

The EHRC's efforts to update the Code of Practice following the Supreme Court's ruling that "sex" in the Equality Act 2010 refers to immutable biological sex are commendable. However, paragraphs 2.1.1–2.1.5 lack clarity and consistency, particularly in defining "trans" and addressing gender reassignment protections. Additionally, Chapter 5 (excluding 5.1.3) requires amendments to strengthen protections for females as a sex class. Below, I outline key issues and recommendations.

### **Lack of Clear Definition of "Trans" (Paragraphs 2.1.2–2.1.3)**

The Code uses "trans" to describe individuals with the protected characteristic of gender reassignment (s.7(1)), defined as those proposing, undergoing, or having undergone a process to reassign their sex by changing physiological or other attributes. However, "trans" and "process" are undefined, creating ambiguity. The Supreme Court's ruling that sex is biological and immutable undermines the concept of "reassigning sex," as legal sex cannot change, even with a Gender Recognition Certificate (GRC). This raises questions about whether protections hinge on intent, self-identification, or social presentation. Without clarity, duty-bearers (e.g., employers, service providers) may struggle to apply the law.

**Recommendation:** The EHRC should define "trans" as individuals meeting s.7(1) criteria, specifying that a "process" includes social (e.g., name changes), medical (e.g., hormones), or legal steps, but does not alter legal sex. The Code should state: "Gender reassignment protections focus on the transition process, not changing biological sex, per the Supreme Court's ruling."

### **Inconsistency in Protection Criteria (Paragraphs 2.1.1, 2.1.4)**

Paragraph 2.1.1 cites s.7(1)'s requirement of a "process" for gender reassignment, while 2.1.4 states no medical intervention is needed, creating confusion. If "reassigning sex" is legally impossible, the criteria for protections need clarification. Self-identification alone lacks a legal basis, risking misapplication.

**Recommendation:** Revise 2.1.4 to clarify that protections require a demonstrable process (e.g., social or medical steps), not mere self-identification, aligning with the ruling: "Protections apply to those engaged in a process under s.7(1), but sex remains biological and immutable."

### **Implications for Single-Sex Services (Paragraph 2.1.4)**

The ruling complicates gender reassignment protections in single-sex settings (e.g., refuges), as Schedule 3, Part 7 exemptions prioritize biological sex. The Code lacks guidance on balancing these protections. For example, excluding a trans woman (biologically male) from a

female-only service may be lawful but risks discrimination claims without clear directives.

**Recommendation:** Add guidance: "Single-sex services may exclude based on biological sex under Schedule 3, if proportionate for safety or privacy. Trans individuals are protected against unrelated discrimination." Include examples, e.g., a refuge prioritizing biological females while offering alternatives.

### **Victimisation Protections (Paragraph 2.1.5)**

Victimisation protections (s.27) are clear but risk misinterpretation without a defined "trans." The EHRC should clarify that these apply broadly but do not extend gender reassignment protections beyond s.7(1).

### **Chapter 5: Protecting Females (Excluding 5.1.3)**

Chapter 5's updates on indirect discrimination (s.19A) and objective justification are valuable but should emphasize protecting females as a sex class. For example, policies like in-person benefit verification may disadvantage women with childcare responsibilities.

#### **Recommendations:**

- Add to 5.1.1: "S.19A claims must not undermine sex-based protections for females."
- Include a sex-based example in 5.1.4, e.g., childcare-related barriers.
- Strengthen 5.1.5 by requiring consultation with women's groups and sex-disaggregated data under the Public Sector Equality Duty (s.149).
- Clarify that single-sex exemptions (e.g., refuges, toilets) are lawful when justified by safety or privacy needs.

**Broader Proposals:** Mandate single-sex provisions in high-risk settings (e.g., NHS wards, prisons, schools, sports) based on biological sex, per the ruling. Require biological sex-based data collection and training for duty-bearers. Offer gender-neutral facilities alongside single-sex spaces, ensuring no disadvantage to females or disabled individuals.

These revisions ensure clarity, align with the Supreme Court's ruling, and uphold sex-based protections for women and girls, balancing inclusion with safety and dignity.

Explicitly state that "sex" means biological sex in all guidance, with examples of lawful single-sex exemptions (e.g., refuges, sports). •

**Sector-Specific Policies:** Mandate single-sex provisions in high-risk settings: • NHS: Female-only wards based on biological sex • Prisons: House inmates by biological sex • Schools: Single-sex toilets and

changing rooms • Sports: Biological sex-based categories • Safeguarding Protocols: Require schools to comply with the existing laws and Legislation and ensure that single-sex provisions are always provided and to prevent any mixed sex toilets as a matter of safeguarding. • Inclusive Alternatives: Gender-neutral facilities alongside single-sex spaces, if available space, without being disadvantageous to people with disabilities or single-sex provisions. • Training and Compliance: Provide duty-bearers with training on biological sex-based policies, emphasising privacy, dignity, and safeguarding. • Data Collection: Mandate biological sex-based data in health and justice systems, per MBM, to ensure accurate outcomes. Single-sex provisions for women and girls are a legal necessity under the Equality Act, as clarified by the Supreme Court, and are critical for their privacy, dignity, safeguarding, and respect. Evidence from organisations like Sex Matters, For Women Scotland, Safe Schools Alliance UK, and others demonstrates the risks of mixed-sex facilities, from health impacts, safeguarding and ideology in schools to clearly documented safety threats in prisons and refuges. I am disappointed at the low word count as it has not enabled me to add in all of the text and research prepared for this consultation.