



LUSU Response to EHRC Consultation 2025

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

Gender Reassignment, Sex, Sexual Orientation

Updated legal definition of sex (throughout the Code)

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

We acknowledge the accuracy and clarity of the definition and feel it is in-line with the Supreme Court ruling.

We are nevertheless unclear about how this definition interacts with Gender Recognition Certificates and whether a GRC still legally changes a person's sex. We are also concerned about the status of intersex people within the binary definition of "biological sex" as described at birth.

Will your organisation make any changes as a result of this update to the code of practice? For example, any changes to your policies, procedures or practices.

Yes

What changes might your organisation make as a result of this update to the code of practice?

Changes to our services will be determined once finalised guidance has been published within the Code by the EHRC.

2.1: New content on Gender Recognition Certificates

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

What definition of "biological sex" is being used and how is it assessed? We would like the Code to use "lived" or "true" in place of "acquired" gender as a more accurate and suitable terminology for those with a GRC.

We feel it is unclear if trans people will retain full protections, as per the Equality Act, under their reassigned gender. We would like to know how the changed provisions of the Code will work in practice for trans people.

**Will your organisation make any changes as a result of this update to the code of practice?
For example, any changes to your policies, procedures or practices.**

No

What changes might your organisation make as a result of this update to the code of practice?

n/a

2.2: New content on asking about sex at birth

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

We have serious concerns about the ability of organisations to comply with this section of the Code whilst retaining peoples' right to privacy and dignity. When a student or member of the public attends a student group-ran event or activity, at what point should the attendees' sex be checked? Should such enquiries be made by student volunteers, given the requirement to ask "in a sensitive way which does not cause discrimination or harassment"? If this should be undertaken by paid professionals, what resources will the EHRC provide to support us to oversee the activities of our 200+ student-led clubs and societies?

On what ground should our student volunteers question a person's declared sex or sex recorded at birth? What constitutes "reasonable" profiling? Who determines whether a person's self-declared sex is "objectively false"? Should profiling take place in a private place, away from other people who may disclose this sensitive information to others? If so, how is it proposed that this take place during public or outdoor activities? For instance, at a women-only activity run by our Mountaineering Club at which attendees meet-up at a bus stop in the Lake District.

Is the expectation that people carry proof of their birth sex with them at all times? If so, how will this work when a birth certificate can be changed using a GRC? Approximately one third of our members are international students; are organisations expected to be able to read and interpret birth certificates from other countries? If so, what resources will be provided by the EHRC to train staff and volunteers?

The Code gives organisations permission to enquire if a person has a GRC. We do not feel such a request would comply with paragraph 202 of the Supreme Court ruling which states: "possessing a GRC is confidential to the person who has it and subject to stringent restrictions on disclosure" and that "the duty bearer cannot ask whether it has been obtained".

**Will your organisation make any changes as a result of this update to the code of practice?
For example, any changes to your policies, procedures or practices.**

Yes

What changes might your organisation make as a result of this update to the code of practice?

Changes to our services will be determined once finalised guidance has been published within the Code by the EHRC.

2.3: New content on defining sex at birth

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

We feel clarity is needed on the right of trans women who are able to breastfeed to access support services and protections as per the Equality Act.

We would also welcome the inclusion of trans men under the protection against pregnancy and maternity discrimination as they are not mentioned in this section.

Will your organisation make any changes as a result of this update to the code of practice? For example, any changes to your policies, procedures or practices.

No

What changes might your organisation make as a result of this update to the code of practice?

n/a

2.4: Updated description of the protected characteristic of sexual orientation

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

We are uncertain how this section links to the original Supreme Court ruling and are concerned that this could constitute an attempt to erode solidarity between LGBTQ+ people.

Concerns could also be raised for people whose sexual identity has now been legally redefined. For example, a couple who both consider themselves lesbians, with one partner being a trans woman. The guidance now classifies this as a heterosexual relationship, despite the fact that they consider themselves to be, and outwardly appear, homosexual. Clarification on potential legal cases would be welcome. For example, if this couple were victim of homophobic harassment on the basis that they are lesbian, and questions are raised as to what legal protections they are entitled to.

Will your organisation make any changes as a result of this update to the code of practice? For example, any changes to your policies, procedures or practices.

Yes

What changes might your organisation make as a result of this update to the code of practice?

Changes to our services will be determined once finalised guidance has been published within the Code by the EHRC.

4.1: New example on sex discrimination by perception

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

We appreciate the intention in the proposed changes but are somewhat concerned that ambiguity in this section of the Code could mean that trans people are left more vulnerable to sex discrimination. Trans people, under the new changes, appear to have no legal protection in their lived (acquired) gender. The stipulations on discrimination by perception are predicated on a trans person's ability to "pass" as a cis gendered person in their lived gender.

Will your organisation make any changes as a result of this update to the code of practice? For example, any changes to your policies, procedures or practices.

Yes

What changes might your organisation make as a result of this update to the code of practice?

Changes to our services will be determined once finalised guidance has been published within the Code by the EHRC.

4.2: Removed reference to superseded case law

No comments.

5.1: New example on sex discrimination - same disadvantage

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

We appreciate the intention in the proposed changes. We need further clarity on how trans people's right to protection from indirect discrimination corresponds to other situations in which they are not protected, or recognised, on the basis of their lived gender.

Will your organisation make any changes as a result of this update to the code of practice? For example, any changes to your policies, procedures or practices.

Yes

What changes might your organisation make as a result of this update to the code of practice?

Changes to our services will be determined once finalised guidance has been published within the Code by the EHRC.

8.1 Updated example on harassment related to sex

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

We appreciate the intention in the proposed changes. We need further clarity on how trans people's right to protection from indirect discrimination corresponds to other situations in which they are not protected, or recognised, on the basis of their lived gender.

Will your organisation make any changes as a result of this update to the code of practice? For example, any changes to your policies, procedures or practices.

Yes

What changes might your organisation make as a result of this update to the code of practice?

Changes to our services will be determined once finalised guidance has been published within the Code by the EHRC.

12.1 New example on women-only associations

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

As an organisation in-which 200+ student-led groups organise as mix, trans inclusive, or single-sex services we would like to greater clarity on how services can independently decide their own eligibility for membership or participation in activities.

Are associations in-which eligibility of access is controlled by a democratic and accountable executive able to determine that their single-sex service is trans inclusive? Is the intention of the Code to force these groups to exclude people they wish to include?

We require further clarity on the interaction between this section of the Code and the right to freedom of association. We also require specific guidance on how to operate trans inclusive associations in compliance with the rest of the Code, the Equality Act, and other UK legislation.

Re-posted from response to section 2.2:

We have serious concerns about the ability of organisations to comply with this section of the Code whilst retaining peoples' right to privacy and dignity. When a student or member of the public attends a student group-ran event or activity, at what point should the attendees' sex be checked? Should such enquiries be made by student volunteers, given the requirement to ask "in a sensitive way which does not cause discrimination or harassment"? If this should be undertaken by paid professionals, what resources will the EHRC provide to support us to oversee the activities of our 200+ student-led clubs and societies?

On what ground should our student volunteers question a person's declared sex or sex recorded at birth? What constitutes "reasonable" profiling? Who determines whether a person's self-declared sex is "objectively false"? Should profiling take place in a private place, away from other people who may disclose this sensitive information to others? If so, how is it proposed that this take place during public or outdoor activities? For instance, at a women-only activity run by our Mountaineering Club at which attendees meet-up at a bus stop in the Lake District.

Is the expectation that people carry proof of their birth sex with them at all times? If so, how will this work when a birth certificate can be changed using a GRC? Approximately one third of our members are international students; are organisations expected to be able to read and interpret birth certificates from other countries? If so, what resources will be provided by the EHRC to train staff and volunteers?

The Code gives organisations permission to enquire if a person has a GRC. We do not feel such a request would comply with paragraph 202 of the Supreme Court ruling which states: “possessing a GRC is confidential to the person who has it and subject to stringent restrictions on disclosure” and that “the duty bearer cannot ask whether it has been obtained”.

Our preference would be for a Code that facilitates associations to determine eligibility independently based upon the wishes of their memberships. The changes to the Code appear to take great effort to permit exclusion of trans people, without considering the many associations that intentionally wish to be trans inclusive. We would welcome further balance in this regard.

Will your organisation make any changes as a result of this update to the code of practice? For example, any changes to your policies, procedures or practices.

Yes

What changes might your organisation make as a result of this update to the code of practice?

Changes to our services will be determined once finalised guidance has been published within the Code by the EHRC.

13.1: Updated section on competitive sport

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

We find this section unclear and broadly unhelpful in a discourse that is already complicated and deeply nuanced.

Though the Code provides clarity around “gender affected activity” and exclusion based on people’s sex on the ground of safety or fairness. It appears a comparative consideration has not been given for trans men and trans women who would be required to compete against cis women and cis men respectively.

Crucially, the guidance in this section seems to fail to recognise that most sporting activity is inherently not competitive. We feel that excluding trans people from social sport, training sessions, and other non-competitive sporting activities is disproportionate and unnecessarily cruel. Similarly, greater clarity on what constitutes competitive sporting activity would be useful for us, as an organisation that hosts a wide range of sporting and competitive activity. As per the Council of Europe’s definition, sport is: “all forms of physical activity, which through casual or organised participation, aim at expressing or improving physical fitness and mental well-being, forming social relationships or obtaining results in competition at all levels”. We feel EHRC guidance should acknowledge the breadth of activity encompassed in this definition and the benefit it has for all, including trans people. For instance, Example 13.1.13 should acknowledge the trans man’s ability to safely take part in boxing activity as part of the man’s boxing group beyond the competition without raising any concerns of safety.

Are sporting teams in-which membership and player-status is controlled by a democratic and accountable executive able to determine that their single-sex service is trans inclusive? Is the

intention of the Code to force these groups to exclude people they wish to include? Do sports teams who include trans people based on their lived gender risk claims of sex discrimination?

The changes to Code appear to take great effort to permit exclusion of trans people, without considering the many associations that intentionally wish to be trans inclusive. We would welcome further balance in this regard.

Re-posted from response to section 2.2:

We have serious concerns about the ability of organisations to comply with this section of the Code whilst retaining peoples' right to privacy and dignity. When a student or member of the public attends a student group-ran event or activity, at what point should the attendees' sex be checked? Should such enquiries be made by student volunteers, given the requirement to ask "in a sensitive way which does not cause discrimination or harassment"? If this should be undertaken by paid professionals, what resources will the EHRC provide to support us to oversee the activities of our 200+ student-led clubs and societies?

On what ground should our student volunteers question a person's declared sex or sex recorded at birth? What constitutes "reasonable" profiling? Who determines whether a person's self-declared sex is "objectively false"? Should profiling take place in a private place, away from other people who may disclose this sensitive information to others? If so, how is it proposed that this take place during public or outdoor activities? For instance, at a women-only activity run by our Mountaineering Club at which attendees meet-up at a bus stop in the Lake District.

Is the expectation that people carry proof of their birth sex with them at all times? If so, how will this work when a birth certificate can be changed using a GRC? Approximately one third of our members are international students; are organisations expected to be able to read and interpret birth certificates from other countries? If so, what resources will be provided by the EHRC to train staff and volunteers?

The Code gives organisations permission to enquire if a person has a GRC. We do not feel such a request would comply with paragraph 202 of the Supreme Court ruling which states: "possessing a GRC is confidential to the person who has it and subject to stringent restrictions on disclosure" and that "the duty bearer cannot ask whether it has been obtained".

Separately, the language of example 13.1.17, "the trans women who participate are significantly faster and have a physical advantage", should be reworded. In a topic so rife with debate, little conclusive research has been published regarding the aptitude of transgender individuals in sport. As such, language like this is misleading, and may result in groups believing that their exclusion of trans individuals is 'reasonable', when in fact it may not be.

Will your organisation make any changes as a result of this update to the code of practice? For example, any changes to your policies, procedures or practices.

Yes

What changes might your organisation make as a result of this update to the code of practice?

Changes to our services will be determined once finalised guidance has been published within the Code by the EHRC.

13.2: Updated section on separate and single-sex services for men and women

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

No comments.

13.3: New section on justification for separate and single-sex services

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

We would appreciate greater clarity on how to include trans people within our services, as this is inadequately covered in this section. The changes in this section appear to take great effort to permit exclusion of trans people, without considering the many services that intentionally wish to be trans inclusive or offer mixed-sex facilities. For instance, it seems unclear to us if there is any scope within the Code or a women-only service that wishes to lawfully include trans women but exclude cis men.

We, along with many charitable organisations, require further guidance on how 13.3.20 would be applied for services with limited resource and space. Will EHRC provide individualised support and resources for services with limited resources to allow them to comply with this section? For instance, a small sports venue with limited changing or toilet facilities.

Additionally, 13.3.20 contradicts the EHRC's pre-action response to ongoing action. The EHRC has stated that "Toilets, showers and changing facilities may be mixed-sex where they are in a separate room lockable from the inside.". This should both be included in the guidance, and be emphasised, as many businesses and services already began changing their practice based on just the interim guidance, causing significant alarm and distress for many.

Will your organisation make any changes as a result of this update to the code of practice? For example, any changes to your policies, procedures or practices.

Yes

What changes might your organisation make as a result of this update to the code of practice?

Changes to our services will be determined once finalised guidance has been published within the Code by the EHRC.

13.4: New content on policies and exceptions for separate and single-sex services

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

Overall, we found this section incoherent and unhelpful.

In Example 13.4.3, we struggle to understand the distinction between a male child and a young adult trans woman in a women-only changing facility, and how the latter poses a threat to safety significant enough to justify exclusion.

In 13.4.6, we feel inadequate consideration has been given to the resources available to service providers. We feel it would be more appropriate for the leisure centre to ask the permission of class members. It is unrealistic expectation for providers to offer additional men-only or mixed-sex sessions, with all the associated costs, instead of inclusion with participants' consent.

Will your organisation make any changes as a result of this update to the code of practice? For example, any changes to your policies, procedures or practices.

Yes

What changes might your organisation make as a result of this update to the code of practice?

Changes to our services will be determined once finalised guidance has been published within the Code by the EHRC.

13.5: Updated section on separate or single-sex services in relation to gender reassignment

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

We are deeply concerned by the possibility, laid out in this section, that trans people may be barred from both male and female single-sex services. We question the legality and morality of simultaneously banning trans people from some services based on their sex at birth, and others on the basis of their perceived gender. We also question the right to exclude someone where service providers are unable to ascertain their sex at birth at the point of entry, particularly in a health setting.

In what instances is it proportionate to not provide a service to trans people? Would this include changing facilities at a swimming pool, changing rooms in a shop, group counselling session? Could this include domestic violence refuges, homeless hostels, hospital wards?

The assertion in 13.5.6, that the exclusion of trans people due to others' feelings of "alarm" or "distress" is deeply troubling. We feel such language is presumptive and discriminatory. The same basis of exclusion for any other protected characteristic would be completely unacceptable. We question the morality and intention of this clause and the precedent it sets for future cases involving disability, ethnicity, religion, or any other protected characteristic.

13.5.11 dismisses the needs of post-operation trans women who have a clear and legitimate need for these services.

We would strongly encourage EHRC to consider the ability of small service providers to provide a third space for trans people. Consideration should be given to disabled people who may find disabled toilets have been co-opted as a gender-neutral spaces where no additional toilet exists.

Will your organisation make any changes as a result of this update to the code of practice? For example, any changes to your policies, procedures or practices.

Yes

What changes might your organisation make as a result of this update to the code of practice?

Changes to our services will be determined once finalised guidance has been published within the Code by the EHRC.

13.6: Updated content on communal accommodation

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

We would welcome further clarity on which accommodation trans people should access where only single-sex accommodation is provided. We would also like to see guidance on how providers can lawfully offer trans inclusive single-gender communal accommodation.

Will your organisation make any changes as a result of this update to the code of practice? For example, any changes to your policies, procedures or practices.

No

What changes might your organisation make as a result of this update to the code of practice?

n/a

Final question

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

At LUSU, we work to advocate the needs of the 16k+ students of Lancaster University and facilitate an arrange of extra-curricular opportunities for all. As a small, charitable organisation, we are looking for guidance from the Code that is clear, unambiguous, and easy to apply.

In general, we found the Code a complex, contradictory, and incoherent set of guidance that is, as a result, wholly unhelpful. For complex but little-resourced organisations such as us, the Code creates a practical, legal, and ethical minefield that neither supports nor advances our work and the experience of our members.

In our response we have continually questioned the ethics of the changed Code and whether due consideration has been given to the needs of services providers without the resources or expertise to actualise it. Similarly, the definition of biological sex, on which much of the amended Code rests, seems in-operable; with no clear way for service providers to check users' sex whilst maintaining their dignity and privacy.

Many of our services are volunteer-led and intentionally trans-inclusive, the Code will make their work more difficult, more politically fraught, and more complex. There is a severe lack of guidance for services and membership associations that wish to be single-sex and trans inclusive.

The publication of the interim guidance has caused significant confusion and panic amongst the student volunteers who organise our various single-sex and trans-inclusive communities. We are concerned that the rushed publication of the interim guidance may have exacerbated trans peoples' distrust of UK law and the intentions of institutions such as the EHRC. We are also concerned that the ensuing confusion may have encouraged some service providers to systematically and illegitimately discriminate against trans people. We would like the finalised guidance to provide clarity and reassurance for trans people and other marginalised members of the Students' Union.