

I find several updates unclear, impractical, or inconsistent, particularly regarding the purpose of a Gender Recognition Certificate (GRC), the undefined term “gender,” and the application of sex discrimination protections to trans individuals. The updates to Chapter 2 aim to reflect the Supreme Court’s ruling that a person’s legal sex under the Equality Act is their biological sex, as recorded at birth, and is unaffected by a GRC. However, the guidance is often abstract, lacking practical examples to help duty-bearers (e.g., service providers, public bodies, associations) navigate complex scenarios, such as single-sex services or interactions with trans individuals. The consultation’s limited scope; focusing only on changes directly tied to the ruling, creates confusion, as some updates (e.g., references to s.19A or protections by perception/association) seem relevant but are not clearly open for feedback. This lack of transparency risks undermining the Code’s utility. Furthermore, the guidance fails to address critical questions about the GRC’s purpose, the undefined term “gender,” and how trans individuals can access sex discrimination protections based on their “acquired gender” when the Act defines sex as immutable. The Equality Act defines “gender reassignment” as a protected characteristic for a transsexual person who is proposing to undergo, is undergoing, or has undergone a process (or part of a process) to reassign their sex by changing physiological or other attributes (s.7). This contrasts with the historical term “transsexualism” (an intense desire to change one’s sexual status, including anatomy), which is not used in the Act but informs its context. The Code’s use of “trans person” instead of “transsexual person” deviates from the Act’s terminology, risking confusion. Paragraph 2.1.6: This paragraph accurately reflects the ruling but is too brief to guide duty-bearers effectively. It does not explain the practical implications, such as how to apply this in single-sex services (e.g., women’s shelters, sports) while respecting gender reassignment protections. The guidance does not address the diminished role of a GRC under the Equality Act. The Gender Recognition Act 2004 allows a GRC to change a person’s legal “sex” for most legal purposes, such as marriage or pensions. However, the Supreme Court’s ruling means a GRC has no effect on Equality Act rights, rendering its purpose unclear in this context. For example, if a “trans woman” with a GRC is legally a man under the Act, what is the practical value of a GRC for accessing services or protections? This omission risks confusion for both trans individuals and duty-bearers. Add a clear statement on the limited role of a GRC under the Equality Act, with examples (e.g., “A trans woman with a GRC must be treated as male for single-sex services). Paragraph 2.1.7: The Equality Act uses “sex” (s.11) and “gender reassignment” (s.7) but avoids defining “gender,” which is problematic when the Code refers to “acquired gender” in paragraph 2.1.9. This undefined term creates ambiguity, as “gender” could be interpreted as social role, identity, or legal status, none of which align with the Act’s focus on biological sex. Without a definition, duty-bearers may struggle to interpret protections related to “acquired gender.” My recommendation is to clarify “gender” and not to leave it as an undefined term in the Act and explain why “acquired gender” is used in the Code. Paragraph 2.1.8: lacks examples to show how these protections interact with sex-based rights, which could lead to confusion in mixed scenarios. It again does not define “gender”, so may leave the duty-bearer confused or having to deal with individuals who pose a risk to them, with no clear legal backing or protection. This is an untenable position. The paragraph does not address potential overlap with sex discrimination, which is critical given the ruling’s emphasis on biological sex. For example, how should a duty-bearer handle a case where a trans person claims discrimination based on both characteristics? Paragraph 2.1.9 This paragraph is complex and fragmented, relying on cross-references to Chapters 4 and 8 and the undefined s.19A. While it aims to clarify dual protections for trans people (based on birth sex and acquired gender), it lacks

standalone examples, making it hard for duty-bearers to apply. The ruling establishes that a trans woman's legal sex is male, yet paragraph 2.1.9 suggests protections for discrimination based on "perceived sex in their acquired gender" (e.g., being treated as a woman). This seems contradictory, as the Act does not recognise a change in sex. For example, if a trans woman is denied access to a women's service due to male birth sex, this aligns with the Act's definition, so how can he claim sex discrimination as a woman? The reference to "discrimination by perception" (Chapter 4) is unclear without examples, and s.19A (indirect discrimination by association) is not explained, adding to the confusion. To have the ability to claim harassment protections under two separate characteristics for the same offence is incoherent and inequitable. In prisons, Murray Blackburn Mackenzie (MBM) ([murrayblackburnmackenzie.org](http://murrayblackburnmackenzie.org)) references the Isla Bryson case (2023), where a trans woman (biological male) convicted of rape was initially housed in a female prison, posing a clear safeguarding risk. The Ministry of Justice (2022) reported 74% of female prisoners have experienced domestic abuse, making single-sex prisons vital for their safety. I recommend that you clarify s.19A's scope (e.g., "A policy requiring birth certificates for service access may indirectly discriminate against trans people associated with a protected group"). Avoid cross-referencing other chapters without summarising key points. The diminished role of a GRC, the undefined term "gender," and the paradoxical application of sex discrimination protections for trans individuals create significant confusion. The selective feedback scope further complicates the consultation process. I urge the EHRC to address these gaps with clear examples specifically for sex based rights, as this is the key issue that arose from the Supreme Court.