



Office for Equality  
and Opportunity



Equality and Human Rights Commission

Guidance

# Equality impact assessment

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# Introduction

As per the Equality Act 2006, the Equality and Human Rights Commission (EHRC), may issue a code of practice in connection with any matter addressed by the Equality Act 2010. A Code must contain provisions designed to ensure or facilitate compliance with the 2010 Act or an enactment made under that Act, or to promote equality of opportunity. Before issuing a Code, EHRC needs to submit a draft to the Secretary of State and if approved the Secretary of State will lay a copy before Parliament.

The current Code of Practice for Services, Public Functions and Associations was produced in 2011. There have been significant developments in the law since that date which means the Code needed to be updated. The aim of updating the Code is to provide clarity to those providing and using services, those exercising public functions, and those participating in and running associations to help them to understand and comply with the law. Therefore EHRC undertook an exercise in updating the Code. The updates to the Code are primarily where there has been a change or clarification of the law since the original Code was published in 2011.

In updating, EHRC aimed to provide clarity to those providing and using services, those exercising public functions, and those participating in and running associations to help them to understand and comply with the law. The Code seeks to facilitate compliance with the Equality Act 2010.

EHRC completed 2 consultations:

- October 2024 to January 2025 which received just under 500 responses
- May to June 2025 following the Supreme Court ruling in *For Women Scotland v Scottish Ministers* [2025] UKSC 16, which received around 50,000 responses

## Duty

Ministers must ensure that when exercising their functions, they meet the legal obligations placed on them by the Public Sector Equality Duty (PSED). This requires the minister to have due regard to the need to:

- eliminate unlawful discrimination, harassment, victimisation and any other conduct prohibited by the Equality Act 2010
- advance equality of opportunity between people who share a protected characteristic and people who do not

- foster good relations between people who share a protected characteristic and people who do not share it

In regard to the updated Code, ministers must have due regard to the above 3 limbs of the duty when making a decision on whether to approve the Code, before laying in Parliament. Therefore this equality impact assessment (EIA) helps ministers consider the equality impact of this decision, which assists in complying with PSED as set out in the Equality Act 2010. See also [EHRC's Technical Guidance on the Public Sector Equality Duty: England](https://www.equalityhumanrights.com/guidance/public-sector/public-sector-equality-duty/technical-guidance-public-sector-equality-duty-0) (<https://www.equalityhumanrights.com/guidance/public-sector/public-sector-equality-duty/technical-guidance-public-sector-equality-duty-0>).

The duty to comply with PSED is a requirement for both EHRC and ministers. The Office for Equality and Opportunity (OEO) received an EIA for EHRC which captures EHRC's assessment of the equality impacts of updates to the Code (including those updates made as a result of both the October 2024 to January 2025 EHRC consultation, and the May to June 2025 EHRC consultation) on 13 October 2025 and an updated version April 2026. This EIA has 2 purposes. It both considers EHRC's equality impact analysis and independently analyses the equality impacts of the updated Code.

This document provides a summary of the key changes to the Code, EHRC position and additional analysis to support ministers in taking their decision on the Code. Analysis is organised into each of the protected characteristics.

## Protected characteristics

### Age

#### Updates to Code

Guidance is provided on age discrimination which incorporates and updates the Commission's technical guidance on age discrimination in services, public functions and associations.

Content is added to outline the connection between older age groups and disability where a person is protected under the disability provisions and age provisions of the Act (read paragraph 2.16).

Guidance is provided to confirm that Scottish and Welsh bodies should consider other obligations in nation specific legislation when considering

persons under the age of 18 who are not protected from age discrimination (read paragraph 2.17).

Guidance is added to outline when less favourable treatment because of age is allowed where there is a legitimate aim and to reflect the decision in *Seldon v Clarkson Wright and Jakes (A Partnership)* [2012] UKSC 16 (read paragraphs 4.75 to 4.79).

Detail is provided to outline what a 'reliable evidence base' is for a service provider to rely on when decision making (read paragraph 4.86).

Guidance is updated to outline application of the exception related to competitive sporting activities which are age banded under section 195(7) of the Act (read paragraphs 13.85 to 13.89).

Guidance is added to outline how the Act does not prohibit discrimination in some circumstances where age is used as a factor in the provision of insurance and other financial services (read paragraphs, 13.199 to 13.201).

Guidance updated to note that the Act does not prohibit age discrimination in relation to certain immigration functions (read paragraphs 13.230 to 13.233).

Paragraphs 13.293 to 13.348 cover 4 age specific exceptions incorporating content from the technical guidance on age discrimination. The 4 exceptions relate to concessionary services, package holidays, age-restricted services and residential mobile homes.

Examples are provided which clarify the scope and application of the law:

- example redrafted to incorporate an example of age discrimination related to digital access (read paragraph 5.5)
- example inserted to demonstrate the appropriate comparator for a possible indirect age discrimination claim (read paragraph 5.32)
- example inserted to demonstrate application of the charities' exception to a group over 65 persons who require a specialised service (read paragraph 13.48)

Some sections of the Code have been reworded for additional clarity, on advice from the EHRC copyediting team (for example, read paragraph 4.27).

### **Summary of EHRC EIA**

EHRC noted that they have due regard to each of the limbs of PSED and considered the overall impact of the updates to Age to be positive. Where they have identified potential negative impacts related to the application of certain exceptions under the Act, they outlined that the updated Code is accurate and clear as to the scope and application of these exceptions, and

by providing accurate guidance on the legal position, the Code promotes the aim to eliminate unlawful conduct and helps duty bearers to correctly implement these provisions.

### **OEO additional impact assessment**

The updates that EHRC have made are likely to have an overall positive impact on those with the protected characteristic of age. The updates promote the aim to eliminate unlawful conduct and help duty bearers to correctly implement these provisions.

The additional guidance which reflects EHRC technical guidance on age discrimination updates to the Code, accurately reflects the law and ensures consistency across EHRC materials. This advances equality of opportunity between people who share a protected characteristic and people who do not.

The additional content added to outline the connection between older age groups and disability is likely to foster good relations between people who share a protected characteristic and people who do not share it.

Our assessment therefore is that, on balance, the likely impacts on age as a characteristic are positive, in relation to each of the 3 limbs of PSED.

## **Disability**

### **Updates to the Code**

Guidance is added to reflect the legislation and case law on the definition of disability. In particular:

- clarification is provided which outlines that the outdated term ‘impairment’ is used because it is the terminology in the Act (read paragraph 2.20)
- explanation is added to explain the concept of ‘non-visible impairments’ (read paragraph 2.24)
- examples added to set out the position on chronic fatigue and menopause (read paragraphs 2.31 and 2.25)
- section added on how coping strategies affect whether a person meets the definition of disability for the purpose of the Act (read paragraph 2.28)
- example amended to explain how service providers should treat fluctuating conditions (read paragraph 2.31)
- clarification is provided to make clear that the definition of mental impairment includes neurodivergent conditions (read paragraph 5, Appendix)

- detail is added on the definition of disability in relation to long covid, progressive conditions and menopause (read paragraphs 22 to 25, Appendix)

Guidance is amended to make clear that it is permissible to treat disabled persons more favourably (read paragraphs 4.87 to 4.88) and to ensure consistency across the Code (at paragraphs 10.33 and 11.86).

Detail is added to explain how ‘something’ arising in consequence of a disability need not be the sole reason for the treatment but must be a significant or at least more than trivial reason (read paragraphs 6.15 and the example at 6.16).

Detail is added to explain that where there has been a failure to make a reasonable adjustment it may be difficult to show that treatment was objectively justified (read paragraph 6.22).

Guidance is revised to move the section on the duty to make reasonable adjustments to earlier in the chapter to emphasise that the duty to make reasonable adjustments is a separate legal obligation (read paragraphs 6.21 to 6.23).

Guidance is added to explain that a service provider needs only to know about the fact of an individual’s impairment to be liable for discrimination arising from disability (read paragraphs 6.25 to 6.26).

Clarification added to explain that a service provider should form their own view of whether an individual is disabled and should not unquestioningly accept a medical adviser’s opinion (read paragraph 6.28).

Detail is added to explain the relevant comparison when determining whether there has been a substantial disadvantage between a disabled and non-disabled person (read paragraphs 7.12 to 7.13).

Guidance is added to explain limits placed on the reasonable adjustment duty (read paragraph 7.15), explain the anticipatory nature of the duty and who it applies to (read paragraphs 7.22 to 7.24, 7.27, 7.28) and reword an example to make these definitions clearer (read paragraph 7.24).

Detail is added to explain the 2 components to the duty to make reasonable adjustments (read paragraph 7.31). Guidance is provided to explain that compliance with the duty may involve placing non-disabled persons at a disadvantage (read paragraph 7.50).

Guidance is amended to clarify that it is not essential for a discrimination claim to show detriment and reference *Finnigan v Chief Constable of Northumbria Police* [2013] EWCA Civ 1191 (read paragraph 7.56).

Detail is added to explain how the burden of proof shifts once an individual has shown substantial disadvantage and to explain the legal principles clarified by the decision in *Latif v Project Management Institute* [2007] IRLR 579 (read paragraph 7.57).

Detail added to expand the list of auxiliary aids or services (read paragraph 7.63).

Detail is added to explain the circumstances where it is likely to be reasonable to offer a service virtually and not in-person due to accessibility issues and reflect the legal principles illustrated by *RBS Group plc v David Allen* [2009] EWCA Civ 1213 (read paragraph 7.84).

Guidance is added to explain how the need to obtain statutory consent for building changes is likely to be viewed in considering whether an adjustment is reasonable and to reflect the legal principles arising from *Plummer v Royal Herbert Freehold Limited* [2018] 5 WLUK 5 (read paragraph 7.106).

Detail is added to explain that persons share the protected characteristic of disability if they are disabled persons in general (read paragraph 12.87).

Detail is added on to include information about 'disability-only shortlists' (read paragraphs 12.96 to 12.100).

Guidance is added to explain the exceptions relating to insurance and financial services (read paragraph 13.199 to 13.201). The previous paragraph 13.75 is deleted and therefore the Code no longer states an insurer cannot adopt a policy or practice of refusing to insure disabled people on certain terms.

Guidance is added to signpost life and income protection insurance (read paragraphs 13.207 to 13.209).

Guidance is added to reflect the legal principles from *Elliot v Dorset City Council* [2021] IRLR 880 and *Sussex Partnership NHS Foundation Trust v Norris* [2012] EqLR 1068 (read paragraphs 7 and 8 Appendix).

Detail added to reflect the impact of substantially recurring adverse effects and the legal principles arising from *Sullivan v Bury Street Capital Ltd* [2021] EWCA Civ 1694 (read paragraph 13, Appendix).

Guidance added to reflect normal day-to-day activities and explain legal principles arising from *Banaszczyk v Booker* [2016] IRLR 273 and *Aderemi v London and South Eastern Railway Ltd* [2013] EqLR 198 (read paragraphs 15 and 16, Appendix).

Examples are provided which clarify the scope and application of the law:

- example amended to include the anticipatory duty to make a reasonable adjustment (read paragraph 5.31)
- example amended to a neurodivergent condition (read paragraph 6.3)
- example amended to clarify the type of discrimination demonstrated in the example (read paragraph 6.5)
- examples inserted to explain how treatment that is not favourable enough for the disabled person may not amount to unfavourable treatment (read paragraph 6.12)
- example amended to change ‘disorder’ to ‘condition’ to remove a negative implication (read paragraph 6.16)
- example reworded for additional clarity (read paragraph 6.20)
- example inserted to reflect neurodivergent conditions (read paragraph 7.40)
- example inserted to reflect the principles established in *First Group plc v Paulley* [2017] UKSC 4 (paragraph 7.51)
- example reworded to make clearer the difference in treatment between the disabled person and the non-disabled person (read paragraph 7.54)
- example inserted to demonstrate what steps a service provider might take where it is not practicable to alter a physical feature as a reasonable adjustment (read paragraph 7.78)
- example inserted to reflect the facts and outcome in *MM v Secretary of State for Work and Pensions* [2013] EWCA Civ 1565 (paragraph 11.45)
- example inserted to illustrate where a body acts under statutory authority because of a requirement or conditions (read example 13.13)
- example inserted to illustrate how charities do not need to assess the relative disadvantage of different groups (read example 13.59)
- example included of a small advice centre extending the use of an accessible toilet to be used as a mixed-sex toilet (read example 13.124)
- example inserted to demonstrate the indirect/direct effect of an impairment and reflect the legal principles arising from *Sussex Partnership NHS Foundation Trust v Norris* [2012] EqLR 1068 (paragraph 11, Appendix)

Some examples and sections amended on advice from the EHRC copyediting team for clarity or completeness (read paragraphs 7.60, 7.81, 7.94, 9.43, Appendix paragraph 13). Some chapters were rearranged and formatted to improve overall clarity of the chapter (read chapter 7).

### **Summary of EHRC EIA**

EHRC assert that almost all of these updates will likely have a positive impact on those with the protected characteristic of disability.

They have acknowledged that updates to their gender reassignment section following the FWS ruling – making an accessible toilet available to also be used as a mixed-sex toilet for people without a disability – could have an impact on disabled people.

However they have suggested that they sought to limit any negative effect on people with the protected characteristic of disability by giving an example where such a decision would likely be proportionate in all the circumstances, rather than suggesting that it will always be appropriate to do so and amending the example to emphasise the need for a service provider to monitor the impacts on disabled people and trans people.

### **OEO additional impact assessment**

The updates to the Code in relation to additional guidance to reflect the legislation and case law on the definition of disability, is likely to have a positive impact. We acknowledge that terminological changes adopted support more British social model approaches.

However, the additional content in relation to the gender reassignment section amended following the FWS ruling, concerning the potential need for trans people to use disabled toilets as 'third space' facilities, may not foster good relations between groups. This is because disabled people and trans people may have to compete to access a limited number of facilities. Disabled people have had (and continue) to fight for access to suitable toilets. Whether this creates tension between the 2 groups will depend on how providers choose to arrange and label their facilities, which is likely to be impacted by resources and site limitations. EHRC have tried to manage this in their example, but we must recognise that there is a significant possibility of this creating tension.

We also note the removal of guidance to insurance and financial services, meaning that the Code no longer states an insurer cannot adopt a policy or practice of refusing to insure disabled people on certain terms. We know that disabled people have historically experienced premium insurance rates as a result of conditions they have. We also know that many disabled people have experienced exclusion from financial services. The removal of this guidance may exacerbate existing issues.

## **Gender reassignment**

To be read with the [sex section](#) below given the relationship across these protected characteristics.

### **Updates to the Code**

The Code uses the term 'trans', explaining that this is because EHRC recognise some people consider the term 'transsexual', which is used in the statute, to be outdated (paragraph 2.38). For similar reasons, 'cross dressing' is not used.

More detailed guidance and examples are provided on the protected characteristic of gender reassignment (GR), as well as people with non-binary or gender-fluid identities (paragraph 2.36 to 2.53).

Changes made to the section on Gender Recognition Certificates (GRC) to reflect that, following the clarification of the law in *For Women Scotland Ltd v The Scottish Ministers* [2025] UKSC 16 (FWS), a GRC does not have the effect of changing legal sex for the purposes of the Act (paragraphs 2.44 to 2.48).

Information and guidance added regarding asking about sex. Wording added to add information on asking people about their protected characteristics and their sex recorded at birth (13.160 to 13.178).

Information and guidance added about when trans people can suffer discrimination due to their biological sex and due to their perceived sex (paragraph 2.53).

Examples across the Code involve trans individuals and cover situations of lawful and unlawful treatment, including discrimination due to their perceived sex (paragraph 3.44, 4.64, 4.6, 4.49, 4.53, 8.28(2), 9.6, 9.7).

Example added of when a trans woman could be lawfully excluded from membership of a women only association (paragraph 12.68).

Wording amended to add information about trans people being protected against gender reassignment discrimination and harassment at any stage in their transition (paragraph 2.39).

Wording amended to add information about relevant comparators when a trans person brings a perceived sex discrimination claim (4.51).

Example added to help with understanding of the law and to make terminology more inclusive (4.53)

An example explaining how harassment can relate to a wrongly perceived protected characteristic was amended to an example concerning a trans woman (8.28 (2)).

New example clarifies legal issues around single-sex associations based on sex and admission of trans people (12.68).

Wording added to explain an association may restrict membership to people who share one protected characteristic or share more than one protected

characteristic or people who have any of more than one protected characteristic. Examples are added to illustrate practical applications with positive effects overall (12.74 to 12.77).

## **Sport**

Guidance is provided on how direct and indirect discrimination principles apply and how and when it might be necessary for service providers to turn to exceptions to liability for sex and gender reassignment discrimination when organising separate events for men and women, illustrated by examples.

Wording has been updated to remove any reference to a GRC changing legal sex and to reflect the definition of sex further to FWS.

Detail is provided on the legal position and on the relevant factors to be considered relating to the exceptions, and on the distinctions between the exceptions for sex and for gender reassignment.

Guidance is provided that the exemption from sex discrimination claims is likely only to apply when activities are organised as separate or single-sex events, noting that the law here is currently not settled.

More detailed guidance is provided for service providers on the factors to be taken into account when developing policies on event participation based on sex and gender reassignment.

New wording added to clarify that sex-based rules or arrangements relating to participation in gender-affected activity should be applied on the basis of biological sex (13.73).

Example revised to clarify that men may bring a claim for direct discrimination if they are excluded from an event that includes women and trans women (13.74).

Example revised to clarify conditions under which people may be excluded from competition because of their biological sex, for example on grounds of health and safety risk (13.81).

Wording added to explain the combined effects of the exceptions as having the potential to limit trans people's ability to participate in gender-affected activity, and to suggest organisers may consider alternative arrangements to increase trans people's opportunity to participate (13.82).

## **Separate and single sex services**

Detailed explanation is provided of the circumstances in which it is lawful, and may be necessary, to provide separate and single-sex spaces, and updated examples are provided to illustrate these points. This accurately reflects the law as it has now been clarified following FWS.

Guidance on proportionality is given for those offering such services, including consideration of alternatives, and how this applies to trans people's use of such services (read paragraphs 13.113 to 13.133).

A detailed explanation is given of the application of statutory exceptions to sex and gender reassignment discrimination when providing separate or single-sex services.

Guidance is provided on when direct and indirect discrimination could arise for service users who have the protected characteristic of sex or gender reassignment.

Guidance is given that a service is very likely to be liable for sex discrimination due to being a separate or single-sex service if an exception is made to admit individuals who are not of the same sex as the single-sex service (read paragraphs 13.130 to 13.131). This covers risks of unlawful discrimination that could arise from admission of trans people of the opposite biological sex to a single-sex service, such as admitting a trans woman to a women's service.

Wording amended to give additional context and explain to service providers how to consider the circumstances, including the nature of the service in question and the individual when considering any potential exclusion of a trans person from a single-sex service (13.147)

Example amended to clarify that it would unlikely be proportionate to refuse a medical service to a trans man, and to clarify that a hospital should consider what proportionate steps it can take to preserve the dignity of all service users. (13.153)

Definition of sex (throughout the Code): The definition was updated to reflect that 'legal sex is the sex that was recorded at your birth' (Gender Recognition Certificate does not change legal sex for the purposes of the Equality Act 2010).

### **Summary of EHRC EIA**

EHRC acknowledges that there are potentially negative impacts for those with the protected characteristic of gender reassignment from the updates to the Code as a result of how service providers implement FWS.

They state that whilst this may have a negative impact on trans people with a GRC (current or future certificate holders), their view is that it is important the guidance accurately reflects the correct legal position.

EHRC note that these updates reflect the law and will facilitate a better understanding of legal obligations and entitlements. These changes aim to mitigate the risk of unlawful discrimination or harassment by helping service providers balance the benefits, needs and impacts across potential user groups. Subsequently, this will assist providers in determining whether

separate or single-sex provision meets the proportionality test. They state they sought to limit any negative effect in accessing services for those with the protected characteristic of gender reassignment by advising service providers to consider alternatives and mitigations to separate and single-sex services.

### **OEO additional impact assessment**

As set out in EHRC's EIA, the updates to the Code are expected to have a significant impact on people with the protected characteristic of gender reassignment. In addition to the concerns detailed in that EIA, there are further impacts to note as follows.

**Exclusion:** The updated Chapter 13 provides guidance on when it is lawful to exclude trans people from services aligned with their acquired gender (e.g. domestic violence refuges, hospital wards, and changing rooms) based on their biological sex. It also covers competitive sport which may leave trans people with access to sport. Chapter 12 also provides guidance on restricting membership to an association based on those sharing one or more protected characteristics. Some organisations such as the Women's Institute and Girl Guiding have already made the decision to restrict membership to biological women only. The Code does explain where membership could be restricted based on sharing multiple characteristics and therefore provides an opportunity for trans inclusion, e.g. a women and trans women association.

**'Double exclusion':** It is possible that trans people could be barred from both the space aligned with their gender (because of their sex) and the space aligned with their birth sex (because of possessing the protected characteristic of gender reassignment), effectively leaving them with no service at all.

**Alternative provision:** While the Code states it is "unlikely to be proportionate" to leave a trans person with no service (especially for essentials like toilets), providers may lack the funding or space to offer 'third-space' or gender-neutral alternatives.

**Involuntary disclosure:** New guidance explains how service providers can request information about an individual's sex at birth. This may force trans people to "out" themselves in public or professional settings. Similarly trans people have expressed concern – as in the Good Law Project litigation against EHRC – that having to use disabled toilets will 'out' them.

**Policing of gender:** Potential 'policing' of gender presentation, which could lead to increased harassment for trans people and cisgender people who do not conform to traditional gender stereotypes.

**Safeguarding risks:** Concern that excluding trans women from female services could mean they have to use male services, where they could face

a disproportionate risk of violence and sexual assault (although this will depend on the nature of the service in question).

Relations between groups: The debate on single sex services and the treatment of trans people is particularly divisive at this time. The Code of Practice may exacerbate these tensions. This may be somewhat mitigated through careful communications surrounding the Code's publication.

Our assessment is therefore that the likely impacts on gender reassignment as a characteristic are negative, in relation to each of the 3 limbs of the PSED. Mitigating factors are the ability of service providers to create 'third-space' provision for trans people, and the guidance in the Code on when it is, and is not, proportionate and necessary to request information on sex at birth.

## **Marriage and civil partnership**

### **Updates to the Code**

Although the protected characteristic of marriage and civil partnership is not covered by this Code, parts of the Code have been updated to ensure it reflects legislative changes in relation to same-sex marriage and civil partnerships for opposite sex couples (paragraph 13.272 – 13.287).

### **Summary of EHRC EIA**

These updates will have a positive impact as people in same-sex marriages and opposite sex civil partnerships who now have their position accurately recognised in the Code and the protections they are afforded are clearer.

### **OEO additional impact assessment**

The updates to the Code clarify the legislative changes that have occurred since the 2011 Code. The updates have had due regard to each of the limbs of the PSED and we consider the overall impact to be positive.

## **Pregnancy and maternity (including breastfeeding)**

### **Updates to the Code**

Guidance is provided to clarify that although the protected characteristic of pregnancy and maternity is not protected directly under the harassment protections in the Act, it is indirectly protected as it amounts to harassment related to sex (read paragraph 12.21).

Guidance updated to make clear that the Act does not prohibit discrimination by service providers and associations in certain cases on the

grounds of pregnancy related health and safety concerns (read paragraphs 13.189 to 13.190 for a general introduction, read paragraphs 13.191 to 13.193 for the exception in relation to service providers and 13.194 to 13.198 for the exception in relation to associations).

Clarification in a new paragraph 4.55 that trans men who become pregnant are included in the protections against discrimination provided by these provisions as they apply on the basis of biological sex.

### **Summary of EHRC EIA**

EHRC considers the overall impact to be positive.

Their analysis sets out that amendments related to harassment will have a positive impact on those with the protected characteristic, as they make clear how a harassed person with the protected characteristic of pregnancy or maternity may bring a claim under sex-based harassment. In their view, the guidance on health and safety related exceptions is now legally accurate and provides service providers, associations and users with

accurate guidance.

Their analysis concludes that updates regarding pregnancy and maternity have a potentially positive impact for trans men who become pregnant, as it will be clear that they will be protected by the pregnancy and maternity provisions.

### **OEO additional impact assessment**

EHRC clarified that the pregnancy and maternity provisions in the Act apply on the basis of sex and so trans men are included in the protections against discrimination provided by these provisions. They also added that although the protected characteristic of pregnancy and maternity is not protected directly under the harassment protections in the Act, it is indirectly protected as it amounts to harassment related to sex.

The Code also adds that conduct relating to breastfeeding may also constitute unlawful harassment on the grounds of sex – this is a helpful and new clarification.

The Code also reflects the most up to date case law. In particular, it clarifies that where the factual circumstances of a claim make it difficult for a woman to make a comparison with a man, courts will sometimes remove the comparator requirement and simply consider whether the less favourable treatment experienced by the woman was because of her sex.

The updates promote the aim to eliminate unlawful conduct, advance equality of opportunity between people who share a protected characteristic and people who do not. In addition, they are likely to foster good relations between people who share a protected characteristic and people who do not share it.

Our assessment therefore is that in relation to each limb of the PSED, the likely impacts on pregnancy and maternity as a characteristic are positive.

## Race and ethnicity

### Updates to the Code

Detail is provided to explain concepts such as ethnic origin (read paragraph 2.58) and segregation (read paragraph 4.14).

Guidance is provided to explain that training provided exclusively to non-residents is not a breach of the Act in the circumstances specified at Schedule 23 paras 4(1) to 4(3) (read paragraphs 13.43 to 13.45).

Examples are provided which clarify the scope and application of the law:

- example added to reflect the facts and outcomes of our investigation into direct and indirect discrimination against Gypsies and Travellers (read paragraph 4.52)
- example expanded to clarify that the factual scenario provides for potential discrimination claims in relation to the protected characteristics of disability and race (read paragraph 5.29)
- example amended to clarify what actions a service provider can take to encourage people who share a protected characteristic to participate in an activity. The amended example connects the facts of the scenario to the statutory conditions and actions taken by the service provider (read paragraph 10.25)
- examples inserted to explain that the charities exception which allows for charities to provide benefits only to people who share a protected characteristic if this is in accordance with a charitable instrument, does not permit a charity to limit the group by reference to skin colour in accordance with sections 194(2) and 193(4) Act (read paragraphs 13.50 to 13.51)

### Summary of EHRC EIA

EHRC considers the overall impact to be positive.

Their analysts set out the amendments made reflect updates arising from changes to the law, case law and outcomes from their investigations.

### OEO additional impact assessment

The impacts are mostly positive. In terms of the positive impacts, the inclusion of outcomes and analysis from recent cases brings the guidance up to date, which is a positive impact for the protected characteristic of race.

In terms of the negative impacts, the removal of the current Code of Practice's listing of the specific immigration-related enactments to which exceptions to the 2010 Act's race discrimination provisions apply may lead to a small increase in the risk of misunderstandings as to their parameters, which could increase risk of discrimination. This follows a finding by the Wendy Williams Review that an over-broad view was taken by Home Office policy officials of the scope of exceptions from the Equality Act 2010.

Our assessment is that, in relation to each limb of the PSED, the likely impacts on race/ethnicity are positive.

## Religion or belief

### Updates to the Code

Detail is added to note that the expression of gender critical views is an example of manifestation of a belief following the decision in *Forstater v Centre for Global Development Europe* 2200909/2019 (read paragraph 2.80).

Detail is added specifying where direct discrimination may be justified in certain circumstances (read paragraph 4.3). Guidance is added on direct discrimination on the grounds of religion or belief arising out of the judgment in *Higgs v Farmors School* [2025] EWCA Civ 109 (read paragraphs 4.91 to 4.101).

The guidance is amended to remove a section and examples following the decision in *Lee v Ashers Baking Company Ltd and others* [2018] UKSC 49 (read previous paragraph 4.19).

Detail is added to remove reference to 'discrimination' because the reference was misleading as to which act or unlawful acts were permitted by the exception (read paragraph 13.38).

Guidance is added to set out the exception in relation to opposite sex marriages of couples in an existing civil partnership in Scotland (read paragraphs 13.284 to 13.287).

Examples are provided which clarify the scope and application of the law:

- example amended from a Jewish to a Muslim person in response to a consultation response that emphasised better balance of beliefs within the protected characteristic (read paragraph 5.18)
- example amended to make clearer how the action taken related to 2 of the stated aims (read paragraph 10.28)

- example added to reflect the case of R (Cornerstone (North East) Adoption and Fostering Services Ltd) v HM Chief Inspector of Education, Children's Services and Skills (OFSTED) [2021] EWCA Civ 1390 (read paragraph 13.41)
- example added to illustrate where a service can be provided to a single protected characteristic group (read paragraph 13.187)
- example added to illustrate the religion or belief immigration exception (read paragraph 13.246)

### **Summary of EHRC EIA**

EHRC concludes that the overall impacts are positive, with the Code being accurate and clear regarding the scope and application of any potential negative impacts. The amendments to the Code of Practice reflect updates arising from changes to the law.

The Code highlights that changes related to gender reassignment may also impact people with or without particular religious or philosophical beliefs. The guidance accounts for this by including an explanation that the needs of those who observe particular religious practices (for example, Muslim people needing separate-sex services) must be taken into account when considering single or separate-sex services.

While guidance on exceptions may have a negative impact on persons with the protected characteristic, providing this accurate guidance on the legal position promotes the elimination of unlawful conduct and helps duty bearers correctly implement the provisions.

### **OEO additional impact assessment**

In terms of the positive impacts, the inclusion of outcomes and analysis from recent cases brings the guidance up to date, which is a positive impact for the protected characteristic of religion or belief.

Updates clarify that harassment related to the protected characteristics of religion and belief and sexual orientation is not prohibited under the Act in the areas covered by this code of practice. However, it also clarifies that where unwanted conduct related to either of these protected characteristics results in a person suffering a detriment, that person may be able to bring a claim of direct discrimination.

Our assessment is that, on balance, the likely impacts on religion and belief are positive.

## **Sex**

To be read alongside the gender reassignment section given the close relationship between these 2 protected characteristics.

### **Updates to the Code**

Information is given about employers' positive legal duty to take reasonable steps to prevent sexual harassment of their employees (paragraph 3.39).

The guidance is amended to provide explanation about 'reasonableness' in the section on the 'employer's defence' (paragraph 3.43).

EHRC have clarified that, following FWS, 'sex', 'woman' and 'man' in the Act mean biological sex, biological woman and biological man. This is the sex of a person at birth. We have added confirmation that consequently a GRC does not change a person's sex for the purposes of the Act (2.87 to 2.89).

EHRC have updated the section on insurance to reflect legal changes (paragraph 13.199).

Guidance is provided on how direct and indirect discrimination principles apply in competitive sport, and how and when it might be necessary for service providers to turn to exceptions to liability for sex and gender reassignment discrimination when organising separate events for men and women, illustrated by examples (paras 13.65 to 13.72).

Wording in the sport section has been updated to remove reference to a GRC changing legal sex and to reflect sex being biological sex, further to the ruling in FWS.

Detail is provided on the legal position and on the relevant factors to be considered relating to the exceptions for competitive sport, and on the distinctions between the exceptions for sex and for gender reassignment. More detailed guidance is provided for service providers on the factors to be taken into account when developing policies on event participation based on sex and gender reassignment.

Guidance is provided that the exemption from sex discrimination claims in sport is likely only to apply when activities are organised as separate or single-sex events, noting that the law here is not currently settled.

An example is given of organising a sporting event for women and trans women and the potential legal implications of doing so (read paragraph 13.74).

Detailed explanations of the circumstances in which it's lawful to provide separate and single-sex spaces, and updated examples are provided to illustrate these points (paragraphs 13.92 to 13.160). Guidance on

proportionality and other relevant factors is given for those offering such services, including consideration of alternatives.

Detailed explanation is given of the application of statutory exceptions to sex and gender reassignment discrimination when providing separate or single-sex services, and guidance is provided on when direct and indirect discrimination could arise for service users who have the protected characteristic of sex or gender reassignment.

Guidance is given that a service may not be able to avoid liability for sex discrimination due to being a separate or single-sex service if an exception is made to admit individuals who are not of the same sex as the single-sex service. This covers risks of unlawful discrimination that could arise from admission of trans people of the opposite biological sex to a single-sex service, such as admitting a trans woman to a women's service. Examples are provided which clarify the scope and application of the law:

- example inserted to illustrate that the 'provision, criterion, or practice' must be a neutral requirement and amended to be an example concerning sex (paragraph 5.14)
- example amended to make clearer group disadvantage (paragraph 5.24)
- example added of when a trans woman could be lawfully excluded from membership of a women only association (paragraph 12.68)

New examples added to clarify how restricting sports teams composition according to sex is likely to be permitted under the Act (13.67 and 13.68)

### **Summary of EHRC EIA**

EHRC assessment is that these updates to the Code will overall have a positive impact on the protected characteristic of sex.

They recognised that in some areas of the Code there is a necessary balancing of rights between protected characteristic groups including those of sex and gender reassignment.

However, they state that these impacts are mitigated by the value of the Code being legally accurate on matters where services providers and users have a need for clarity and practical guidance.

### **OEO additional impact assessment**

Our assessment recognises there will be benefits on the basis of sex related to access to sex-based services. We recognise the positive impact on the protected characteristic of sex of the Code being legally accurate.

The extent to which the changes to the code could have a negative impact when it comes to fostering good relations between those with protected characteristics of sex and gender reassignment, even if the changes reflect the law accurately, is not fully explored within EHRC's EIA. The changes to

the Code will still mean many organisations/organisers have difficult, finely balanced decisions to make to determine the appropriate provision of events and services for users depending on their sex and whether they possess the protected characteristic of gender reassignment. In making these decisions, it is likely that some service users will more starkly see their needs balanced against those with other protected characteristics, and this has the potential to create animosity and division between these groups.

The impact of the changes for women who are deemed not to meet cultural and social expectations of femininity are also not explored in EHRC's EIA (explored in the 'gender reassignment' section as unintended consequences leading to gender policing). OEO notes anecdotal evidence from stakeholders that this is occurring, although at present there's not yet a strong evidence base to ascertain the level at which this is occurring, or the scale or severity of the impact. Women who are considered masculine may face greater scrutiny about their sex as a result of the changes. This will likely have a negative impact on this group, potentially on limbs one and three of PSED.

There is also little consideration in the EIA of how women in associations would be asked to 'police' other attendees to ensure compliance with the Code and how this might affect membership and sustainability of such organisations. OEO has anecdotal evidence from stakeholders that this would be an issue, however, at present there's not yet a strong evidence base to ascertain the level.

## **Sexual orientation**

### **Updates to the Code**

Guidance is amended to add a signpost to chapter 4 to make clear that although persons with the protected characteristic of sexual orientation are not protected from harassment, where there is unwanted conduct leading to detriment or less favourable treatment this may be direct discrimination (read paragraph 11.53).

Guidance is amended to include exceptions related to same-sex marriage (read paragraphs 13.250 to 13.253) and civil partnership (read paragraphs 13.254 to 13.261).

Examples are provided which clarify the scope and application of the law:

- example is amended to make clear that it may be necessary to consider whether the characteristic significantly influenced the thought processes of the alleged discriminator (read paragraph 4.26)

- example amended to be an example relating to age and not sexual orientation. The example demonstrates the fact that the prohibition of harassment does not protect individuals with the protected characteristic of sexual orientation (read paragraph 8.9)
- example amended to a gay club member (read paragraph 12.50)

While drafting, Stonewall, a UK based charity, published a report into asexuality which included a policy recommendation for our Codes to recognise that people may have a lack of sexual orientation, and explore the degree to which they would be protected under the Act. We considered including this but determined that since there is minimal case law on this topic, inclusion of guidance in the Code would be unlikely to add clarity for users.

### **Summary of EHRC EIA**

EHRC asserts these updates will be likely to have a positive impact on interpretation and application of the law. The additional guidance which reminds service providers, associations and other users of the protections against direct discrimination is helpful for those with the protected characteristic of sexual orientation.

They have acknowledged that amendments to chapter 13 to clarify the scope of exceptions under the Act may have a negative impact for persons with the protected characteristic of sexual orientation. However, note that this potential negative impact is mitigated by highlighting that behaviour may not be harassment, but it may still be unlawful in terms of the Act, for example by constituting direct discrimination.

### **OEO additional impact assessment**

Changes are relatively minor and add helpful clarification/exemplification.

The clarification that harassment related to the protected characteristics of sexual orientation is not prohibited under the Act may be detrimental. However, this is an accurate reflection of the law, and is balanced by the further clarification that where unwanted conduct related to this protected characteristics results in a person suffering a detriment, that person may be able to bring a claim of direct discrimination.

Our assessment is that, on balance, the likely impacts on sexual orientation are positive.

## **Conclusion**

In terms of the positive impacts, the inclusion of outcomes and analysis from recent cases provides legal clarity, which is a positive impact for the

protected characteristics. Many of the changes made to the Code were made to reflect a change or clarification of the law since the original Code was published.

Generally, we have assessed that changes which apply across all protected characteristics contribute to the pursuit of the 3 aims in the PSED, and have a positive impact overall. However, the exception to this would be the gender reassignment protected characteristic, where we do think there are negative impacts. We assess that updates following the FWS ruling may also negatively impact other characteristics, including disability and sex.

## **Annex – additional assessment**

### **Impacts on women**

The government's position is that single-sex services should be protected to ensure women's privacy, dignity and safety. The government also believes in upholding the Equality Act's protections for trans people and ensuring suitable provision for them.

The published Equality Impact Assessment (EIA) in the main part of this document sets out that the updates to the Code will overall create benefits on the basis of sex. Overall the EIA deemed that the positive impact outweighed the negative.

The Minister for Women and Equalities commissioned an additional assessment of the impact of the Code on women's rights and protections. This assessment follows below.

#### **Clarity for service providers**

Service providers may consider the Code provides certainty and clarity in terms of restricting access to their women-only services and providing protections to women's privacy, dignity and safety. The Code makes it clear to them that providing women-only services is on the basis of biological sex and therefore they can plan and deliver their services on that basis.

The Code offers additional guidance to service providers. It helps them to make decisions suited to their specific circumstances which reduces the risk of successful legal challenge. Any form of challenge, even if unsuccessful, can create financial difficulty for small organisations and divert resources from delivery of front-line services. Organisations may also welcome transparency on how to organise associations.

The Code provides information on the legal duty on employers to take reasonable steps to prevent sexual harassment of their employees, and we would expect employers to take further action to protect staff accordingly.

The Code provides information on how associations can be formed, and offers clarity that women can legally establish groups with others who have shared interests or lived experiences. Participating in these groups can offer valuable social, physical and mental health benefits and can support positive relations between women.

The Code also provides guidance to help bear in mind the rights of all users, including the needs of women who need access to single-sex services.

### **Safety for women**

The Code encourages service providers to clearly communicate who services are designed for – for example, via signage – and provides guidance on single-sex provision, empowering women and making them feel confident in making informed choices when accessing services. The Code's guidance on single-sex provision may also empower women to request women-only services where these are not currently provided, and in circumstances where the conditions for providing such services are met. This could be especially useful for those women who, for cultural or religious reasons, are unable to share some spaces with men. It also particularly supports those women who have experienced domestic abuse or violence from men and feel unable to use services open to those who are not biologically female, including refuges or homeless accommodation.

For pregnant and breastfeeding women the updated Code highlights that harassment relating to breastfeeding may also constitute unlawful harassment on the grounds of sex, confirming that women are protected. The Code also highlights that while the protected characteristic of pregnancy and maternity is not covered directly under the harassment protections in the Act, it is indirectly covered as it amounts to harassment related to sex.





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