

Consultation Responses Q5 (by date received)

This table presents responses mapped to Questions 5 of the Commission’s consultation. Where submissions were not structured by consultation question, we have allocated comments to this question based on the relevance of the information provided.

	Organisation/ Individual	Question 5 <i>Do you consider that other useful interim suggestions might be made by the Commission which are not dependent on resolving the legal uncertainties?</i>
#1	Individual	<p>Issue public guidance stating clearly that trans women with a GRC and surgical transition are legally female.</p> <p>Provide examples of good practice, especially around toilets, changing rooms, healthcare settings, and workplace policies.</p> <p>Continue direct outreach to trans people and civil society so that final guidance reflects real- life needs.</p>
#2	Individual	<p>I believe that ALL such information should be withdrawn until the ECNI has properly determined what NI law actually is and requires AND until AFTER there are proper medical definitions of what “sex” actually is / is not. Thereafter, some thought could be given to whether ANY attempt to infringe the rights of Intersex and trans people is justifiable under NI’s legal obligations.</p>
#3	Individual	<p>Yes. The Commission could immediately:</p> <ul style="list-style-type: none"> • Issue guidance confirming that single-sex spaces and services based on biological sex remain lawful • Clarify that sexual orientation protections, including those for lesbians, are based on biological sex.

		<ul style="list-style-type: none"> Remind duty-holders that gender reassignment is a separate protected ground and requires balanced application alongside sex-based rights.
#4	Individual	<p>The Commission could recommend dedicated or parallel services for trans people such as open and neutral spaces for both sexes or trans specific services where safeguarding requires single-sex provision, ensuring inclusion without compromising women’s protections. Model policies and training for service providers would be of immediate use, as would encouragement of data collection disaggregated by sex and gender reassignment. It would also be helpful to clarify that single-user unisex facilities are a legitimate and inclusive alternative. Where not available, the proportionate expectation if that individuals use the facilities of their birth sex.</p>
#5	Lewis Silkin Solicitors	<p>Yes – we believe that it is useful to provide some interim guidance. There are a few points where interim information would be useful:</p> <ul style="list-style-type: none"> It has been set out in the Legal Paper that there is a more limited application on protections for trans persons where a trans person is not undergoing medical supervision – not all trans persons will go through a medical supervision in their transition. The Legal Paper suggests that this may not be in line with jurisprudence or societal norms and it would be useful to have clarity on whether employers and service providers should be mindful of not strictly applying the statutory approach which insists on medical supervision. The EHRC interim guidance suggested that there are some occasions that a trans person may not be permitted to use facilities of their identified gender but that they may also not be permitted to use facilities of their biological sex – what is the opinion of the Commission on this point? More guidance is needed on how providers and employers can mitigate the risk of harassment claims and avoid inadvertently ‘outing’ trans service users as per the interim guidance, particularly if they are out in a position where they are permitted only to use toilets for their birth sex- this alone would presumably ‘out’ them?
#6	Individual	N/R

#7	LGSC	The Commission is of the opinion that a useful interim suggestion from the ECNI is to be able to advise on the appropriate communications and training for staff.
#8	Fermanagh Omagh DC	N/R
#9	Individual	N/R
#10	Individual	N/R
#11	Girl Guiding Ulster	If the GB based parent organisation of a charity in Northern Ireland is required to exclude trans people by virtue of the SCJ, would the NI organisation be discriminating if they have to follow the same policies?
#12	Response on behalf of each of the health trusts, ambulance service and BSO.	<p>Yes, interim guidance is urgently sought by the Trusts to ensure we are meeting our duties as employers and service providers and to ensure all staff, service users and visitors to our sites are afforded their rights and protections.</p> <p>It would be helpful to confirm that there is no impact on offering free period products - Period Products (Free Provision) Act (Northern Ireland) 2022 creates obligations towards 'person[s] who menstruate (whether that person is a woman, girl or other person)'</p>
#13	CAJ	N/R
#14	Ulster University	Considering the timeframe proposed in the road map, and while the process takes its course it would be beneficial to provide training and webinars for HR and managers with models of policies, case studies, a good practice to make sure dignity, respect, and non-discrimination continue to underpin institutions guiding principles.
#15	Individual	<ul style="list-style-type: none"> If you decide to continue with the proposed pre-action protocol, then you should issue

		<p>interim advice that FWS should be implemented in NI in what you describe as its ‘simplistic’ interpretation. There is no need to impose detriment on ordinary people here while you await the outcome of your legal actions.</p> <ul style="list-style-type: none"> • If you fail to do this, you will create increasing confusion, uncertainty, and doubt in the general public regarding their personal sex-based rights. People in particular protected groups will suffer detriment as a result—detriment that could have been avoided with less dithering, hand-wringing, and expensive, unnecessary legal actions on your part. • It is entirely clear to the majority of the NI population that equality law does in fact mean “the same in Belfast as it does in Birmingham, Bristol or anywhere else in the UK” and that words like ‘man’ ‘woman’ and ‘sex’ hold their ordinary meanings here as they do elsewhere. To pretend otherwise makes a laughing stock of the Commission, and your wordy paper has not provided coherent arguments to the contrary.
#16	Individual	N/R
#17	Individual	Perhaps the interim guidance should highlight the growing number of court cases and tribunals being fought in this area over the last few years, along with their outcomes? It’s possible that some organisations are not up to speed on these. Highlighting this information might protect such an organisation from having to defend itself - and lose - in a court in the future.
#18	Individual	N/R
#19	Gaels For Fair Play	N/R
#20	Women’s Rights Network	As this process unfolds several significant legal cases are underway, for example Sandie Peggie vs NHS Fife which is concerned with the rights to single sex spaces in the workplace. ECNI could usefully advise that employers keep a very close view on the past and current proceedings of relevant cases. This would be of enormous benefit in informing the public accurately about the

		<p>legal outworkings of these questions and in alerting employers and service providers to legal precedents and duties.</p> <p>ECNI should make explicit that in the law and in logic sex and gender reassignment are two entirely distinct categories. It should make clear that these are not equal and opposite categories. There is no comparison between sex - a biological reality which precedes the law and is necessarily recognised by law primarily in order to protect women - and gender reassignment - a type of legal fiction or contrivance originally introduced primarily because same sex marriage was not lawful at the time. Sex exists despite the law. Gender reassignment only exists as a contrivance of the law. It should be clear that difficulties have arisen because these two have been treated as if they are equal and opposite which they are clearly not.</p> <p>ECNI should advise employers to seek legal advice and speak to their insurers for advice in the interim while ECNI is unable to provide adequate guidance.</p>
#21	Individual	What uncertainties? The law is clear and only confused by the actions of the ECNI.
#22	Individual	N/R
#23	Women's Policy Group	<p>The FWS judgment is very clear about not interpreting the judgment as a diminution of rights for transgender people. It would be useful if the Commission guidance strongly emphasized this point and drafted guidance for ensuring that employers, service providers, and public bodies do not move unilaterally to make the lives of transgender, non-binary, gender fluid, and intersex people more difficult.</p> <p>Anti-trans sentiment is on the rise in the UK,⁹ leading to an increase in “interpersonal violence and social exclusion”.¹⁰ To help combat this, ECNI guidance must be clear about the rights of trans people to live private, dignified lives, free from harassment.</p>
#24	Individual	N/R
#25	For Women Scotland	N/R

#26	HERe NI and Rainbow Project	<p>It is our view that the Commission should await legal clarity before publishing any further guidance or finalising their interim guidance. The Commission should urge service providers, public authorities and other relevant organisations to retain existing arrangements for access to spaces and facilities as a means of minimising legal risk. If the Commission chooses to publish additional interim guidance, this guidance should provide affirmation to trans people themselves in their right to access public spaces.</p>
#27	Anurag Deb Colin Murray Aoife O'Donoghue Sylvia de Mars	<p>This is covered by the response to Q4 insofar as the requirements of EU law are concerned. More generally, and outside of areas where EU law continues to apply in Northern Ireland, it would be very useful if the ECNI were to acknowledge the limitations of the For Women Scotland judgment so as to reassure providers of their options here. For Women Scotland ruled that single-sex spaces, where these are adopted in pursuit of a legitimate aim and proportionate to that aim, can be restricted to biological women. It did not require single-sex spaces to be the norm. It also did not preclude trans-inclusivity as the norm within organisations, with single-sex spaces as the alternative. To suggest otherwise is to read requirements into the judgment that it does not impose.</p> <p>The Equality and Human Rights Commission have attempted to argue that the only way to comply with the judgment is to effectively make, e.g. communal restrooms and changing rooms, “single-sex” and provide a separate space for trans people to use. Letting trans women access a “single-sex” space, they have suggested in the consultation on their draft guidance, would directly or indirectly discriminate against what For Women Scotland describes as “biological” men on the basis of their sex – and only making mixed-sex spaces available is discriminatory against ‘biological women’ in circumstances where they need a separate space. Their conclusion is therefore that there must be single-sex restrooms and changing rooms, with separate provision for trans people.</p> <p>This wholly ignores the other obvious and possible reconciliation of the conflict between the protected characteristics of gender reassignment and sex, as set out in For Women Scotland. If a provider wishes to maintain communal restrooms and changing rooms that operate on a trans-inclusive basis, and provides separate space for “biological” women, nothing in the judgment precludes this. It would be very helpful if the ECNI could assert this clearly, so as to avoid</p>

		producing guidance that pre-emptively and automatically resolves the perceived clash between two different sets of Protected Characteristics in favour of one category of rights-holder, undermining the value of the other protected characteristic in practice.
#28	Sinn Fein	N/R
#29	Individual	N/R
#30	Individual	There are no legal uncertainties other than those the Commission has created. It would be useful if the Commission based its advice on the law as it stands rather than the law as it wishes it to be. It might be best if ECNI just told to ignore their previous advice and told employers and service providers to contact their own legal teams and insurance companies for absolute certainty with regards to the actual law.
#31	Individual	Advise that the FWS is correct and that there are no legal uncertainties. Advise them that they are at risk if they do not abide by the judgment ECNI must clarify that gender ideology and gender identity are not a protected characteristic in law.
#32	Unison NI	N/R
#33	Individual	The Commission should take its lead from the UK Supreme Court and provide the necessary guidance for employers, service providers and public bodies as soon as possible. It should make clear to these stakeholders that sex and gender are not the same, they are two distinct categories. Sex is a biological reality. Gender identity is a deeply contested concept with no standing in UK, nor Northern Ireland, law. Gender reassignment is a legal concept introduced by the Gender Recognition Act. The public has lost faith in the Commission. Grievous errors in previous guidance and the current delays in the production of final guidance, subsequent to the UK Supreme Court judgement, have had the effect of bringing the Commission into disrepute.

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#34	Individual	1. There are no legal uncertainties and the ECNI should provide guidance immediately. You should be doing your job and providing advice that meets the legal precedent set by the FWS ruling. You should make the distinction between sex and gender clear for everyone.
#35	Individual	Yes. Issue final guidance now, in the same manner as the ECHR are likely to. Put back in place the initial guidance in the interim.
#36	Newry, Mourne and Down District Council	It is important that all people feel comfortable using our facilities and services. As set out previously in our response, additional clarification would be helpful in relation to the examples already suggested by the Equality Commission within the Interim information document.
#37	Mid & East Antrim	Mid and East Antrim Borough Council is of the view that, given the complexity and sensitivity of the legal issues involved, it would not be appropriate to offer comment at this time.
#38	Armagh, Banbridge, Craigavon DC	As explained above the Council would welcome further clarification on some of the examples already suggested by the Equality Commission which have been provided so that all people can feel comfortable in our facilities. Due to the lack of clarity provided in the document, we have decided to seek Senior Counsel's opinion on the application of our current policies in accordance with the interim information.
#39	NICCY	N/R