

Campaign briefing:
**Why Sex Matters is
calling for clarification of
the Equality Act 2010**

November 2022

Sex Matters is a human rights organisation campaigning
for clarity about sex in law, policy and language

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Sex Matters has launched a petition calling on the government to clarify that in the Equality Act 2010, “sex” means biological sex, and is not modified by the Gender Recognition Act 2004.

This would protect the rights of people of both sexes, as well as people who identify as transgender. This briefing explains why we are calling for this clarification of the law.

To sign the petition visit bit.ly/Equality_Petition



The Equality Act

The Equality Act 2010 protects everyone in Great Britain from **discrimination and harassment** at work, in education and in receiving goods and services.

Direct discrimination	You are treated differently because you have a protected characteristic (or are perceived as having one or connected to someone that has one).
Indirect discrimination	A policy that applies to everybody but disadvantages people who share a protected characteristic . It may be justified if there is a good reason for the policy.
Harassment	You are treated in a way related to a protected characteristic that violates your dignity or creates an intimidating, hostile, degrading, humiliating or offensive environment .

Protection against unlawful discrimination is based on nine **protected characteristics**. Everyone has some characteristics.

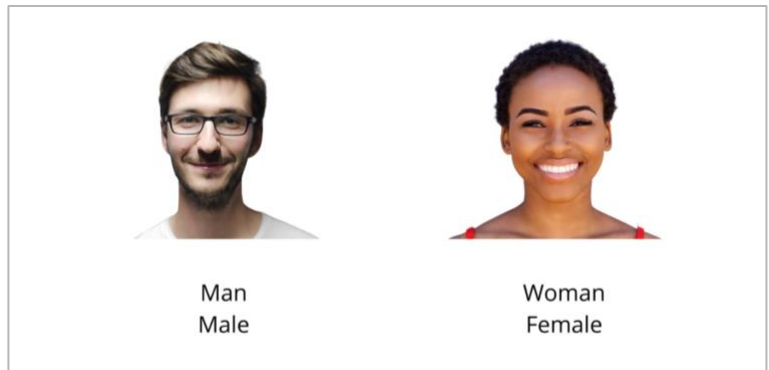
The characteristics include sex (being male or female) and “gender reassignment” (being trans).



Sex in the Equality Act

To show that someone has been treated differently or disadvantaged because of a protected characteristic they are looked at alongside a “**comparator**”. This is a person who is similar, apart from not having the particular protected characteristic.

In a sex-discrimination case the comparator is a similar person of the opposite sex.



Men and women in the same employment performing equal work must receive equal rewards.

There is also specific protection against sexual harassment.



Sex is a biological characteristic.

Sex discrimination protection covers women against discrimination and harassment because of breastfeeding, being a mother or being seen as likely to become pregnant in the future.



Treating people differently because of their sex

There are situations where it is lawful to treat men and women differently.

For example:

- in jobs where being a particular sex is essential
- in sport
- in combat situations in the armed forces
- if an organisation is taking positive action to address underrepresentation.

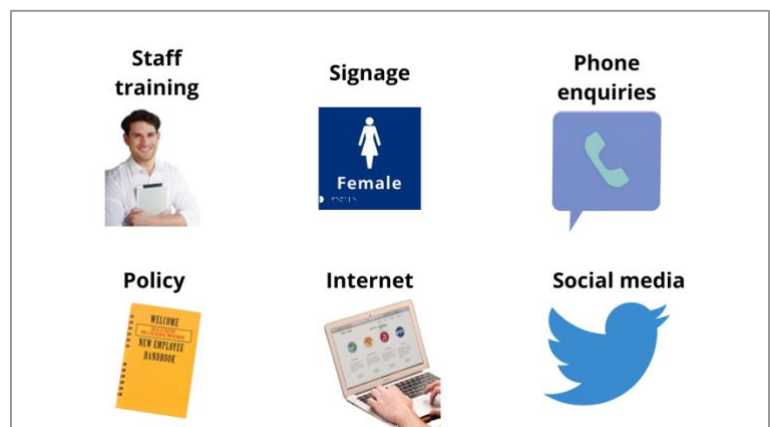


The Equality Act allows employers and service-providers to provide services and accommodation separately or differently for men and women, when there is a good reason (this is called “a proportionate means to a legitimate aim”).



Both men and women can feel humiliated, offended or degraded if they are forced to share intimate spaces with members of the opposite sex. Avoiding this is one everyday legitimate aim.

Sex-based rules need to be able to be clearly communicated, so that everyone knows what words and signs mean, and to avoid potential harassment.



Trans people and the Equality Act

The Equality Act also includes a separate protected characteristic of “**gender reassignment**” which covers people who identify as transgender or transsexual.

The process of “reassignment” can mean changing name, title or pronouns; changing clothing style or hairstyle; taking hormones; having cosmetic surgery. A person need not have medical treatment to be covered by this protected characteristic.

In a case of gender-reassignment discrimination the comparator is a person who does not have the protected characteristic of gender reassignment.

A person should not be harassed or discriminated against at work, in education or in receiving goods and services because they have this characteristic. But it does not mean their sex has changed, or that other people are required to pretend to believe that it has.




Equality Act 2010:
“A person has the protected characteristic of gender reassignment if the person is


- proposing to undergo
- is undergoing or
- has undergone

a process (or part of a process) for the purpose of reassigning the person’s sex by changing physiological or other attributes of sex.”

**Male
Not transsexual**



**Male
transsexual**



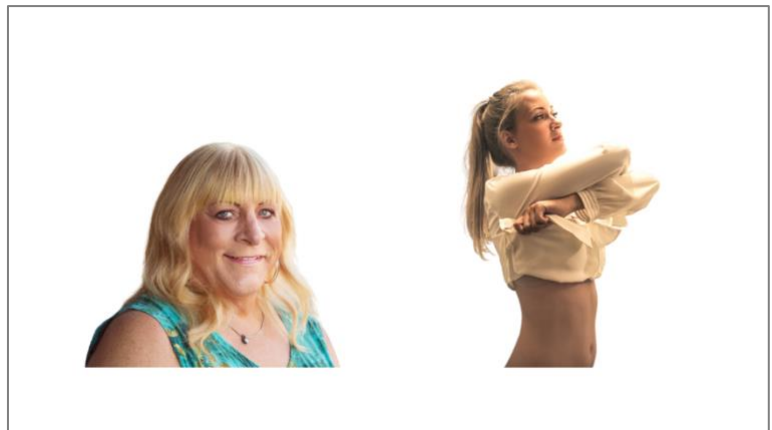
Trans people and single-sex services

Excluding a transgender person from a single-sex service that relates to their sex would be **direct gender-reassignment discrimination**.

For example, a female person who identifies as a “trans man” could need a cervical smear test, fertility treatment, pregnancy care or maternity benefits.



Being trans does not mean that a person has the right to use services intended for members of the opposite sex. If they attempt to do so it could result in harassment of other users, who might feel humiliated. It could also result in harassment of the trans person as they might be challenged with hostility.



Trans people may feel uncomfortable using services for their own sex, as they might be challenged and experience hostility or intrusive questions.

It is often possible to provide a service in a different way to accommodate transgender people without undermining their privacy and dignity, or that of others, such as by providing a unisex alternative.

It can be proportionate to exclude, modify or limit trans people’s access altogether (such as where no unisex alternative is possible).



The Gender Recognition Act

A trans person can change the sex recorded on their birth certificate by obtaining a Gender Recognition Certificate.

This does not require that they have had surgery, or that they are perceived as the opposite sex by others.

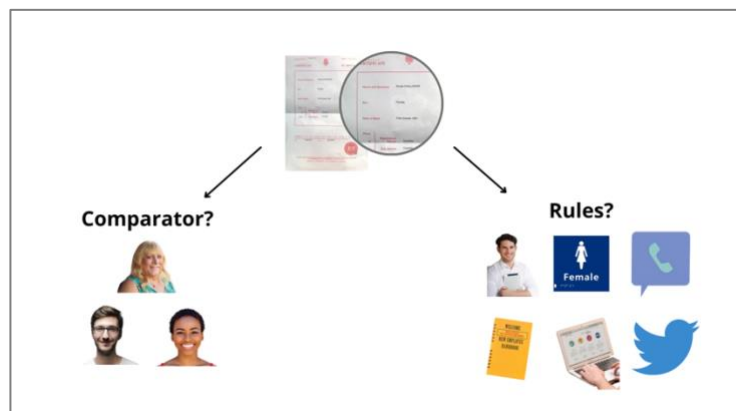
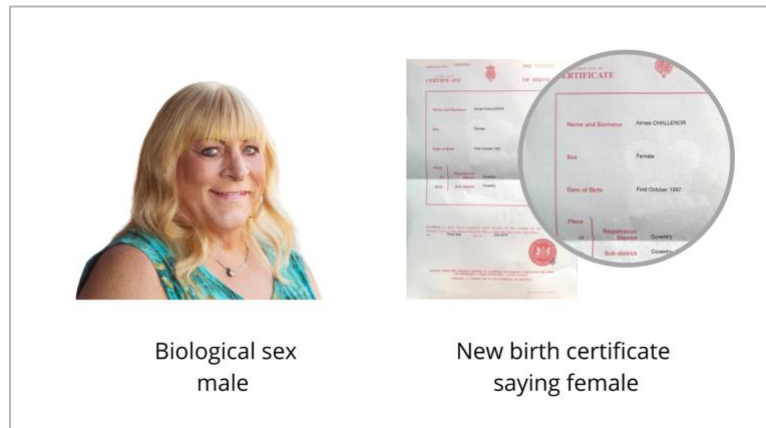
Only a small proportion of trans people have taken this step.

They are considered to be the opposite sex for some legal purposes such as pensions and marriage. Information about them that relates to their sex must generally be kept private by those who have access to it in an official capacity.

But people who meet them or know them are not compelled to believe or pretend they are really the opposite sex.

The interaction between the Gender Recognition Act and the Equality Act 2010 is unclear and makes the law hard to understand and implement.

This is causing conflict and confusion.



Make the Equality Act clear

Because the law is unclear, organisations are afraid to provide single-sex services and to protect people against harassment by communicating clear rules.

We are calling on the government to resolve this by using the power written into the GRA to modify the operation of the Equality Act 2010 to put it beyond doubt that the terms “sex”, “male”, “female”, “man” and “woman” in the Act mean biological sex and not “sex as modified by a Gender Recognition Certificate”.

This would mean that everyone is protected against discrimination based on their biological sex, while all trans people also have protection against discrimination because of being trans.

It would make it simpler for service providers and regulators to understand the law, and clearer for them to communicate rules, which protect everyone against harassment and unlawful discrimination.

How to sign the petition

This is an official petition hosted by Parliament. It is open to British citizens and UK residents: bit.ly/Equality_Petition

- It only takes one minute to sign.
- You have to give your name, email address, location and postcode.
- You will receive an automatically generated email, to which you must respond in order to confirm that you wish to sign.
- **Your name and email address will remain private and will not be published or shared.**

If we get 100,000 signatures the Petitions Committee will consider the question for a debate in Parliament.

To learn more about the campaign and to sign up for updates, visit: www.sex-matters.org/petition

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