

Applying NHS England's revised hospital accommodation guidance to trans patients: a guide for clinicians

Eden Openly · Clinician guide · Version 1.1

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Bottom line

Under *Privacy, dignity and safety in hospital accommodation* (NHS England, PRN02528i, 15 October 2026), trans patients in settings covered by the same-sex accommodation rules are placed by biological sex by default. Two routes away from the default are open, and both rest on a documented, individual assessment:

- **Alternative arrangements**, where a birth-sex ward or bay “would not be clinically appropriate”. Where clinical needs and same-sex accommodation cannot both be met, “clinical needs are the priority”.
- **A single room**, which trans patients “should be offered” on the basis of privacy, dignity and safety for all patients, weighed against wider clinical requirements for single rooms.

For the clinical-exception placements, section 4 says “The reasons for the placement decision should be clearly recorded and reported nationally as breaches of this guidance”. It does not say that every alternative arrangement, or every single-room placement, is itself a breach; section 3 defines a breach by four principles (below). A reported breach is a reporting category, not a finding that care was unlawful or unsafe.

The default is NHS England's policy for delivering the NHS Constitution's same-sex accommodation pledge, which the Constitution says is “not legally binding”. The policy sits within the Equality Act 2010, as interpreted in *For Women Scotland Ltd v The Scottish Ministers*, and the EHRC's statutory code of practice, in force since 5 August 2026. The code says it “does not impose legal obligations”, but courts and tribunals must consider any relevant part of it. Where a provider relies on the Act's exceptions for separate- or single-sex services, the statutory conditions and proportionality requirements apply; the guidance does not explain how proportionality is assessed at national, service or individual level. It cites no studies or data on outcomes for trans patients or for other patients on the ward.

It reverses the 2019 guidance, under which trans patients were “accommodated according to their presentation”. Trust policies written to the 2019 guidance will need to change.

The placement decision

Birth sex is the default; every departure is assessed and recorded.

1. **Trans patient admitted.**
2. **Is the setting covered?** Not covered: A&E and urgent treatment centres, adult critical care (levels 2 and 3), active treatment areas, children's units, and defined outbreak and end-of-life scenarios. There, “all reasonable steps” to protect privacy, dignity and safety

still apply. Assessment units and enhanced care (level 1) are covered only once the patient remains 4 hours after a decision to discharge or transfer. Otherwise go to step 3.

3. **Assess with the patient:** clinical needs, safety (including safeguarding), privacy and dignity, for the trans patient and for the other patients.
4. **Is a birth-sex ward or bay clinically appropriate?**
 - **Yes:** place by biological sex. Consider the single-room offer, and record the decision.
 - **No:** identify alternative arrangements, assessed case by case. Record the reasons, tell the patient (and relatives and carers where appropriate), and report as section 4 and your trust's data team direct.
5. **Review the placement regularly.**

Making the decisions defensibly

The guidance gives three core questions for every placement: “What are the patient’s clinical needs?”, “What is safe and fair?” and “How can the patient’s privacy and dignity be respected?”. For a trans patient, answer them in that order and write the answers down.

Clinical appropriateness. The guidance does not define when a birth-sex placement “would not be clinically appropriate”. It says the decision rests on “an assessment of the specific circumstances in each instance”. Record the specific clinical facts you relied on, not a general statement that the patient is trans.

Safeguarding and risk. The guidance makes safeguarding part of its general framework: “Safeguarding patients from the risk of harm, abuse and neglect is an integral part of high-quality care”, and teams should “identify any safeguarding issues”. It does not separately define how safeguarding concerns, psychological safety, risk of assault or trauma determine a departure from the default. Trans status alone does not establish that a patient poses a risk to others; assess the relevant circumstances of all patients. HSSIB’s mental health investigation recorded that it was told guiding principles should consider “the risk assessment of all patients”, rather than assuming a trans or non-binary patient poses an inherently greater risk.

Single rooms. FAQ 7 says trans patients “should be offered” single-bed rooms, that offers depend on an assessment “taking into account wider clinical requirements for single rooms”, and that “No patients have a legal right to be accommodated in single rooms”. Infection control and end-of-life care are the examples of competing need given in section 4. If no single room is available, record that and when the decision will be reviewed. Whether particular clinical circumstances or duties, such as reasonable adjustments, could require a single room in an individual case is not addressed by the guidance.

Shared decision-making. Teams should “ask patients what matters to them”, support shared decision-making with the patient, and “review the patient placement regularly”. The guidance specifies no review interval.

Communication. Wherever patients of different sexes are accommodated together, the patient, their relatives and carers should be told the reasons, what is being done and the expected timeline, kept updated regularly, and those conversations recorded in the patient’s record.

Escalation. The covering letter asks boards to ensure that “arrangements are in place to support consistent decision-making and escalate difficult issues when needed”, and that staff “know where to seek advice on complex cases”. Neither document specifies a detailed pathway, decision authority or timescale for a disputed individual placement. Find out your trust’s

arrangements, and who its executive board lead for same-sex accommodation is, before you need them.

Recording and reporting

A breach occurs when one or more of the four section 3 principles is not met:

1. Women and men do not share sleeping accommodation.
2. Women and men do not share toilet or bathroom facilities.
3. Neither has to walk through an area occupied by the other to reach toilets or bathrooms (corridors excepted).
4. Mental health inpatient units provide women-only day rooms.

National reporting. Section 5 says “All breaches of same-sex hospital accommodation must be reported through the Strategic Data Collection System (SDCS)”, each occurrence “counted once for national reporting purposes, regardless of duration”. All patients in an affected bay are recorded, not only the patient whose placement triggered it (FAQ 4). Providers that can admit 10 or more patients at once submit a nil return in months with no breaches (FAQ 5).

Local reporting. Section 5 separately lists scenarios to be “monitored and reported locally”: all toilet and bathroom breaches; women-only day spaces in mental health units and mixing in psychiatric intensive care units; and all breaches in each 24-hour period, including continuing ones. The guidance does not say how this list relates to the national sentence, so do not assume every locally monitored category belongs in the national return.

The reporting guidance has been updated. *Update, 20 October 2026.* The guidance says “related reporting guidance has also been updated” and links to NHS England’s mixed-sex accommodation statistics page. When this guide was first published on 17 October 2026, that page still offered the October 2019 collection guidance (version 1.5), which counted “unjustified occurrences” of sleeping-accommodation breaches. By 20 October 2026 NHS England had replaced it with *Monthly Mixed-Sex Accommodation Return Guidance*, version 1.6 (“Updated: October 2026”). Version 1.6 collects data on “all occurrences of patients receiving care that are in breach of” the 2026 guidance, removes “the ‘unjustified’ and ‘justified’ breach terminology”, and applies “from October 2026 data onwards”. As before, only sleeping-accommodation breaches go in the national return; bathroom and toilet mixing is monitored locally. Check with your trust’s data team how its local systems record placements under the new guidance.

What the guidance leaves to you

National guidance may properly leave detail to providers. These points need a local answer, and a record of how it was reached.

Gap	Why it matters	What to agree or escalate locally
How the sex category used by the default is established	The 2019 guidance decided placement by presentation and preferences, and told staff to “ask discreetly” where unsure. The 2026 guidance does not reproduce that, and gives no comparably specific process. The EHRC code says an enquiry about sex must be objectively justified and made “sensitively and discreetly”, that it should be designed to avoid the answer “being given in the presence of other service users or staff”, that “it is not always possible to be sure of a person’s sex from their appearance”, and that “There is no type of official record or document in the UK which provides reliable evidence of sex” (paras 13.162–13.179). The code says information about sex “is likely to constitute special category data” (para 13.182); under the ICO’s framework that depends on what the information reveals. Onward disclosure of Gender Recognition Certificate information “may be a criminal offence in some circumstances” (para 13.181; Gender Recognition Act 2004, s.22, which has defined conditions and exceptions).	Whether staff ask, rely on records, or neither; who asks, where, and how the answer is recorded and protected
Unconscious patients, or patients who lack capacity	The 2019 guidance said to draw inferences from presentation, with no investigation of genital sex unless treatment required it. The 2026 guidance does not address this.	A local approach, agreed with safeguarding and information governance leads
The trans patient’s own safety	Safeguarding is in the general framework, but there is no specific provision on assessing and reducing risks to a trans patient in a placement by biological sex, beyond the general principles, the single-room offer and the clinical exception. The EHRC code itself recognises, in an example about toilets, that such requirements “may cause safety risks and distress for trans users” (para 13.123).	A local risk assessment covering the trans patient and the other patients
What makes a placement one that “would not be clinically appropriate”	Not defined; no named decision-maker, review interval or dispute timescale	Examples the trust will treat as clinical grounds, agreed with clinical leads; a decision-maker and review interval
Non-binary patients	Not expressly mentioned, although some have the protected characteristic of gender reassignment (Equality Act 2010, s.7). The 2019 guidance said to ask discreetly and place according to their choice.	A route for individual decisions
Patients with variations of sex development	Not mentioned; they may involve uncertainty about sex and particular privacy and care needs	A route for individual decisions, with clinical input
The Equality Act’s communal accommodation exception (Schedule 23 para 3; EHRC code paras 13.155–13.159)	Not mentioned. Which inpatient arrangements, if any, engage it is a legal question.	Escalate to the trust’s legal advisers
Mental health units	Women-only day rooms are required, but there is no distinct framework for therapeutic mental health environments. HSSIB recommendation R/2024/041 asked for guiding principles “including patients who are transgender and non-binary”.	How placement and day-room access will be decided
Trust policy timing	Boards are asked to review the guidance “at pace”, with no deadline	Which policy currently applies on your ward

The covering letter asks boards to make sure local decisions are “lawful, proportionate, evidence-based and clearly documented”.

About this guide

This guide summarises NHS England guidance for clinicians in England. It is not legal advice, and it does not replace your trust’s policy or your professional judgement. It takes no position on whether the policy is right. For how the guidance uses its legal sources, what changed from 2019, and what it cites, see Evidence Note EN-026, *How NHS England’s revised hospital accommodation guidance uses its sources*. A companion guide for patients is also available.

Competing interests. The author is a transgender woman with a declared prior in favour of access to gender-affirming care, and is founder and sole funder of a non-profit transgender healthcare and education organisation. She also has a commercial interest in skincare and a planned aesthetic hospital. Each interest is listed, with the date it began, in our register of declared interests (edenopenly.com/about/declared-interests).

Preparation. Prepared with the assistance of a large language model (Claude, Anthropic). Every quotation was checked against the retained copies of the sources used for EN-026. The author is responsible for every statement.

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Sources

1. NHS England. *Privacy, dignity and safety in hospital accommodation*. Publication reference PRN02528i. 15 October 2026. <https://www.england.nhs.uk/long-read/privacy-dignity-and-safety-in-hospital-accommodation/>
2. Mortimer D, Burton D. *Guidance to support NHS organisations in the provision of single-sex services and facilities*. Letter to trust and ICB chief executives. NHS England; 15 October 2026 (updated 16 October 2026). <https://www.england.nhs.uk/long-read/guidance-to-support-nhs-organisations-in-the-provision-of-single-sex-services-and-facilities/>
3. NHS England. *Mixed-sex accommodation* (statistics), and the linked *Monthly Mixed-Sex Accommodation Return: Collection Guidance*, version 1.5 (October 2019), replaced by *Monthly Mixed-Sex Accommodation Return Guidance*, version 1.6 (October 2026), by 20 October 2026. <https://www.england.nhs.uk/statistics/statistical-work-areas/mixed-sex-accommodation/>
4. Equality Act 2010, section 7; Schedule 3, paragraphs 26–28; Schedule 23, paragraph 3. legislation.gov.uk.
5. *For Women Scotland Ltd v The Scottish Ministers* [2025] UKSC 16 (16 April 2025). <https://supremecourt.uk/cases/uksc-2024-0042>
6. Equality and Human Rights Commission. *Equality Act 2010: Code of Practice for services, public functions and associations, 2026*, paras 1.6, 13.123, 13.155–13.159, 13.162–13.182. In force 5 August 2026. <https://www.gov.uk/government/publications/equality-act-2010-code-of-practice-for-services-public-functions-and-associations-2026>
7. Gender Recognition Act 2004, section 22. legislation.gov.uk.
8. Information Commissioner’s Office. *What is special category data?* <https://ico.org.uk/for-organisations/uk-gdpr-guidance-and-resources/lawful-basis/special-category-data/what-is-special-category-data/>
9. Department of Health and Social Care. *The NHS Constitution for England*. Last updated 17 August 2023. <https://www.gov.uk/government/publications/the-nhs-constitution-for->

england/the-nhs-constitution-for-england

10. NHS England. *Delivering same-sex accommodation*, Annex B. 2019 (last updated 24 April 2025). Internet Archive copy captured 8 January 2026:
<https://web.archive.org/web/20260108233806/https://www.england.nhs.uk/long-read/delivering-same-sex-accommodation/>
11. Health Services Safety Investigations Body. *Mental health inpatient settings: Creating conditions for the delivery of safe and therapeutic care to adults*. Investigation report, 24 October 2024, recommendation R/2024/041 and para 4.2.11.
<https://www.hssib.org.uk/patient-safety-investigations/mental-health-inpatient-settings/investigation-report/>
12. Eden. *How NHS England's revised hospital accommodation guidance uses its sources*. Evidence Note EN-026, version 1.0. Eden Openly; 17 October 2026.
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Revision history

Version 1.1 — updated 20 October 2026. Update: the paragraph on reporting now describes NHS England's updated collection guidance (version 1.6, October 2026), which replaced the October 2019 version on the statistics page after Eden Openly reported the mismatch on 17 October 2026. The earlier paragraph was accurate when published. Nothing else changed.

Version 1.0 — first published 17 October 2026. Revised to match EN-026 version 1.0: reporting described from section 4 and section 5 with the local-reporting list; the linked collection guidance described from its content; escalation and safeguarding provisions added; the 2019 placement procedure distinguished from establishing sex; the communal accommodation exception attributed to the Act; the trans-status and risk statement narrowed; an unsourced statement about NHS records removed. Earlier drafts (v0.1, v0.2) were not published.