

# Code of practice consultation 2025: questions for organisations

This document is for information purposes only. You must submit your response to the consultation through the online survey. If you cannot use the online survey, or need a reasonable adjustment, you can:

- call us on 0161 829 8100
- email us at [correspondence@equalityhumanrights.com](mailto:correspondence@equalityhumanrights.com)

We are conducting a consultation to gather feedback on the code of practice for services, public functions and associations.

## Code of practice for services, public functions and associations: consultation 2025

This is a consultation on our code of practice for services, public functions and associations. We previously consulted on this code of practice between 2 October 2024 and 3 January 2025.

We are opening another consultation on the code to gather feedback on changes we have made following the UK Supreme Court ruling on 16 April 2025 in *For Women Scotland Ltd v The Scottish Ministers (For Women Scotland)*.

If you have not yet read the [code of practice for services, public functions and associations](#), please read it before responding to this consultation.

We will use responses to make sure the changes are accurate, accessible and provide clarity to service providers, public bodies and associations on their duties under the Equality Act.

The Equality and Human Rights Commission (EHRC) undertakes research under its statutory duties and the information you provide will only be processed under these powers, for the purpose of this research.

All information will be stored in line with our [privacy notice](#) and used only for the purposes of this research. We are collecting this information under our statutory powers and we may publish a report of our research. Please do not provide any information that may identify you in any free-text responses. However, any information you provide will be anonymised in our published report and you will not be identified in our report.

Some data may be collected through the SmartSurvey website when you complete the survey. To find out more about this, please refer to SmartSurvey's [privacy policy](#).

## Do you want to provide feedback as part of this consultation?

[Select one answer]

- **Yes**
- No

## About you

**Are you responding as an individual (service user), legal professional or on behalf of an organisation?**

[Select one answer]

- An individual
- A legal professional
- **An organisation**

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

[Select all that apply]

- Age
- Disability
- Gender reassignment
- Marriage and civil partnership
- Pregnancy and maternity
- Race
- Religion or belief
- Sex
- Sexual orientation
- **None in particular**

## Changes – organisations

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.

## Change 2.2: New content on asking about sex at birth - organisations

### 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.

**You do not need to provide feedback for every change.**

**Would you like to provide feedback on the new content on asking about sex at birth?**

[Select one answer]

- ☒ **Yes**
- ☐ No

## Change 2.2: New content on 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.

**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.**

[Select one answer]

- ☐ Strongly Agree
- ☒ **Agree**
- ☐ Disagree
- ☐ Strongly Disagree
- ☐ Do not know

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

This answer can be no longer than 1000 words.

[Free text answer]

**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.**

[Select one answer]

- **Yes**
- No

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

This answer can be no longer than 1000 words.

The RCN may need to make changes to the way it collects data from members for the purposes of equality monitoring. We will need to review the wording of our data collection policy to ensure compliance. The RCN will also need to consider providing additional training to staff regarding how to have the conversation about sex/gender sensitively and discreetly when collecting equality monitoring data and in casework where discrimination on those characteristics may be a factor.

Our members working in clinical spaces will require further guidance on how and when to appropriately ask patients for their sex at birth. We expect to work closely with the Equalities and Human Rights Commission and the NHS to ensure that guidance is workable and does not risk the privacy and dignity of patients or staff.

## **Change 13.2: Updated section on separate and single-sex services for men and women - organisations**

**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.

**You do not need to provide feedback for every change.**

**Would you like to provide feedback on the updated section on separate and single-sex services for men and women?**

[Select one answer]

- **Yes**

- No

## **Change 13.2: Updated section on separate and 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.

**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.**

[Select one answer]

- Strongly Agree
- **Agree**
- Disagree
- Strongly Disagree
- Do not know

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

This answer can be no longer than 1000 words.

The guidance appears to be clear, except that in 13.2.10 at the end of that paragraph, the reference to paragraphs 13.99 to 13.109 appears to be an error. It looks like it should be referring to paragraphs 13.2.11 to 13.2.20 which immediately follow.

**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.**

[Select one answer]

- Yes
- **No**

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

This answer can be no longer than 1000 words.

## **Change 13.3: New section on justification for separate and single-sex services - organisations**

### **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.

**You do not need to provide feedback for every change.**

**Would you like to provide feedback on the new section on justification for separate and single-sex services?**

[Select one answer]

- ☒ **Yes**
- ☐ No

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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.

**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.**

[Select one answer]

- ☐ Strongly Agree
- ☒ **Agree**
- ☐ Disagree
- ☐ Strongly Disagree
- ☐ Do not know

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

These rights and responsibilities are clear, and we have commented on potential implications in the free text response at the end of the survey.[Free text answer]

**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.**

[Select one answer]

- Yes
- **No**

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

This answer can be no longer than 1000 words.

[Free text answer]

## **Change 13.4: New content on policies and exceptions for separate and single-sex services - organisations**

### **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.

**You do not need to provide feedback for every change.**

**Would you like to provide feedback on the new content on policies and exceptions for separate and single-sex services?**

[Select one answer]

- **Yes**
- No

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

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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.

**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.**

[Select one answer]

- Strongly Agree
- **Agree**
- Disagree
- Strongly Disagree
- Do not know

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

This answer can be no longer than 1000 words.

[Free text answer]

**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.**

[Select one answer]

- Yes
- **No**

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

This answer can be no longer than 1000 words.

[Free text answer]



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

### **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.

**You do not need to provide feedback for every change.**

**Would you like to provide feedback on the updated section on separate or single-sex services in relation to gender reassignment?**

[Select one answer]

- **Yes**
- No

## **Change 13.5: Updated section on 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.

**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.**

[Select one answer]

- Strongly Agree
- **Agree**
- Disagree

- Strongly Disagree
- Do not know

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

This answer can be no longer than 1000 words.

The guidance appears to be clear; however, more examples relating to the nursing profession would be useful. This is clearly where the rights of persons with two protected characteristics may come into conflict, i.e. the protected characteristics of sex and of gender reassignment. We suggest providing a worked example of a single sex hospital ward (see 13.2.17) where there is a question of whether a trans man should be excluded from a female ward. The example should clearly set out what factors might determine whether this would be a proportionate means of achieving a legitimate aim, and what the EHRC's suggested alternative accommodation solution would be for this patient, particularly in clinical settings that is unable to guarantee the availability of side rooms and bearing in mind the patient's right to privacy.

**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.**

[Select one answer]

- **Yes**
- No

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

This answer can be no longer than 1000 words.

The RCN expects to work closely with the EHRC and the NHS to ensure that guidance for our members relating to the provision of single sex wards and services in clinical spaces is clear and workable.

**Any other feedback from your organisation**

**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**

This answer can be no longer than 1000 words.

The Royal College of Nursing (RCN) is the largest professional body and trade union for nursing staff in the world. We represent around half a million members who are registered nurses, midwives, students, and nursing support workers across the United Kingdom and beyond.

While our membership has varied views on the Supreme Court judgment itself, with some welcoming the judgment and clarification in the law, as the professional association and trade union for nurses and nursing the RCN is predominantly concerned about the workability of the updated guidance for our members working in clinical spaces, including hospitals, community based services and social care settings.

We note that the consultation questions ask for views on clarity of wording, but not on the substance of the guidance. We hope and presume that the EHRC wishes to hear views on efficacy of the guidance itself. We therefore set out here the issues which members have raised, which the RCN expects the final EHRC guidance to fully address.

We have heard from members that they are concerned about the practicality of asking patients for their sex at birth in a way that is sensitive and does not risk the patient's privacy. Our members are concerned that they will be required to make a judgment about a patient's sex, based on gender confirming presentation and as a result this may have legal and regulatory consequences for our members.

Members have expressed that, where transgender patients are unable to be placed on single-sex hospital wards, the lack of availability of side rooms may lead to trans patients being treated in inappropriate clinical settings, being treated in ways that risk "outing" them to fellow patients, ceasing to engage with the healthcare system due to a fear of discrimination or loss of privacy and dignity during treatment, or simply being denied treatment. Not only does this impact patients, members have also told us it is likely to result in healthcare staff experiencing moral injury and distress at being asked to provide care that was, in many cases, discriminatory. There are also potential clinical risks by placing some patients in side rooms, for example early after surgery, as they cannot be staffed to the same levels as a ward.

For example, members have told us that in areas such as mental health care, which is almost entirely single sex, it may not be appropriate for transgender patients to be placed in facilities for their birth sex, and these patients may struggle to access care as a result due to a lack of alternative mixed-sex facilities. This is particularly concerning given that transgender people are a vulnerable population who are significantly more likely to experience poor mental health outcomes -including as a result of trauma - and often have complex health needs and neurodevelopmental conditions<sup>12</sup>. We would like the EHRC to demonstrate that these additional vulnerabilities are being taken into consideration in the guidance.

Members are also concerned that they may be expected to provide care in a way that violates the NMC Code of Conduct where they feel unable to provide care to

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<sup>1</sup> [Elevated rates of autism, other neurodevelopmental and psychiatric diagnoses, and autistic traits in transgender and gender-diverse individuals | Nature Communications](#)

<sup>2</sup> [Autism Spectrum Disorder and Gender Dysphoria/Incongruence. A systematic Literature Review and Meta-Analysis - PMC](#)

transgender patients that is compassionate, respectful, and does not breach their rights. Existing NMC guidance states that it is a breach of the Code to persistently and deliberately misgender a trans person – placing a transgender patient in a ward that does not correlate to their acquired gender could reasonably be interpreted as misgendering them for the purposes of the Code. Members are also concerned about violating the general duty to treat patients with kindness, and to take all reasonable steps to protect people who are vulnerable or at risk from harm, neglect or abuse. It is imperative that the EHRC equips service providers with guidance, including practical examples, on what is required of them to accommodate and enable nursing staff to adhere to their Code of practice, within the requirements of the law.

We also note that the updated guidance lacks clarity on how members should provide care for intersex people, an issue which members have repeatedly raised with us. Similarly, there is a lack of consideration of non-binary people.

Finally, the guidance must set out with clear, practical examples, what factors would deem exclusion from health and care single sex services and facilities a proportionate means of achieving a legitimate aim, so that these can be referred to when practically implementing the guidance. We propose that such decisions must be underpinned by evidence-based risk and equality impact assessments.

We expect that the EHRC will carefully consider these concerns when working with bodies such as NHS England and the Department of Health and Social Care on further clinical guidance. The RCN is willing and available to hold further conversations with the EHRC, and will be carrying out further engagement with our members to understand how the changes to the interpretation of the Equality Act 2010 are affecting them and their clinical practice.

We are happy to feedback anything of note to the EHRC – given the short timeframe for this consultation and the limited amount of time between it and the Supreme Court's judgment being issued, we would expect to see the EHRC take an iterative approach to receiving feedback to ensure that concerns can be considered as and when they develop.

## About your organisation

### Where is your organisation based?

[Select all that apply]

- England
- Scotland
- Wales
- Other (please specify): [Free text answer] Northern Ireland

### What is the size of your organisation?

[Select one answer]

- 1 to 9 people
- 10 to 49 people
- 50 to 249 people
- **250 or more people**
- Do not know

### Which area does the organisation work in?

[Select all that apply]

- Agriculture, energy or water
- Construction
- Education
- Financial or real estate
- **Health or social work**
- Information or communication
- Manufacturing
- Professional or administrative activities
- Public administration
- Retail or hospitality
- Transport
- Other (please specify): [Free text answer]

### What kind of organisation are you responding on behalf of?

[Select one answer]

- A private body
- A public body
- **A civil society organisation (for example a charity, union, not-for-profit)**

### What is the name of your organisation?

[Free text answer]

**The Royal College of Nursing**

### Does your organisation provide services?

[Select one answer]

- **Yes**
- No

## Further research

The Equality and Human Rights Commission (EHRC) sometimes carries out research with organisations and members of the public so that we can better understand the impact of our work and improve our products. For example, we may

invite people to be interviewed, or to take part in a focus group. If you are interested in taking part in EHRC research for this purpose, please leave your email address below so we can contact you.

By providing your email address below, you are consenting to be contacted by the EHRC about any opportunities to take part in EHRC research. You may withdraw your consent at any time by emailing [research@equalityhumanrights.com](mailto:research@equalityhumanrights.com).

**If you would like to be contacted by the EHRC about opportunities to take part in future research, enter your email address below:**

[Free text answer]

sophie.maher@rcn.org.uk

## **End of the survey**

Select finish survey to submit your response.

If you need to edit any of your answers before submitting, select previous page to navigate back through the questions.