



### **Change 1 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.'

### **Our Response**

**Strongly disagree** that definition of “legal sex” is clear

#### **Comment:**

Take out any phrases such as "legal sex" or "birth sex" or "sex at birth". Sex is a protected characteristic which describes whether someone is male or female. It is usually observed in the womb in the UK, or if not then at birth. This is what the Supreme Court rightly calls “biological sex”. The rest of the document should simply say “sex”.

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### **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.

### **Our Response**

**Strongly disagree** that the explanation of the legal rights and responsibilities set out in the new content on Gender Recognition Certificates is clear.

## **Comment**

The language used does not reflect the 2010 Equality Act. It introduces concepts with no legal foundation - such as "birth sex", "acquired gender", "trans man", and "trans woman". An obvious principle should be followed - that a guide to a specific law must use only the relevant terminology included in the legislation itself. Most people think a "trans man" is male and a "trans woman" is female – so the guidance must be specific and factual. Instead of "trans woman" the guidance should state something like "man with the protected characteristic of gender reassignment". If the language is unclear the guidance will be confusing and extremely hard to understand - as we see in this section and others.

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## **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.

## **Our Response**

**Strongly disagree** that the explanation of the legal rights and responsibilities set out in the new content on asking about sex at birth is clear

## **Comment**

This whole section is not fit for purpose and the example provided illustrates the problem by suggesting that front line staff can make on the spot decisions in the course of their daily work. That is quite unreasonable, impractical and raises major safeguarding concerns. Para 2.2.8 correctly states that a birth certificate is no longer a definitive indication of sex since these may be altered by those with a GRC. Para 2.2.9 goes on to threaten potential criminal action against anyone who discloses the sex of someone with a GRC. There are no answers - just warnings and vague threats about the possible invasion of privacy of those with the protected characteristic of gender reassignment and/or GRCs.

The only fair method of asking about sex is to collect data which is deemed essential for all users of a single sex service. Anyone who is unwilling to answer the question may be excluded from that service. The EHRC must write guidance that accords with the FWS judgment. This section undermines the clarity of the rules confirmed by the Supreme Court and must be completely rewritten.

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### **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.

#### **Our Response**

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

#### **Comment**

Para 2.3.3 delete "birth sex" as sex is sufficient without any qualifier.

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### **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)

#### **Our Response**

**Agree** that the explanation of the legal rights and responsibilities set out in the updated description of the protected characteristic of sexual orientation is clear.

#### **Comment**

Yes. We would amend 2.4.6 to read:

Gender reassignment is a separate protected characteristic and unrelated to sexual orientation. For many years it has been incorrectly grouped together under the acronym "LGBTQ+ people". Service providers should not use such groupings as the needs of each protected characteristic are so different. It is best practice to split the two and use separate acronyms such as LGB or TQ+. There is no such thing as an LGBTQIA+ person or community.

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In addition, we would point out that the “false teaming” of LGB people (those with the protected characteristic of same-sex sexual orientation) with TQ+ people (those with the protected characteristic of gender reassignment) has almost destroyed the social contract under which society has operated for the last half century. The voices of lesbians, gays and bisexuals have been silenced and our needs put to one side. This has led to the imbalance we see in your consultation document, where the word trans is used 85 times, gay 5 times, lesbian twice and bisexual once. The ever more authoritarian demands made by TQ+ people are inimical to maintaining a society where competing demands are discussed and resolved fairly. Examples include mandating pronouns, language changes (mother to “birthing person”), removal of single sex facilities, encouraging men to enter female sports, refuges, prisons and social activities. In addition boundaries of age and sex are deliberately blurred with no recognition of the appalling safeguarding risks raised. Worst of all is the promotion of the idea that a child could be born in the wrong body and will need puberty blockers, cross sex hormones and surgery which have life changing consequences of ill health, sterilisation and loss of sexual function. Of course, this medical experimentation is used on the most vulnerable – those “gender non-conforming” children likely to grow up to be gay or lesbian, those with co-morbidities (especially autism) and “cared for” children. This is an international scandal and is a direct result of the promotion of the ideology promoted by LGBTQIA+ groups according to which sex is a spectrum. It is not. The Supreme Court has made this crystal clear – let there be no more confusion or obfuscation by those in leadership positions.

The EHRC should be leading by example and should immediately stop the use of LGBT or LGBTQ+ acronyms in its own work. Furthermore, it should advise parliament, NHS and all official bodies to stop using these acronyms.

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#### **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.

#### **Our Response**

**Agree** that the explanation of the legal rights and responsibilities set out in the new example on sex discrimination by perception are clear

### **Comment**

The explanation is clear but once again the example is not fit for purpose. The language used cannot be "trans woman" as the average person believes that is a female. To be consistent with the Act it must say "a man with the protected characteristic of gender reassignment". Until the language is clear individuals at the front line are likely to misjudge situations and make mistakes.

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### **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.

### **Our Response**

**Strongly agree** that the explanation of the legal rights and responsibilities set out in Change 4.2 is clear

### **Comment**

Good to get clarity here.

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### **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.

### **Our Response**

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

### **Comment**

Once again it is the examples which are unhelpful. We cannot have terms that are not in the Act such as "trans woman".

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### **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.

#### **Our Response**

**Agree** that the explanation of the legal rights and responsibilities set out in the updated example on harassment related to sex is clear

#### **Comment**

As before in the example the code of practice must say "man with the protected characteristic of gender reassignment" to be consistent with the Act and clear to members of the public

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### **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.

#### **Our Response**

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

#### **Comment**

As before in the example the code of practice must say "man with the protected characteristic of gender reassignment" to be consistent with the Act and clear to members of the public.

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### **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.

### **Our Response**

**Strongly disagree** that the explanation of the legal rights and responsibilities set out in the updated section on competitive sport is clear

### **Comment**

This section undermines the Supreme Court's ruling. Instead of providing clarity over a very simple issue it increases uncertainty and confusion.

The code of practice should state that single-sex sports teams exclude people of the opposite sex. Mixed-sex sports are an option but do not belong in either the male or female category. People who call themselves trans can take part either in mixed sex teams or in the category of their sex. It is perfectly legal to exclude men with the protected characteristic of gender reassignment from women's sports on the basis of their sex. All the confusing wording in this section should be replaced with clear rules around the legal sex-based exclusions which are already in the Equality Act.

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### **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.

### **Our Response**

**Strongly agree** that 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.

### **Comment**

This section is exceptionally clear.

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### **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.

## **Our Response**

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

## **Comment**

This section undermines the Supreme Court's judgment and shows either a lack of understanding or an extraordinary bias against the needs of women. The focus on the needs of males with the protected characteristic of gender reassignment above those of women is expressed clearly - especially in paragraphs 13.3.4 and 13.3.7. It is extraordinary and misleading to say that people who call themselves trans "are likely to be disadvantaged" by single sex spaces as is stated in paragraph 13.3.7.

This reads like a personal opinion and takes no account of the Supreme Court judgment. It is shocking to see it in the draft code of practice.

The Equality Act balances rights and the EHRC must state clearly that there is nothing unlawful or "disadvantageous" to people who call themselves trans about single sex services. A service simply is not single sex if it includes someone of the opposite sex.

This section must be rewritten to emphasise that the law is clear, that single-sex spaces are lawful and are not up for negotiation with someone of the opposite sex who calls themselves trans.

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## **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.

## **Our Response**

**Strongly disagree** that 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



### **Comment**

This section needs to be re-written. It is dangerous as it reintroduces the idea that making policy on a case-by-case basis is a good idea. It is not, and the whole point of the Supreme Court judgment was to put an end to confusion. Services can be clearly demarcated by language and icons - men, women, and the icons commonly used for these.

In the case of individuals who may wish to access a single sex service of the opposite sex - as in para 13.4.4 - the obvious response is no. Yet the EHRC recommends a tortuous process of "accommodating the needs of the service user". The code of practice must be simple and clear and this is not clear at all. All this does is to spread the idea that front line staff must wrangle with potential challenges posed by individuals who will not accept the law of the land. It is both unfair, impracticable and does not remotely reflect the spirit of the Equality Act itself.

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### **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.

### **Our Response**

**Strongly disagree** that 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

### **Comment**

This section is muddled and extremely unclear. Once again the focus is not on the needs of women who require single sex lavatories, changing rooms, sports, lesbian associations, hospitals, refuges, a variety of services and prisons. All that is needed is wording to emphasise that it is lawful to provide single sex services and is not unlawful gender reassignment discrimination because providing that service is a proportionate means of achieving a legitimate aim. The law is clear. The judgment is clear so why is this made so complicated? Bafflingly, we also see the return of "case-by-case" decision making. Once again that is unworkable and against the spirit of the law and the judgment.

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### **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

#### **Our Response**

**Agree** that the explanation of the legal rights and responsibilities set out in the updated content on communal accommodation is clear

#### **Comment**

Communal accommodation is an area where safeguarding must be paramount. All organisations, especially those involving young people like the Girl Guides, must now review their policies to ensure they stop allowing boys who identify as girls to share overnight accommodation with girls.

Schools who organise trips for pupils must also be vigilant and the code of practice should provide clear examples to ensure the safety of children. Rules must be clear and organisations must have the support of the EHRC in implementing clear and fair policies.

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### **Question 84. 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

#### **Our Response**

The EHRC states: “We are committed to developing guidance that provides legal clarity and practical support for organisations following the Supreme Court judgment.” This is a laudable aim and badly needed. Unfortunately, the draft Code of Practice published for consultation achieves the opposite. Instead of giving clear, concise instructions that any person managing, say, a small netball club or rape crisis centre might be able to understand and implement, the draft guidance is full of double negatives and equivocation (“are unlikely to be unlawful”; “unlikely to warrant”, “likely to be disadvantaged”) that will perplex and dismay any ordinary person seeking reliable help.

It would have been extremely helpful to suggest, for instance, that service providers hang a sign at the front desk stating: “Anyone who states their age or sex incorrectly will be liable to exclusion.”

Front desk staff need simple guidance. For this and other reasons, the draft Code of Practice is not fit for purpose. We summarise our other key concerns below:

- Language. The Supreme Court ruling states: “A person who is a biological man, i.e. who was at birth of the male sex, but who has the protected characteristic of gender reassignment is described as a ‘trans woman’. Similarly, a person who is a biological woman, i.e. who was at birth of the female sex, but who has the protected characteristic of gender reassignment is described as a ‘trans man’.” The draft Code of Conduct follows the Court in using these terms.
- However, the Court also established that “man” means a biological man, “woman” means a biological woman, and “sex” means “biological sex”. The point of the guidance is to help ordinary people to apply the law correctly. It should choose simple language that people can understand. The words “trans woman” and “trans man” confuse the public, as polls have shown. 21% of the public think a “trans woman” is someone born female and another 19% are unsure. (See <https://murrayblackburnmackenzie.org/2023/08/07/clarity-matters-how-placating-lobbyists-obscures-public-understanding-of-sex-and-gender/>). They understandably think a “trans woman” is a kind of woman. If the EHRC insists on adhering to these terms, it should provide a Glossary and clearly direct readers to it at the beginning. But in our view, it is better to avoid confusing terms altogether and to refer instead to a “man with the protected characteristic of gender reassignment”. Statutory guidance is the last place in which one should find confusing language.
- Another example: “LGBTQ+ people” conflates people who have the protected characteristic of sexual orientation (LGB) with those who have the protected characteristic of gender reassignment (T) as well as other indeterminate groups (Q+). This is incoherent and unhelpful.
- The document displays a glaring bias. It highlights the needs of people with the protected characteristic of gender reassignment and ignores those of people with the protected characteristic of sexual orientation. This is demonstrated by the 85 mentions of the word “trans”, with only 5 for the word “gay”, 2 for “lesbian” and 1 for “bisexual”. This is incomprehensible, given the importance of the arguments adduced by the Lesbian Interveners, as reflected at length in the Supreme Court ruling. Astonishingly, there is no guidance on gay or lesbian associations or spaces at all. Despite its mandate to balance rights, the EHRC has not given due consideration to the protected characteristic of sexual orientation – either in its multiple examples or elsewhere. The EHRC cannot seriously claim it has endeavoured to balance rights while adopting such a skewed approach.

- The rights of lesbians, gays and bisexuals have been gradually eroded since 2015 and this erosion is reflected in the lack of attention given to those rights in this draft guidance. We find this shameful and of serious concern. We had hoped that the Supreme Court ruling would have an immediate and positive impact on the lives of gays, lesbians and bisexuals but the EHRC appears not to have given any thought to LGB rights or lives.
- Our organisation, LGB Alliance, first intervened in 2022/23 in support of LGB sex-based rights, in the For Women Scotland Judicial Review of the revised statutory guidance produced by the Scottish Ministers under Section 7 of the Gender Representation on Public Boards (Scotland) Act 2018. We then went on to intervene in the same case at the Supreme Court as part of the "Lesbian Interveners" (LGB Alliance, the Lesbian Project and the Scottish Lesbians). The judges saw the grave implications for lesbians of prioritising gender over sex, particularly when it comes to men with Gender Recognition Certificates, who, according to Ruth Crawford KC, Counsel for the Scottish Government, "become lesbians". She argued that if a heterosexual man obtained a Gender Recognition Certificate (GRC) and thereby legally became a woman, this would technically make him a "same-sex attracted woman", i.e. a lesbian. We believe that this counter-intuitive statement shocked the judges, as it was so clearly ridiculous, and that it had a direct impact on their ruling. Indeed, all who watched the proceedings saw that the judges were "visibly perplexed" at the notion that a man with a GRC could legally call himself a lesbian and join lesbian-only spaces. As the ruling observes at para. 204: "People are not sexually oriented towards those in possession of a certificate".
- Lesbian rights matter. Gay men's rights matter. The EHRC must remedy its reprehensible neglect of the rights of people with same-sex sexual orientation.

**Recommendation:**

LGB Alliance urges the EHRC to use the recent guide issued by LGB Alliance Cymru to inform the Code of Practice: <https://lgballiancecymru.wales/wp-content/uploads/2025/06/The-Legal-Defence-of-Lesbian-Spaces-Short-Organisers-Guide-17-6-2025.pdf>