

# **Submitting a response to the Equality and Human Rights Commission Code of Practice Consultation**

## **EXPLAINER FOR ORGANISATIONS**

# Key information

## WHEN?

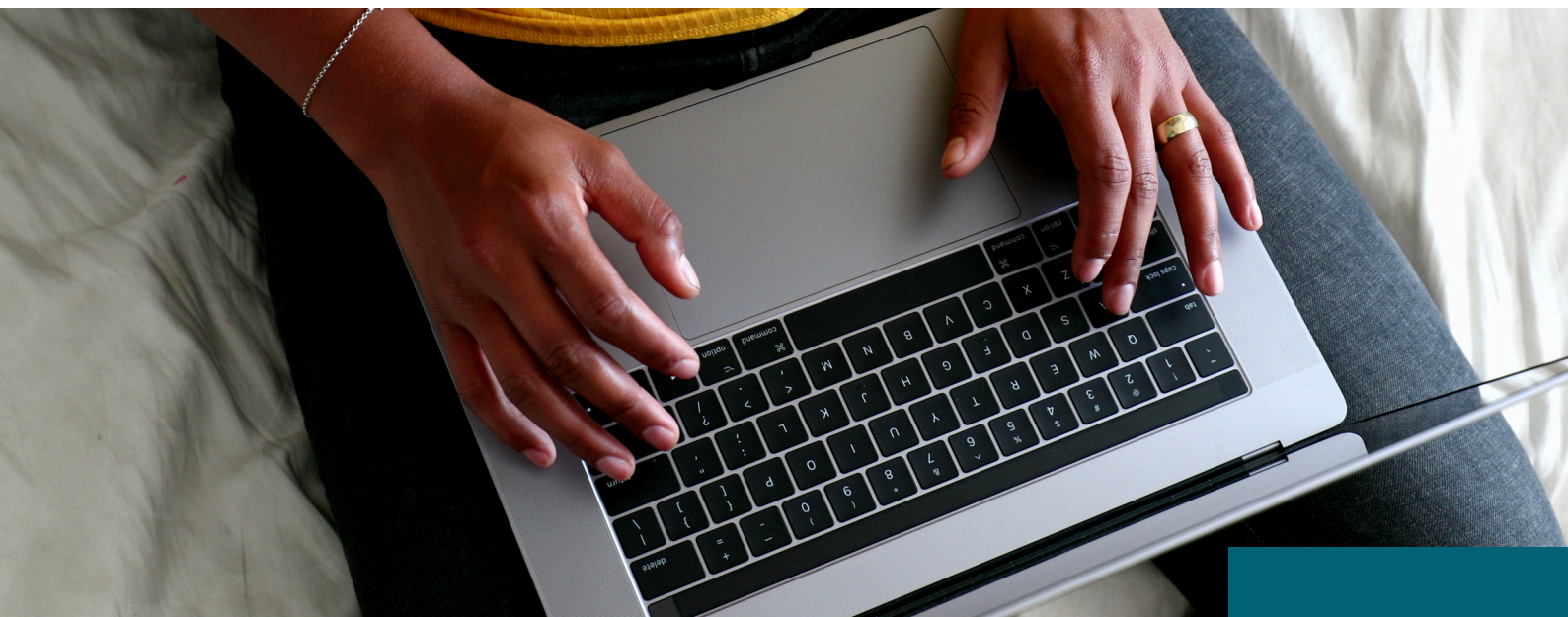
The consultation opened on 20 May 2025 and will close at 11:59pm on 30 June 2025.

## 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 organisation's opportunity to have their questions heard

This consultation is your organisation's opportunity to give feedback on proposed changes to the legally binding guidance (Code of Practice) being produced by the Equality and Human Rights Commission (EHRC) following the Supreme Court judgment.

## These changes include:

- Protections from discrimination and harassment
- Guidance around separate and single-sex services
- 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'

As an organisation, if you have concerns, uncertainty or unresolved questions regarding your operations and the potential impact – financial, legal, practical – of the proposed changes, this consultation is your opportunity to make these known. This is also your opportunity to provide any examples of practical questions, challenges or difficulties your organisation is currently experiencing. For example, these issues could relate to an ongoing commitment to inclusion which you may be experiencing as at odds with current guidance.

You also have the opportunity to respond to the consultation in your personal capacity. If you wish to do so, take a look at our explainer for responses from individuals.

# The details

## YOU DON'T HAVE TO ANSWER ALL OF THE QUESTIONS

Even if your organisation only wants to say something about one of the proposed changes, this would be very helpful in shaping the guidance. 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 and/or to the Minister for Women and Equalities Bridget Phillipson; making them aware of your feedback.

You can find your local MP's email address [here](#), and you can email Bridget Phillipson MP [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 and/or members of your team and wider community are struggling and need support, please consider contacting or signposting to:

- [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 (legally binding) 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*.

*Please note, this consultation **is not** on the EHRC Code of Practice for Employers. In the absence of a consultation on the impact of the Supreme Court judgment on employers, if you have any questions, concerns or experiences of relevance in your capacity as an employer you could use the final question of the consultation to submit a written response. See below for more information on this question.*

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.

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.

Different organisations will be experiencing unique challenges. It is important for all unresolved questions to be brought to the attention of the EHRC and Government.

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.

It is not necessary 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 or raised within organisations.

When filling in the consultation you will click through one section at a time. If it is helpful to you to compile your responses ahead of time and see all of the questions in one place, you can find [word documents on the EHRC website](#) that lists all questions together.

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 for Services, Public Functions and Associations. 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 **four 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.

## QUESTION 3

The third question for each proposed change asks, 'Will your organisation make any changes as a result of this update to the code of practice?' You can select 'Yes' or 'No'.

## QUESTION 4

The final question of each section asks, 'What changes might your organisation make as a result of this update to the code of practice?' To answer this question, you can write up to 1000 words in the text box provided.

This second and fourth questions are your opportunity to provide examples of your organisation's experiences relevant to the content in each section, to express any concerns, raise any potential conflicts in legal requirements, highlight financial impact and ask any questions you feel are left unanswered by the EHRC's 'explanation of the legal rights and responsibilities'.

The fourth question specifically provides an opportunity to outline any confusion and uncertainty you may have about potential changes to your policies, procedures and practices. For each proposed change, this question allows you to discuss any legal uncertainty, any seeming inconsistency with PSED requirements and inclusion commitments, any concerns around the costs of making changes, any difficulties around practical enforcement, or any other areas where you are experiencing a lack of clarity.

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.

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, and the potential impact on you as a service provider*
- *If you have any questions about how the Gender Recognition Act and Equality Act work together in practice, and the potential impact on you as a service provider*
- *If you are unclear about what ‘for the purpose of the Equality Act means’ and the reach of this statement*

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

The new guidance sets out that requests about a person's birth sex should be done in a sensitive way which doesn't cause discrimination or harassment and "consideration should be given to whether it is reasonable and necessary to ask for evidence of birth sex".

The guidance states that in many cases, it will be sufficient to simply ask an individual to confirm their birth sex. If there is genuine concern about the accuracy of the response, a birth certificate could be requested. If it is decided that further enquiries are needed, such as confirmation as to whether a person has a Gender Recognition Certificate, "any additional requests should be made in a proportionate way which is discreet and sensitive".

You may wish to respond with:

- *Any confusion you have over how to practically apply this guidance to your organisation*
- *What this might mean for the monitoring data that you collect in order to ensure you are providing effective services for all users*
- *Any concerns regarding associated costs of changing practices and procedure or following potential legal challenges*
- *Any confusion about the situations in which providers can ask about someone's birth sex, what "reasonable and necessary" means in this context, and how this relates to an individual's right to privacy*
- *Any concerns you have about enforcing this guidance, or examples you have of this guidance not working for your organisation*
- *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)*



**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*
- *Any practical questions you have about how to ensure the rights to privacy set out in the Gender Recognition Act, for service users or other relevant persons*
- *Any concerns you have regarding the cost of updating relevant policies following this change*
- *Any concerns you have about ensuring that all trans people, whether or not they have a gender recognition certificate, are treated equally and fairly in your organisation*

**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:

- *Any questions around the impact of this change on your ability to provide services or run associations for LGBTQ+ people*
- *Any concerns you have regarding the cost of making changes to your organisation’s policies or services following this proposed change*
- *If you have any concerns in relation to sexual orientation discrimination or harassment in relation to this proposed change*
- *How this proposed change might impact your data monitoring procedures and processes*
- *How this could impact your communications around service delivery for women who identify as gay*

# 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:

- *Unresolved questions or confusion around the ability of service users to bring claims of direct discrimination*
- *Any concerns regarding the costs associated with cases of direct discrimination and a potential for increased claims*
- *Any unresolved questions you may have about the ability for cis men (people biologically born as men and who identify as men) and cis women (people biologically born as women and who identify as women) to bring claims of direct discrimination following the Supreme Court ruling*
- *Any experiences you have of dealing with claims of direct discrimination, especially those which the consultation content does not address*
- *Any concerns or confusion you have about the protections from direct discrimination available to trans service users which are not included in the consultation content*
- *Any confusion you have about changes that you might need to make to policies, for example bullying & harassment policies or trans inclusion policies*

**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:

- *Any questions or confusion you have regarding potential changes to your pregnancy, maternity, and shared parental leave policies*
- *Any concerns you have regarding the costs associated with potential changes to your operations and policies*
- *If your organisation has any relevant experiences 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, and therefore also make a claim of indirect discrimination.

You may wish to respond with:

- *Whether you have unresolved questions or confusion around the ability of service users to bring claims of indirect discrimination*
- *Any concerns regarding potential costs associated with indirect discrimination claims or changes to policies and practices*
- *When considering potential disadvantage, if you have unresolved confusion around comparisons between different service users with different protected characteristics of sex and/or gender reassignment*
- *If you have questions about what might be considered ‘proportionate’ and ‘legitimate’ in relation to avoiding indirect discrimination following the Supreme Court judgment*
- *Any experiences relating to indirect discrimination, especially if questions arising from this experience are not addressed by the EHRC example*
- *If you have questions or concerns around the impact of proposed changes on your obligation not to indirectly discriminate against disabled people*
- *If you have a lack of clarity around changes that you might make to policies, for example bullying & harassment policies or trans inclusion policies*

## 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:

- *Experiences you have of dealing with harassment claims that are not addressed by the proposed changes and consultation content*
- *Questions or confusion you have about the ability of service users to bring claims of harassment*
- *Any concerns regarding costs associated with harassment claims or related changes to policies and practices*
- *Any unresolved concerns or confusion you have about the protections from harassment available to trans service users*
- *Any confusion you have about changes that you might need to make to policies, for example bullying & harassment policies*



# 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), outlines when they can restrict membership around a protected characteristic, and their 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:

- *Any concerns or experiences you have of enforcing membership of associations based on biological sex*
- *Any concerns you have about requesting information about someone's birth sex when enforcing membership of associations*
- *Any concerns regarding the costs of making changes to how your association operates or costs associated with potential legal challenges*
- *Any unresolved confusion around how to maintain and fulfil inclusion commitments when running associations*
- *Any questions about the impact of this change on your ability to organise and run LGBTQ+ networks*
- *Any questions in relation to positive action by associations following the Supreme Court ruling*
- *Any confusion you have about whether particular groups or networks within your organisation are associations for the purposes of the Equality Act 2010*
- *Any concerns about how these changes could impact your inclusion policies*

# 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:

- *Any experiences you have running or organising competitive sport and examples of situations that are not covered in this guidance*
- *If you don't understand the reasons and evidence clubs and sporting authorities could provide to justify exclusion*
- *Any concerns regarding the cost of potential changes your organisation or sporting authority could make*
- *Any concerns or confusion about the rights of trans people in this area or how organisers can be inclusive and avoid direct and indirect discrimination*
- *Any questions or concerns you have about how to ensure trans people are able to access competitive sport*

**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*
- *Any concerns regarding costs associated with making changes to how your organisation provides separate, single-sex or mixed-sex services*
- *If you are unsure about what ‘proportionate means of achieving a legitimate aim’ means and what examples of this might be*
- *Any concerns you have about enforcing the use of single sex services while respecting the privacy of service users*
- *Any worries you have about your ability to provide appropriate services for trans people*
- *Any confusion you have around the impact of proposed changes on your obligation not to indirectly discriminate against disabled people*
- *Any confusion around the types of potential discrimination claims following changes to the provision of separate or single-sex services*
- *Any issues your organisation faces related to separate or single-sex services which are not covered in this guidance*

**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:

- *Any confusion you have about the considerations your organisation should make when making decisions around the provision of separate or single sex services*
- *Any concerns regarding the costs associated with the potential legal implications of providing mixed-sex or single-sex services, or to the service provision itself*
- *Any confusion you have about the legal implications of providing only mixed sex services*
- *Any concerns or questions you might have about receiving complaints of discrimination within your services*
- *Whether, in your experience, trans or cis people, have experienced disadvantages when using your single or mixed sex services*
- *Challenges you might have faced, or envisage you will face, policing the use of single sex services while respecting the privacy of service users*
- *Any examples of issues around the provision of separate or single sex services which are not resolved by this guidance*
- *Any confusion you have about the balance between the disadvantage to trans people and a 'proportionate means of achieving a legitimate aim' when considering the provision of separate and single sex services*
- *Any examples of issues around the provision of changing room or toilet facilities that are not resolved by these proposed changes*
- *The impact of these proposed changes on your policies and practices, for example facilities policies*

**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 concerns or confusion you have about the requirement to develop policies regarding the provision of separate or single sex services*
- *Any concerns regarding the costs associated with making changes to policies and practices*
- *Any concerns or confusion you have about the circumstances which require a 'different approach'*
- *Any concerns or confusion you have about enforcing a policy on separate or single-sex services*
- *Unresolved questions you have about discrimination in this area*
- *The impact of these proposed changes on any of your policies or practices, for example your facilities policy or trans inclusion policies*

**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 (i.e. trans women are allowed to use a women's facility), that service ceases to be a single-sex service under the Equality Act 2010. That would mean people who are excluded from using the service (in this example cis men) would be able to claim they are being discriminated against.

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:

- *Any experience or examples you have of being in a position where you are unable to provide alternative services for trans people*
- *Any confusion you have about the requirement to provide separate or single sex services as well as the requirement to provide alternative services for trans people*

- *Any concerns about the potential costs of providing additional services or spaces following these proposed changes*
- *Any concerns about the impracticalities or challenges your organisation could face if providing additional services or spaces following these proposed changes*
- *Any questions about your organisation's obligations in this area*
- *Any implications on the effective and safe running of your service you envisage from this requirement*
- *Any concerns you might have about enforcing the use of single-sex services while respecting the privacy of service users*
- *Any unresolved questions or 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:

- *Examples of confusion around service users requiring access to communal accommodation or examples of not having appropriate accommodation for a particular service user*
- *Any unresolved questions around what a 'proportionate means of achieving a legitimate aim' means in this area*
- *Any concerns around associated costs to your organisation*
- *Any questions or concerns you have about your ability to provide adequate communal accommodation services to trans service users*
- *Any concerns around experiences of discrimination and harassment trans people might experience in mixed communal accommodation services*

# 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 organisation*
- *Any unresolved questions or confusion (for example questions about changes to your duties towards your service users which are not addressed in these proposed changes)*
- *Any concerns or questions about the financial implications of these proposed changes for your organisation*
- *Key questions that you feel are still without answer*
- *Key areas where you feel there may be conflicting information*
- *Any questions you have about groups not addressed in this guidance (for example non-binary and intersex people)*
- *Examples you have experienced through your work that raise challenges not adequately addressed in this guidance*
- *Specific changes that you are particularly concerned about*