

## EHRC's updated definition of "legal sex"

This page is part of our consultation on our code of practice for services, public functions and associations. We previously consulted on this code of practice between 2 October 2024 and 3 January 2025.

We are opening another consultation on the code to gather feedback on changes we have made following the UK Supreme Court ruling on 16 April 2025 in *For Women Scotland Ltd v The Scottish Ministers (For Women Scotland)*.

Before you respond to the consultation or provide feedback on this chapter, read our information about the consultation.

### Updated legal definition of sex

We have updated the definition of 'legal 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.’

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

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

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

6. Is there anything you would change to make this update clearer?

### Example Response:

I welcome the EHRC's updated definition of "legal sex" in the Code of Practice, which now aligns with the Supreme Court's ruling in *For Women Scotland v The Scottish Ministers* (16 April 2025), clarifying that **"legal sex is the sex that was recorded at your birth"** for the purposes of the Equality Act 2010. This change ensures that the legal framework reflects biological reality, providing clarity for service providers, employers, and individuals in maintaining sex-based protections, particularly for single-sex spaces and services. I strongly support this shift, as it reinforces the importance of biological sex in contexts where it is critical for privacy, safety, and fairness.

The updated definition is a significant step toward safeguarding single-sex spaces and services. For example, in women's refuges, biological sex is paramount to ensuring survivors of domestic abuse feel safe. A 2022 report by Women's Aid highlighted that 94% of women accessing refuges cited the importance of female-only spaces for their recovery from trauma. The Supreme Court's ruling, now reflected in the Code, supports the lawful exclusion of trans women (biological males) from such spaces under Schedule 3, Part 7 of the Equality Act, provided it is a proportionate means of achieving a legitimate aim. This clarity empowers service providers to maintain these protections without fear of legal challenge, while still allowing for inclusive mixed-sex alternatives.

However, I have concerns about the continued ability to amend the sex marker on birth certificates through a Gender Recognition Certificate (GRC) under the Gender Recognition Act 2004. While the Supreme Court

ruling clarifies that a GRC does not change legal sex for the purposes of the Equality Act, an amended birth certificate reflecting a sex different from that recorded at birth could create confusion or undermine the integrity of identification processes. This discrepancy may affect the enforcement of sex-based safeguards in areas such as single-sex services, sports, healthcare, and criminal justice, where accurate identification of biological sex is essential.

To address this, I urge the EHRC to provide further guidance on the following:

**Safeguards for Identification Documents:** What measures are in place to ensure that amended birth certificates do not lead to misidentification of biological sex in contexts where the Equality Act's definition of legal sex (biological sex at birth) applies? For example, can service providers rely on other documentation (e.g., medical records, original birth records, or alternative ID) to verify biological sex when necessary, without risking discrimination claims? An amended birth certificate may lead to misidentification of biological sex in settings where the Equality Act's definition applies, such as single-sex hospital wards or prisons. For instance, in 2021, a high-profile case in the UK involved a trans woman with a GRC being placed in a female prison, raising concerns among inmates about safety due to the individual's biological male characteristics. Although the Supreme Court ruling clarifies legal sex, reliance on amended birth certificates could perpetuate such issues. Recommendation: The EHRC should provide guidance on acceptable alternative documents (e.g., medical records, original birth records, or passports) that duty-bearers can request to verify biological sex discreetly. This could include a protocol for accessing unamended birth records through secure channels, ensuring compliance with the Equality Act without risking discrimination claims.

**Verification Processes:** The updated code mentions that requests for proof of biological sex, such as birth certificates, should be "necessary and proportionate" and handled sensitively to avoid discrimination or harassment. However, given that some trans individuals with a GRC may have an amended birth certificate, how can duty-bearers (e.g., hospitals, sports clubs, or employers) verify biological sex discreetly and consistently without creating ambiguity or legal risk?

**Additional Backing for Sex-Based Protections:** Are there plans to recommend or develop standardised mechanisms (e.g., a secure database, supplementary ID markers, or legal clarifications) to ensure that biological sex can be reliably identified across all relevant documentation? This would strengthen the practical application of the Supreme Court's ruling and prevent potential loopholes where amended documents might obscure

biological sex.

**Impact on Other Legal Frameworks:** The Supreme Court ruling applies specifically to the Equality Act, but the Gender Recognition Act still allows for legal recognition of acquired gender “for all purposes” under Section 9(1), which may include birth certificate amendments. Could the EHRC clarify how this interacts with the Equality Act’s definition of sex, particularly in contexts where ID verification is critical? For instance, in criminal justice settings (e.g., searches or custody), how should authorities balance GRC-amended documents with the need to uphold single-sex policies based on biological sex?

I appreciate the EHRC’s efforts to update its guidance promptly and to launch a public consultation to reflect stakeholder views. However, the potential for amended birth certificates to misalign with the Equality Act’s definition of legal sex, risks undermining the clarity provided by the Supreme Court ruling. I encourage the EHRC to include specific provisions in the final Code of Practice to address this issue, ensuring that biological sex can be verified accurately and respectfully across all relevant contexts. This could include guidance on acceptable alternative documents, protocols for sensitive inquiries, or recommendations for legislative amendments to align the Gender Recognition Act with the Equality Act 2010’s biological definition of sex, until such a time as the GRA can be reviewed or repealed, as Gender reassignment as a protected characteristic does not require a certificate.

Additionally, I support the EHRC’s interim guidance that emphasises the provision of mixed-sex facilities alongside single-sex ones to ensure access for all, while maintaining the integrity of single-sex spaces. However, clearer protocols are needed to protect individuals’ rights to single-sex spaces without fear of discrimination claims.