

Sex and the law

a short guide

to your human rights

in everyday life

Speaking about the two sexes, male and female, should not be difficult. This guide uses ordinary language, and is based on science, universal human rights and UK law.

What sex means

Sex is a matter of biology: whether someone is female or male. Women (females) have the type of body with the potential to produce eggs and become a mother, and men (males) have the type of body with the potential to produce sperm and become a father. Girls grow up to be women; boys grow into men.

Words for the two sexes started to be used long before anyone attempted to define them formally or had any idea how evolution or genetics worked. Sex is a feature of all animals and plants except the very simplest ones, which do not reproduce sexually (for example bacteria, which simply split in two).



The ordinary meaning of these words concerning the two sexes is well established in law. But you don't need to know any laws or complex science

to use words relating to the two sexes in your personal life or at work. In fact, you shouldn't have to. Protecting everyone's rights and privacy requires the simple, everyday notion of sex to be clear and usable by everyone.

You can feel confident that all the adults you interact with understand that there are two sexes, and know what sex they are themselves. People develop this understanding in early childhood. Everyone can be expected to follow sex-based rules that are clearly explained.

Your sex is yours for life

When a baby is born, medical professionals and the parents can see what sex they are. Their sex is put in their medical records, and in the UK is linked to their NHS number.

The parents go to the registrar's office to record the birth in the official birth register. This record includes the baby's sex and the identity of the mother. The identity of

Sex in the law

“The distinction between male and female exists throughout the animal world. It corresponds to the different roles played in the reproductive process. A male produces sperm which fertilise the female's eggs.

In this country, as elsewhere, classification of a person as male or female has long conferred a legal status. It confers a legal status, in that legal as well as practical consequences follow from the recognition of a person as male or female.

The legal consequences affect many areas of life, from marriage and family law to gender-specific crime and competitive sport.

It is not surprising, therefore, that society through its laws decides what objective biological criteria should be applied when categorising a person as male or female.

Individuals cannot choose for themselves whether they wish to be known or treated as male or female. Self-definition is not acceptable. That would make nonsense of the underlying biological basis of the distinction.”

the father or other person who takes parental responsibility is also usually recorded. A copy of this record (the “birth certificate”) is made for the parents to take home.

Being registered at birth is a human right. The United Nations says: “All people have a right to birth registration”.

A birth certificate neither creates nor determines someone's sex. It simply records their sex, which would remain the same if their birth were not recorded. That fact cannot change: baby girls stay female all their life and baby boys stay male.

Some people develop without reproductive organs that are normal for their sex, and may have those organs removed later in life or be infertile (unable to reproduce). None of this changes someone's sex. A woman who has a

Bellinger
(FC)
(Appellant)
v. Bellinger
[2003]
UKHL 21

United
Nations
Birth
registration,
OHCHR and
children

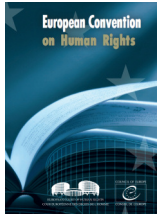
double mastectomy or hysterectomy (surgery to remove her breasts or womb) does not become less female, or less of a woman.

Recognising that there are two sexes does not mean that you have to take a traditional view of men's and women's roles in society.

Sex and human rights

Everyone has human rights, whatever their sex. We all have equal rights. The following are Articles in the European Convention on Human Rights, but the principles are universal.

- **The right not to be subjected to degrading treatment.** This means treatment that arouses feelings of fear, anguish and humiliation. This can include being made to undress, and in particular being made to undress in front of members of the opposite sex. (Article 3)
- **The right to respect for private and family life.** This covers things like your right to determine your sexual orientation, your lifestyle, and the way you look and dress. It also includes your right to control who sees and touches your body. It includes your right to develop your personal identity and to have relationships and participate in economic, social and cultural life. It includes the limited right to keep your personal information private. (Article 8)
- **Freedom of thought, conscience and religion.** This includes the right to hold beliefs and think thoughts about the two sexes, and about yourself and other people. (Article 9)
- **Freedom of expression.** This includes the freedom to hold opinions and to receive and impart information



and ideas without interference by public authorities. You might also express yourself with your appearance or the words you use about yourself. (Article 10)

- **Freedom of assembly and association.** Everyone has the right to peacefully meet and associate with other people, including in groups based on sex, religion or other interests. (Article 11)
- **The right to have a family.** Men and women of marriageable age have the right to marry and to found a family. (Article 12)
- **Prohibition of discrimination.** You should not be discriminated against on grounds such as sex, race or religion in enjoying all of your rights. (Article 14)

Sometimes your rights can be constrained, with good reason. For example, the right to freedom of expression does not mean you can ignore a rule about not shouting in the library.

Sometimes people's rights and interests come into conflict with other people's rights and interests and a court may be asked to decide whether rules and policies treat everyone fairly.

Talking about the sexes

Being able to speak clearly about the two sexes is important.

Once someone has been through puberty, other people can almost always tell immediately what sex they are. A person's sex is also memorable: you may forget their name, face or birthday, but not whether they are male or female. The English language has pronouns based on sex, so people who speak English will automatically think of someone they perceive to be female as "she" and someone they perceive to be male as "he".

Judging sex by gait Mather and Murdoch, 1994: 'Gender discrimination in biological motion displays based on dynamic cues'

Judging sex by faces Hillairet de Boisferon, Anne et al. (2019) 'Sex Categorization of Faces: The Effects of Age and Experience.'

Many other common words also relate to the sexes: son, daughter, mother, father, husband, wife, lesbian, gay, bisexual, homosexual and heterosexual.



Freedom to think and express yourself using these ordinary words is part of your human rights.

Sex matters in many situations such as healthcare, fairness and safety in women's sports, respecting other people's bodily privacy, and sex discrimination.

People need to be able to refer to the two sexes, using ordinary language, to express what they are thinking, and in order to do their jobs and to protect and respect everyone's human rights.

What about gender?

The word "gender" is sometimes used to mean sex, and sometimes used to mean stereotypes for men and women such as social roles, clothing and hairstyles.

In some professional or social situations, it can be best to avoid language that refers to sex. This is sometimes called "gender-neutral" language. For example, not all children live with a mother and father, so a letter home from school might be addressed to "parents and carers".

School staff may find that it is generally mothers who bring cakes for the school cake sale and fathers who coach football, but they should not assume that this will always be the case. Nor should they assume that the mother is the right parent to call in an emergency. When describing people at work nobody should assume that nurses are female and doctors male, or that firefighters are male and school lunches are served by "dinner ladies".

It is one thing to use "gender-neutral" language to be more inclusive and avoid sex stereotypes. But in some

situations, sex-based language is both correct and appropriate. It is anything but inclusive to avoid using ordinary words such as mother and father, he and she, man and woman when that would be most natural, for example to describe a specific individual or when drafting a company's maternity policy.

Some people believe that everyone has a "gender identity", which is unrelated to their physical sex. Sometimes they use the words for this that most other people – and the law – use for the two sexes. But whatever people think about the idea of gender or gender identity, it does not change a person's sex, either biologically or in law.

You do not have to believe in the existence of gender identities or pretend that you do. But you should treat people with different beliefs about gender politely at work and respect everyone's right not to talk about their beliefs.

What about intersex people?

"Intersex" is an old-fashioned term, considered offensive by some, for a varied group of disorders of sex development (DSDs). People who have these conditions are still male or female: they are not a third sex or "in between" male and female. Almost all DSDs affect only one sex or the other. A man with Klinefelter Syndrome (an extra X chromosome) is as much a man as any other man, and a woman with Turner Syndrome (a missing X chromosome) is as much a woman as any other woman.

In a tiny number of births, a baby's sex may be hard to tell even for medical staff. Very occasionally, tests are needed to check whether a child is male or female.

There is no reason to ask people if they are "intersex" when collecting information about people's sex, and to do so would infringe their privacy.



Equality Act 2010 Section 10: Religion or belief

See the information about DSDs at the [NHS website](#).

What about trans people?

Some people identify as transgender or non-binary. This means that they prefer to refer to themselves in a different way, rather than using ordinary words for their sex, and they may change their appearance and prefer that other people do not refer to their sex, some or all of the time.

It is estimated that as many as 500,000 people in the UK identify as transgender. Their feelings about this can be important (and sometimes distressing) to them, but do not change their sex. This form of personal identity is increasingly common in younger age groups.

Identifying as transgender is not in itself a medical condition. It does not require medical treatment (although some people may be diagnosed with mental-health symptoms). Some people who identify as transgender change their name, take sex hormones or have surgery to look more like the opposite sex, or wear clothing associated with the opposite sex.

People who identify as transgender have the same human rights as everyone else. This means, for example:

- They have the right to have their sex recorded accurately at their birth, and to be recognised as their sex.
- Their safety and welfare should be protected by organisations that have a duty of care towards them (for example as schools do towards pupils or employers do towards employees), just as people who do not identify as transgender would be protected.
- They have the right not to be subjected to humiliating or degrading treatment.
- They have a right to respect for their private life.
- They have the right to marry and found a family.
- They have the right to have their data safeguarded by

organisations. This includes recording their sex accurately where they consent or it is needed (for example for their own healthcare) and keeping sensitive information private. They have the right to express their beliefs and what they are thinking, including about their transgender identity.

They should not be harassed or discriminated against because of these beliefs or statements.

People should not be discriminated against for identifying as transgender, for example excluded from education, work or services such as healthcare or transportation.

People should not be harassed or discriminated against because they have chosen to adopt aspects of self-presentation associated with the opposite sex.

But none of this means their sex has changed, or that they must be regarded as not having a sex.

What about people with a gender recognition certificate?

Very few people (it is estimated 1% to 3% of those who identify as transgender, which is already a small group) have gone through a legal process to have a new birth certificate issued showing them as members of the opposite sex. This is known as a “legal fiction”. It does not mean their actual sex has changed, or that they have different human rights from people who do not have a certificate.

It does mean that information on their sex must be kept more private by people and organisations dealing with them in an official capacity, and that they are treated as the opposite sex for some legal purposes (such as marriage and pensions).



Equality Act 2010 Section 7: Protected Characteristic “Gender Reassignment”

Gender Recognition Act Section 22

Bodily privacy

Everyone should be able to have personal privacy about their bodies. It is a human right to be able to have some control over who touches and looks at your body, and not to be forced into humiliating and degrading situations.

Among other things, this means that we should not (apart from in very limited situations such as medical examinations or criminal custody) be required to undress in front of others. And even then, efforts should be made to make the experience as comfortable as possible. We should have reasonable privacy while we wash, sleep, use the toilet or deal with menstruation.

People should not expose their naked body or genitals to others without their consent. When this is done intentionally, and with the aim of causing harm or distress, it is a sex crime.

In situations of reduced bodily privacy, most people feel less embarrassed when the only other people around are of the same sex. This is why single-sex and separate-sex services are expressly allowed for in legislation.

One everyday example is toilets. Urinals have advantages over stalls for men and boys; they are easier to clean, quicker to use and take up less space. In busy places, unless urinals are provided, toilet seats quickly become dirty and unpleasant to use.

Men expect to be able to use urinals with a degree of privacy, without being overlooked by women. Women do not wish to see men using urinals (or to sit on toilet seats that men have urinated on).

In many other situations, such as sleeping in a dormitory, staying in hospital, showering or changing your clothes, single-sex facilities help everyone feel more comfortable, and for women especially, help keep everyone safe.

Sometimes single-sex spaces are subdivided, for example with cubicles, to provide extra privacy. But this does not mean members of the opposite sex are welcome. Locks can fail, curtains can slip and people can accidentally walk through the wrong door.

Many women and girls dislike being overheard by members of the opposite sex in certain situations, for example while being fitted for a bra, relieving themselves or unwrapping sanitary protection.

Clear rules and boundaries help everyone feel comfortable. They also make it harder to commit sexual harassment, indecent exposure or voyeurism by exploiting vagueness and claiming innocence.

Different people have varying requirements for privacy from the opposite sex. For example, some university students may be happy with mixed-sex accommodation. But others prefer a single-sex hall, floor, or shared flat. In either case students will have their own rooms with lockable doors; the difference is in the sharing of communal spaces. Both single-sex and mixed-sex options can be provided in order to accommodate everyone.

Wherever facilities are separated by sex, it is a good idea also to provide facilities that can be used by anyone. These are called mixed (if used by more than one person at a time) or unisex (if used by just one person, or a parent and child, or person with a carer, at any one time).

It is good practice to record and share information regarding the location and availability of single-sex and unisex facilities (for example on websites and to staff).



Equality Act
2010 Section
11: Sex

When sex matters in law

Sex discrimination

It is generally unlawful to discriminate on the basis of sex, as an employer or service provider or in education. It is also illegal to pay men more than women (or vice versa) for the same work or for work of equal value.

Direct discrimination

Most jobs and most services should be offered to men and women equally. Saying “No men allowed” or “No women allowed” would be direct discrimination, but is allowed in many everyday situations where it can be justified using one of the exceptions in the Equality Act, such as for bodily privacy.

Indirect discrimination

Organisations must also avoid indirect discrimination (where a policy or rule is applied in the same way for everyone, but puts people with a protected characteristic at a disadvantage), unless there is good reason for it. For example, if uniforms and safety equipment do not fit the majority of women, this would probably constitute unlawful indirect sex discrimination.

In order to check that unlawful sex discrimination is not being committed, it is helpful to collect data on how many men and women are accessing a service, how many apply for jobs, are appointed and promoted, and how much they are paid.

The government requires organisations above a certain size to report data on the pay of men and women across their organisation.

Single-sex and separate-sex services

Men’s and women’s bodies (and lives) are different, and so fairness does not mean always treating men and women in exactly the same way.

Programmes to support and empower members of one sex in fields or situations where that sex is disadvantaged are legal when they are for a good reason. Examples include a programme to encourage women into leadership positions in science, or to provide educational support for boys at risk of crime.

Similarly, it is not unlawful discrimination to advertise jobs as being open to one sex only, when there is good reason. For example, you can advertise for a male actor to play a male role, or a female manager to work in a women’s refuge. When a job is lawfully advertised as restricted to people of one sex only, lying about your sex on the application form would justify summary dismissal.

It is lawful to provide facilities and services for one sex only, or for both sexes separately, where there is a good reason. Ordinary expectations of bodily privacy are a sufficiently good reason. Regulations for schools, buildings and workplaces often require single-sex facilities, and these are expressly permitted in laws that more generally prohibit sex discrimination. The law also allows specialist services for only one sex, such as a women’s refuge or a health workshop for gay men.

Single or separate-sex facilities and services require clear rules to ensure that everyone knows what to expect and what is expected of them, to avoid arguments and to keep everyone safe. It is not unlawful discrimination to communicate and enforce those rules.

Laws about sex discrimination protect men and women equally, but when assessing risks and vulnerability, organisations should be aware that 98% of perpetrators of sexual crimes are male, and women and children are most often the victims. Sex matters in relation to safeguarding.

Equality Act
2010 Section
158: Positive
action

Equality Act
2010
Schedule 9:
Work:
exceptions

Equality Act
2010
Schedule 3
Paragraphs
26 and 27



Office for
National
Statistics
Nature of
sexual
assault by
rape or
penetration

The right to free association is another justification for single-sex groups. Sometimes people want to meet as a club or association just for women or just for men, or for girls or boys. This might be for sport, or for religious reasons, or just because we prefer to do some things only with people of our sex, for example a weekly cycle ride just for women, a lesbian knitting club or a book group just for men. Clubs, associations and schools for just one sex are allowed.

Organised religions are also allowed to provide single-sex or separate-sex services where this is necessary to comply with the doctrines of the religion or to avoid conflict with the strongly held religious convictions of its followers.

Sport

Sex matters in physical activities because, on average, men are bigger, faster and stronger than women. In almost every sport, female-only teams and competitions are essential for women and girls to compete fairly and safely.

Sex-affected sports are those where male strength, stamina or physique provides competitive advantages or presents safety risks. The Equality Act 2010 Section 195 calls them “gender affected sports” and allows for sex-based rules.

Although the Gender Recognition Act allows a person to change their legal sex, the Equality Act 2010 allows for rules based on biological sex in sport where necessary for fair competition and safety.



Personal data

Your sex is one of the first things recorded about you when you are born. Information about your sex continues to be needed throughout your life:

- Your sex is recorded when you marry or enter a civil partnership.
- If you become a parent, your relationship to your child is recorded when the child’s birth is registered: mother or father, according to your sex.
- Your sex should be stated in your medical records so that you get correct diagnosis and treatment.
- When you access spaces or services, your sex may need to be known and recorded. This is especially likely when children or vulnerable adults are involved, and in situations where an institution has a duty of care towards you or others.
- Your sex is recorded in relation to employment, taxes and benefits, because some eligibility rules are based on sex.
- If you want to compete in sport in the female category, your sex needs to be recorded accurately.
- Information about your sex may be recorded for the purpose of equality monitoring.
- Information about your sex is used by statisticians to plan services and study demographic patterns.
- Insurers and pension providers need to know your sex to estimate risks.
- If you are involved in a crime or a civil-law case, you will be expected to tell “the truth, the whole truth and



nothing but the truth”. If your sex is relevant you should state it truthfully, and it should be recorded accurately.

Organisations should be clear about what they are using your information for and whether they need to know your biological sex or the sex recorded on your birth certificate (for people who have had this changed).

**Data
Protection
Act 2018**

Everyone has the right to have their data fairly and properly used, recognising their right to have control over their own identity and their interactions with others, and striking a balance with the wider interests of society.

**ICO
Special
category
data**

Organisations should be particularly cautious about asking for sensitive information. This includes information on your gender identity and your views on the idea of gender identity, your transgender status, sexual orientation and mental or physical health diagnoses or treatments. Data on your sex is generally not sensitive. It is often and routinely recorded, usually easily observable by anyone who meets or talks to you, and needed for many purposes. If a person has a gender recognition certificate, information about their sex becomes sensitive and protected by law in some situations.

**Gender
Recognition
Act 2004
Section 22**

**The
accuracy
principle:
article
5(1)(d) of the
UK GDPR**

When organisations are collecting and recording information about your sex, this should be labelled clearly. It should not be confused with the idea of “gender” or “gender identity”.

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Sex Matters is a not-for-profit company registered by guarantee.
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Published 1st July 2022

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