

## **Change 2.4: Updated description of the protected characteristic of sexual orientation -Changes we are consulting on in chapter 2**

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.

### **Updated content**

What the Equality Act 2010 (the Act) says about sexual orientation

2.4.1 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)
- persons of either sex (the person is bisexual)

2.4.2 Sexual orientation relates to how people feel as well as their actions.

2.4.3 Sexual orientation discrimination includes discrimination because someone is of a particular sexual orientation, and it also covers discrimination connected with manifestations of that sexual orientation. These may include someone's appearance, the places they visit or the people they associate with.

2.4.5 When the Act refers to the protected characteristic of sexual orientation (s.12(2)), it means the following:

a reference to a person who has a particular protected characteristic is a reference to a person who is of a particular sexual orientation

a reference to people who share a protected characteristic is a reference to people who are of the same sexual orientation

2.4.6 Gender reassignment is a separate protected characteristic and unrelated to sexual orientation, despite often being grouped together (for example under the acronym 'LGBTQ+ people').

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

Progress

62%

### 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)

17. 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. - required

- ☐ Strongly Agree
- ☐ Agree
- ☐ Disagree
- ☐ Strongly Disagree
- ☐ Do not know

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

### Example Response:

(Change 2.4). While the updates provide clearer definitions of sexual orientation, including specifying lesbian women and gay men as attracted to the same sex, I have concerns about the guidance's implications for protecting females as a sex class. Below, I outline feedback and propose amendments to strengthen protections for women and girls, ensuring clarity and alignment with the Act's intent to prevent discrimination based on sex.

**Clarity in Defining Sexual Orientation (2.4.1)** The updated description specifying that a person attracted to the same sex is either a "lesbian woman" or a "gay man" is a positive step toward clarity. This aligns with the biological reality of sex, which is critical for ensuring that protections for females, particularly lesbian women, are not undermined by conflating sex with gender identity. However, the guidance could be strengthened by explicitly stating that "sex" refers to biological sex, as defined in the Equality Act 2010 (s.212), to avoid ambiguity in legal application, especially in single-sex spaces or services.

**Separation of Sexual Orientation and Gender Reassignment (2.4.6)**

The clarification that gender reassignment is a separate protected characteristic from sexual orientation is welcome. This distinction is crucial to prevent the conflation of sex-based rights (e.g., those of lesbian women) with gender identity considerations, which could erode protections for females. For example, lesbian women's rights to associate or access services based on same-sex attraction could be compromised if gender identity is misinterpreted as overriding sex-based protections. However, the guidance should explicitly address how these distinctions apply in practical scenarios, such as single-sex spaces, to ensure robust protections for females.

**Potential Risks to Females in Section 2.4.3** - here it notes that sexual orientation discrimination includes discrimination connected to "manifestations" of sexual orientation, such as appearance or places visited. While this is broadly appropriate, it risks ambiguity if "appearance" or "associations" are interpreted to include gender identity expressions, potentially conflicting with sex-based rights. For instance, females accessing single-sex services (e.g., domestic violence shelters or lesbian-only spaces) may face challenges if individuals identifying as women, but who are male, claim access based on perceived sexual orientation. This could undermine the safety and privacy of women and girls.

To strengthen the guidance and ensure robust legal protections for females as a sex class, I propose the following amendments: Amend 2.4.1 to explicitly state that "persons of the same sex" refers to biological sex, as defined in the Equality Act 2010. Proposed wording: "Sexual orientation is a person's attraction to persons of the same biological sex (the person is a lesbian woman or a gay man), persons of the opposite biological sex (the person is heterosexual), or persons of either biological sex (the person is bisexual)."

This ensures that protections for lesbian women, in particular, are anchored in biological sex, safeguarding their rights to single-sex spaces and services.

**Strengthen Protections for Single-Sex Spaces (New 2.4.7)** Add a new section to clarify that the protected characteristic of sexual orientation does not override sex-based protections under the Equality Act (s.7, s.11). Proposed wording: "2.4.7 The protected characteristic of sexual orientation does not diminish the rights of individuals to access single-sex spaces or services based on their biological sex, as provided under the Equality Act 2010. For example, lesbian women have the right to organise or access services and spaces exclusive to biological females, consistent with the

Act's provisions for lawful discrimination (Schedule 3, Part 7)." This amendment ensures that the guidance explicitly protects females' rights to single-sex spaces, such as lesbian support groups or women's shelters, without interference from misinterpretations of sexual orientation.

Single-sex provisions uphold respect for women's and girls' sex-based rights under the Equality Act. LGB Alliance ([lgballiance.org.uk](http://lgballiance.org.uk)), an intervenor in the Supreme Court case, argues that lesbian organisations can exclude "transwomen" (biological males) to maintain same-sex spaces, preserving the integrity of sexual orientation-based services.

**Address Ambiguity in "Manifestations" (2.4.3) Revise 2.4.3** to clarify that "manifestations" of sexual orientation do not include gender identity or expressions that could conflict with sex-based rights. Proposed wording: "Sexual orientation discrimination includes discrimination because someone is of a particular sexual orientation. It also covers discrimination connected with manifestations of that sexual orientation, such as someone's appearance or the places they visit, provided these do not infringe on the sex-based rights of others, particularly in single-sex spaces or services." This ensures that the guidance does not inadvertently allow gender identity to supersede protections for females.

**Expand 2.4.6 to include practical examples illustrating the separation of sexual orientation and gender reassignment**, particularly in contexts affecting females. Proposed addition: "For example, a lesbian women's support group may lawfully restrict access to biological females to maintain the group's purpose and safety, as permitted under the Equality Act's provisions for single-sex services. This restriction is based on the protected characteristic of sex, not sexual orientation or gender reassignment." To fully protect females as a sex class, the guidance must explicitly anchor definitions in biological sex, clarify the primacy of sex-based rights in single-sex spaces, and provide practical examples to prevent misapplication. The proposed amendments aim to strengthen the legal framework, ensuring that women and girls, including lesbian women, can fully exercise their rights under the Equality Act 2010 without compromise. I urge the EHRC to consider these amendments to enhance the guidance's effectiveness in protecting females while maintaining fairness for all protected characteristics.