

**ARE YOU SHOCKED BY WHAT
THE GOVERNMENT AND THE
PRESS ARE TRYING TO DO TO
TRANS PEOPLE IN THE UK?
DO YOU WANT TO MAKE YOUR
VOICE HEARD?
HERE'S A WAY.**

**READ THIS.
WRITE TO YOUR MP.
GO AND SEE YOUR MP.
ASK YOUR FRIENDS
TO DO IT TOO.**

Amidst an unrelenting campaign of smears and lies from the British press and some political figures, the Equality and Human Rights Commission is now encouraging the government to destroy the basic rights of trans people in the UK. It has provided advice that would effectively see trans people removed from British society.

If you are not trans, you have the power to speak as an ally who'd like to see trans people treated with decency and respect. Your voice will count for more with politicians than the voices of trans people now.

Some background

The Equalities and Human Rights Commission (EHRC) is a body about which you may know little, but if you are part of a minority group in Britain, it's a very important one. Created by Labour in 2007, it advises the government on matters of equality law and practice. Its job is to fight for fairness in society and against discrimination, especially for those who are disadvantaged or subject to prejudice. It is run by a Board of eleven Commissioners under a Chairperson.

Despite the EHRC being ostensibly an independent body, all twelve are appointed by the Minister for Women and Equalities, currently Kemi Badenoch (previously Liz Truss). The Commissioners and Chairperson are political appointees.

Since 2019, the EHRC has reversed its previously balanced and inclusive stance on how trans people in society should be treated. It has made several statements about this, to indicate its new thinking, and they chime with a growing intolerance and hostility towards trans rights within the UK government.

In April 2023, the EHRC did its most chilling thing yet. It provided the government with advice on how to change The Equality Act 2010, an important act that helps to protect trans people and others in their right to be part of British society. The EHRC promoted the idea of changing the definition of 'sex' in The Equality Act from 'legal sex' to 'biological sex'. Because 'biological sex' is actually quite complex, this term is generally taken to mean the sex, *M* or *F*, written on your original birth certificate.

Not for the first time, its advice was legally incoherent (many senior lawyers have left the EHRC in recent years over its descent into prejudice), but if the government follows it, the results will be catastrophic for Britain's trans people. It's not become law yet, but it could. Please help us fight – now – to ensure that it never does.

Why is this such a dangerous moment for trans people in the UK?

If this already reminds you of some of the many initiatives being taken against trans people by ultra right-wing Republicans in parts of the US, it should. The EHRC advice comes from a similar perspective as so called ‘bathroom bills’. It is strongly supported in the UK by people and groups who have highly prejudiced views against trans people and who have campaigned against their legal rights here for years. Many of these groups assert that trans people do not even exist.

If the advice becomes law – and the hostile position on trans rights of the Minister of Women and Equalities, Kemi Badenoch, is well known – trans people would effectively be driven out of British society. It would make it legal to *blanket ban* all trans people from any ‘single-sex space’ (like a toilet, changing room, or women’s hospital ward) without any consideration at all for the trans person and their individual circumstances. This would happen irrespective of how they appear, how long it has been since they went through their gender transition (which could be decades), how completely they have integrated into society, their jobs or family since then, what surgeries or medical interventions they may have had. Trans people who have been using toilets and changing rooms that reflect who they are and how they live, sometimes for decades without issue, would quite suddenly be unable to.

This is because all trans people would be effectively assumed to be some sort of potential *threat* and it would become legally possible just to remove them all.

The far-reaching consequences could even affect trans people who have been through the long process of getting a Gender Recognition Certificate (GRC) and who have even changed the sex marker on their birth certificate. Their sex recorded *at birth* would be all that mattered. The landmark Gender Recognition Act of 2004, which said that trans people with a GRC would ‘*for all purposes*’ be treated as their acquired sex and gender, and which allows trans people to be legally recognised that way, would be emptied of almost all meaning. What’s the point of being legally recognised as a woman or a man in society if you are banned from using facilities specifically designed for women or men in that society?

In practice what could this mean?

Trans women could, under this guidance, be banned as a group from women’s toilets. They would be either forced to ‘out’ themselves by using a gender neutral or disabled toilet (if there even is one), or to use the men’s toilets, where humiliation is guaranteed, and violence is likely. Beyond that, even if they did try to use the men’s toilets, bizarrely, another part of The Equality Act says that they could be kept out of there too¹. Where are they supposed to go?

¹ Equality Act 2010 sched. 3 para. 28).

It's the same in reverse for trans men. They would be forced into gender neutral or disabled facilities...or the women's toilets. Trans men – many of whom look physically identical to cisgender² men – could end up in women's toilets as these may be the only toilets they could legally use. And the women in there won't know whether they are cisgender or transgender. They just look like men. Bizarrely, it's a perfect cover for an actual cisgender male predator to get access.

And yes, the same absurd legal twist applies to trans men too. Even if they did try and enter the women's toilets, they could be legally kept out by that clause in The Equality Act (footnote 1).

If you are a cisgender woman reading this and you were told that you had to use men's toilets, would you do it? Trans women just won't. Likewise, the last thing trans men want is to use women's toilets. No trans people want to be endlessly told that they are in the wrong toilet, to be threatened, chased, or attacked. Trans men don't want to frighten women by turning up in a women's toilet. And it is obviously the wrong place for them anyway.

So trans people just won't go out. They won't go the restaurant or pub where this policy is in force, or to the shopping centre. They won't go to the cinema or the leisure centre (all this would apply to changing rooms too). They won't use train stations or airports where these rules are in place, nor libraries, nor council offices, nor sports arenas, nor theatres. They won't go to work where their employer has introduced this ban. They'll be pushed out of employment simply because it's not possible for them to use the right toilet.

And with the continuing media campaign against trans people likely to grow even more hysterical if this were to happen, they'd be even more vulnerable to abuse and violence in public.

Would all this become obligatory?

The government hasn't publicly responded to the EHRC's ideas and none of this is law yet, so we don't know. But one possible scenario is that the government could allow service providers (i.e., people who run pubs, restaurants, leisure centres, theatres, department stores etc) to legally ban all trans people but leave it up to them whether they do so. In this situation, we believe that it's likely many would go ahead with a ban. The British press, deep into its years long campaign, full of inaccuracies and moral panic aimed at trans people, would clamour for it. 'Gender Critical' groups, whose views endlessly appear in the British media, as they claim to represent all women, would lobby companies and employers to do it.

There's another final, sinister, twist. If the EHRC proposals became law, then cisgender women who 'look or dress a bit masculine' could expect to be challenged

² Cisgender, or 'cis', simply means not trans.

in the women's toilet or changing room. They could be questioned about their birth certificate (or even their genitals) and abused or expelled. In fact, because the small size of the trans community, it's cisgender women who would be numerically most affected by these changes. This has happened in both the US where bans like this have been discussed and even in this country, already.

This would demolish decades of rights

The Equality Act of 2010 was by no means the first piece of legislation that guaranteed trans people the right to use spaces appropriate for their lived gender, but it was a very important one. This small, vulnerable community simply wants to be able to continue to do what it has been doing for many years. There is no crime wave of trans people suddenly causing problems. The reality is that there is an exploding crime wave *against* them, as trans people are increasingly subject to hate crime³, endlessly monstered by aggressive, well-resourced, and hostile lobby groups and scapegoated by politicians. As a small group about whom many people feel they know little, they are the perfect target in a culture war that has overtaken British public life.

Trans people have been using facilities that match their lived gender for a very long time. And there is already provision in law for them to be refused entry to some single-sex spaces, based on the individual situation at the time and whether it's a proportional thing to do. These situations are rare, but the law is already clear and in place for when its needed, and it can be used.

Trans and cisgender women are natural allies. Both trans and cisgender women are subject to misogyny, prejudice and violence from men. Despite attempts to divide them, they should be on the same side in the fight for rights, equity, and full respect in society.

Will you please help?

³ <https://www.itv.com/news/2022-10-06/hate-crime-against-transgender-people-double-as-offences-reach-record-high>

WHAT NOW?

WRITE TO YOUR MP
(FIND THEIR DETAILS AT:
WWW.THEYWORKFORYOU.COM).

**MAKE AN APPONTMENT TO SEE YOUR MP
TO SHARE YOUR CONCERNS ABOUT THE
EHRC ADVICE AND HOW TRANS PEOPLE
ARE BEING TREATED.**

**ASK YOUR MP TO CONTACT THE MINISTER
FOR WOMEN AND EQUALITIES AND THE
GOVERNMENT EQUALITIES OFFICE TO
VOICE THEIR OPPOSITION TO THE EHRC
ADVICE.**

**ASK YOUR MP TO SPEAK UP FOR TRANS
PEOPLE.**

THE UK TRANS COMMUNITY NEEDS YOU.

Want to know more?

About the legislation and the guidance around it:

The Equality Act 2010

<https://www.legislation.gov.uk/ukpga/2010/15/contents>

Statutory Guidance* to The Equality Act (a legally enforceable guide on how to interpret The Equality Act, produced by the EHRC in 2010)

https://www.equalityhumanrights.com/sites/default/files/servicescode_0.pdf

The Gender Recognition Act 2004

<https://www.legislation.gov.uk/ukpga/2004/7/contents>

Further (non-statutory*) guidance produced by the EHRC in April 2022. Prompted by the government, this ostensibly claimed to offer clarity on when trans people could or could not be excluded from single-sex spaces. In fact, it contained only examples of ways of excluding them. It caused outrage amongst LGBTQ+ groups.

<https://www.equalityhumanrights.com/sites/default/files/guidance-separate-and-single-sex-service-providers-equality-act-sex-and-gender-reassignment-exceptions.pdf>

A paper by barrister and transgender law expert Robin Moira White explaining the legal flaws in this non-statutory guidance.

https://www.translegalproject.org/files/ugd/3466eb_9f636514c00840e58f37eb4f61dff4b3.pdf

Letter from The Minister for Women and Equalities to the EHRC Chair asking for clarification on the definition of 'sex' in The Equality Act 2010 (February 21, 2023) The letter cites two cases brought by trans-hostile activist groups and a petition heavily promoted by anti-trans groups.

<https://www.equalityhumanrights.com/en/file/43051/download>

Reply from the Chair of the EHRC to The Minister for Women and Equalities re the above exploring a potential change of the definition of sex to 'biological' sex (April 3, 2023). This is the letter that has raised serious alarm. In our view it contains a series of bizarre and highly dangerous conclusions, misunderstanding the law, the EHRC's own Statutory Guidance around it and its own longstanding position on it. If these conclusions were translated into law, trans people would, effectively, be removed from society.

<https://www.equalityhumanrights.com/en/file/43056/download>

* *Statutory* guidance around a law has legal teeth – a court must take it into account when deciding on a case. While non-statutory guidance does not have the same status as statutory guidance, courts and regulators may look to it when they consider whether an organisation is meeting its obligations and duties.

About the EHRC

<https://www.equalityhumanrights.com/en>

Information about the EHRC Commissioners (all serving Commissioners have been appointed by Conservative governments since 2016), plus press commentary.

<https://www.equalityhumanrights.com/en/who-we-are/our-commissioners-committees-and-governance>

<https://www.theguardian.com/society/2020/nov/30/ehrc-board-member-under-scrutiny-over-social-media-use>

There are three barristers amongst the EHRC Commissioners. As legal professionals they can be expected to be highly influential in the formulation and presentation of legal advice from the EHRC. Notable cases they have been involved in around trans or related issues are highlighted.

Alasdair Henderson (since April 2018, Joint Chair since January 2023) is a barrister at 1 Crown Office Row.

- Acted for Keira Bell in a much-publicised case against the Tavistock and Portman NHS Foundation Trust challenging the legality of puberty blocker treatment for children. Having won the case initially, it was comprehensively overturned on appeal.
- [Encouraged the EHRC](#) to become involved in an Employment Tribunal case involving ‘Gender Critic’ Maya Forstater (co-founder of prominent anti-trans group Sex Matters) in support of her position and “as part of the overall strategy we [EHRC] decided on” (as per leaked email September 11, 2020). The case resulted in ‘Gender Critical’ being included within the Equality Act’s list of ‘Protected Characteristics’.

We have found no record of Henderson ever taking a case in support of trans people’s rights or speaking for them.

Akua Reindorf KC (since January 2022) is a barrister at Cloisters Chambers where she is listed as having specialisms in discrimination and equality, employment, and human rights.

- The ‘Reindorf Report’ for University of Essex into alleged no-platforming of two external speakers who were accused of transphobia. Widely lauded by anti-trans voices in the media but legally incoherent, it levelled major accusations at Stonewall but subsequently resulted in only very minimal changes of phraseology in Essex University’s transgender and non-binary inclusion policy. See the Trans Legal Project response: <https://www.translegalproject.org/reindorf-review>
- Representing ‘Gender Critical’, trans-hostile ex psychotherapy student James Esses in his ongoing litigation against his training college, and an individual course leader (ongoing).
- Representing the LGB Alliance (an organisation with a highly anti-trans stance and a policy of working to sever LGB community contact with the trans community) in a test case challenging their charitable status.
- Successfully represented a senior politician accused of transphobia on Twitter.

We have found no record of Reindorf ever taking a case in support of trans people’s rights or speaking for them.

Joanne Cash, who joined the EHRC in January 2023, has practiced as a barrister but we do not believe that she is still doing so. She is an ex Conservative Parliamentary candidate and a Board Adviser to Women2Win, an organisation encouraging Conservative women to stand for Parliament.

The LGBTQ+ community and the EHRC

[Consortium](#), representing a grouping of several hundred LGBTQ+ organisations wrote to the EHRC protesting its hostile stance towards trans people in 2022.

<https://www.consortium.lgbt/ehrc-open-letter/>

Stonewall and several other LGBTQ+ organisations plus The Good Law Project appealed to the UN organisation responsible for accrediting national human rights organisations (GANHRI), asking for the EHRC's 'A' grade status be withdrawn. This was prompted by the EHRC's new policy of opposition to Gender Self-ID (after years of supporting it) and its policy reversal to suddenly oppose a ban on trans conversion therapy.

<https://www.stonewall.org.uk/about-us/news/major-lgbtq-organisations-spark-international-review-ehrc>