Code of practice consultation 2025: questions for organisations

Updated legal definition of sex

We have updated the legal definition of sex throughout the code of practice. Our previous definition explained that:

‘Legal sex is the sex that was recorded at your birth or the sex you have acquired by obtaining a Gender Recognition Certificate (GRC).’

Following the UK Supreme Court ruling in For Women Scotland, this definition is no longer accurate, because a GRC does not change your legal sex for the purposes of the Equality Act 2010. We have therefore updated this definition throughout the code to be:

'Legal sex is the sex that was recorded at your birth.'

To what extent do you agree or disagree with the following statement:

The explanation of the updated legal definition of sex is clear.

[Select one answer]

- Strongly Agree
- Agree
- **Disagree**
- Strongly Disagree
- Do not know

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

We are concerned about the use of the term ‘legal sex’, which should be avoided – it is not a legal concept and its use is confusing in the context of the Equality Act.

The term is not used in the Supreme Court judgment, nor is the term ‘recorded at birth’, which implies that it is the act of recording that determines sex, not biological fact. You are male or female, regardless of whether your sex is recorded.

We recommend that the guidance follows the language of the Supreme Court judgment, which noted in paragraph 7,

> “We also use the expression “biological sex” which is used widely, including in the judgments of the Court of Session, to describe the sex of a person at birth, and we use the expression “certificated sex” to describe the sex attained by the acquisition of a GRC.”

and defines sex as ‘biological sex, that is the sex of a person at birth’.

Given the difficulties caused by widespread misrepresentation of the law by lobbying groups, it is vital that there is no room for ambiguity in definitions.

This section should also acknowledge that the definition in the previous guidance was wrong - the Supreme Court judgment did not change the definition of sex, it confirmed it.

Change 2.1: New content on Gender Recognition Certificates

This content explains that the Supreme Court in For Women Scotland has ruled that a Gender Recognition Certificate (GRC) does not change a person’s legal sex for the purposes of the Equality Act 2010 (the Act). It also outlines what protections trans people have under the Act whether or not they have a GRC.

We have included paragraphs 2.1.1 to 2.1.5 for context for this change. We are looking for feedback only on paragraphs 2.1.6 to 2.1.9.

To what extent do you agree or disagree with the following statement:

The explanation of the legal rights and responsibilities set out in the new content on Gender Recognition Certificates is clear.

[Select one answer]

- Strongly Agree
- Agree
- Disagree
- **Strongly Disagree**
- Do not know

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

We disagree with the use of the terms ‘legal sex’ and ‘birth sex’. There is no such concept as ‘legal sex’ in the Equality Act, and a person’s ‘birth sex’ is simply their sex, which cannot change.

The Supreme Court judgment is clear that sex means biological sex. There should be no suggestion in the guidance that there are sub-categories of sex of which biological sex is just one. This would be harmful to the rights and protections of women and girls and pave the way for renewed misrepresentation of the law by lobby groups. The guidance needs to state clearly and consistently that sex in the Equality Act means a person's biological sex.

We disagree also with the use of the term 'acquired gender' – this does not appear in the Equality Act and should have no place in the guidance.

We would like to see clearer language to describe trans people to make the protected characteristic explicit. The use of 'trans woman' and 'trans man' on their own with no explanation could be confusing – a survey carried out by policy collective Murray Blackburn Mackenzie in 2023 found that fewer than two thirds of respondents correctly understood the terms 'trans woman' and 'transgender woman'.

We suggest that priority is given to the protected characteristic first, for example 'A man with the protected characteristic of gender reassignment (also known as a 'trans woman')'.

Change 2.2: New content on asking about sex at birth

Change 2.2: New content on asking about sex at birth

This section gives information on how requests about sex at birth should be made. It outlines the circumstances in which making such requests, with or without evidential proof of birth sex, may be unlawful.

To what extent do you agree or disagree with the following statement:

The explanation of the legal rights and responsibilities set out in the new content on asking about sex at birth is clear.

[Select one answer]

- Strongly Agree
- Agree
- Disagree
- **Strongly Disagree**
- Do not know

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

The guidance needs to make it clear that if a service is operating on a single sex basis in line with the exceptions in the Equality Act, then it is sufficient for the service operators to communicate this clearly without needing to collect any personal data that would not be routinely collected in line with data protection principles.

The emphasis on asking about ‘birth sex’ (see our objections to this term in our response to section 2.1) suggests that this is somehow different to asking about sex.

The guidance should be clear that frontline staff should not be put in the position of having to make case-by-case decisions about individuals. The scenario of a ‘trans woman’ approaching a local support group and being taken into a side room by the receptionist inadvertently highlights the problems with this approach - it involves the receptionist having to be alone with someone she can see is a man and who might react badly to being questioned.

If the conditions of the service are clear, it is reasonable to expect people to comply with those conditions and to accept that there is no option for case-by-case decisions.

If one man with the protected characteristic of gender reassignment (a ‘trans woman) is admitted to a women-only service, then that service is mixed sex. The same applies to a woman with the protected characteristic of gender reassignment (a ‘trans man’) being admitted to a men-only space or service.

Birth certificates could not be used as proof of sex as under current legislation a person who has a GRC can obtain a birth certificate for the opposite sex.

Change 2.3: New content on defining sex at birth

Change 2.3: New content on defining sex at birth

This content defines 'sex', 'man' and 'woman', and explains how a GRC does not change a person's legal sex for the purposes of the Equality Act 2010.

To what extent do you agree or disagree with the following statement:

The explanation of the legal rights and responsibilities set out in the new content on defining sex at birth is clear.

[Select one answer]

- Strongly Agree
- **Agree**
- Disagree
- Strongly Disagree
- Do not know

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

The term ‘birth sex’ should not be used. A person’s sex does not change, regardless of how they identify. Someone with a GRC has a ‘certificated sex’ - their sex has not changed for the purposes of the Equality Act.

Change 2.4: Updated description of the protected characteristic of sexual orientation

Change 2.4: Updated description of the protected characteristic of sexual orientation

We updated our description of sexual orientation. Our description now specifies that a person who is attracted to people of the same sex is either a lesbian woman or a gay man. The full description is as follows.

Sexual orientation is a protected characteristic (s.12(1)). It means a person’s sexual orientation towards:

- persons of the same sex (the person is a lesbian woman or a gay man)
- persons of the opposite sex (the person is heterosexual), or
- persons of either sex (the person is bisexual)

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 description of the protected characteristic of sexual orientation is clear.

[Select one answer]

- Strongly Agree
- **Agree**
- Disagree
- Strongly Disagree
- Do not know

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

There should also be an outline of protections for individuals who experience harassment or abuse on the basis of perception of sexual orientation or through

association - for example, having a same-sex attracted family member or friend. It should be made clear that this does not give the individual the protected characteristic of their associate.

Change 4.1: New example on sex discrimination by perception

Change 4.1: New example on sex discrimination by perception

This example explains how discrimination can occur based on a perceived protected characteristic, in the context of sex and gender reassignment.

To what extent do you agree or disagree with the following statement:

The explanation of the legal rights and responsibilities set out in the new example on sex discrimination by perception are clear.

[Select one answer]

- Strongly Agree
- **Agree**
- Disagree
- Strongly Disagree
- Do not know

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

The scenario - although unlikely - is a reasonable example. In using the term ‘trans woman’, however, it may not be clear to all individuals and organisations that engage with this document that the ‘trans woman’ is a biological male. We suggest amending the wording to ‘A trans woman (a man who identifies as trans and uses a female name and title) is a member of an association…’

Change 4.2: Removed reference to superseded caselaw

Change 4.2: Removed reference to superseded caselaw

We removed content that explained that, for trans men holding a gender recognition certificate (GRC), the protection from pregnancy and maternity discrimination under the Equality Act 2010 (the Act) arose from case law. This case law set out that trans men were still protected irrespective of them having a GRC that stated that their legal sex was male. Following the For Women Scotland ruling, their legal sex is now female for the purposes of the Act, and they therefore have protection on that basis.

To what extent do you agree or disagree with the following statement:

The explanation of the legal rights and responsibilities set out in Change 4.2 is clear.

[Select one answer]

- **Strongly Agree**
- Agree
- Disagree
- Strongly Disagree
- Do not know

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

No

Change 5.1: New example on sex discrimination - same disadvantage

Change 5.1: New example on sex discrimination - same disadvantage

This example explains how indirect sex discrimination can occur when people experience the same disadvantage, even if they do not share the same protected characteristic. The example is in the context of sex and gender reassignment.

To what extent do you agree or disagree with the following statement:

The explanation of the legal rights and responsibilities set out in the new example on sex discrimination - same disadvantage is clear.

[Select one answer]

- Strongly Agree
- **Agree**
- Disagree
- Strongly Disagree
- Do not know

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

We would remove the reference to ‘presenting as a woman’ and be clearer about the protected characteristic involved - for example ‘A man who identifies as trans who feels unsafe in the area…’.

Change 8.1: Updated example on harassment related to sex

Change 8.1: Updated example on harassment related to sex

We produced a new example to explain how harassment can occur based on a perceived protected characteristic, in the context of sex and gender reassignment.

We have included additional information to provide context for this example. We are only looking for feedback on the example in paragraph 8.1.6b.

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 example on harassment related to sex is clear.

[Select one answer]

- Strongly Agree
- **Agree**
- Disagree
- Strongly Disagree
- Do not know

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

The should be greater clarity about the protected characteristic involved - for example ‘A trans woman (a man who identifies as trans) using the gym equipment is regularly subjected to comments from male staff members that are typically targeted at women, such as…’

Change 12.1: New example on women-only associations

Change 12.1: New example on women-only associations

The example in this section explains when applications to an association can be lawfully refused based on a protected characteristic, in the context of sex and gender reassignment.

We have included additional information to provide context for this example. We are only looking for feedback on the example in paragraph 12.1.3.

To what extent do you agree or disagree with the following statement:

The explanation of the legal rights and responsibilities set out in the new example on women-only associations is clear.

[Select one answer]

- **Strongly Agree**
- Agree
- Disagree
- Strongly Disagree
- Do not know

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

As previously stated, whilst the scenario is straightforward it would be helpful to make clear that the trans woman is a biological male as this will not necessarily be understood by all individuals and organisations that will need to engage with this guidance.

Change 13.1: Updated section on competitive sport

Change 13.1: Updated section on competitive sport

This section has been updated to explain the circumstances in which it may be lawful to exclude participation in competitive sporting events in relation to the protected characteristics of sex and gender reassignment. It also sets out considerations that should factor into policy decisions regarding the exclusion of trans people from competitive sporting events.

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 section on competitive sport is clear.

[Select one answer]

- Strongly Agree
- Agree
- Disagree
- **Strongly Disagree**
- Do not know

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

This section should be the one of the most straightforward in the guidance, yet it is overcomplicated and actually undermines the implementation of the Equality Act.

It is - and always has been - lawful to organise sports on the basis of sex in order to ensure safety and fairness for women and girls.

The guidance should be absolutely clear that men with the protected characteristic of gender reassignment are excluded from women's sports and competitions in the same way as men without the protected characteristic of gender reassignment are excluded. This is not unlawful discrimination on the basis of gender reassignment, it is lawful discrimination on the basis of sex.

This also applies to mixed sex sports such as mixed doubles or mixed relay teams, where men who identify as women should not be able to compete as women.

This section introduces ambiguity through reference to testosterone reduction in trans identifying men. This completely disregards other key physical and social factors which give advantage to men and boys in sport, such as greater physical strength, heart and lung size, male socialisation and the promotion of and investment in of male sport. This is irrelevant and should be removed.

The scenario regarding the inclusion of a girl in a boys' football team is unclear and adds to the general confusion and ambiguity.

This confusion is further exacerbated by the use of the term 'gender-affected activity' - we understand that this is the language of the Act, but it is not helpful when referring to activities which are clearly affected by the differences between male and female physiology.

This whole section should be completely rewritten and simplified. The starting point has to be that sex means biological sex: all men are male and all women are female, including those with the protected characteristic of gender reassignment and regardless of whether they hold a GRC.

Trans identifying women who take testosterone as part of their attempts to look more like a man can be excluded from women's sports in the same way that anyone taking any performance enhancing drug would be.

Change 13.2: Updated section on separate and single-sex services for men and women

Change 13.2: Updated section on separate and single-sex services for men and women

This section has been updated to provide guidance on how separate or single-sex services can be provided for men and women. It also sets out when providing these services is likely to be lawful.

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 section on separate and single-sex services for men and women is clear.

[Select one answer]

- Strongly Agree
- **Agree**
- Disagree
- Strongly Disagree
- Do not know

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

The scenario in which a hospital ‘chooses to provide’ a single sex ward is disingenuous: this is not a matter of choice but should be expected practice. On a hospital ward patients often are in a state of undress, in and out of consciousness, and vulnerable.

Change 13.3: New section on justification for separate and single-sex services

Change 13.3: New section on justification for separate and single-sex services

This section sets out the considerations that should be given to all potential service users when deciding whether separate and single-sex services are a proportionate means of achieving a legitimate aim. It also sets out circumstances in which mixed-sex services may be necessary, and the potential legal implications of providing only mixed-sex services.

To what extent do you agree or disagree with the following statement:

The explanation of the legal rights and responsibilities set out in the new section on justification for separate and single-sex services is clear.

[Select one answer]

- Strongly Agree
- Agree
- **Disagree**
- Strongly Disagree
- Do not know

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

This section of the guidance makes the concept of the right and responsibility of services to provide single sex services in specific circumstances more confusing rather than less.

The guidance needs to be absolutely clear and unequivocal that where single sex or separate sex services are justified, they are legal and operate on the basis of biological sex.

If it is proportionate to exclude men who don't have the protected characteristic of gender reassignment from a women-only service, then it is proportionate to exclude men who do have the protected characteristic of gender reassignment.

To imply that there might be exceptions or scope to make case-by-case decisions completely undermines the operation of the Equality Act as confirmed by the Supreme Court.

This area of the law has been subject to considerable misrepresentation by lobbying groups pressurising service providers to give trans-identifying people access to services for the opposite sex.

This guidance needs to counter those misrepresentations robustly with clear, practical advice so that service providers are confident to offer and defend single or separate sex provision where this is a proportionate means of achieving a legitimate aim.

With reference to 13.3.7 we are unclear as to the meaning of the statement: 'The impact on those who will be excluded from the service includes both the impact on people of the opposite biological sex generally and the particular impact on trans people of the opposite biological sex'. As a scenario is not given we are unsure as to

what is implied by ‘the particular impact on trans people’ from being excluded from a service intended for use by the opposite sex.

Use of the term ‘acquired gender’ is unhelpful (13.3.11). It is not used in the Equality Act and the Supreme Court judgment makes clear that sex is immutable and remains unchanged for legal purposes.

The guidance should state that unisex single use facilities should be provided alongside single-sex services and that failure to do so might be considered to disadvantage trans people.

Change 13.4: New content on policies and exceptions for separate and single-sex services

Change 13.4: New content on policies and exceptions for separate and single-sex services

This new content explains that service providers may need to develop policies regarding the provision of separate or single-sex services. It also covers specific circumstances that may require a different approach to that set out in policy, and examples of those circumstances.

To what extent do you agree or disagree with the following statement:

The explanation of the legal rights and responsibilities set out in the new content on policies and exceptions for separate and single-sex services is clear.

[Select one answer]

- Strongly Agree
- Agree
- Disagree
- **Strongly Disagree**
- Do not know

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

This is another section that confuses rather than clarifies matters.

Stating that ‘individual circumstances may, exceptionally, require a different approach to that set out in a policy’ makes no sense.

A policy is worthless if an organisation does not enforce it. A mother taking her ten-year-old son into the women’s changing rooms in a council swimming pool is not an

example of an exception to a policy - it would be part of the pool's policy as a means to protect young children.

This statement suggests that single or separate sex services should operate on a case-by-case basis at the discretion of frontline staff, rather than by a clear policy that applies to everyone.

Stating that making exceptions to allow people of the opposite sex to use a single or separate sex service is likely to be permissible '...if doing so adds necessary flexibility without undermining the aim of the service…' undermines the whole premise of legally justified single or separate sex provision. It will likely encourage challenges by lobby groups seeking to force service providers to allow trans-identifying people to access services and spaces for the opposite sex and potentially deter service providers from offering such provision.

The law here is not complex, despite lobbyists' attempts to make it appear so. Once again, if it is permitted to exclude a man or a woman without the protected characteristic of gender reassignment from a space or service for the opposite sex, then it is permitted to exclude a man or woman with the protected characteristic of gender reassignment.

Change 13.5: Updated section on separate or single-sex services in relation to gender reassignment

Change 13.5: Updated section on separate or single-sex services in relation to gender reassignment

This section explains that service providers should consider their approach to trans people's use of their services when deciding whether to provide a separate or single-sex service. It includes examples of relevant considerations when deciding whether the exclusion of trans people from a separate or single-sex service is a proportionate means of achieving a legitimate aim.

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 section on separate or single-sex services in relation to gender reassignment is clear.

[Select one answer]

- Strongly Agree
- Agree
- Disagree
- **Strongly Disagree**
- Do not know

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

In deciding whether or not to provide single or separate sex services, providers should consider the potential impact or disadvantage on all other relevant protected characteristics as a matter of course.

For example a council leisure centre having only single sex facilities with no unisex option/alternative could disadvantage families and disabled people with opposite sex carers, not only transgender people.

Singling out trans people for special consideration when deciding on single or separate sex provision is unnecessary and implies a hierarchy of protected characteristics where gender reassignment takes priority.

This section should be removed and replaced if necessary with a section on separate or single-sex services in relation to other protected characteristics.

Change 13.6: Updated content on communal accommodation

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.

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.

[Select one answer]

- Strongly Agree
- **Agree**
- Disagree
- Strongly Disagree
- Do not know

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

No

Any other feedback from your organisation

Do you have any other feedback about the content of the code of practice that you have not already mentioned?

Include references to specific changes where relevant

Throughout this document the scenarios use the term ‘likely to be permitted’ rather than ‘is/is not permitted’. This phrasing introduces further ambiguity, undermining the confidence of duty-bearers in their decision-making and implying that all decisions are open to legal challenge.

The clarity provided by the Supreme Court judgment means that there should be no ambiguity in this guidance and no suggestion that providing single or separate sex services is difficult or unworkable.

Organisations need to be confident when providing legally justified single and separate sex services that their policies apply to everyone and that they aren’t expected or obliged to make case-by-case decisions.

This is vital, given the damage that has been caused by widespread and repeated misrepresentation of the law by lobby groups and, previously, by the EHRC itself.

The whole of the EHRC needs to be seen to be united on this. Inaction from the Wales committee, an apparent lack of clarity on the part of the board about what its role should be and the lack of clear leadership in the absence of a permanent Chair have contributed to confusion about the law in Wales.

We have a Welsh Government that has so far failed to withdraw or address its Cabinet statement that ‘trans women are women, trans men are men’ and continues to prevaricate about revising policy and guidance in light of the Supreme Court judgment.

This, in turn, gives confidence to other civil society organisations to delay or avoid taking action.

If there is any hint of a lack of unity between the national EHRC and the Wales committee about the revised guidance, this will impair its effective implementation in Wales.

We recommend that a specific budget be allocated to disseminating an accurate understanding of the updated code to prevent further misrepresentation by lobbying groups.

This communications campaign needs to acknowledge that there never was a ‘right’ for trans people to access services and spaces meant for the opposite sex, so no rights have been removed or rolled back, despite what trans activist organisations might say.

The guidance needs to be available in Welsh from the outset and all communications activity should be carried out bilingually in Wales.

The Equality Act is about balancing rights and protections of different groups in society. In recent years, it has failed women and girls.

The clarity provided by the Supreme Court judgment is an opportunity to reset the balance and ensure that everyone’s rights are respected and protected.

We urge the EHRC to face down those who have misrepresented the law to the detriment of women and girls and be clear about the way forward regarding sex-based rights and protections.