

The UK's Supreme Court has ruled that "man", "woman" and "sex" in the Equality Act 2010 refer to sex, not self-ID or paperwork (gender-recognition certificates). This agreed with our legal interpretation. [We have published new guidance](#) and are in the process of updating our publications to reflect the judgment. We are also working to provide answers to the questions we're hearing from supporters and the media. We will publish these as soon as possible.



## Respond to the EHRC consultation!

The Equality and Human Rights Commission is seeking feedback on its updated code of practice for service providers, associations and public bodies.

The changes to the code are in response to the clarification by the Supreme Court that the protected characteristic of sex (man and woman) in the Equality Act relates to the ordinary biological meaning of the categories male and female.



The deadline for feedback is Monday 30th June. [The consultation](#) is open to individuals, organisations and legal professionals.

### **This is Sex Matters' guidance to help you respond.**

Given the intense pressure from transactivist lobby groups against organisations complying with the Equality Act, the guidance needs to be crystal clear.

We think most of the changes are reasonably clear, but there are five significant sections that are not clear enough.

**They make it appear legally difficult to provide single-sex and separate-sex services, and leave the door open for service providers and service users to try to operate on the basis that it is appropriate for people with the protected characteristic of gender reassignment to seek to access opposite-sex spaces and services on a case-by-case basis.**

The EHRC should be advising service providers to confirm clearly and publicly to their service users that they:

- provide facilities and services with access limited according to biological sex
- offer readily accessible unisex facilities and services as a practical alternative to separate-sex where possible
- have clear and appropriate signage so that everyone knows which services are single-sex and which are for both sexes
- expect people to comply with the rules and take reasonable steps, including acting on complaints, if they don't.

## **Quick option (takes 10 minutes)**

Answer [the online survey](#). You don't have to answer all of the questions in detail (there are a lot of them).

For question 3 (Which of the following protected characteristics under the Equality Act 2010 are relevant to your response?) we would check sex, gender reassignment and sexual orientation, as well as any others you specifically want to talk about.

Go through the survey and tick the boxes to say whether you agree or disagree that each of the changed sections is clear. We **AGREE** that most of the sections are clear.

The sections that we **STRONGLY DISAGREE** are clear are:

- 2.2: New content on **asking about sex at birth**
- 13.1: Updated section on **competitive sport**
- 13.3: New section on **justification** for separate and single-sex services

- 13.4: New content on **policies and exceptions** for separate and single-sex services
- 13.5: Updated section on separate or single-sex services in relation to **gender reassignment**

**If you DISAGREE that a section is clear it is important to include a short explanation** in answer to the question “is there anything you would change to make the explanation of the legal rights and responsibilities [in this update] clearer?” – **otherwise it will not be obvious that you think the guidance is not clear enough in protecting sex-based rights.**

You could use this sentence to quickly indicate why you think these sections should be clearer:

This section should be in line with the Supreme Court’s judgement in the FWS case. It should make clear that where single-sex and separate-sex services are appropriate, a case-by-case approach is not required. Otherwise it will encourage service providers and service users to ignore the law on a case-by-case basis, harming protection for sex-based rights in practice.

For the question on separate or single-sex services in relation to **gender reassignment** you could answer:

This section should include an example of an organisation publishing a clear policy, for instance: “A service provider responds to questions over who can access its facilities by publishing the following statement on its website. ‘[XX] provides facilities (including toilets and changing facilities) with access limited according to biological sex. It may further limit access to facilities and services where this is necessary and proportionate to secure the autonomy, or privacy and dignity of the two biological sexes. Where it does so, it will always attempt to provide readily accessible unisex facilities and services as a practical alternative where feasible. We will make every effort to ensure clear and appropriate signage to these facilities. Please respect these rules and any directions given to you on signage or by our staff.’”

[Respond now](#)

## If you have 10 more minutes

Fill in the **general feedback** section at the end with your own comments.

If you are an individual user of single-sex services, you can write about how important it is to you that these services have clear sex-based rules and that the organisations that provide them are confident that they can explain and enforce those rules. You can write about **the problems that “case-by-case” ambiguity causes.**

If you represent a duty-bearing organisation such as a **service provider or association**, you could explain that you need clear, simple guidance that can be given to support staff across the organisation so they know their responsibilities. You cannot expect them to make **case-by-case** decisions to disapply sex-based rules.

## General points

- In relation to single-sex and separate-sex services, the guidance must support organisations to have and to communicate simple, workable rules.
- These rules must be readily understandable to staff and customers. Everyone should be expected to recognise that simple signs like “male” and “female” refer to sex, and that they are expected to follow the rules.
- Any suggestion that an organisation needs to decide access to services on a case-by-case basis, or that it can decide to disapply a sex-based policy for an individual on the basis of “gender reassignment” is unworkable and likely to result in unlawful conduct.
- Providing a unisex (mixed or single-user) alternative alongside separate-sex services is helpful when this is logistically possible. But if it is not, a service provider offering only single-sex or separate-sex provision will still be acting lawfully as long as it can justify the provision as proportionate in the circumstances (for example considering the size of the building or the demand for different services by men and women).
- The guidance should actively address the misunderstanding that it is appropriate for people with the protected characteristic of gender reassignment to try to use opposite-sex services and facilities.
- The guidance should make clear that organisations routinely and lawfully collect personal information including sex, and that they should do this following ordinary data-protection principles.
- The guidance should make clear that if staff need to step in to clarify or enforce rules on single-sex services, they can operate on the basis of their own observations and judgement, despite the possibility of an occasional mistake. They do not need to check IDs or ask for proof of sex.

[Respond now](#)

## If you want to give more detailed answers

If you have time to give more detailed feedback, we have produced a worksheet to help you prepare your answers, which you can fill in before transferring them to the online survey. It includes the consultation text you are being asked to respond to and a summary of Sex Matters’ response.

If you represent an organisation, for each section you will also be asked the questions:

- Will your organisation make any changes as a result of this update to the code of practice?
- For example, any changes to your policies, procedures or practices.

You could use this to describe **practical problems that unclear sections of the guidance will cause you, and how clarity is helpful to you.**

[Download the Word version of the worksheet.](#)

[Use the worksheet in Google docs](#) – on the next page, click on **Make a copy**.

## Summary of Sex Matters' response

### ✓ **We AGREE that the updated legal definition of sex is clear**

But the language should be simpler. Don't use "legal sex". The protected characteristic just means sex.

### ✗ **We DISAGREE that the new content on gender-recognition certificates is clear.**

**Elements of this section undermine clear understanding of the Equality Act, as confirmed by the Supreme Court in the FWS case. This will harm women's rights, make it hard for service providers to understand the law, and encourage individuals to try to flout the law.**

- The guidance should stick to ordinary language and the language in the Equality Act. References to legal sex imply that legal sex is a concept: it is not. It is also confusing to refer to legal sex in the content of the Equality Act – the Supreme Court referred to sex, meaning biological sex. The guidance should simply state that sex in the Equality Act means someone's biological sex (this is sometimes referred to as sex as recorded at birth).
- The guidance should not introduce the concepts of "birth sex" and "acquired gender" – neither is in the Equality Act.
- The guidance should not use the terms "trans man" and "trans woman" on their own – these are confusing as they relate to women and men respectively. It should refer to the relevant protected characteristics with other terms in brackets. For example: man with the protected characteristic of gender reassignment (someone who identifies as a "trans woman").

### ✗ **We STRONGLY DISAGREE that the section asking about sex at birth is clear.**

**This section undermines the implementation of the Equality Act, as confirmed by the Supreme Court in the FWS case, and suggests uncertainty which is not there. This will harm women's rights, make it hard for service providers to understand the law, and encourage individuals to try to flout the law.**

- This section is unworkable and the example is extremely problematic and unsafe. Frontline staff should not be asked to guess which potential clients are trans or to develop ad hoc workarounds.
- The guidance should advise organisations to approach collecting personal data on sex in the same way as any other piece of personal information they collect: decide what information they need to collect for service users as a whole and then collect and record individuals' data accurately (allowing a "prefer

not to say” option but stating if this will exclude users from some services). Often registering for a service involves someone filling in a form online.

- The guidance should be clear that while people may answer “prefer not to say” to a question about their sex (such as people who identify as transgender and non-binary) this will mean that they cannot use services that are sex-segregated.
- The advice on asking for birth certificates is wrong: they cannot be used as ID and are not reliable on sex.

✓ **We AGREE that the new content on defining sex at birth is clear.**

- Remove the concept of “birth sex”: a person’s sex remains their sex for the whole of their life.
- Add clarification on the relevant comparators in a sex-discrimination claim involving someone male or female with the protected characteristic of gender reassignment, and in a gender-reassignment claim.

✓ **We STRONGLY AGREE that the updated description of the protected characteristic of sexual orientation is clear.**

✓ **We STRONGLY AGREE that the new example on sex discrimination by perception are clear.**

✓ **We STRONGLY AGREE with the removal of the superseded case law on “pregnant transmen with GRCs”.**

✓ **We STRONGLY AGREE that the new example on sex discrimination – same disadvantage is clear.**

✓ **We STRONGLY AGREE the updated example on harassment related to sex is clear.**

✓ **We STRONGLY AGREE that the new example on women-only associations is clear.**

✗ **We DISAGREE that the updated section on competitive sport is clear.**

**This section undermines the implementation of the Equality Act, as confirmed by the Supreme Court in the FWS case, and suggests uncertainty which is not there. This will harm women’s rights, make it hard for service providers to understand the law, and encourage individuals to try to flout the law.**

This section should make clear that:

- It is straightforward to run a single-sex sporting event (or to apply sex-based rules to participation in mixed-sex sports such as mixed teams in volleyball or hockey) and will be lawful for any gender-affected activity. It will therefore be lawful for a women’s event or team to exclude men if the activity is gender-affected.
- The starting point for any policy related to trans individuals in sport must be that where the sport is a gender-affected activity and is organised on a single-sex basis or with sex-based rules, they can only participate in the category applicable to their sex.

- A sporting event with sex-based criteria will exclude males who identify as trans (“trans women”) from female competition and females who identify as trans (“trans men”) from male competition. This is lawful sex discrimination, not gender-reassignment discrimination.
- Where the sport is a gender-affected activity, that is a sufficient basis to exclude a man with the protected characteristic of gender reassignment (a trans woman) from female sports and vice versa. There is no additional legal test.
- In the boxing gym example, there is no need for the gym to demonstrate a known health and safety risk for the trans person, because boxing is already organised as single-sex, recognising that the sport is “gender-affected”. That is sufficient.
- The Equality Act also allows trans people to be excluded from an event or treated differently in an event which they would qualify for in terms of their sex for reasons of safety or fair competition. An example of this would be a transexual female (“trans man”) taking testosterone excluded from female competition because of concerns about fairness and safety.
- While it may be lawful to organise recreational “solidarity teams” of women and transexual males who wish to play together, these teams will not be able to compete in female sports leagues which operate on sex-based rules. Nor do they count as women’s teams or events in any assessment of equality of the service provider overall.

✓ **We STRONGLY AGREE that the updated section on separate and single-sex services for men and women is clear.**

✗ **We STRONGLY DISAGREE that the new section on justification for separate-sex and single-sex services is clear.**

**This section undermines the implementation of the Equality Act, as confirmed by the Supreme Court in the FWS case, and suggests uncertainty which is not there. This will harm women’s rights, make it hard for service providers to understand the law, and encourage individuals to try to flout the law.**

- This section and the section on recording sex apply to areas that are most vulnerable to confusion, misunderstanding and pressure to allow people to use opposite -sex services or make it difficult to provide lawful single-sex services. They therefore need to be the clearest.
- We do not agree that people who identify as transgender are disadvantaged by the existence of services that are intended for members of the opposite sex. It is only possible to provide single-sex services by excluding members of the opposite sex, including those who identify as trans (otherwise the services would be mixed-sex).
- A trans person may be disadvantaged if the service is provided for both sexes and the sex segregation means there are no facilities that they feel comfortable using. But even if that is the case, the provider may still be justified in providing the service on a separate-sex basis.
- The aim of this section should be to clarify that single-sex and separate-sex services are often justified, are straightforward to implement and defend legally, and operate on the basis of biological sex.

- A less discriminatory approach towards people who prefer mixed-sex services, or who do not wish to be asked about their sex, is to offer a unisex alternative where possible.
- Changes should emphasise that single-sex services are simple and do not need to be negotiated on an individual basis.
- The guidance should be clear that if there are no facilities a trans person can comfortably use this will be a disadvantage, which may be unlawful if it is not proportionate.

## **✗ We STRONGLY DISAGREE that the new content on policies and exceptions for separate and single-sex services is clear.**

**This section undermines the implementation of the Equality Act, as confirmed by the Supreme Court in the FWS case, and suggests uncertainty which is not there. This will harm women's rights, make it hard for service providers to understand the law, and encourage individuals to try to flout the law.**

- This section is confusing and dangerous, as it suggests there can be compromises on the exceptions and that these should be considered on a case-by-case basis.
- This is the misunderstanding of the law that this revision is designed to address. It should be very careful to avoid repeating it.
- In most cases the fact that a service is provided for one sex or the other can be communicated simply with a single word (man/woman, male/female) or standard icon.
- The example of a council swimming pool allowing parents to take young children into the changing room with them is not "a different approach to that set out in a policy". It is a policy (with an explicit age cut-off).
- The example relating to a women-only water aerobics class states that the centre should consider whether it can establish a men's class on a different day or at a different time. We do not agree that it is necessarily the case. If the leisure centre has made a decision based on demand to operate a women-only class it does not have to match this with a class that includes men (i.e. mixed or male-only). It does not need to reconsider its programme of classes because an individual asks.
- We would remove this whole section and include the example of a service provided for women and their dependent children (e.g. a women's refuge) elsewhere. This remains a single-sex service.

## **✗ We STRONGLY DISAGREE that the new content on single and separate-sex services with respect to gender reassignment is clear.**

**This section undermines the implementation of the Equality Act, as confirmed by the Supreme Court in the FWS case, and suggests uncertainty which is not there. This will harm women's rights, make it hard for service providers to understand the law, and encourage individuals to try to flout the law.**

This section is too long and complicated: it should be much simpler. This section should:

- make clear that if a service is offered for women only, this policy will exclude all men, including those who identify as "trans women", and that this is not unlawful sex discrimination or unlawful gender-

reassignment discrimination

- make clear that if a service is offered for men only, this policy will exclude all women, including those that identify as “trans men”
- include a straightforward example of a transexual male wanting to use a women’s service and being told No
- include an example of a person who has changed their appearance to look like the opposite sex or who seeks to be referred to as the opposite sex being turned away from a service provided for their sex because they may be perceived as being the opposite sex. It should explain that this is not unlawful discrimination because of gender reassignment (Sch 3 paragraph 28)
- include an example of an organisation publishing a clear policy, such as: “A university responds to questions over who can access its facilities by publishing the following statement on its website and as part of student and staff induction information ‘[XX University] provides, as we are required to do, facilities (including toilets and changing facilities) with access limited according to biological sex. We may further limit access to facilities and services where this is necessary and proportionate to secure the autonomy, or privacy and dignity of the two biological sexes. Where we do so, we will always attempt to provide readily accessible unisex facilities and services as a practical alternative. We will make every effort to ensure clear and appropriate signage to these facilities’.”

✓ **We AGREE that the explanation of the legal rights and responsibilities set out in the updated content on communal accommodation is clear.**

Respond now