

The draft code of practice for services, public functions and associations

Parliamentary briefing, June 2026

The Equality and Human Rights Commission's draft *Code of practice for services, public functions and associations* was laid before Parliament by the Minister for Women and Equalities on 21st May 2026. It is being agreed under the negative procedure. It provides detailed, practical guidance on how to interpret the Equality Act 2010 for associations, service providers and those undertaking public functions.

It corrects the error in the previous version of the code, published in 2011, which told service providers to allow people who identify as transgender to use services provided for the opposite sex and said those people could only be excluded from opposite-sex services on a “case-by-case” basis. This ignored other people's rights, was unworkable for service providers and, as the Supreme Court made clear in the *For Women Scotland* judgment in 2025, was wrong in law. The new code of practice has removed that error.

The new guidance says lawful single-sex services are based on biological sex. This includes both specialist services such as rape crisis centres and women's

refuges, and everyday services such as toilets and changing rooms. Importantly, the EHRC explicitly states that if a women-only service admits “trans women” (trans-identifying men), it will cease to qualify legally as a single-sex service under the Equality Act. That is a major clarification. For years, many organisations assumed they could remain “women-only” while also operating on the basis of gender identity.

Competitive sport. The guidance makes clear that it is lawful to organise single-sex or separate-sex events where an average person of one sex would be at a disadvantage compared with the other due to physical strength, stamina or physique. Sex-based rules should be applied on the basis of **biological sex**. Trans people can be excluded or treated differently from members of their own sex if necessary for **fair competition or safety** (for example, “trans men” – trans-identifying women – who have taken testosterone). Organisers should consider alternative arrangements, such as mixed-sex categories, to enable trans people to participate.

Considering women’s needs. The guidance recognises that women may reasonably object to the presence of males in contexts involving undressing, trauma recovery or intimate services.

13.107 ...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.

It says that if a service provider **provides a service only on a mixed-sex basis**, in situations where:

- women are likely to be in a state of undress
- there will be limited ability to leave or to choose an alternative service
- the service is provided as a result of or connected with male violence against women
- the physical differences between men and women are relevant to the experience of the service and put women at a particular disadvantage

– then this **could be direct or indirect sex discrimination against women who use the service or lead to unlawful harassment against them.**

Considering trans people's needs. It makes clear that it would be direct gender-reassignment discrimination to restrict access by trans people to services provided to people **of their birth sex or people of both sexes.**

However, sometimes this may be lawful. For universally necessary services such as toilets, it is **very unlikely to be proportionate** to leave a trans person with no service they are allowed to use. Service providers are

encouraged to consider alternative arrangements, mixed services or additional provision where possible. They are also expected to treat people sensitively and avoid unnecessary humiliation.

The code says associations that are only for women or only for men are lawful, based on biological sex. It says that it may also be lawful to form associations of more than one protected characteristic (such as an association for “women and transwomen”). However, this does not mean that associations and charities that were set up for women can simply declare themselves to be “trans inclusive”.

Asking about sex. There is a new section concerning asking service users about their sex. This section is overcomplicated and contradictory. Although it says service providers can ask about and record people’s sex, it suggests that this is an extraordinarily difficult thing to do, rather than a simple matter of observing or recording ordinary personal data in a routine way. It claims that information about sex is likely to constitute “special-category data” for the purposes of data protection and GDPR.

This is wrong in law. Article 9(1) of UK GDPR defines special-category data as “personal data revealing racial or ethnic origin, political opinions, religious or

philosophical beliefs, or trade union membership, and the it processing of genetic data, biometric data for the purpose of uniquely identifying a natural person, data concerning health or data concerning a natural person's sex life or sexual orientation shall be prohibited." **It does not include sex.**

Responses to the code of practice

The code of practice has been welcomed by many organisations. For example, **Women's Aid**, a charity that helps victims of domestic violence, [said](#): "We hope, once formally adopted, this EHRC guidance will give our member services the clarity they need to continue supporting survivors of domestic and sexual abuse in a legally compliant way." However, other organisations that take the position that "trans women are women" in contradiction to the law, such as the trade union **Unison**, say they are opposing it.

[Claire Coutinho](#), **Shadow Minister for Equalities**, has raised concerns that the government appears to have put pressure on the EHRC to make legally dubious changes to parts of the new code of practice. [Ed Davey](#), the **leader of the Liberal Democrats**, is calling for the guidance to be withdrawn and for post-legislative scrutiny of the Equality Act and the Gender Recognition Act to be carried out instead.

Sex Matters welcomes the code overall. But it is dismayed by the new section on “asking about sex”, which includes legally incorrect advice presented as being a requirement of the data protection laws, which are outside of the EHRC’s mandate.

This advice undermines the rest of the guidance, recreates the problem which the guidance sets out to solve and harms women’s rights. We [have written](#) to the Minister for Women and Equalities saying **this section of the guidance should be withdrawn.**

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