General Questions

1. *Do you want to provide feedback as part of this consultation?*
    a. Yes
    b. No

2. *Are you responding as an individual (service user), legal professional or on behalf of an organisation?*
    a. An individual
    b. A legal professional
    c. An organisation

3. *Which of the following characteristics protected under the Equality Act 2010 are relevant to your response?*
    a. Age
    b. Disability
    c. Gender reassignment
    d. Marriage and civil partnership
    e. Pregnancy and maternity
    f. Race
    g. Religion or belief
    h. Sex
    i. Sexual orientation
    j. None in particular

Specific Questions

This part of the survey asks questions about specific changes to the Code of Practice following the UK Supreme Court judgment on 16 April 2025 in For Women Scotland v The Scottish Ministers (For Women Scotland). The judgment found that the definition of sex in the Equality Act 2010 means biological sex.

These changes are all outlined in the consultation pages.

You do not need to provide feedback on all changes.

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.

4. *Would you like to provide feedback on the updated legal definition of sex throughout the code of practice?*
    a. Yes
    b. No
5. *To what extent to you agree or disagree with the following statement: The explanation of the updated legal definition of sex is clear*
    a. Strongly Agree
    b. Agree
    c. Disagree
    d. Strongly Disagree
    e. Do not know
6. *Is there anything you would change to make the explanation [in] this update clearer?*
    a. The definition used is clear, as are the terms used to refer to trans individuals.

Gender Recognition Certificates

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.

7. *Would you like to provide feedback on the new content on Gender Recognition Certificates?*
    a. Yes
    b. No
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:*
    a. Strongly agree
    b. Agree
    c. Disagree
    d. Strongly Disagree
    e. Do not know
9. *Is there anything you would change to make the explanation of the legal rights and responsibilities in this update clearer?*
    a. [Free text response]

Asking about sex at birth

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.

10. *Would you like to provide feedback on the new content on asking about sex at birth?*
    a. Yes
    b. No
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.*
    a. Strongly agree
    b. Agree
    c. Disagree
    d. Strongly Disagree
    e. Do not know
12. *Is there anything you would change to make the explanation of the legal rights and responsibilities in this update clearer?*
    a. Paragraph 2.2.6 states that "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". How will "objectively falsely" be assessed? An example is needed to give guidance on the circumstances in which the service provider's rule would be lawful, and/or the circumstances in which such an exclusion may amount to discrimination related to sex or gender reassignment (or indirect discrimination, and what would be needed for objective justification).
    b. The example given at 2.2.7 provides a single example of when asking about birth sex could be lawful, but no guidance is provided about when it might be unlawful. Organisations will be concerned to understand the circumstances in which asking such a question would be unlawful, and on what basis (direct discrimination? Harassment potentially in relation to sex (e.g. perception) as well as gender reassignment?). Examples of unlawful discrimination should be included.
    c. The example at 2.2.7 uses the example of a receptionist who "reasonably" thinks that a trans woman is biologically male.. In many day-to-day situations of accessing services/facilities (e.g. toilets in restaurants and shops) it will not be necessary or proportionate to ask about any service-user's birth sex – but it is an issue which is provoking strong public sentiment on both sides of the debate. Organisations need guidance on such situations, as well as guidance on how to assess "reasonableness" of the question, bearing in mind the statement at 2.2.1 that the question may be "*distressing*".

d. It would be useful if the guidance could include further examples as to when asking for information regarding an individual's birth gender may constitute harassment, and when it would not. For instance, it is possible that the progressive requests for information outlined in paragraph 2.2.8 could lead to claims of harassment on the basis of sex/gender reassignment.

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.

13. *Would you like to provide feedback on the new content on defining sex at birth?*
    a. Yes
    b. No
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.*
    a. Strongly agree
    b. Agree
    c. Disagree
    d. Strongly Disagree
    e. Do not know
15. *Is there anything you would change to make the explanation of the legal rights and responsibilities in this update clearer?*
    a. [Free text response]

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.

16. *Would you like to provide feedback on the updated description of the protected characteristic of sexual orientation?*
    a. Yes
    b. No
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.*
    a. Strongly agree
    b. Agree
    c. Disagree
    d. Strongly Disagree
    e. Do not know
18. *Is there anything you would change to make the explanation of the legal rights and responsibilities in this update clearer?*
    a. [Free text response]

New example on sex discrimination by perception

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.

19. *Would you like to provide feedback on the updated description of the new example on sex discrimination by perception?*
    a. Yes
    b. No
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 are clear?*
    a. Strongly agree
    b. Agree
    c. Disagree
    d. Strongly Disagree
    e. Do not know
21. *Is there anything you would change to make the explanation of the legal rights and responsibilities in this update clearer?*
    a. With the reference to 'associative discrimination', the draft could make it clearer that this is a mistaken label, to avoid confusion with discrimination because of a protected characteristic of a person with whom the complainant associates or is associated with.

Removed reference to superseded caselaw

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

22. *Would you like to provide feedback on Change 4.2?*
    a. Yes
    b. No
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.*
    a. Strongly agree
    b. Agree
    c. Disagree
    d. Strongly Disagree
    e. Do not know
24. *Is there anything you would change to make the explanation of the legal rights and responsibilities in this update clearer?*
    a. [Free text response]

New Sex Discrimination example

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.

25. *Would you like to provide feedback on the new example on sex discrimination – same disadvantage?*
    a. Yes
    b. No
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.*
    a. Strongly agree
    b. Agree
    c. Disagree
    d. Strongly Disagree
    e. Do not know
27. *Is there anything you would change to make the explanation of the legal rights and responsibilities in this update clearer?*
    a. [Free text response]

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.

28. *Would you like to provide feedback on the updated example on harassment related to sex?*
    a. Yes
    b. No
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 new example on harassment related to sex is clear.*
    a. Strongly agree
    b. Agree
    c. Disagree
    d. Strongly Disagree
    e. Do not know
30. *Is there anything you would change to make the explanation of the legal rights and responsibilities in this update clearer?*
    a. The example provides a clear guide to a complex area of law.

New example on women only associations

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.

31. *Would you like to provide feedback on the new example on women-only associations?*
    a. Yes
    b. No
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.*
    a. Strongly agree
    b. Agree
    c. Disagree
    d. Strongly Disagree
    e. Do not know
33. Is there anything you would change to make the explanation of the legal rights and responsibilities in this update clearer?
    a. We are aware of comments made by Baroness Falkner in evidence to the Women and Equalities Committee to the effect that a women-only association could not admit trans women but that where there is (a) a cis-gender women-only association and (b) a trans-women only association, the two associations could do things together. Many members of the public and member organisations would question why that should be different from a single association that wished to admit both cis-women and trans-women to do activities together. As these comments have been made publicly, they risk becoming perceived to be the EHRC's position and/or guidance and should be addressed by the Code of Practice. The Code should also address whether and how any ECHR rights might apply (in particular Article 11, freedom of assembly and association).

Competitive Sport

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.

34. *Would you like to provide feedback on the updated example on competitive sport?*
    a. Yes
    b. No
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 new example on harassment related to competitive sport is clear.*
    a. Strongly agree
    b. Agree
    c. Disagree
    d. Strongly Disagree
    e. Do not know
36. *Is there anything you would change to make the explanation of the legal rights and responsibilities in this update clearer?*
    a. Free text response]

Single-sex services for men and women

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.

37. *Would you like to provide feedback on the updated example on separate and single-sex services for men and women?*
    a. Yes
    b. No
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.*
    a. Strongly agree
    b. Agree
    c. Disagree
    d. Strongly Disagree
    e. Do not know
39. *Is there anything you would change to make the explanation of the legal rights and responsibilities in this update clearer?*
    a. In light of the heated public debate on separate and single sex services, it would be helpful if the new Code began by clarifying that there is no legal and automatic right to a separate or single sex service. Rather, the law permits service providers to offer services in this way if certain conditions are met.
    b. At 13.2.3 it could be made clearer for the benefit of a lay-person that both of conditions (1) (joint service less effective) and (2) (proportionate means of achieving legitimate aim) need to be met – e.g. revise wording to say "It is lawful to provide separate-sex services ***if both of the following conditions are met***:"
    c. It would be helpful to make clear that the specific exceptions referred to only relate to sex discrimination, and do not provide exceptions for the purpose of discrimination relating to other protected characteristics – and therefore acting within the scope of these exceptions does not necessarily mean that other discrimination will not arise. It may be helpful to sign-post / cross-reference the later sections of the Code relating to gender reassignment.
    d. As a general point, given that the EHRC is aware that much of the recent public debate has focussed on access to single-sex toilet and similar facilities in everyday life, there is insufficient guidance on this issue.

Justification for separate and single-sex services

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.

40. *Would you like to provide feedback on the new section on justification for separate and single-sex services?*
    a. Yes
    b. No
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 is clear.*
    a. Strongly agree
    b. Agree
    c. Disagree
    d. Strongly Disagree
    e. Do not know
42. *Is there anything you would change to make the explanation of the legal rights and responsibilities in this update clearer?*
    a. The guidance and examples do not adequately address the potential difficulties in the provision of suitable separate-sex space for men and women, and suitable mixed-sex space that may be suitable for trans people. In particular, there is insufficient guidance at 13.3.7 to 13.3.10 on how organisations should approach the proportionality test in weighing up the potential disadvantages to trans people.
    b. 13.3.10 focuses on a 'holistic approach' but gives no guidance as to what might be proportionate in the face of practical constraints, such as space in particular premises, cost/time/disruption of making any changes and the overlay of Building Regulations requirements/Health & Safety requirements as to numbers of facilities.
    c. It is insufficient to provide the examples at 13.3.11 and 13.3.12 of the service providers deciding to provide additional mixed-sex toilets in individual lockable rooms/re-purposing the accessible toilet, without addressing the position if that is not an option. 13.3.14 refers to the situation in which alternative arrangements are not reasonably possible – but only gives an example relating to retaining mixed-sex provision, not single sex provision, where there is no third space available. That is clearly an area on which guidance is required given that example 13.3.11 makes clear that this will disadvantage trans individuals. The two examples given (renovation of entire shopping centre and launch of small advice centre) are at the extreme ends of a spectrum and do not address the far more common situations faced by medium to large-sized

organisations that are not starting from scratch and were not already planning on renovating their estate.

d. The guidance also needs to address the impact on disabled people if the only mixed-sex provision is the accessible toilet. The example in 13.3.12 refers to a single accessible toilet in a "small advice centre" (where user numbers are necessarily likely to be low). However, it is generally the case that there is only a single accessible toilet in most premises where there are hundreds of possible users. At what point does the number of potential service users mean that this is no longer a proportionate response or that there are no longer adequate or sufficient facilities for disabled people?

e. Paragraph 13.3.19 outlines that service providers that admit trans individuals to services intended for the opposite biological sex can no longer rely on the separate-sex/single-sex service protections of the Equality Act 2010. The draft then goes on to state that deciding to provide a service on a mixed sex basis "could" discriminate against women or lead to unlawful harassment, which is "most likely" in contexts "referred to in paragraph 13.3.4". This is unnecessarily opaque. The Code should be clear that just because a service provider chooses not to rely upon the separate or single sex exemptions does not mean that they are acting unlawfully. More examples should be given of when a mixed sex service risks resulting in harassment/discrimination against women and whether/how those risks could be mitigated or addressed in a range of different building set-ups. The draft should also address the option of positive action (see below).

f. In situations where service providers opt to provide separate sex services, there is no guidance on whether service providers will be required to enforce this segregation in practice and, if so, how they should do so. The example at 2.2.7 is unlikely to be applicable in many day-to-day contexts, such as toilets and changing rooms. Clearer guidance should be given on how providers can mitigate the risk of harassment claims and avoid inadvertently outing trans service users. In particular, the draft should explicitly address the question of whether service providers can rely on signage alone.

g. Although the current consultation relates to service provision, organisations are also in need of urgent guidance in relation to employment matters relating to single-sex spaces and trans employees – in the context of both the Services Code and the Employment Code. In many organisations, the provision of sanitary or changing facilities is managed by the landlord of the premises, rather than organisations within the building. Many employers will also have some facilities which are open to the public as well as employees. Therefore there will be many situations in which facilities for employees are governed by the service provision rules by virtue of section 31(5) or Sch 9, para 19. It is unclear what this means for employee rights vis-à-vis their employer. An inability for a trans employee to access suitable toilet facilities will have a serious and continuing impact on their ability to participate in the workplace (compared to a service user in relation to toilet facilities in a shop, for example). The draft Code does not engage with how employers can reconcile their obligation not to discriminate against their employees on grounds of gender re-assignment with their rights and responsibilities (and those of their landlords) as service providers.

h. See further below our response to section 13.5 on gender reassignment

Policies and exceptions for separate and single-sex services

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.

43. *Would you like to provide feedback on the new content on policies and exceptions for separate and single-sex services?*
    a. Yes
    b. No
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*.
    a. Strongly agree
    b. Agree
    c. Disagree
    d. Strongly Disagree
    e. Do not know
45. *Is there anything you would change to make the explanation of the legal rights and responsibilities in this update clearer?*
    a. It is confusing to the reader that this section is separate from 13.3 on justification. It also appears to be contradictory in some respects.
    b. Para 13.4.2 suggests that it may sometimes be permissible to make an exception to allow people of the opposite sex to use a separate of single-sex service if doing so adds a necessarily flexibility without undermining the aim of the service. However, this seems to contradict paragraphs 13.3.19 and 13.5.3 which state the service would no-longer be single-sex – further explanation is needed on this, the example at 13.4.3 is insufficient. In particular, it is unclear why a limited exception to allow trans people to access facilities corresponding to their gender identity would not be capable of amounting to a permissible exception for these purposes.
    c. Where exceptions to policies might be needed, it is likely that many service providers will need to set those exceptions in advance within the overall policy, to avoid the need for ad hoc decisions. More guidance will therefore be needed about how service providers should consider exceptions.
    d. While unlikely to be uncontentious on its own, the narrow example at 13.4.3 relating to the swimming pool changing rooms raises some questions (similar issues are likely to be relevant in the proportionality consideration in relation to Sch 3, para 28 – see section 13.5).

i. Does the example in question give rise to other potential discrimination issues – e.g. age? If a single-sex women's service also needs to be accessible to male children in order to allow women meaningful access, how should service providers assess a 'cut-off' age given that the definition of "man" in the Equality Act is a "male of any age"?

ii. Could the Code provide more guidance on the nature of the service and the potential impact of allowing the exception? For example, in the example in 13.4.3, there may be a difference between an entirely communal changing facility, and one where there are still cubicles.

iii. The example at 13.4.3 could still give rise to privacy and dignity concerns (even if 'safety' is not in issue). On what basis should an assessment be made of whether allowing the exception would potentially threaten women's privacy and dignity? What evidence should a service provider consider?

iv. Whose perception of the "threat" is relevant? An individual subjective perception of the service user, or an objectively reasonable perception?

Separate or single sex services in relation to gender reassignment

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.

46. *Would you like to provide feedback on the updated section on separate or single-sex services in relation to gender reassignment?*
    a. Yes
    b. No
47. *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.*
    a. Strongly agree
    b. Agree
    c. Disagree
    d. Strongly Disagree
    e. Do not know
48. *Is there anything you would change to make the explanation of the legal rights and responsibilities in this update clearer?*
    a. Para 13.5.2 states that impact on trans people should be considered in deciding whether it is justified to have a separate or single-sex service in the first place. As set out above, there is insufficient guidance on this in relation to day-to-day services such as access to toilet facilities in shops/restaurants etc. The narrow examples at 13.5.9 relating to counselling services and 13.5.11 relating to Obs & Gynae services do not provide clarity in relation to other day-to-day services.
    b. At 13.5.3, the draft states that if a service provider decides to have separate or single-sex services and allows trans people to use the service intended for the opposite biological sex, it will no longer be a separate or single-sex service, and is also "very likely" to be discrimination against "others" – it is assumed the reference to "others" is intended to mean "women" as per 13.3.19. If this is the case, the guidance should say so, and should set out on what basis this would amount to discrimination or harassment.
    c. At 13.5.4, it would be helpful if the new Code started by clarifying that there is no legal and automatic right to exclude a trans person from the separate or single-sex service aligned to their birth sex. Rather, the law permits service providers to do so if certain conditions are met. Given the significant impact on trans people's access to any such services if the Sch 3 paragraph 28 exemption is relied upon to exclude trans people

from all provision of a service, starting the guidance with "*it will not be unlawful discrimination*" does not provide sufficient direction to service providers on the likely risks of direct discrimination. In the example at 13.5.6, guidance should be provided as to whether the "*alarm or distress*" will be based on the individual subjective perception of the service user, or an objectively reasonable perception.

d. The guidance/examples at 13.4.5 and 13.4.6 of maintaining a single-sex service but with an additional mixed-sex service will not always be available to service providers. The guidance needs to state very clearly what action service providers should take where no "third space" option is available.

e. 13.5.7 states that in the case of services that are necessary for everyone, such as toilets, it is unlikely to be proportionate to put a trans person in a position where there is no service they are "allowed" to use. However, an arguably more significant issue – particularly in relation to toilet provision – is that a trans person is not permitted to use toilets consistent with their gender identity, but is permitted to use toilets for their birth sex, but to do so would have a sizeable detrimental impact on their safety (particularly for trans women), dignity and privacy – potentially "outing" them. The example at 13.3.11 recognises that they are disadvantaged by not being able "access a toilet catered towards their acquired gender".

f. There is also no guidance for service providers dealing with the situation in which a trans individual does use a single sex facility such as a toilet or changing room that aligns with their biological gender, and other facility users complain because the trans individual outwardly appears to be from the opposite sex. The earlier example at 13.2.18 states that "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", but does not address the issue of a woman who objects to the presence of a trans individual she thinks is a man, but is actually biologically a woman. Commentary and examples of navigating these issues, and the legal risks involved, would be useful.

g. The example from the current Code in relation to retail fitting rooms has been removed without a similar example, and without explanation. Specific guidance on this is required on this high-profile area that has attracted media scrutiny, and it is often the service-providers' vulnerable, junior and low-paid members of staff who have to manage it. Given the considerations included in other examples (e.g. the fact that there are lockable doors, and the absence of complaints about inappropriate conduct in the fitting rooms) and other considerations (e.g. users do not fully undress, the fitting room area is manged by staff, the ease with which clothes can be tried at home and returned (including by post) if people do not feel comfortable) it's unclear why this example has been removed.

h. What consideration has been given to potential interference with Article 8 ECHR privacy rights in this context? We are aware of evidence given by Baroness Falkner to the Women and Equalities Committee to the event that Art 8 would not apply, but that would be inconsistent with the draft Code's position in para 2.2.2 in relation to seeking information on birth sex.

i. The Code should engage with the possibility of service providers being able to take positive action for trans individuals under section 158. The Code should explain whether positive action might enable a service provider to (for example) allow trans women to access a service which would otherwise be reserved to biological women as a proportionate means of meeting the different needs of trans people.

Communal accommodation

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.

49. *Would you like to provide feedback on the updated content on communal accommodation?*
    a. Yes
    b. No
50. *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.*
    a. Strongly agree
    b. Agree
    c. Disagree
    d. Strongly Disagree
    e. Do not know
51. *Is there anything you would change to make the explanation of the legal rights and responsibilities in this update clearer?*
    a. [Free text response]

Any other feedback

52. Do you have any other feedback about the content of the Code of Practice that you have not already mentioned? Include references to specific changes where relevant.

Whilst we welcome EHRC's review and consideration of the Services, Public Functions and Associations code of practice, the Code of Practice on Employment remains out of date following the Supreme Court's decision in For Women Scotland and needs urgent review. The uncertainty created by the Supreme Court's decision and the lack of clear guidance is causing serious concern for employers, and in some cases risking harm to employees' mental health and wellbeing. Employers may have limited ability to make physical changes to their premises to create suitable unisex toilets or changing rooms, and they cannot benefit from the defences to gender reassignment discrimination claims which are available to service providers when restricting access to separate or single sex spaces. Alongside guidance on providing suitable toilet and changing facilities, practical guidance on employee resource groups and recording gender identity for various HR purposes is needed.

Lewis Silkin LLP