

The updated guidance in sections 2.3.1 to 2.3.5 of the Equality Act 2010 provides critical clarity by aligning with the Supreme Court's ruling in *For Women Scotland* that sex refers to biological sex. This ensures legal accuracy and safeguards women's sex-based rights, particularly in single-sex spaces, services, and protections related to pregnancy and maternity. While the updates are robust, this response proposes minor additions to enhance practical enforceability, emphasise women's rights, and provide duty holders with clear, actionable guidance. These suggestions aim to strengthen the guidance's impact without altering its legal foundation. The revised sections effectively reflect the Supreme Court's ruling, reinforcing that sex in the Equality Act 2010 refers to biological sex at birth. This clarity is essential for protecting women's rights, particularly in contexts like single-sex spaces, sports, and maternity protections. The explicit statement that a Gender Recognition Certificate (GRC) does not alter legal sex under the Act is a pivotal step in preventing misinterpretation and ensuring compliance. However, the guidance could be further strengthened by explicitly linking each section to its practical implications for women and girls, incorporating brief examples for duty holders, and consistently referencing the ruling to enhance legal authority. These enhancements would make the guidance more actionable and supportive of women as a protected group.

Section 2.3.1: This section defines sex as a protected characteristic, referring to "a male or a female of any age" and, for groups, to "men and/or boys, or women and/or girls" (s.11(a), s.11(b), s.212(1)). The section accurately reflects the Equality Act's definition of sex, with clear references to relevant legal provisions. Including age considerations ensures the Act's applicability to both adults and children, which is critical for protecting girls in contexts like education and sports. However, to better centre women's rights, the guidance could explicitly highlight the definition's role in upholding sex-specific provisions. "This definition underpins the Act's provisions for sex-based rights, including access to single-sex spaces, services, and protections for women and girls, ensuring their safety and dignity." This addition clarifies the practical implications of the definition, particularly for duty holders managing facilities like women's shelters or bathrooms. Include a brief example: "For instance, a school may lawfully maintain separate changing facilities for girls, based on biological sex, to comply with this provision."

Section 2.3.2: This section states that the Supreme Court ruled that "sex," "woman," and "man" refer to biological sex at birth. The section is precise and robust, directly referencing the *For Women Scotland* ruling to affirm that sex is biological. The use of "biological woman" and "biological man" eliminates ambiguity, aligning with legal precedent. However, briefly explaining the ruling's significance for women's rights would

enhance its impact. “This ruling ensures that the Act’s protections for women, including single-sex exemptions, are based on biological sex, safeguarding the rights of women and girls in contexts like sports and domestic violence services.” This reinforces the ruling’s importance for duty holders. “A women’s sports league can use this definition to maintain fair and safe competition by restricting eligibility to biological females.” **Section 2.3.3:** This section clarifies that a GRC does not change a person’s sex for the purposes of the Equality Act, referencing sections 2.1.1 to 2.1.9 and 2.2.1 to 2.2.10 for further details. The statement is legally accurate and crucial for maintaining the integrity of sex-based rights. However, it could be strengthened by explicitly citing the *For Women Scotland* ruling to ground the provision in legal authority and by emphasising its role in protecting women’s rights. The reference to other sections is helpful but may leave duty holders uncertain about practical application without additional context. “In line with the Supreme Court’s ruling, a Gender Recognition Certificate (GRC) does not change a person’s biological sex for the purposes of the Equality Act 2010. This ensures that women’s sex-based rights, including access to single-sex spaces and services, are upheld.” Additionally, clarify when requesting birth sex information is appropriate: “Duty holders, such as employers or service providers, may request evidence of birth sex in contexts like female-only facilities, provided it complies with sections 2.2.1 to 2.2.10.” “A women’s refuge may lawfully prioritise biological females for admission, as a GRC does not alter sex-based eligibility under the Act.” **Section 2.3.4:** This section states that the comparator for sex discrimination is a person of the opposite sex, excluding gender reassignment and sexual orientation (referencing sections 2.1.6 to 2.1.9 and 2.4.1 to 2.4.6). The section is clear and legally sound, ensuring that sex discrimination claims are based on biological sex, which prevents conflation with other protected characteristics. This is critical for maintaining fair application of the law, especially for women in employment or service provision. Adding a brief note on its practical application would enhance usability. Add: “This ensures that sex discrimination claims, particularly for women, are assessed based on biological sex, maintaining clarity in contexts like workplace policies or service access.” “An employer investigating a claim of unequal pay must compare a female employee’s treatment to that of a male counterpart, based on biological sex.” **Section 2.3.5:** This section highlights protections for women related to pregnancy, maternity, and breastfeeding (s.13(6)(a), s.13(7)). The section effectively underscores the biological basis of these protections, which are inherently tied to women’s sex-based rights. Referencing the relevant sections of the Act aids duty holders in compliance. Explicitly linking these protections to biological sex would further align the

section with the Supreme Court ruling. Add: “These protections apply exclusively to biological women, as defined by the Act, reflecting the unique sex-based experiences of pregnancy, maternity, and breastfeeding.” “A workplace must provide breastfeeding facilities for biological women, as required under section 13(7), to comply with the Act.” This ensures the guidance is legally accurate and practically supportive of women and girls.