your decision
 - How you have considered the impact on all service users, including trans people.
- Depending on your service, where you have decided that excluding, modifying or limiting access to a service to trans people would be a proportionate means of achieving a legitimate aim, it may be appropriate to explain to individual trans people who wish to access the service:
 - What alternative options you have considered for inclusion, such as modifying the service and why this has not been applied in their individual circumstance.

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- If full inclusion is not considered possible, the options for their inclusion, but without putting any pressure on anybody to accept.
- Where you are able to, signpost to where people can find a list of specialist services, or provide a list yourself if you have one.

Contacts

This publication and related equality and human rights resources are available from [our website](#).

Questions and comments regarding this publication may be addressed to: correspondence@equalityhumanrights.com. We welcome your feedback.

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EASS

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Telephone 0808 800 0082

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