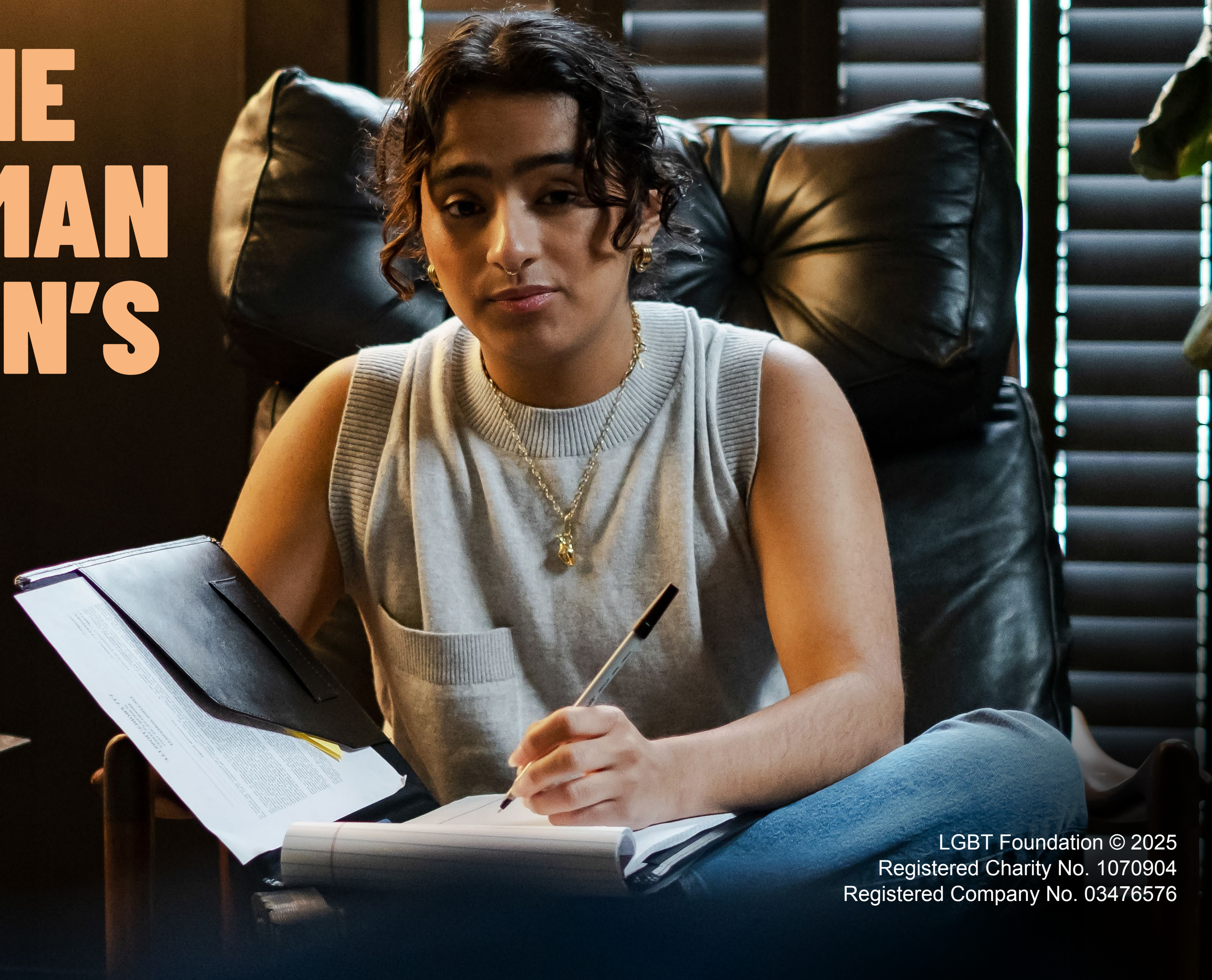


RESPONDING TO THE EQUALITY AND HUMAN RIGHTS COMMISSION'S CODE OF PRACTICE CONSULTATION

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CONTENT NOTE: THIS DOCUMENT CONTAINS REFERENCES TO ANTI-TRANS DISCRIMINATION, TRANSMISOGYNY AND SEXUAL HARASSMENT THROUGHOUT. IT WILL ALSO ASK YOU TO CONSIDER YOUR OWN EXPERIENCES OF DISCRIMINATION. IF YOU NEED SUPPORT ANY OF THE ISSUES RAISED WITHIN THIS DOCUMENT, GET IN TOUCH WITH LGBT FOUNDATION'S HELPLINE AT 03453 30 30 30 OR EMAIL HELPLINE@LGBT.FOUNDATION.

The Equality and Human Rights Commission (EHRC) create guides for organisations and services to use, to help them follow UK equality law.

The EHRC publishes a Code of Practice which tells organisations how they must apply the Equality Act 2010 in the work that they do. The Code of Practice is a statutory guide, meaning that it is illegal for organisations not to do what it says. The Equality Act 2010 is the main equality law in the UK, and protects people from different types of discrimination they may experience because of a characteristic they have. These are called protected characteristics.

There are 9 protected characteristics: age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation.

The Code of Practice was updated in May 2025 to include new legal changes to the Equality Act 2010.

These legal changes are a result of the UK Supreme Court's decision that the protected characteristic of 'sex' means 'biological' (or 'sex recorded at birth'), rather than 'legal' (or acquired) sex.

This change in law will change how single sex spaces and services, sports teams, toilets, changing rooms and other facilities are run, which may affect trans and non-binary people, LGBTQ+ people, gender non-conforming people, cisgender women, and other groups.

The EHRC is asking you to give your opinion on the changes they have made to the Code of Practice, and how you will be affected by them.

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ABOUT THIS GUIDE

This guide will help you answer the Code of Practice consultation. It will explain how you may want to respond to each question, focusing on LGBTQ+, and particularly trans and non-binary inclusion.

This guide is designed to provide suggestions, but **we encourage you to write about your own opinions and experiences.**

We also recommend that you do not copy and paste these suggestions directly into the consultation document. Your answer may not be counted if it is identical to answers given by others. Therefore, we encourage you to **personalise your answers** as much as possible.

You may find it easier to write your answers in a separate document and then insert them into the consultation.

The appendix includes the text from the *Code of Practice* that has been updated by the Equality and Human Rights Commission for your reference. When writing your response, you may wish to refer to the direct text of the *Code*.

If you begin to complete the consultation, but feel that you cannot continue, you can save your response and come back to it later. We also recommend taking breaks and practising self-care while you work on your response. You may find it helpful to get together with friends or family and respond together.

If you need any support, get in touch with LGBT Foundation's **helpline at 03453 30 30 30** or email **HELPLINE@lgbt.foundation**.



HOW TO RESPOND TO THE SURVEY

The survey is split into sections about the 17 different changes that have been made to the Code of Practice. These are labelled based on the specific part of the Code that they apply to. For example, 'Change 2.1' or 'Change 4.2'.

Some sections of the Code of Practice have not been changed, and are therefore not included in the consultation. It may appear that sections have been skipped (for example, the survey goes from change 2.4 to change 4.1); this is just how the survey is designed.

The most important changes that you may wish to consider are:

- **Change 2.4 (Updated description of the protected characteristic of sexual orientation)** which is about how the protected characteristic of sexual orientation has been changed.
- **Change 12.1 (New example on women-only associations)** which gives an example of how women's only associations should admit people based on their sex.

- **Change 13.1 (Updated section on competitive sport)** which talks about how people should be included in sports, based on their sex.
- **Change 13.3 (New section on justification for separate and single-sex services)** which explains how single sex services can decide who can and can't be included.
- **Change 13.4 (New content on policies and exceptions for separate and single-sex services)** which is about how businesses and public organisations can make policies about who can and can't use their services.
- **Change 13.5 (Updated section on separate or single-sex services in relation to gender reassignment)** which talks about when a trans person may need to access a service despite their sex, and how they might be excluded from a service.



HOW TO RESPOND TO THE SURVEY

There are 52 questions in total. Most of these questions do not need a detailed response, and you do not need to answer every question.

For each section, you will be asked:

“Would you like to provide feedback on (the current section)?”

If you select **no**, you will be taken to the next section.

If you select **yes**, you will be asked:

“To what extent do you agree or disagree with the following statement: The explanation of the (current section) is clear?”

You can then select **strongly agree, agree, disagree, strongly disagree** or **do not know**.

We will suggest which of these options you may want to select for each section that you decide to comment on, but we encourage you to make your own decision.

Once you have completed the consultation, if you feel able to, encourage your friends, family and colleagues to do so too. You could share this resource on your social media pages.

We also encourage you to tell us you have submitted a response using this link: **<https://form.jotform.com/251471690527359>**.

This will help LGBT Foundation and other LGBTQ+ charities know how many people have responded.



HOW TO RESPOND TO THE SURVEY

If you have 5 minutes

Answer the questions about change 13.3 and question 52.

(If you are specifically interested in sport, and only have 5 minutes, you may wish to answer the questions about change 13.1).

If you have 15 minutes

Answer the questions about changes:

- 2.4
- 12.1
- 13.1
- 13.3
- 13.4
- 13.5

And question 52.

If you have 30 minutes

Answer all of the questions you are able to.

If you are responding as a service provider, please include information about how your service will be impacted by excluding, or choosing to include trans and non-binary people, the cost of implementing this for your club, and how supported you feel in doing this by the guidance you have received.

The rest of this guide will focus on the main question for each section, which asks you to give your feedback and opinion about the changes to the *Code of Practice*.



SUGGESTED RESPONSES

1. Do you want to provide feedback as part of this consultation?

We recommend answering 'Yes'.

If you select 'No', you will not be able to complete the rest of the consultation.

2. Are you responding as an individual (service user), legal professional or on behalf of an organisation?

Select whichever option is most relevant to you.

3. Which of the following characteristics protected under the Equality Act 2010 are relevant to your response?

Select whichever options are most relevant to you. You can select more than one option.

If you are trans and/or non-binary, we recommend selecting 'gender reassignment'.

If you are LGBTQ+, we recommend selecting 'sexual orientation'.

You may feel anxious or scared about sharing your gender identity or sexual orientation. The EHRC will not have access to your personal details or any identifiable information about you, if you do disclose your trans status or sexuality.

It is important for the EHRC to know how many LGBTQ+ people have responded so they can accurately understand our experiences.



UPDATED LEGAL DEFINITION OF SEX

4. Would you like to provide feedback on the updated legal definition of sex throughout the code of practice?

We recommend answering 'Yes'.

If you answer 'no', you will be taken to the next section.

5. To what extent do you agree or disagree with the following statement: The explanation of the updated legal definition of sex is clear.

We recommend answering 'do not know'.

6. Is there anything you would change to make this update clearer?

You may want to write about how:

- The Code of Practice should make it clear that legal sex is only defined as 'biological sex' by the Equality Act 2010, and not in other areas.
- Sex in all other circumstances apart from the Equality Act 2010 should mean the sex recorded on your documentation (such as a passport, driving license, medical record etc).
- Trans people with a Gender Recognition Certificate (GRC) now have two legal sexes; the one recorded on their GRC and the one they were assigned at birth.



CHANGE 2.1: NEW CONTENT ON GENDER RECOGNITION CERTIFICATES

7. Would you like to provide feedback on the new content on Gender Recognition Certificates?

We recommend answering 'Yes'.

If you answer 'no', you will be taken to the next section.

8. 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 Gender Recognition Certificates is clear.

We recommend answering 'strongly disagree'.

9. Is there anything you would change to make the explanation of the legal rights and responsibilities in this update clearer?

You may want to write about:

- How 'biological sex' and 'sex recorded at birth' are not always the same, and treating them as the same may create legal risk for service providers, especially in relation to intersex service users.
- Your experiences of having a Gender Recognition Certificate, including whether you have found it useful to have, and how it has helped, or not helped you, navigate services.

CHANGE 2.2: NEW CONTENT ON ASKING ABOUT SEX AT BIRTH

10. Would you like to provide feedback on the new content on asking about sex at birth?

We recommend answering 'Yes'.

If you answer 'no', you will be taken to the next section.

11. 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 asking about sex at birth is clear.

We recommend answering 'strongly disagree'.

12. Is there anything you would change to make the explanation of the legal rights and responsibilities in this update clearer?

You may want to write about:

- The importance of including non-binary, gender non-conforming and intersex people in examples when providing information on how to ask about assigned sex at birth.
- Why it is important for service providers to treat trans and non-binary people with dignity and respect when asking about assigned sex at birth.
- How you feel about being asked about your assigned sex at birth.
- How it may be difficult for a service provider to 'prove' someone's assigned sex at birth in a non-intrusive, respectful or non-discriminatory way.

CHANGE 2.2: NEW CONTENT ON ASKING ABOUT SEX AT BIRTH

- How it may be difficult for a service provider to prove if someone has a Gender Recognition Certificate.
- How it is important for a service provider to treat everyone equally, and not ask only trans and non-binary people for proof of sex or other identity documents.
- The importance of service providers having a legitimate reason to ask about sex recorded at birth, and that they should not ask for this information when it is not relevant.

CHANGE 2.3: NEW CONTENT ON DEFINING SEX AT BIRTH

13. Would you like to provide feedback on the new content on defining sex at birth?

We recommend answering 'Yes'.

If you answer 'no', you will be taken to the next section.

14. 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 defining sex at birth is clear.

We recommend answering 'strongly disagree'.

15. Is there anything you would change to make the explanation of the legal rights and responsibilities in this update clearer?

You may want to write about:

- The importance of using inclusive language when talking about pregnancy and maternity, to include trans and non-binary parents.
- How 'biological sex' and 'sex recorded at birth' are not always the same, and treating them as the same may create legal risk for service providers, especially in relation to intersex service users.

CHANGE 2.4: UPDATED DESCRIPTION OF THE PROTECTED CHARACTERISTIC OF SEXUAL ORIENTATION

16. Would you like to provide feedback on the updated description of the protected characteristic of sexual orientation?

We recommend answering 'Yes'.

If you answer 'no', you will be taken to the next section.

17. To what extent do you agree or disagree with the following statement: The explanation of the legal rights and responsibilities set out in the updated description of the protected characteristic of sexual orientation is clear.

We recommend answering 'strongly disagree'.

18. Is there anything you would change to make the explanation of the legal rights and responsibilities in this update clearer?

You may want to write about:

- How your sexuality will be impacted by the Equality Act's definition of trans women as 'biologically male' and trans men as 'biologically female'.
- This could include detail about how your relationship with a trans person may no longer be considered LGBTQ+ or heterosexual, depending on who you are in a relationship with.
- This could include detail about how your right to marry may have changed, including which types of services, both religious and secular, are available to you.

CHANGE 4.1: NEW EXAMPLE ON SEX DISCRIMINATION BY PERCEPTION

19. Would you like to provide feedback on the new example on sex discrimination by perception?

We recommend answering 'Yes'.

If you answer 'no', you will be taken to the next section.

20. 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 example on sex discrimination by perception is clear.

We recommend answering 'do not know'.

21. Is there anything you would change to make the explanation of the legal rights and responsibilities in this update clearer?

You may want to write about:

- How it might be a problem that a trans persons ability to be protected from discrimination may now rely on their ability to 'pass' as a cisgender person.

CHANGE 4.2: REMOVED REFERENCE TO SUPERSEDED CASELAW

22. Would you like to provide feedback on Change 4.2?

We recommend answering 'Yes'.

If you answer 'no', you will be taken to the next section.

23. To what extent do you agree or disagree with the following statement: The explanation of the legal rights and responsibilities set out in Change 4.2 is clear.

We recommend answering 'strongly disagree'.

24. Is there anything you would change to make the explanation of the legal rights and responsibilities in this update clearer?

You may want to write about:

- The importance of using inclusive language when talking about pregnancy and maternity, to include trans and non-binary parents.
- How 'biological sex' and 'sex recorded at birth' are not always the same, and treating them as the same may create legal risk for service providers, especially in relation to intersex service users.

CHANGE 5.1: NEW EXAMPLE ON SEX DISCRIMINATION – SAME DISADVANTAGE

25. Would you like to provide feedback on the new example on sex discrimination – same disadvantage?

We recommend answering 'Yes'.

If you answer 'no', you will be taken to the next section.

26. 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 example on sex discrimination – same disadvantage is clear.

We recommend answering 'strongly disagree'.

27. Is there anything you would change to make the explanation of the legal rights and responsibilities in this update clearer?

You may want to write about:

- How 'biological sex' and 'sex recorded at birth' are not always the same, and treating them as the same may create legal risk for service providers, especially in relation to intersex service users.

CHANGE 8.1: UPDATED EXAMPLE ON HARASSMENT RELATED TO SEX

28. Would you like to provide feedback on the updated example on harassment related to sex?

We recommend answering 'Yes'.

If you answer 'no', you will be taken to the next section.

29. To what extent do you agree or disagree with the following statement: The explanation of the legal rights and responsibilities set out in the updated example on harassment related to sex is clear.

We recommend answering 'do not know'.

30. Is there anything you would change to make the explanation of the legal rights and responsibilities in this update clearer?

You may want to write about:

- How 'biological sex' and 'sex recorded at birth' are not always the same, and treating them as the same may create legal risk for service providers, especially in relation to intersex service users.

CHANGE 12.1: NEW EXAMPLE ON WOMEN-ONLY ASSOCIATIONS

31. Would you like to provide feedback on the new example on women-only associations?

We recommend answering 'Yes'.

If you answer 'no', you will be taken to the next section.

32. 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 example on women-only associations is clear.

We recommend answering 'strongly disagree'.

33. Is there anything you would change to make the explanation of the legal rights and responsibilities in this update clearer?

You may want to write about:

- How it would be difficult for a service provider to know if someone is trans without being told by that person.

- How it is not always appropriate or relevant to ask if someone is trans or non-binary.
- If some people are asked if they are trans or non-binary before they can join a club, but others are not, this may be discriminatory.
- If people are excluded from a service because they are assumed to be trans or non-binary, this will impact cisgender people too
- How an organisation must have a legitimate reason to exclude trans or non-binary people.
- The importance of trans and non-binary people being included by service providers.
- Your experiences of navigating single sex spaces, and how this has, or has not, been important for you.

CHANGE 12.1: NEW EXAMPLE ON WOMEN-ONLY ASSOCIATIONS

If you own, operate or facilitate a club or association, you may wish to write about:

- How your service will be impacted by excluding, or choosing to include trans and non-binary people.
- The cost of implementing this for your club.
- How supported you feel in doing this by the guidance you have received.



CHANGE 13.1: UPDATED SECTION ON COMPETITIVE SPORT

34. Would you like to provide feedback on the updated section on competitive sport?

We recommend answering 'Yes'.

If you answer 'no', you will be taken to the next section.

35. To what extent do you agree or disagree with the following statement: The explanation of the legal rights and responsibilities set out in the updated section on competitive sport are clear.

We recommend answering 'strongly disagree'.

36. Is there anything you would change to make the explanation of the legal rights and responsibilities in this update clearer?

You may want to write about:

- The importance of trans and non-binary people having access to inclusive sports, exercise and movement classes and facilities.
- How you feel about playing sports with trans and non-binary people.
- How it may not be accurate to say that women are always weaker, slower and smaller than men.

- How it may not be accurate to say that trans people pose a threat to the safety of others when playing sports.
- How it may not be accurate to say that trans people pose a threat to fair competition when playing sports.
- Examples of good practice for trans inclusion in sports.
- How you have been affected by being banned from participating in sports.
- The position of national sports governing bodies, and how this affects you or your sports club.
- Why making athletes take testosterone suppressing drugs may be bad.

If you own, operate or facilitate a sports club you may wish to write about:

- How your service will be impacted by excluding, or choosing to include trans and non-binary people.
- The cost of implementing this for your club.
- How supported you feel in doing this by the guidance you have received.

CHANGE 13.2: UPDATED SECTION ON SEPARATE AND SINGLE-SEX SERVICES FOR MEN AND WOMEN

37. Would you like to provide feedback on the updated section on separate and single-sex services for men and women?

We recommend answering 'Yes'.

If you answer 'no', you will be taken to the next section.

38. To what extent do you agree or disagree with the following statement: The explanation of the legal rights and responsibilities set out in the updated section on separate and single-sex services for men and women is clear.

We recommend answering 'do not know'.

39. Is there anything you would change to make the explanation of the legal rights and responsibilities in this update clearer?

You may want to write about:

- The importance of gender-neutral changing rooms and spaces within exercise, movement and sports facilities.
- How exercise, movement and sports service providers can meaningfully include trans and non-binary people.

If you own, operate or facilitate a sports club, you may wish to write about:

- How your service will be impacted by the cost of amending your facilities.
- How realistic it is for you to do so.



CHANGE 13.3: NEW SECTION ON JUSTIFICATION FOR SEPARATE AND SINGLE-SEX SERVICES

40. Would you like to provide feedback on the new section on justification for separate and single-sex services?

We recommend answering 'Yes'.

If you answer 'no', you will be taken to the next section.

41. 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 section on justification for separate and single-sex services the clear.

We recommend answering 'strongly disagree'.

42. Is there anything you would change to make the explanation of the legal rights and responsibilities in this update clearer?

You may want to write about:

- How excluding trans women from women's spaces does not make cis women safer or protect them from sexual harassment.
- Your experiences of facing harassment based on your gender identity, and how this might be affected by not being able to use single sex facilities.
- How 'biological sex' and 'sex recorded at birth' are not always the same, and treating them as the same may create legal risk for service providers, especially in relation to intersex service users.

- Why segregating trans and non-binary people to specific spaces (such as trans and non-binary only bathrooms, changing rooms etc) might be bad.
- Your neutral or positive experiences of using facilities such as bathrooms, changing rooms etc with and around trans and non-binary people, OR your experience using these facilities as a trans person.
- Your feelings about what trans exclusion from single sex facilities might mean for you.

If you own, operate or manage a service with single or separate sex services (such as bathrooms, changing rooms, groups etc), you may want to write about:

- How this change will affect your organisation.
- The impact on staff and service users.
- The cost of bringing your service into compliance.
- How supported you feel by the guidance you have received.

CHANGE 13.4: NEW CONTENT ON POLICIES AND EXCEPTIONS FOR SEPARATE AND SINGLE-SEX SERVICES

43. Would you like to provide feedback on the new content on policies and exceptions for separate and single-sex services?

We recommend answering 'Yes'.
If you answer 'no', you will be taken to the next section.

44. 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 policies and exceptions for separate and single-sex services is clear.

We recommend answering 'strongly disagree'.

45. Is there anything you would change to make the explanation of the legal rights and responsibilities in this update clearer?

You may want to write about:

- The lack of support for services who want to include trans and non-binary people in their services.
- How excluding trans women from women's spaces does not make cis women safer or protect them from sexual harassment.
- You could include examples of steps services could take instead that may make spaces safer, such as sexual harassment training for staff.

- Why segregating trans and non-binary people to specific spaces (such as trans and non-binary only bathrooms, changing rooms etc) might be bad.
- Your neutral or positive experiences of using facilities such as bathrooms, changing rooms etc with and around trans and non-binary people, OR your experience using these facilities as a trans person.

46. If you own, operate or manage a service with single or separate sex services (such as bathrooms, changing rooms, groups etc), you may want to write about:

- How this change will affect your organisation.
- The impact on staff and service users.
- The cost of bringing your service into compliance.
- How supported you feel by the guidance you have received.
- Whether you need any additional support from the Code of Practice.

CHANGE 13.5: UPDATED SECTION ON SEPARATE OR SINGLE-SEX SERVICES IN RELATION TO GENDER REASSIGNMENT

47. Would you like to provide feedback on the updated section on separate or single-sex services in relation to gender reassignment?

We recommend answering 'Yes'.
If you answer 'no', you will be taken to the next section.

48. To what extent do you agree or disagree with the following statement: The explanation of the legal rights and responsibilities set out in the updated section on separate or single-sex services in relation to gender reassignment is clear.

We recommend answering 'strongly disagree'.

49. Is there anything you would change to make the explanation of the legal rights and responsibilities in this update clearer?

You may want to write about:

- Why preventing a trans or non-binary person from using a single sex space based on the 'alarm or distress' of others might be bad.
- Why it is important for services aimed at women or men (such as cervical or prostate screening) to include trans and non-binary people's experiences and perspectives.

- Why trans women may also need to use gynaecology services.
- If you are a trans woman who needs gynaecology appointments, you could write about your experience of these, how included you felt, and whether staff sufficiently accommodated your gender identity.
- Your experiences of discrimination based on your gender identity when using single sex services, and how these were handled by the service provider.
- Why it is important for trans and non-binary people to be included in single sex spaces in general.

CHANGE 13.6: UPDATED CONTENT ON COMMUNAL ACCOMMODATION

50. Would you like to provide feedback on the updated content on communal accommodation?

We recommend answering 'Yes'.
If you answer 'no', you will be taken to the next section.

51. To what extent do you agree or disagree with the following statement: The explanation of the legal rights and responsibilities set out in the updated content on communal accommodation is clear.

We recommend answering 'do not know'.

52. Is there anything you would change to make the explanation of the legal rights and responsibilities in this update clearer?

You may want to write about:

- Your experiences of using communal accommodation.
- Examples of good practice for including trans and non-binary people in communal accommodation.

CONCLUSION

53. Do you have any other feedback about the content of the Code of Practice that you have not already mentioned?

You may want to write about:

- The importance of including trans and non-binary people when considering changes to the Equality Act 2010.
- The importance of supporting service providers to include, rather than exclude, trans and non-binary people in their services.
 - Any examples of good practice are incredibly valuable here.
- The need to include non-binary, genderfluid, agender, intersex and gender non-conforming people when considering how the updated definition of 'sex' within the Equality Act will impact different people.

- The importance of intersectionality when combatting violence against women and girls.
- The financial cost of redesigning facilities.
- How you have been impacted by the change in the definition of sex in the Equality Act 2010.
- Anything else you haven't already mentioned.

APPENDIX

Updated legal definition of sex

We have updated the legal definition of sex throughout the code of practice. Our previous definition explained that:

‘Legal sex is the sex that was recorded at your birth or the sex you have acquired by obtaining a Gender Recognition Certificate (GRC).’

Following the UK Supreme Court ruling in For Women Scotland, this definition is no longer accurate, because a GRC does not change your legal sex for the purposes of the Equality Act 2010. We have therefore updated this definition throughout the code to be:

‘Legal sex is the sex that was recorded at your birth.’

Please go to the **consultation page** to read about this change.



CHANGE 2.1: NEW CONTENT ON GENDER RECOGNITION CERTIFICATES

This content explains that the Supreme Court in *For Women Scotland* has ruled that a Gender Recognition Certificate (GRC) does not change a person's legal sex for the purposes of the Equality Act 2010 (the Act). It also outlines what protections trans people have under the Act whether or not they have a GRC.

We have included paragraphs 2.1.1 to 2.1.5 for context for this change. We are looking for feedback only on paragraphs 2.1.6 to 2.1.9.

Please go to **Change 2.1 on the consultation page** to read about this change.

2.1.6 The Supreme Court in *For Women Scotland Ltd v The Scottish Ministers (For Women Scotland)* [2025] UKSC 16 has ruled that a GRC does not change a person's legal sex for the purposes of the Equality Act 2010.

2.1.7 This means that, in relation to the Act, a person's sex remains their biological sex, whether they have a GRC or not. This is also referred to as 'sex at birth' or 'birth sex' in this code. For example, a trans man with a GRC is a woman and a trans woman with a GRC is a man, for the purposes of the Act.

2.1.8 A trans person will be protected from discrimination because of gender reassignment, whether they have a GRC or not.

2.1.9 A trans person will also be protected from sex discrimination whether they have a GRC or not. They will be protected from sex discrimination that is based on their birth sex. They will also be protected from sex discrimination related to their acquired gender where they suffer:

- direct discrimination by association or where this is because of their perceived sex in their acquired gender (read about discrimination by perception in the changes to chapter 4).
- indirect discrimination by association (s.19A) of the Act.
- harassment related to sex (s.26) (read about harassment related to sex in the changes to chapter 8).

CHANGE 2.2: NEW CONTENT ON ASKING ABOUT SEX AT BIRTH

This section gives information on how requests about sex at birth should be made. It outlines the circumstances in which making such requests, with or without evidential proof of birth sex, may be unlawful.

Please go to **Change 2.2 on the consultation page** to read about this change.

Asking about birth sex

2.2.1 It is important to be aware that some people, including some trans or gender non-conforming people, may find it distressing to be asked about their birth sex. Therefore, any necessary request about birth sex should be made sensitively, taking this into account.

2.2.2 Where obtaining information on birth sex is not necessary and proportionate, asking a trans person about their birth

sex may risk unjustifiably interfering with their human rights under Article 8 of the European Convention on Human Rights (ECHR), which is respect for private and family life. Therefore, care should be taken, particularly by public authorities, that this is only done where necessary and justified.

2.2.3 Requests about birth sex are more likely to be justified where it is necessary and proportionate for a service provider, those exercising public functions or an association to know an individual's birth sex to be able to discharge their legal obligations under the Act. Any request that is made should be done in a sensitive way which does not cause discrimination or harassment.

2.2.4 Discrimination or harassment could occur if, for example, individuals are asked about their birth sex in a way which may

require them to disclose this information in public, or if the language or manner of a request is rude, combative or offensive.

2.2.5 Indirect discrimination could occur if a policy on how or when to ask for such information places some protected characteristic groups at a particular disadvantage and is not justified. However, where practical, it is likely to be best to adopt the same approach with everyone, rather than only asking some people for information, because this approach is less likely to be discriminatory against any one group.

2.2.6 If it is necessary to ask a person's birth sex, consideration should be given to whether it is reasonable and necessary to ask for evidence of birth sex. In many cases, it will be sufficient to simply ask an individual to confirm their birth sex.

A service provider may make a rule that if someone is asked their birth sex and chooses to answer objectively falsely it will be grounds for exclusion from the service.

Example

2.2.7 A trans woman goes to the office of a local support group and makes enquiries with the receptionist about the group counselling sessions they offer. Based on the needs of its service users, the group provides different sessions that are single-sex or mixed-sex. The receptionist reasonably thinks that the trans woman is a biological male and, as there are some other people waiting in the office, asks her to come into a side room to get more details about the support she is looking for. When they are in private, the receptionist explains the different group sessions that are offered and asks the trans woman what her birth

CHANGE 2.2: NEW CONTENT ON ASKING ABOUT SEX AT BIRTH

sex is. When she confirms her birth sex, the receptionist provides her with the details of the mixed-sex groups she could attend.

2.2.8 If there is genuine concern about the accuracy of the response to a question about birth sex, then a birth certificate could be requested. For the vast majority of individuals, this will be an accurate statement of their birth sex. However, it should be noted that a birth certificate may not be a definitive indication of birth sex. If a person has a Gender Recognition Certificate (GRC) they may have obtained an amended birth certificate in their acquired gender. In the unlikely event that it is decided that further enquiries are needed, such as confirmation as to whether a person has a GRC, then any additional requests should be made in a proportionate way which is discreet and sensitive.

2.2.9 It is important to be aware of legal provisions protecting privacy in the context of making such enquiries. If, in the course of these enquiries or otherwise, a service provider, those exercising public functions or an association acquires information that someone has a GRC or has applied for a GRC, onward disclosure of either that information or their biological sex without consent may be a criminal offence in some circumstances (read section 22 of the Gender Recognition Act 2004).

2.2.10 Read also the **Data Protection Act 2018** and **UK General Data Protection Regulations**, which deal with processing personal data.

CHANGE 2.3: NEW CONTENT ON DEFINING SEX AT BIRTH

This content defines 'sex', 'man' and 'woman', and explains how a GRC does not change a person's legal sex for the purposes of the Equality Act 2010.

Please go to **Change 2.3 on the consultation page** to read about this change.

2.3.1 Sex is a protected characteristic and refers to a male or a female of any age. In relation to a group of people it refers to either men and/or boys, or women and/or girls (s.11(a) and (b) and s.212(1)).

2.3.2 The Supreme Court in *For Women Scotland* ruled that 'sex', 'woman' and 'man' in the Act mean biological sex, biological woman and biological man. This is the sex of a person at birth.

2.3.3 A Gender Recognition Certificate (GRC) does not change a person's sex for the purposes of the Act. Read paragraphs 2.1.1 to 2.1.9 for more information on GRCs.

Read paragraphs 2.2.1 to 2.2.10 for more information about when and how it may be appropriate to request information or evidence of birth sex.

2.3.4 A comparator for the purposes of showing sex discrimination will be a person of the opposite sex. Sex does not include gender reassignment (read paragraphs 2.1.6 to 2.1.9) or sexual orientation (read paragraphs 2.4.1 to 2.4.6).

2.3.5 There are specific provisions which apply where the treatment of a woman is because of her pregnancy and maternity, or because she is breastfeeding (s.13(6)(a) and s.13(7)).

CHANGE 2.4: UPDATED DESCRIPTION OF THE PROTECTED CHARACTERISTIC OF SEXUAL ORIENTATION

We updated our description of sexual orientation. Our description now specifies that a person who is attracted to people of the same sex is either a lesbian woman or a gay man. The full description is as follows.

Sexual orientation is a protected characteristic (s.12(1)). It means a person’s sexual orientation towards:

- persons of the same sex (the person is a lesbian woman or a gay man)
- persons of the opposite sex (the person is heterosexual), or
- persons of either sex (the person is bisexual)

Please go to **Change 2.4 on the consultation page** to read about this change.

2.4.1 Sexual orientation is a protected characteristic (s.12(1)). It means a person’s sexual orientation towards:

- persons of the same sex (the person is a lesbian woman or a gay man)
- persons of the opposite sex (the person is heterosexual)
- persons of either sex (the person is bisexual)

2.4.2 Sexual orientation relates to how people feel as well as their actions.

2.4.3 Sexual orientation discrimination includes discrimination because someone is of a particular sexual orientation, and it also covers discrimination connected with manifestations of that sexual orientation. These may include someone’s appearance, the places they visit or the people they associate with.

2.4.5 When the Act refers to the protected characteristic of sexual orientation (s.12(2)), it means the following:

- a reference to a person who has a particular protected characteristic is a reference to a person who is of a particular sexual orientation
- a reference to people who share a protected characteristic is a reference to people who are of the same sexual orientation

2.4.6 Gender reassignment is a separate protected characteristic and unrelated to sexual orientation, despite often being grouped together (for example under the acronym ‘LGBTQ+ people’).

CHANGE 4.1: NEW EXAMPLE ON SEX DISCRIMINATION BY PERCEPTION

This example explains how discrimination can occur based on a perceived protected characteristic, in the context of sex and gender reassignment.

Please go to **Change 4.1 on the consultation page** to read about this change.

Discrimination by perception

4.1.1 It is direct discrimination if service providers, those exercising public functions or associations treat an individual less favourably because the service providers, those exercising public functions or associations perceive that the individual has a protected characteristic even if they do not. However, this does not apply to the protected characteristic of pregnancy and maternity.

Example

4.1.2 People with certain Irish surnames are subjected to more stringent checks by a holiday company and then excluded from making holiday bookings because they are assumed to be Irish Travellers. This is less favourable treatment because of race.

Example

4.1.3 A trans woman is a member of an association and applies to become treasurer, but her application is rejected. She is told by the Chairman that this is because they want a man to take the role on as they do not think a woman could do the job as well. This is less favourable treatment because of sex. The trans woman would have a claim for direct discrimination because of her perceived sex as a woman. The fact that she is not a woman under the Equality Act 2010 would not prevent her bringing this claim of sex discrimination.

CHANGE 4.2: REMOVED REFERENCE TO SUPERSEDED CASELAW

We removed content that explained that, for trans men holding a gender recognition certificate (GRC), the protection from pregnancy and maternity discrimination under the Equality Act 2010 (the Act) arose from case law. This case law set out that trans men were still protected irrespective of them having a GRC that stated that their legal sex was male. Following the For Women Scotland ruling, their legal sex is now female for the purposes of the Act, and they therefore have protection on that basis.

Please go to **Change 4.2 on the consultation page** to read about this change.

Discrimination because of pregnancy and maternity

4.2.1 The Act provides protection against discrimination because of pregnancy and maternity in the provision of services, the exercise of public functions and in associations (s.17).

4.2.2 When explaining these provisions, we use the same language as the Act, which refers to discrimination against women on the grounds of pregnancy and maternity. The pregnancy and maternity provisions in the Act apply on the basis of biological sex and so trans men are included in the protections against discrimination provided by these provisions.

CHANGE 5.1: NEW EXAMPLE ON SEX DISCRIMINATION – SAME DISADVANTAGE

This example explains how indirect sex discrimination can occur when people experience the same disadvantage, even if they do not share the same protected characteristic. The example is in the context of sex and gender reassignment.

Please go to **Change 5.1 on the consultation page** to read about this change.

Example

5.1.3 A local council holds its public consultation meetings on a weekday evening in an area regarded as unsafe for women. It discovers that fewer women than men attend. A woman complains that this is because many women cannot come because of safety concerns, including herself. This kind of disadvantage is more likely to apply to women as a group and will amount to indirect discrimination against women, unless the council can justify its policy.

People who do not share the same protected characteristic but who may also feel unsafe for similar reasons could experience disadvantage that is essentially the same. For example, a trans woman who feels unsafe in the area where the consultation meetings are held because they present as a woman would also have a claim for indirect discrimination, if the council is unable to justify its policy.

CHANGE 8.1: UPDATED EXAMPLE ON HARASSMENT RELATED TO SEX

We produced a new example to explain how harassment can occur based on a perceived protected characteristic, in the context of sex and gender reassignment.

We have included additional information to provide context for this example. We are only looking for feedback on the example in paragraph 8.1.6b.

Please go to **Change 8.1 on the consultation page** to read about this change.

8.1.6b. An individual may be wrongly perceived as having a particular protected characteristic.

Example

A trans woman using the gym equipment in her local leisure centre is regularly subjected to comments from male staff members such as ‘watch what you say in front of her, it’s her time of the month again’. As with the example at 8.1.3, this could amount to harassment. However, in this example, the harassment would be related to the trans woman’s perceived sex.

CHANGE 12.1: NEW EXAMPLE ON WOMEN-ONLY ASSOCIATIONS

The example in this section explains when applications to an association can be lawfully refused based on a protected characteristic, in the context of sex and gender reassignment.

We have included additional information to provide context for this example. We are only looking for feedback on the example in paragraph 12.1.3.

Please go to **Change 12.1 on the consultation page** to read about this change.

Example

12.1.3 A trans woman applies to join a women-only association and her application is refused. This would be lawful because membership is based on sex and restricted to women and, under the Act, she does not share that protected characteristic (read about this in the **changes to chapter 2** (paragraphs 2.3.1 to 2.3.5)).



CHANGE 13.1: UPDATED SECTION ON COMPETITIVE SPORT

This section has been updated to explain the circumstances in which it may be lawful to exclude participation in competitive sporting events in relation to the protected characteristics of sex and gender reassignment. It also sets out considerations that should factor into policy decisions regarding the exclusion of trans people from competitive sporting events.

Please go to **Change 13.1 on the consultation page** to read about this change.

Competitive sport

13.1.1 The Act includes four types of exceptions that may apply in relation to the participation of a competitor in a sport, game or other activity of a competitive nature (s.195). These relate to sex, gender reassignment, nationality or birthplace, and age.

Competitive sport – sex

13.1.2 It is not a breach of the Act for a person to organise single-sex or separate-sex events for male and female competitors in a sport, game or other activity of a competitive nature in specific circumstances (s.195(1) and (3)). These circumstances are where an average person of one sex would be at a disadvantage as a competitor against an average person of the other sex due to their physical strength, stamina or physique (referred to in the Act as a ‘gender-affected activity’). Where there is no disadvantage due to these factors, organising single-sex or separate-sex events may be unlawful sex discrimination.

Example

13.1.3 The organisers of a 5-a-side football event decide that it is necessary to hold separate competitions for men and women. This is likely to be permitted under the Act.

Physical strength, stamina and physique are all significant factors in 5-a-side football match. An average man has an advantage compared to an average woman because men are on average taller and stronger and have more overall muscle mass than women.

13.1.4 This exception also applies to children’s sport (s.195(4)). However, organisers must consider whether there are significant differences in physical strength, stamina or physique at the age and stage of development of the children competing in the activity.

Example

13.1.5 A primary school only has a boys’ under-7 football team as there are not enough girls for a full team. A girl requests to join the team. It may be unlawful to decline this request unless the school can

demonstrate that there are differences in physical strength, stamina or physique between boys and girls under 7 years old that would disadvantage girls taking part in football. Examples of disadvantage could be unfair competition or risks to health and safety.

Competitive sport – gender reassignment

13.1.6 In the context of a gender-affected activity (read paragraph 13.1.2), the Act allows trans people to be excluded from an event or treated differently, which would otherwise constitute unlawful gender reassignment discrimination, when necessary for reasons of safety or fair competition. If it is not necessary for these reasons, it is likely to be unlawful to exclude trans people.

CHANGE 13.1: UPDATED SECTION ON COMPETITIVE SPORT

13.1.7 Consequently, if a person is organising single-sex or separate-sex events for men and women in a gender-affected activity, they should consider their approach to trans competitors' access to the service (s.19 and s.195(2)).

13.1.8 Direct gender reassignment discrimination can occur if a policy or decision to restrict participation of trans people is made on the grounds of gender reassignment.

13.1.9 This would be the case, for example, if a trans man, who is a woman under the Act, is excluded from a women's event because of his gender reassignment characteristic. Read **our changes to chapter 2** for more information on the meaning of gender reassignment.

13.1.10 Indirect gender reassignment discrimination can occur if a provision, criterion or practice puts trans people

(including the individual trans person concerned) at a particular disadvantage compared to people who are not trans and it cannot be justified.

13.1.11 However, in the context of a gender-affected activity, the Act provides an exception to a claim of gender reassignment discrimination if a person restricts participation of a trans person in a gender-affected activity and can show it is necessary to do so for reasons of fair competition or the safety of competitors (s.195(2)).

13.1.12 This means that organisers can prevent trans people from participating in a gender-affected sporting activity if it is necessary to do so because their participation would create a competitive advantage or disadvantage, or would potentially endanger their own safety or that of other participants.

Example

13.1.13 A boxing gym runs a boxing competition for men. A trans man wishes to compete. The gym declines his request because they are concerned about the safety of trans men taking part in the full-contact sparring with men due to physiological differences. This is likely to be lawful if the gym can demonstrate that that there would be a genuine health and safety risk if trans men were allowed to join the competition.

13.1.14 In some circumstances, limiting, modifying or excluding the participation of trans people for the reasons of fair competition or safety may be necessary to avoid discrimination against other competitors. Section 195(1) provides organisers of separate sporting events for men and women with an exception for sex

discrimination when providing separate men's and women's events. The law on the interpretation of this provision is not settled and there is therefore uncertainty as to how this provision applies.

13.1.15 Section 195(1) is likely to only apply where a person has decided to organise the gender-affected activity as a single-sex or separate-sex event. A claim of direct or indirect sex discrimination cannot be brought about the participation of a person in an event which has been organised as a single-sex or separate-sex event.

13.1.16 Where an organiser chooses to offer a mixed-sex gender-affected activity, then this activity is not protected by the exception in section 195(1) and participants may bring claims of direct and indirect sex discrimination about it.

CHANGE 13.1: UPDATED SECTION ON COMPETITIVE SPORT

Example

13.1.17 An athletics club chooses to organise an athletics event that includes women and trans women. The trans women who participate are significantly faster and have a physical advantage. A woman may be able to bring a claim for indirect sex discrimination due to the provider’s decision not to limit or modify the participation of trans women placing her at a particular disadvantage.

13.1.18 Given the physiological differences between men and women, it will often be necessary for organisations to develop general policies to guide and inform their decision making in this area. Policies should be supported by a clear rationale and evidence base, and will often wish to draw upon guidance from sporting authorities. Relevant factors may include:

- whether an activity is primarily competitive, or competitive but with a significant social and recreational purpose, and whether it is a mass participation event
- whether there are safety risk factors such as those arising from physical contact between men and women
- the extent to which there are competitive advantages arising from sex-based physiological factors such as physical strength, stamina or physique
- whether such competitive advantage can be sufficiently reduced through medical intervention, such as drugs to reduce levels of testosterone, to make the competition fair



CHANGE 13.2: UPDATED SECTION ON SEPARATE AND SINGLE-SEX SERVICES FOR MEN AND WOMEN

This section has been updated to provide guidance on how separate or single-sex services can be provided for men and women. It also sets out when providing these services is likely to be lawful.

Please go to **Change 13.2 on the consultation page** to read about this change.

Services for particular groups

13.2.1 The Equality Act 2010 (the Act) contains specific exceptions (discussed in this section) which allow service providers and, in certain cases, those exercising public functions (s.31(3)), to provide services:

- separately and/or differently for women and men
- exclusively for women
- exclusively for men
- to people of a particular age group (in certain circumstances)

13.2.2 If a service is generally provided only for persons who share a protected characteristic, a person who normally provides that service can (Sch 3 paragraph 30):

- insist on providing it in a way they normally provide it
- refuse to provide the service to people who do not share that protected characteristic, if they reasonably think it is impracticable to provide it
- separate services for women and men

13.2.3 The Act (Sch 3 paragraph 26(1)) does not prohibit sex discrimination where a service provider (including a person providing a service in the exercise of public functions (s.31(3)) offers separate services for men and women in specific circumstances. It is lawful to provide separate-sex services if:

- a joint service for women and men would be less effective, and
- providing the service separately to women and men is a proportionate means of achieving a legitimate aim

13.2.4 If these conditions do not apply, the provision of separate-sex services is likely to be unlawful sex discrimination.

13.2.5 The Act (Sch 3 paragraph 26(2)) also does not prohibit sex discrimination where a service provider (including a person providing a service in the exercise of public functions) provides separate services for each sex in a different way, if:

- a joint service for persons of both sexes would be less effective, or
- the extent to which the service is required by one sex makes it not reasonably practicable to provide the service other than separately and differently for each sex, and

- the limited provision of the service is a proportionate means of achieving a legitimate aim

Example

13.2.6 A domestic violence support unit is set up by a local authority for women and men separately as they are aware that service users feel safer and more comfortable attending a single-sex group. There is less demand for the men's group, which meets less frequently.

13.2.7 The Act (Sch 3 paragraph 26(3)) also does not prohibit sex discrimination where a service provider (including a person providing a service in the exercise of public functions) does anything in relation to the provision of separate services, or services provided differently for women and men, for the reasons set out in paragraph 13.2.5.

CHANGE 13.2: UPDATED SECTION ON SEPARATE AND SINGLE-SEX SERVICES FOR MEN AND WOMEN

Example

13.2.8 A local authority allocates funding for a primary care trust to contract with a voluntary sector organisation to provide counselling for women who have had a mastectomy.

13.2.9 Read paragraphs 13.3.1 to 13.3.20 for the considerations relevant to whether a separate-sex service, or anything done in relation to it, is a proportionate means of achieving a legitimate aim.

Single-sex services

13.2.10 The Act (Sch 3 paragraph 27) does not prohibit sex discrimination where a service provider (including a person providing a service in the exercise of public functions) provides a service exclusively to one sex, if doing so is a proportionate means of achieving a legitimate aim and at least one of the conditions in paragraphs 13.99 to 13.109 applies.

13.2.11 Condition 1: Only people of that sex need the service.

13.2.12 Condition 2: A service that is provided jointly for both sexes is not sufficiently effective without providing an additional service exclusively for one sex.

Example

13.2.13 A gym provides weightlifting classes to all its customers, but few women join the class, so it also provides an additional single-sex weightlifting class for women to encourage women to use the service.

13.2.14 Condition 3: A service provided for men and women jointly would not be as effective, and the demand for the services makes it not reasonably practicable to provide separate services for each sex.

Example

13.2.15 A support unit for women who have experienced domestic or sexual violence can be established, even if there is no men's unit established because there is insufficient demand to make it reasonably practical to provide a separate service for men.

13.2.16 Condition 4: The service is provided at a hospital or other place where users need special care, supervision or attention.

Example

13.2.17 A hospital chooses to provide a single-sex hospital ward for women patients to protect their safety, privacy and dignity. The hospital supports this decision by noting that the ward in question does not fit its criteria for the small number of circumstances where mixed-sex accommodation may be acceptable.

13.2.18 Condition 5: The service is for, or is likely to be used by, more than one person at the same time and a woman might reasonably object to the presence of a man, or vice versa.

It is likely to be reasonable for a woman to object to the presence of a man if she will be getting undressed or in a vulnerable situation when she is using the service.

Example

13.2.19 Women-only communal changing rooms in a sports facility.

13.2.20 Condition 6: The service is likely to involve physical contact between the service user and another person and that other person might reasonably object if the service user is of the opposite sex.

CHANGE 13.2: UPDATED SECTION ON SEPARATE AND SINGLE-SEX SERVICES FOR MEN AND WOMEN

In this condition, limited and non-intimate physical contact is unlikely to justify single-sex provision. For instance, the fact that in first aid training there may be some physical contact between participants in the classes is unlikely to warrant the provision of single-sex sessions.

Example

13.2.21 A female carer only provides intimate personal care to female clients as she is uncomfortable providing this type of care to men in a domestic environment.

13.2.22 Where a service provider (including a person providing a service in the exercise of public functions) does anything in relation to the provision of single-sex services, this will be lawful provided that one of conditions 1 to 6 is met, and that providing the service on a single-sex basis is a proportionate means of achieving a legitimate aim.

13.2.23 Read paragraphs 13.3.1 to 13.3.20 for the considerations relevant to whether a single-sex service, or anything done in relation to it, is a proportionate means of achieving a legitimate aim.



CHANGE 13.3: NEW SECTION ON JUSTIFICATION FOR SEPARATE AND SINGLE-SEX SERVICES

This section sets out the considerations that should be given to all potential service users when deciding whether separate and single-sex services are a proportionate means of achieving a legitimate aim. It also sets out circumstances in which mixed-sex services may be necessary, and the potential legal implications of providing only mixed-sex services.

Please go to **Change 13.3 on the consultation page** to read about this change.

13.3.1 When providing a separate or single-sex service, a service provider (including a person providing a service in the exercise of public functions) must be able to demonstrate that doing so is a proportionate means of achieving a legitimate aim.

13.3.2 An example of a legitimate aim for providing a separate or single-sex service could be ensuring the safety of women

or the privacy and dignity of women and/or men. The service provider (including a person providing a service in the exercise of public functions) must show that providing the service only to one sex or separately to both sexes is a proportionate way to achieve the aim.

13.3.3 When considering whether providing a separate or single-sex service is proportionate, the service provider (including a person providing a service in the exercise of public functions) should consider all potential service users and whether there is a fair balance between:

1. the benefits of offering the service as a separate or single-sex service, and
2. the needs of those who are accessing it, and
3. the impact on those who are excluded from accessing it

13.3.4 When considering the benefits of offering a separate or single-sex service, the service provider (including a person providing a service in the exercise of public functions) should think about whether women’s safety, privacy and/or dignity would be at risk in the service if it was shared with men.

Taking the example of offering a single-sex service for women, the service provider should consider factors such as:

- whether women are likely to be in a state of undress
- whether there will be limited ability for women to leave or to choose an alternative service
- whether the service is provided a result of, or connected with, male violence against women

- whether the physical differences between men and women are relevant to the experience of the service and put women at a particular disadvantage

Where factors like these are present, the benefits of offering a separate or single-sex service will be likely to outweigh other considerations in the balancing exercise.

13.3.5 The needs of potential service users include the specific needs of people with different protected characteristics, such as older people, disabled people and those who observe particular religious practices. For example, Muslim people may have a particular need for separate-sex services to observe the requirements of their faith.

Example

13.3.6 A swimming class provider runs classes at a swimming centre that caters to the local community, including Muslim people. The swimming class provider

CHANGE 13.3: NEW SECTION ON JUSTIFICATION FOR SEPARATE AND SINGLE-SEX SERVICES

operates a mix of services with some separate-sex classes, which are used predominantly by Muslim women and men, as well as mixed-sex classes which are open to everybody. The swimming class provider has considered the impact of the mix of its services across different protected characteristics and determined that its balanced mix of services is proportionate. The provision made is therefore likely to be lawful.

13.3.7 The impact on those who will be excluded from the service includes both the impact on people of the opposite biological sex generally and the particular impact on trans people of the opposite biological sex. In separate or single-sex services, a trans man will be excluded from the men-only service because his biological sex is female, and a trans woman will be excluded

from the women-only service because her biological sex is male. Trans people are likely to be disadvantaged by this, by comparison to people who are not trans.

13.3.8 The service provider (or person providing a service in the exercise of public functions) should consider whether the disadvantage to trans people, and any other people who may be disadvantaged, outweighs the benefits of achieving the legitimate aim. They should also consider whether there is a less intrusive option than excluding trans people which would be proportionate (read 13.4.4 to 13.4.8).

13.3.9 Having carried out this balancing exercise, the service provider (including a person providing a service in the exercise of public functions) may conclude that arrangements or adaptations can be made to meet the needs of all service users, or that it remains proportionate to maintain only a separate or single-sex service.

13.3.10 In many cases, it will be proportionate to take a holistic approach to service provision by providing a mix of services which may include both separate or single-sex services and mixed-sex services. The mix of services in terms of the size of the separate or single-sex services and of the mixed-sex services should reflect the needs and relative numbers of service users with different needs.

Example

13.3.11 A service provider operates a shopping centre and decides to renovate the centre. It initially intends to only provide separate-sex toilets to improve the safety and comfort of users. This disadvantages trans people because it means that a trans person cannot access a toilet catered towards their acquired gender. The service provider therefore decides to also provide toilets in individual lockable rooms which can be used by people of either sex.

Example

13.3.12 A community group is opening a small advice centre. It decides to provide separate-sex toilets for women and men, and it repurposes the accessible toilet to be used as a mixed-sex toilet for anybody who does not wish to use the toilet for their biological sex. This is likely to be proportionate given the size and resources of the centre and takes into account the needs of all the potential service users.

Example

13.3.13 A local gym organises weightlifting induction classes designed to teach users of the gym proper techniques and safety measures. The classes are in high demand and are well attended. A small number of women request women-only classes, as they feel uncomfortable in the mixed-sex service. The gym amends its schedule to

CHANGE 13.3: NEW SECTION ON JUSTIFICATION FOR SEPARATE AND SINGLE-SEX SERVICES

offer one induction class a fortnight to cater to this request, which it considers to be proportionate to the needs of service users and the relative demand. This is likely to be lawful because it has balanced the needs of different service users and provided a proportionate mix of services.

13.3.14 However, it may be that offering alternative arrangements is not reasonably possible for the service provider (including a person providing a service in the exercise of public functions) or that doing so would undermine the service that is being provided. This may be because of the type of service being provided, the needs of the service users, the physical constraints of any building, or because of the disproportionate financial costs associated with making those arrangements.

Example

13.3.15 In the example in paragraph 13.3.13, the women who have requested women-only classes also ask for single-sex changing rooms. The gym is in a small, shared studio space which provides mixed changing facilities with private cubicles for changing. The cubicles have floor to ceiling lockable doors and there have been no complaints about inappropriate conduct in the changing rooms. The service provider determines that providing single-sex changing rooms is impractical because of space constraints and the disproportionate cost. Since the existing changing rooms enable users to change in privacy, the current arrangement is likely to be proportionate and lawful.

Example

13.3.16 A women's centre provides a gym predominantly used by Jewish women who have religious objections to sharing a gym with men. The gym considers whether to open the gym to men on certain days, or to open the gym on a mixed-sex basis on certain days.

13.3.17 However, the centre decides to offer the gym only to women because the overwhelming demand for the service is from Jewish women and there are numerous other gyms in the area that cater to men and trans people. This service would exclude men and trans women, but it is likely to be proportionate and lawful.

13.3.18 It is good practice to record the reasons why a decision has been taken to provide or not to provide a separate or single-sex service, along with any supporting evidence.

13.3.19 If a service provider (or a person providing a service in the exercise of public functions) admits trans people to a service intended for the opposite biological sex, then it can no longer rely on the exceptions set out at paragraphs 13.2.3 to 13.2.22. This means that if a service is provided only to women and trans women or only to men and trans men, it is not a separate-sex or single-sex service under the Equality Act 2010. A service like this is very likely to amount to unlawful sex discrimination against the people of the opposite sex who are not allowed to use it. A service which is provided to women and trans women could also be unlawful sex discrimination or lead to unlawful harassment against women who use the service. Similar considerations would apply to a service provided for men and trans men.

CHANGE 13.3: NEW SECTION ON JUSTIFICATION FOR SEPARATE AND SINGLE-SEX SERVICES

13.3.20 Similarly, if a service provider (including a person providing a service in the exercise of public functions) decides only to provide a service on a mixed-sex basis, without any separate or single-sex option, this could be direct or indirect sex discrimination against women who use the service or lead to unlawful harassment against them. This is most likely in contexts like those referred to in paragraph 13.3.4.



CHANGE 13.4: NEW CONTENT ON POLICIES AND EXCEPTIONS FOR SEPARATE AND SINGLE-SEX SERVICES

This new content explains that service providers may need to develop policies regarding the provision of separate or single-sex services. It also covers specific circumstances that may require a different approach to that set out in policy, and examples of those circumstances.

Please go to **Change 13.4 on the consultation page** to read about this change.

Policies and exceptions for separate and single-sex services.

13.4.1 It will usually be helpful and often necessary for service providers (including a person providing a service in the exercise of public functions) to have a policy setting out whether, and if so how, separate or single-sex services will be provided. When developing a policy, the service provider should consider how the policy should apply in different circumstances to ensure

appropriate consideration of all affected interests and provide transparency for service users.

13.4.2 However, individual circumstances may, exceptionally, require a different approach to that set out in a policy. The law in this area is complex, and it is not certain that it is permissible to make exceptions to allow people of the opposite sex to use a separate or single-sex service. It is likely, however, that this will be permissible if doing so adds a necessary flexibility without undermining the aim of the service and/or contributes towards achieving the aim.

Example

13.4.3 A council swimming pool has separate men's and women's changing rooms. One of the aims of having separate-sex changing rooms is to safeguard women's ability to access the facilities and use them safely. A woman is allowed to take

her male child under the age of ten into the women's changing room. This does not undermine the aim, because it is unlikely that young boys pose a threat to women's safety. It also contributes towards achieving the aim, because fewer women would be able to use the swimming pool if they could not bring their children with them.

13.4.4 In most situations, when a potential service user wishes to access a single-sex service for the opposite biological sex, the service provider (including a person providing a service in the exercise of public functions) should consider whether it can accommodate the needs of the service user in a way which achieves a fair balance without compromising the single-sex nature of the service.

13.4.5 The service provider (including a person providing a service in the exercise of public functions) should consider whether it can offer a separate service to that individual and others in similar circumstances. If it is possible to do so, the service will remain a single or separate-sex service, with an additional separate service for those that share that individual's circumstances.

13.4.6 For example, if a leisure centre offers women-only water aerobics sessions, and it is approached by a man who would like to access the service, the leisure centre should consider whether it could offer a water aerobics session that is also open to men at a different time or on a different day. If it is possible to do so, the service would remain a separate or single-sex service, but with an additional separate service that is also open to men.

CHANGE 13.4: NEW CONTENT ON POLICIES AND EXCEPTIONS FOR SEPARATE AND SINGLE-SEX SERVICES

13.4.7 Another example of a less intrusive measure would be adapting a service to enable the service to be used by people of both sexes. For example, it may be possible to offer toilets in individual lockable rooms to be used by both sexes.

13.4.8 It may be that offering alternative arrangements is not reasonably possible for the service provider (or person providing a service in the exercise of public functions) or that doing so would undermine the service that is being provided. This may be because of the type of service being provided, the needs of the service users, the physical constraints of any building, or because of the disproportionate financial costs associated with making those arrangements. The service provider may take account of the fact that if it admits the individual it may cease to be a separate or single-sex service (read paragraph 13.3.19).



CHANGE 13.5: UPDATED SECTION ON SEPARATE OR SINGLE-SEX SERVICES IN RELATION TO GENDER REASSIGNMENT

This section 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. It includes examples of relevant considerations when deciding whether the exclusion of trans people from a separate or single-sex service is a proportionate means of achieving a legitimate aim.

Please go to **Change 13.5 on the consultation page** to read about this change.

Separate or single-sex services — gender reassignment

13.5.1 If a service provider (including a person providing a service in the exercise of public functions) is considering providing a separate or single-sex service, they should consider their approach to trans people's use of the service.

13.5.2 The impact of separate or single-sex services on trans people should be considered when the service provider is deciding whether it is justified to have a separate or single-sex service in the first place. Read paragraphs 13.3.8 to 13.3.20 for further information on this.

13.5.3 If a service provider (including a person providing a service in the exercise of public functions) decides to have a separate or single-sex service and allows trans people to use the service intended for the opposite biological sex, the service will no longer be a separate or single-sex service under the Equality Act 2010 (the Act). It is also very likely to amount to unlawful discrimination against others (read paragraph 13.3.19).

13.5.4 If it is justified to provide a separate or single-sex service, then it will not be unlawful discrimination because of gender reassignment to prevent, limit or modify trans people's access to the service for their own biological sex, as long as doing so is a proportionate means of achieving a legitimate aim (Sch 3 paragraph 28).

13.5.5 For example, a trans man might be excluded from the women-only service if the service provider decides that, because he presents as a man, other service users could reasonably object to his presence, and it is a proportionate means of achieving a legitimate aim to exclude him.

13.5.6 A legitimate aim for excluding a trans person from a separate or single-sex service for their own biological sex might be to prevent alarm or distress for other

service users. Whether it is reasonable to think that the presence in that service of the trans person will cause alarm or distress will depend on all the circumstances, including the extent to which the trans person presents as the opposite sex. For this reason, a service provider (including a person providing a service in the exercise of public functions) should only consider doing this on a case-by-case basis.

13.5.7 The service provider should consider whether there is a suitable alternative service for the trans person 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.

CHANGE 13.5: UPDATED SECTION ON SEPARATE OR SINGLE-SEX SERVICES IN RELATION TO GENDER REASSIGNMENT

13.5.8 If the service provider does not act proportionately, this is very likely to amount to direct or indirect discrimination because of gender reassignment (s.13 and s.19).

Example

13.5.9 Group counselling sessions are provided for female survivors of domestic violence. The service provider excludes a trans man from the sessions because he presents as a man and the service provider is concerned that women service users could reasonably be alarmed or distressed by his presence.

The service provider’s decision to exclude the trans man from the service could amount to direct gender reassignment discrimination because he has been treated less favourably than a woman without the protected characteristic of gender reassignment. However, in this situation the service provider is likely to be able to rely

on the exception from liability explained in paragraph 13.5.4, because the decision to exclude the trans man was proportionate.

13.5.10 If the nature of a service means that it is only, or generally, used by women or by men, this does not mean that it is necessarily a separate or single-sex service under the Act. A service like this does not need to operate according to the rules and principles described in paragraphs 13.2.10 to 13.5.9. However, the Act (Sch 3 paragraph 30) contains a different exception which means that, in services of this sort, it will not be unlawful discrimination if the service provider refuses to serve a person of the opposite sex, if it would be impracticable to provide the service to that person. The service provider can also refuse to adjust the way in which the service is provided to cater for a person of the opposite sex. This exception applies to all protected characteristics in the Act, not just sex.

Example

13.5.11 A hospital provides an Obstetrics and Gynaecology outpatient service. Only women and trans men need to use the service. The hospital provides the service to women and trans men in a way which preserves all users’ privacy and dignity.

The hospital can refuse to allow a man or a trans woman to access the service because it does not offer any treatment which is suitable. This means that it would be impracticable to treat a man or a trans woman. It could also be impracticable to do so if it would impact on the privacy and dignity of the women and trans men who use the service.

The hospital can also refuse to adjust the way in which it provides the service.

Example

13.5.12 A trans man attends a gym frequently and uses the women’s changing room, consistent with his biological sex. If the gym owner decides that he can no longer use the women’s changing room and there is no other changing room he can use this may be a disproportionate decision. If it is disproportionate, the gym owner will not be able to rely on the exception for gender reassignment discrimination (Sch 3 paragraph 28). The trans man will be able to bring a complaint of direct gender reassignment discrimination, because he has been treated less favourably than a woman who does not have the protected characteristic of gender reassignment.

CHANGE 13.6: UPDATED CONTENT ON COMMUNAL ACCOMMODATION

This content explains the application of the Act to communal accommodation in respect of the protected characteristics of sex and gender reassignment.

Please go to **Change 13.6 on the consultation page** to read about this change.

13.6.1 The Act does not prohibit sex discrimination or gender reassignment discrimination where a person does anything in relation to admitting persons to communal accommodation, or providing any benefit, facility or service linked to the accommodation (Sch 23 paragraph 3(1)). This exception applies if the criteria set out in paragraphs 13.6.4 to 13.6.6 are satisfied.

13.6.2 ‘Communal accommodation’ is residential accommodation which includes dormitories or other shared sleeping accommodation which, for reasons of privacy, should be used only by persons of the same sex (Sch 23 paragraph 3(5) to (6)).

It can also include:

- shared sleeping accommodation for men and for women
- ordinary sleeping accommodation
- residential accommodation, all or part of which should only be used by persons of the same sex because of the nature of the sanitary facilities serving the accommodation

13.6.3 A benefit, facility or service is linked to communal accommodation if it cannot be properly and effectively provided except to those using the accommodation. It can only be refused to a person if they can lawfully be refused use of the accommodation (Sch 23 paragraph 3(7)).

13.6.4 This exception only applies if the communal accommodation is managed in a way that is as fair as possible to both women and men (Sch 23 paragraph 3(2)).

13.6.5 When excluding a person from use of communal accommodation because of sex or gender reassignment, the service provider, person exercising public functions or association must consider:

- whether and how far it is reasonable to expect that the accommodation should be altered or extended or that further accommodation should be provided, and
- the relative frequency of demand for the accommodation by persons of each sex (Sch 23 paragraph 3(3))

13.6.6 Excluding a person from use of communal accommodation provided for their own biological sex because of gender reassignment will only be lawful if it is a proportionate means of achieving a legitimate aim (Sch 23 paragraph 3(4)). The matters which a service provider, person exercising public functions or association should consider are similar to those set out in paragraphs 13.2.1 to 13.2.23.

