

**Submitting a response
to the Equality and
Human Rights
Commission Code of
Practice Consultation
EXPLAINER FOR INDIVIDUALS**

Key information

WHEN?

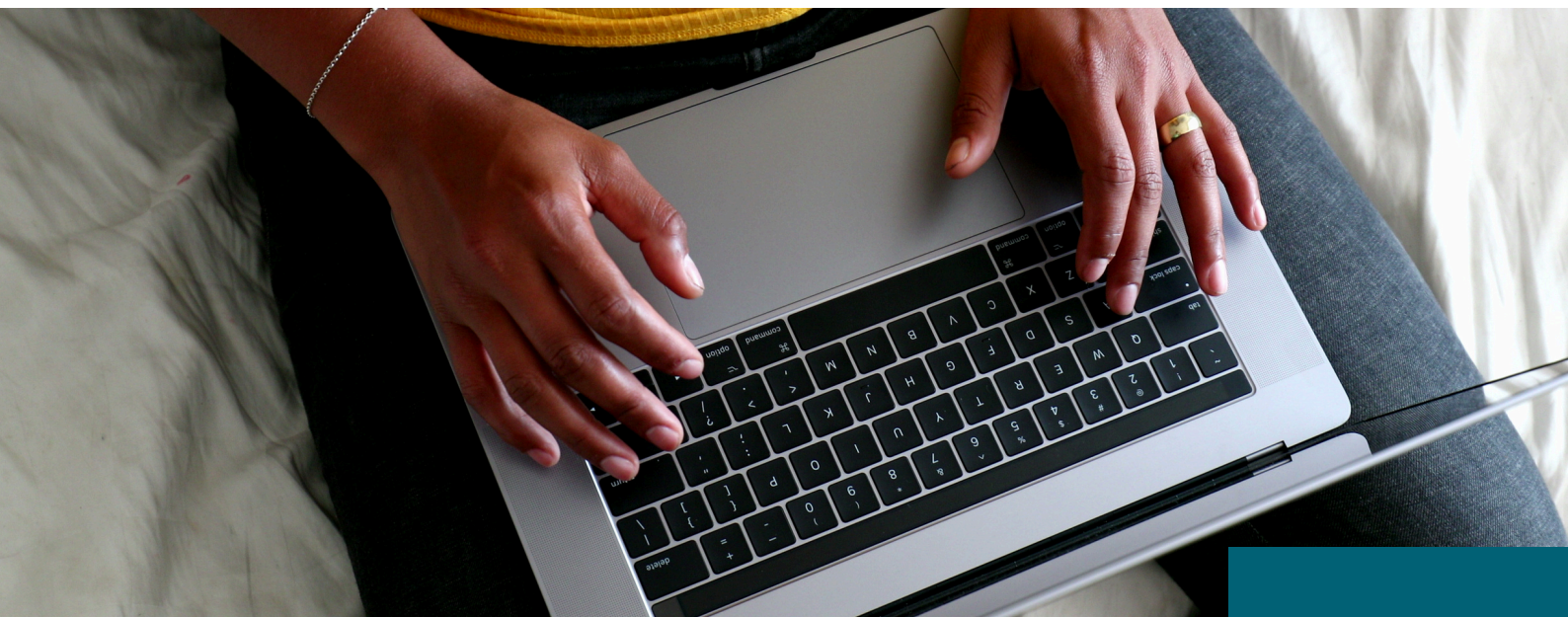
The consultation opened on 20 May 2025 and will close at 11:59pm on 30 June 2025.

WHERE?

To respond to the consultation, [fill in this survey](#).

WHAT?

The consultation is on proposed changes to the Equality and Human Rights Commission's statutory Code of Practice for Services, Public Functions and Associations. These changes have been made in light of the [UK Supreme Court ruling](#) in *For Women Scotland Ltd v The Scottish Ministers* [2025] UKSC 16 on 16 April 2025 which concluded that, for the purposes of the Equality Act 2010, 'sex' refers to 'biological sex'.



Your opportunity to be heard

This consultation is your opportunity to feedback on proposed changes to legally binding guidance (Code of Practice) following the Supreme Court Judgment.

These changes include:

- The rights of trans people with Gender Recognition Certificates (often referred to as GRCs) and trans people without a GRC
- How and when someone could ask about a person's 'birth sex'
- Protections from discrimination and harassment
- Guidance around separate and single-sex services

If you have had any personal experiences which relate to any of these areas, or are confused or concerned about your rights or those of people you know, this consultation is your opportunity to make these known.

Many people are worried and frightened about the impact the proposed changes could have on their lives and the lives of those they care about. For the purposes of the consultation feedback, it could be helpful to provide practical examples of how the new code of practice might not work for you or might create more questions than answers.

It might also be helpful to focus on asking some of those questions when explanations are confusing or appear conflicting. These are the things that the EHRC and Government lawyers will have to fully consider and have an answer for.

The details

YOU DON'T HAVE TO ANSWER ALL OF THE QUESTIONS

Even if you only want to say something about one of the proposed changes, this would be very helpful. Providing a response within any of the sections will help to build up a picture of the questions, concerns and challenges being experienced by all those affected, directly or indirectly.

YOU COULD ANSWER JUST ONE QUESTION

The final question asks, 'if you have any other feedback'. You could answer this question only if that is easier for you. Please keep in mind that the feedback being requested is only about the content of the draft Code of Practice, not about the Supreme Court Judgment itself. If responses are not focused on the proposed changes to the draft code, the potential impact of these changes and the related uncertainty, then they may not be considered.

HOW MUCH DO YOU NEED TO WRITE?

For all questions allowing a written response the word count is limited to 1000 words.

ONCE YOU HAVE SUBMITTED YOUR RESPONSE

Once you have submitted your response, we recommend downloading and sending your response to your local MP, making them aware of your feedback. You can find your local MP's email address [here](#).

MORE INFORMATION

If you would like more information before providing a response to the consultation, there is an explainer that goes into a bit more detail below.

SUPPORT

We know many people are finding the implications of the Supreme Court Judgment worrying. If you are struggling please consider contacting:

- [Switchboard](#)
- [Mermaids](#)
- [LGBT+ Helpline Scotland](#)
- [MindOut](#)



BACKGROUND

The Equality and Human Rights Commission (EHRC) is responsible for promoting and enforcing the Equality Act 2010 (1). This includes producing statutory Codes of Practice to support stakeholders “to understand the [Equality] Act, exercise their rights, and meet their responsibilities”.

One of the Codes of Practice the EHRC produces is a ‘Code of Practice for Services, Public Functions and Associations’. This specifically outlines the steps that service providers should take to make sure that people with protected characteristics are not discriminated against. This includes guidance about services that should be provided in a different way to meet the needs of different people, for example positive action, single sex services and for disabled people.

On 2 October 2024, the EHRC launched a consultation on a draft revised Code of Practice for Services, Public Functions and Associations, running for three months until 3rd January 2025. The draft was not issued following the consultation, so the current statutory code, published in 2011, is still in force and can be found [here](#).

On 20 May 2025, the EHRC opened another consultation on the code to gather feedback on changes made following the UK Supreme Court ruling on 16 April 2025 in *For Women Scotland Ltd v The Scottish Ministers*.

1. The Equality Act 2010 introduced a framework for protection against discrimination based on nine protected characteristics, including “sex” and “gender reassignment”.

WHAT DID THE SUPREME COURT RULE?

The Supreme Court judgment found, for the purposes of the Equality Act 2010, sex refers to biological sex. This means a trans woman with a Gender Recognition Certificate (GRC) is not considered a woman under the Equality Act 2010, and a trans man with a GRC is not considered a man under the Equality Act 2010.

The Supreme Court also reaffirmed that **trans people – with and without a GRC – are still protected from discrimination and harassment under the Equality Act 2010. As such, any statutory Code of Practice must clearly explain how this protection works in practice** and provide examples to support inclusion in line with the law.



ABOUT THE EHRC CONSULTATION

Anyone, including anyone who feels affected by the impact of the Supreme Court judgment and the proposed changes to the Code of Practice, can submit a consultation response. It is vital the consultation receives responses from all those affected, whether you are trans, LGBTQ+, family, friends, an employer, a service provider, a legal professional or affected in any other way.

A full range of responses will help to ensure the final statutory Code of Practice helps everyone to both understand and exercise their rights and understand and meet relevant obligations. This is a key purpose of the code.

The consultation is broken down into sections which ask a couple of questions about parts of the code the EHRC has made changes to following the Supreme Court judgment.

Don't worry if you don't want to answer all the questions. Providing a response within any of the sections will help to build up a picture of the questions, concerns and challenges being experienced by all those directly and indirectly affected.

When filling in the consultation you will click through one section at a time. If it is helpful to you to have a think about your responses ahead of time and see all of the questions in one place, you can find word documents on the EHRC website that list all questions together. The questions for individual respondents and legal professionals can be found [here](#).

Full information about the consultation, what's included, and what changes are being proposed by the EHRC can be found [here](#).

WHAT IS THE EHRC CONSULTATION ASKING ABOUT AND WHAT IS THE FORMAT?

The consultation asks about the changes proposed within different parts of the Code of Practice. The EHRC is not consulting on the whole Code. It is only consulting on the elements of the Code that the EHRC says are affected by the Supreme Court judgment.

The Code is broken down into chapters and the EHRC has proposed a number of changes within six chapters: Chapters 2, 4, 5, 8, 12 and 13.

For each proposed change the consultation asks **two questions**.

QUESTION 1

The first question for each proposed change asks, 'To what extent do you agree or disagree with the following statement: The explanation of the legal rights and responsibilities set out in the new content on [updated area] is clear'. Response options range from 'strongly agree' to 'strongly disagree' alongside an option for 'do not know'.

QUESTION 2

The second question for each proposed change is, 'Is there anything you would change to make the explanation of the legal rights and responsibilities in this update clearer?' To answer this question, you can write up to 1000 words in the text box provided.

This second question is your opportunity to provide examples of your experiences relevant to the content in each section, to express any concerns or confusion, and ask any questions you feel are left unanswered by the EHRC's 'explanation of the legal rights and responsibilities'. Don't worry about wording your answer for the question asked. If you can provide any information relevant to the proposed change in that section, that's all you need to do.

To note, the consultation form itself does not outline what the proposed changes are. The new/amended content is outlined on the relevant consultation pages found [here](#) or on a word document found [here](#).

WHAT ARE THE PROPOSED CHANGES AND WHAT COULD YOUR RESPONSE COVER?

Please note, for the purpose of providing a clear explanation of the proposed changes, the shortened **descriptions below come from the wording and explanations provided in the EHRC consultation** documentation.

Chapter 2

This chapter explains the protected characteristics which are set out in the Equality Act.

Change 2.1 explains that, following the Supreme Court ruling, for the purpose of the Equality Act 2010 “a person’s sex remains their biological sex, whether they have a Gender Recognition Certificate (GRC) or not”. It also outlines what protections trans people have under the Equality Act whether or not they have a GRC.

You may wish to respond with:

- *Whether this explanation is clear to you, for example is the meaning of ‘biological sex’ clear*
- *If you have questions about what having a GRC now means*
- *If you have any questions about how the Gender Recognition Act and Equality Act work together in practice*
- *If you are unclear about what ‘for the purpose of the Equality Act means’ and the reach of this statement*
- *If you have concerns about how trans people will now be protected from discrimination and harassment in reality*
- *Whether you have any other unresolved questions, concerns or relevant experiences*

Change 2.2 explains how organisations should make requests for information about someone's sex at birth.

You may wish to respond with:

- *Experiences of having your birth sex questioned when accessing services and the personal impact this has had on you*
- *Any concerns you have about the practicalities of service providers questioning the birth sex of service users*
- *Any concerns about the legality of service providers asking about, or challenging someone regarding their birth sex*
- *Any confusion about the situations in which providers can ask about someone's birth sex, and why there could be variation*
- *Any confusion about what someone can do if they feel uncomfortable or are unsure about their rights in this area (especially if they are a trans person with a GRC)*
- *Whether you have any other unresolved questions, concerns or relevant experiences*

Change 2.3 updates the legal definitions of 'man' and 'woman' for the purposes of the Equality Act 2010 following the Supreme Court ruling and explains that obtaining a Gender Recognition Certificate does not legally change a person's sex for the purposes of the Equality Act 2010.

You may wish to respond with:

- *Any questions you have about the practical implications of these proposed changes*
- *You might have examples or questions about implications affecting you, your partner or another person you know*
- *Any questions or confusion around how the updated definitions in the Equality Act might interact with other aspects of the law*
- *Your thoughts on the purpose of a GRC now that it doesn't legally change the sex of the certificate holder for the purposes of the Equality Act 2010*
- *Whether you have any other unresolved questions, concerns or relevant experiences*

Change 2.4 updates the description of a person's sexual orientation towards persons of the same sex from "gay man or lesbian" to "lesbian woman or gay man".

You may wish to respond with:

- *How you feel about your sexual orientation being re-designated by the state and the practical impact of that*
- *The impact of this on your partner and your relationship*
- *The impact this change may have on your access to community and spaces designed for your sexual identity – for example a trans woman married to a woman who can no longer access lesbian spaces*
- *The impact this change might have on services available to you for example in the context of getting married or having a civil partnership*
- *If you have any concerns in relation to sexual orientation discrimination or harassment in relation to this proposed change*
- *Whether you have any other unresolved questions, concerns or relevant experiences*

Chapter 4

This chapter explains direct discrimination (when a person treats another less favourably than they treat or would treat others because of a protected characteristic).

Change 4.1 includes a new example of a trans woman who is directly discriminated against because of the perception that she is a woman. This example aims to help clarify that a trans person can still claim they have been directly discriminated against on the basis of the perception of their sex (i.e. a trans woman can be discriminated against on the basis that she is perceived as a woman and a trans man can be discriminated against on the basis that he is perceived as a man).

You may wish to respond with:

- *Your experience of being directly discriminated against because you are perceived as your acquired gender*
- *Whether you find it difficult to understand what kinds of discrimination you are protected from*
- *Your reflections on being protected from discrimination on the “perception” of your sex, and whether you would be likely to bring a claim on this basis*
- *If you or someone you know has fears of an increased risk of trans people being outed and uncertainty around legal protections in such cases*
- *Whether you have any other unresolved questions, concerns or relevant experiences*

Change 4.2 removes content that explained that for trans men who have a Gender Recognition Certificate, protection from pregnancy and maternity discrimination arose from case law. Following the Supreme Court judgment, trans men have protection on the basis of their legal sex.

You may wish to respond with:

- *Your experience of pregnancy or maternity discrimination as a trans man*
- *If you are unclear about what protection ‘on the basis of legal sex’ means in this area*

- *If you have concerns about discrimination in this area*
- *Whether you have any other unresolved questions, concerns or relevant experiences*

Chapter 5

This chapter explains indirect discrimination (when a service provider applies an apparently neutral provision which puts people with a protected characteristic at a particular disadvantage).

Change 5.1 includes a new example of a trans woman who is also affected by indirect discrimination against women. This example aims to help clarify that a trans woman can experience the same disadvantage as cis women (people biologically born as women and who identify as women), and therefore also make a claim of indirect discrimination.

you may wish to respond with:

- *Any experiences you have of being indirectly discriminated against and the impact it has had on you*
- *Any confusion you have over what kind of discrimination you are protected from*
- *Any concerns you have about being able to bring a claim of indirect discrimination forward*
- *Whether you have any other unresolved questions, concerns or relevant experiences*

Chapter 8

This chapter explains the different kinds of harassment that are prohibited under the Equality Act 2010. The Equality Act 2010 prohibits harassment based on protected characteristics (this includes harassing someone because they are trans), sexual harassment, and less favourable treatment because they submit to or reject sexual harassment.

Change 8.1 includes a new example of a trans woman who is harassed by male staff members at a leisure centre because they perceive her as a woman. This example helps to clarify that a trans woman can still claim they have been harassed on the basis of the perception of their sex.

You may wish to respond with:

- *Any experiences you have of harassment and the impact it has had on you*
- *Thoughts around whether it is difficult or necessary to understand why you have faced harassment*
- *Any concerns or worries about protections from harassment, particularly for trans people, and how to bring forward claims*
- *Whether you have any other unresolved questions, concerns or relevant experiences*

Chapter 12

This chapter is about associations. It explains what constitutes an association (a group of people with at least 25 members, whose membership is regulated by the group's rules and a selection process), when they can restrict membership around a protected characteristic, and the duty to make reasonable adjustments.

Change 12.1 includes a new example of a trans woman who applies to join a women-only association and her application is refused. It goes on to explain that this would be lawful because the rules around membership come from the Equality Act 2010 and, following the Supreme Court Judgment, are based on biological sex.

You may wish to respond with:

- *Experiences or questions about being excluded from an association that corresponds with your acquired gender and the practical implications of that*
- *Any concerns you have about how membership of associations based on biological sex would be enforced*
- *Confusion around what constitutes 'reasonable adjustments' and how to question or challenge related decisions*
- *Experiences you have of your birth sex being challenged when joining an association*
- *Confusion around what constitutes an association, and if there are implications for informal groups of less than 25 people*
- *Whether you have any other unresolved questions, concerns or relevant experiences*

Chapter 13

This chapter is about exceptions which allow discrimination in the provision of services, the exercise of public functions, or the activities of associations which would otherwise be prohibited by the Equality Act 2010. In other words, this chapter sets out guidance about services that should be provided in a different way to meet the needs of different people.

Change 13.1 updates the section on competitive sport, explaining when it is lawful to exclude people on the basis of their biological sex. It also sets out the considerations that should factor into policy decisions about excluding trans people from competitive sport.

The updated code of practice has added more detail about the considerations that should factor into policy decisions.

You may wish to respond with:

- *Participating in or organising competitive sport*
- *Whether you are clear about when, why and who could be excluded from participation in sport*
- *If you have experiences of exclusion in this area*
- *If you are concerned or confused about the rights of trans people in this area or feel unsure about how organisers can be inclusive and avoid direct and indirect discrimination*
- *If you don't understand the reasons and evidence clubs and sporting authorities could provide to justify exclusion*
- *If you participate at a sports club that is committed to inclusion and uncertainty around the interpretation of the law in this area is creating problems for the running of the club*
- *Whether you have any other unresolved questions, concerns or relevant experiences*

Change 13.2 updates guidance on how separate or single-sex services can be provided for men and women.

This section explains that it is lawful to provide separate services for men and women if a joint service would be less effective, and if providing the service separately is a ‘proportionate means of achieving a legitimate aim’.

It also explains that it is lawful to provide a service exclusively to one sex (that is only to men or only to women) if it is ‘a proportionate means of achieving a legitimate aim’ and one of a number of conditions are met.

You may wish to respond with:

- *Whether you are clear about when and how providers can provide services separately or exclusively*
- *If you are unsure about what ‘proportionate means of achieving a legitimate aim’ means and what examples of this might be*
- *If you are concerned about what services you can use and whether some services might not be available to you at all*
- *If you are worried about how you may be treated when accessing services*
- *Any experiences you have of services not being provided as a result of the Supreme Court judgment, and this creating harms or risks*
- *Any examples of being incorrectly denied access to a separate or single-sex service*
- *Any worries you have about being denied access to services that you need because of your biological sex (for example cervical screenings)*
- *Whether you have any other unresolved questions, concerns or relevant experiences*

Change 13.3 introduces a new section on justification for separate and single-sex services. This sets out the considerations that should be made when deciding whether providing separate or single-sex services are a proportionate means of achieving a legitimate aim, as well as the potential legal implications of providing only mixed-sex services.

This section also explains that trans people are likely to be disadvantaged by the provision of single sex services and asks providers to consider whether that disadvantage outweighs the benefits of achieving the legitimate aim.

This section includes new examples about decision-making around the provision of toilets.

This section also explains that if a service provider decides to admit trans women to a service intended only for women (or trans men to a service only intended for men), that is no longer considered a single-sex service for the purposes of the Equality Act 2010.

You may wish to respond with:

- *Your experiences of using single sex services*
- *Your experiences of being challenged by service providers when trying to access separate or single sex services*
- *Whether you are confused about which services (for example public toilets) you can access*
- *The personal impact of being denied access to services that correspond with your acquired gender*
- *Any concerns you have about how this will be practically enforced*
- *Unresolved questions you may have about discrimination in this area*
- *Whether you have any other unresolved questions, concerns or relevant experiences*

Change 13.4 includes new content explaining that service providers may need to develop policies regarding the provision of separate or single-sex services. The section also states that individual circumstances might require a different approach (they give the example of a woman being allowed to bring her male child under the age of ten into the women's changing room).

You may wish to respond with:

- *Any experiences you have of service providers being confused about which services you can access*

- *Whether what could constitute ‘individual circumstances’ and a ‘different approach’ is clear to you or if you have unanswered questions about what this could mean in reality*
- *Any concerns you have about finding out what policies a service provider has.*
- *Any worries about not being able to access the services you need*
- *Whether you have any other unresolved questions, concerns or relevant experiences*

Change 13.5 explains that service providers should consider their approach to trans people’s use of their services when deciding whether to provide a separate or single-sex service.

This section explains that if trans people are allowed to use the service intended for the opposite biological sex, that service ceases to be a single-sex service under the Equality Act 2010 and is likely to amount to unlawful discrimination.

This section explains that service providers should consider whether there is a suitable alternative service for trans people to use. In the case of services which are necessary for everybody, such as toilets, “it is very unlikely to be proportionate to put a trans person in a position where there is no service that they are allowed to use”.

You may wish to respond with:

- *Experiences you have had of being left without any services that you are able to use because of separate or single sex provision*
- *Experiences you have had of service providers not considering their approach to trans people’s use of their services and any confusion this has caused*
- *Any concerns you have about trans people only being able to access a third or gender neutral service*
- *Any concerns about circumstances in which trans people could be forced to out themselves, confusion around the legality of this, and worries about the impact on the individual*
- *Whether you have any other unresolved questions, concerns or relevant experiences*

Change 13.6 explains how the Equality Act 2010 is applied to communal accommodation. It explains that service providers can exclude people from communal accommodation on the basis of their biological sex (if it is a proportionate means of achieving a legitimate aim) but they should consider whether it is reasonable to expect that further accommodation should be provided.

You may wish to respond with:

- *The impact of being denied access to communal accommodation services that align with your gender*
- *Examples of requiring access to communal accommodation or examples of not having access to any appropriate accommodation*
- *Any unresolved questions around what a 'proportionate means of achieving a legitimate aim' means in this area*
- *Whether you have any other unresolved questions, concerns or relevant experiences*

The final question

Do you have any other feedback about the content of the code of practice that you have not already mentioned?

This answer can be no longer than 1000 words.

You may wish to respond with:

- *The overall impact of this guidance on your day-to-day life*
- *Your concerns about how this guidance will impact your ability to access the services that you need to live a full and healthy life*
- *Key questions that you feel are still without answer*
- *Any questions you have about groups not addressed in this guidance (for example non-binary and intersex people)*
- *Key areas where you feel there may be conflicting information*
- *Specific changes that you are particularly concerned about*