

Consultation on EHRC code of practice for services Acas response

27 June 2025

This is the Acas Executive response to the [Equality and Human Rights Commission \(EHRC\) consultation on the code of practice for services, public functions and associations](#).

Cover note and key messages

Updating the Code of Practice on Services, Public Functions and Associations but not the parallel Code of Practice on Employment is highly likely to cause significant confusion for organisations.

That risk has been exacerbated by the [EHRC's interim update from 25 April 2025 on the practical implications of the Supreme Court judgment](#) heavily referencing employers and workplaces.

Failing to publish a Code for Employment and a Code for Services, Public Functions and Associations at the same time and with consistency between the two, our view is that employers are likely to follow divergent practices in their treatment of staff and treatment of customers. Or employers may inappropriately rely on the Code for Services, Public Functions and Associations to guide their approach to employees.

The failure to publish both codes simultaneously seems likely to cause an inconsistency of approach, and opens employers up to litigation risk due to the lack of update on employment code.

We recommend that the EHRC reconsider their approach and update the two Codes in parallel or, at a minimum share guidance on how employers should reconcile the two on publication of the Services Code and while the Code of Practice on Employment is updated.

Our national helpline handles 598,500 calls from individuals and employers each year and our website reaches 20 million users. Last year over 68,500 (11.5%) of our calls related to discrimination in general and nearly 250 related to gender reassignment specifically (0.04%).

The Acas website also received 7.2 million recorded visits from individuals seeking advice and support, including 1,900 visits to advice about gender reassignment, which was first published 29 October 2024 (estimated website visits including those where cookies were rejected is around 20.5 million).

Without the EHRC providing clarity on the position of employers, Acas may be unable to give clear advice to those who contact us.

We encourage EHRC to amend the employment code of practice at the earliest opportunity to provide consistent and clear guidance for employers. We look forward to the opportunity to respond to the subsequent consultation on the employer code.

Code of practice-wide change – updated legal definition of sex

From EHRC: We have updated the legal definition of sex throughout the code of practice. Our previous definition explained that:

'Legal sex is the sex that was recorded at your birth or the sex you have acquired by obtaining a Gender Recognition Certificate (GRC).'

Following the UK Supreme Court ruling in For Women Scotland, this definition is no longer accurate, because a GRC does not change your legal sex for the purposes of the Equality Act 2010. We have therefore updated this definition throughout the code to be:

'Legal sex is the sex that was recorded at your birth.'

Question 5: To what extent do you agree or disagree with the following statement?

EHRC statement: 'The explanation of the updated legal definition of sex is clear.'

Acas response: Disagree

Question 6: Is there anything you would change to make the explanation of the legal rights and responsibilities in this update clearer?

Acas response:

Updating the Code of Practice on Services, Public Functions and Associations but not the parallel Code of Practice on Employment is highly likely to cause significant confusion for organisations.

That risk has been exacerbated by the [EHRC's interim update from 25 April 2025 on the practical implications of the Supreme Court judgment](#) heavily referencing employers and workplaces.

Without a Code for Employment and a Code for Services, Public Functions and Associations published together and with consistency between the two, employers may follow divergent practices regarding treatment of staff versus treatment of customers. Or employers may inappropriately rely on the Code for Services, Public Functions and Associations to guide their approach to employees.

We recommend that the EHRC reconsider their approach and update the two Codes in parallel or, at a minimum share guidance on how employers should reconcile the two while the Code of Practice on Employment is updated.

If employers attempt to use the amended Code for Services, Public Functions and Associations, in relation to this update they could run into the following risks:

Employers could find the statement 'Legal sex is the sex that was recorded at your birth' misleading, potentially opening them up to legal challenge if they interpret this as meaning it applies to other areas of legislation (such as antenatal provisions of the Employment Rights Act 1996 or the Shared Parental Leave Regulations 2014) in addition to the Equality Act, which the Supreme Court judgement was clear on being limited to. Acas recommends amending this definition to be more specific, and less open to inaccurate interpretation.

Question 7: 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

Acas response: Yes

Question 8: What changes might your organisation make as a result of this update to the code of practice?

Acas response:

Acas is a statutory, non-departmental public body with a duty to improve employment relations in Great Britain. The advice for employers and employees on our website includes topics such as [discrimination](#), the [protected characteristic of sex](#), and the [protected characteristic of gender reassignment](#).

We expect this advice needs updating in the light of the Supreme Court ruling. However we require the updated EHRC Code of Practice on Employment in order to update our advice.

We will review our advice but, without the Employment Code, we will not have the clarity we require to update our advice in a way which is aligned with EHRC Codes. This risks employers being unclear whether to follow EHRC Service Code, EHRC Employment Code or Acas advice and they will not have consistency.

In the absence of any imminent changes to the Employment code of practice, we may need to consider alternate steps to ensure our existing guidance is accurate following the Supreme Court ruling.

Our national helpline handles 598,500 calls from individuals and employers each year and our website reaches 20 million users. Last year over 68,500 (11.5%) of our calls related to discrimination in general and nearly 250 related to gender reassignment specifically (0.04%).

The Acas website also received 7.2 million recorded visits from individuals seeking advice and support, including 1,900 visits to advice about gender reassignment, which was first published 29 October 2024 (estimated website visits including those where cookies were rejected is around 20.5 million).

Without clarity regarding the position on employers, we may be unable to give clarity to employers and employees contacting us through these channels.

Change 2.1 New content on Gender Recognition Certificates – organisations

From EHRC: This content explains that the Supreme Court in For Women Scotland has ruled that a Gender Recognition Certificate (GRC) does not change a person's legal sex for the purposes of the Equality Act 2010 (the Act). It also outlines what protections trans people have under the Act whether or not they have a GRC.

We have included paragraphs 2.1.1 to 2.1.5 for context for this change. We are looking for feedback only on paragraphs 2.1.6 to 2.1.9.

Question 10: To what extent do you agree or disagree with the following statement:

EHRC statement: 'The explanation of the legal rights and responsibilities set out in the new content on Gender Recognition Certificates is clear.'

Acas response: Disagree

Question 11: Is there anything you would change to make the explanation of the legal rights and responsibilities in this update clearer?

Acas response:

Please refer to our previous answer at survey question 6 (regarding the updated legal definition of sex): updating the Code of Practice on Services, Public Functions and Associations but not the parallel Code of Practice on Employment is highly likely to cause significant confusion for organisations.

We recommend that the EHRC reconsider their approach and update the two Codes in parallel or, at a minimum share guidance on how employers should reconcile the two while the Code of Practice on Employment is updated.

If employers attempt to use the amended Code for Services, Public Functions and Associations, in relation to this update they could run into the following risks:

As section 2.1.9 stands, some employers and employees using this code of practice might mistakenly assume such a claim may only be limited to the protected characteristic of sex. Further clarification that all other protected characteristics apply where relevant could be useful to avoid this misunderstanding.

Question 12: 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

Acas response: Yes

Question 13: What changes might your organisation make as a result of this update to the code of practice?

Acas response:

Acas is a statutory, non-departmental public body with a duty to improve employment relations in Great Britain. The advice for employers and employees on our website includes topics such as [discrimination](#), the [protected characteristic of sex](#), and the [protected characteristic of gender reassignment](#).

We expect this advice needs updating in the light of the Supreme Court ruling. However we require the updated EHRC Code of Practice on Employment in order to update our advice.

We will review our advice but, without the Employment Code, we will not have the clarity we require to update our advice in a way which is aligned with EHRC Codes. This risks employers being unclear whether to follow EHRC Service Code, EHRC Employment Code or Acas advice and they will not have consistency.

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Change 2.2: New content on asking about sex at birth

From EHRC: 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.

Question 15: To what extent do you agree or disagree with the following statement?

EHRC statement: 'The explanation of the legal rights and responsibilities set out in the new content on asking about sex at birth is clear.'

Acas response: Strongly disagree

Question 16: Is there anything you would change to make the explanation of the legal rights and responsibilities in this update clearer?

Acas response:

Please refer to our previous answer at survey question 6 (regarding the updated legal definition of sex): updating the Code of Practice on Services, Public Functions and Associations but not the parallel Code of Practice on Employment is highly likely to cause significant confusion for organisations.

We recommend that the EHRC reconsider their approach and update the two Codes in parallel or, at a minimum share guidance on how employers should reconcile the two while the Code of Practice on Employment is updated.

If employers attempt to use the amended Code for Services, Public Functions and Associations as regards their duties as an employer they could run into the following risks:

- Employers could interpret that they would be expected to ask about sex at birth, whereas we struggle to envisage any routine employment situation when an employee or worker may be reasonably singled out in such a manner.
- Employers could be opened up to risk as the advice and supporting example do not clarify how an individual or an employer would 'reasonably think' that someone is a biological male, biological female or indeed trans. An explanation of how an employer or individual can be reasonable (or indeed unreasonable) when identifying people they need to clarify birth sex with would provide clarity on this.
- We anticipate that an inconsistent approach risks increased discrimination-related claims against employers related to protected characteristics beyond gender reassignment. Where employers feel encouraged to challenge individuals based on their assumptions, this may indirectly impact workers on the basis of disability (for example those with polycystic ovary syndrome may find they are open to being challenged), race, and religion (for those who may use face coverings).

Question 17: 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

Acas response: Yes

Question 18: What changes might your organisation make as a result of this update to the code of practice?

Acas response:

Acas is a statutory, non-departmental public body with a duty to improve employment relations in Great Britain. The advice for employers and employees on our website includes topics such as [discrimination](#), the [protected characteristic of sex](#), and the [protected characteristic of gender reassignment](#).

We expect this advice needs updating in the light of the Supreme Court ruling. However we require the updated EHRC Code of Practice on Employment in order to update our advice.

We will review our advice but, without the Employment Code, we will not have the clarity we require to update our advice in a way which is aligned with EHRC Codes. This risks employers being unclear whether to follow EHRC Service Code, EHRC Employers Code or Acas advice and they will not have consistency.

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Without clarity regarding the position on employers, we may be unable to give clarity to employers and employees contacting us through these channels.

Change 2.3: New content on defining sex at birth

From EHRC: This content defines 'sex', 'man' and 'woman', and explains how a GRC does not change a person's legal sex for the purposes of the Equality Act 2010.

Question 20: To what extent do you agree or disagree with the following statement?

EHRC statement: 'The explanation of the legal rights and responsibilities set out in the new content on defining sex at birth is clear.'

Acas response: Disagree

Question 21: Is there anything you would change to make the explanation of the legal rights and responsibilities in this update clearer?

Acas response:

Please refer to our previous answer at survey question 6 (regarding the updated legal definition of sex): updating the Code of Practice on Services, Public Functions and Associations but not the parallel Code of Practice on Employment is highly likely to cause significant confusion for organisations.

We recommend that the EHRC reconsider their approach and update the two Codes in parallel or, at a minimum share guidance on how employers should reconcile the two while the Code of Practice on Employment is updated.

While we don't disagree that this particular change is clear, we are unable to agree that the explanation of the legal rights and responsibilities in general is clear due to the inconsistent approach between the Code of Practice on Services, Public Functions and Associations and the Code of Practice on Employment.

Question 22: 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

Acas response: Yes

Question 23: What changes might your organisation make as a result of this update to the code of practice?

Acas response:

Acas is a statutory, non-departmental public body with a duty to improve employment relations in Great Britain. The advice for employers and employees on our website includes topics such as [discrimination](#), the [protected characteristic of sex](#), and the [protected characteristic of gender reassignment](#).

We expect this advice needs updating in the light of the Supreme Court ruling. However we require the updated EHRC Code of Practice on Employment in order to update our advice.

We will review our advice but, without the Employment Code, we will not have the clarity we require to update our advice in a way which is aligned with EHRC Codes. This risks employers being unclear whether to follow EHRC Service Code, EHRC Employment Code or Acas advice and they will not have consistency.

In the absence of any imminent changes to the Employment code of practice, we may need to consider alternate steps to ensure our existing guidance is accurate following the Supreme Court ruling.

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Without clarity regarding the position on employers, we may be unable to give clarity to employers and employees contacting us through these channels.

Change 2.4: Updated description of the protected characteristic of sexual orientation

From EHRC: We updated our description of sexual orientation. Our description now specifies that a person who is attracted to people of the same sex is either a lesbian woman or a gay man. The full description is as follows:

Sexual orientation is a protected characteristic (s.12(1)). It means a person's sexual orientation towards:

- persons of the same sex (the person is a lesbian woman or a gay man)
- persons of the opposite sex (the person is heterosexual), or
- persons of either sex (the person is bisexual)

Question 25: To what extent do you agree or disagree with the following statement?

EHRC statement: 'The explanation of the legal rights and responsibilities set out in the updated description of the protected characteristic of sexual orientation is clear.'

Acas response: Disagree

Question 26: Is there anything you would change to make the explanation of the legal rights and responsibilities in this update clearer?

Acas response:

Please refer to our previous answer at survey question 6 (regarding the updated legal definition of sex): updating the Code of Practice on Services, Public Functions and Associations but not the parallel Code of Practice on Employment is highly likely to cause significant confusion for organisations.

We recommend that the EHRC reconsider their approach and update the two Codes in parallel or, at a minimum share guidance on how employers should reconcile the two while the Code of Practice on Employment is updated.

If employers attempt to use the amended Code for Services, Public Functions and Associations, in relation to this update they could run into the following risks:

- Employers may find the updated language less clear, and misinterpret that they need to change language in their policies, guidance and communications in a similar way. Acas does not see the purpose of changing 'lesbian' to 'lesbian woman'. The legal definition of sexual orientation in S.12(1) of the Equality Act 2010 makes reference only to 'persons' and no reference to man or woman. Acas recommends reflecting the Equality Act wording by amending the update to 'persons of the same sex (lesbian or gay)', which is the approach taken in our guidance.
- This amendment of terminology risks creating conflict where individuals for example in workplaces could believe their freedom of expression is being restricted. This could potentially be of greater importance in public sector employers who are directly subject to claims for breaches of human rights – in this case potentially Article 10 (freedom of expression) and Article 8 (protection of private and family life).

Question 27: 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

Acas response: Yes

Question 28: What changes might your organisation make as a result of this update to the code of practice?

Acas response:

Acas is a statutory, non-departmental public body with a duty to improve employment relations in Great Britain. The advice for employers and employees on our website includes topics such as [discrimination](#), the [protected characteristic of sex](#), and the [protected characteristic of gender reassignment](#).

We expect this advice needs updating in the light of the Supreme Court ruling. However we require the updated EHRC Code of Practice on Employment in order to update our advice.

We will review our advice but, without the Employment Code, we will not have the clarity we require to update our advice in a way which is aligned with EHRC Codes. This risks employers being unclear whether to follow EHRC Service Code, EHRC Employment Code or Acas advice and they will not have consistency.

In the absence of any imminent changes to the Employment code of practice, we may need to consider alternate steps to ensure our existing guidance is accurate following the Supreme Court ruling.

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The Acas website also received 7.2 million recorded visits from individuals seeking advice and support, including 1,900 visits to advice about gender reassignment, which was first published 29 October 2024 (estimated website visits including those where cookies were rejected is around 20.5 million).

Without clarity regarding the position on employers, we may be unable to give clarity to employers and employees contacting us through these channels.

Change 4.1: New example on sex discrimination by perception

From EHRC: This example explains how discrimination can occur based on a perceived protected characteristic, in the context of sex and gender reassignment. We are looking for feedback on the example in paragraph 4.1.3.

Question 30: To what extent do you agree or disagree with the following statement?

EHRC statement: 'The explanation of the legal rights and responsibilities set out in the new example on sex discrimination by perception are clear.'

Acas response: Disagree

Question 31: Is there anything you would change to make the explanation of the legal rights and responsibilities in this update clearer?

Acas response:

Please refer to our previous answer at survey question 6 (regarding the updated legal definition of sex): updating the Code of Practice on Services, Public Functions and Associations but not the parallel Code of Practice on Employment is highly likely to cause significant confusion for organisations.

We recommend that the EHRC reconsider their approach and update the two Codes in parallel or, at a minimum share guidance on how employers should reconcile the two while the Code of Practice on Employment is updated.

While we don't disagree that this particular change is clear, we are unable to agree that the explanation of the legal rights and responsibilities in general is clear due to the inconsistent approach between the Code of Practice on Services, Public Functions and Associations and the Code of Practice on Employment.

Question 32: 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

Acas response: No

Change 4.2: Removed reference to superseded case law

From EHRC: We removed content that explained that, for trans men holding a gender recognition certificate (GRC), the protection from pregnancy and maternity discrimination under the Equality Act 2010 (the Act) arose from case law. This case law set out that trans men were still protected irrespective of them having a GRC that stated that their legal sex was male. Following the For Women Scotland ruling, their legal sex is now female for the purposes of the Act, and they therefore have protection on that basis.

Question 35: To what extent do you agree or disagree with the following statement?

EHRC statement: 'The explanation of the legal rights and responsibilities set out in Change 4.2 is clear.'

Acas response: Disagree

Question 36: Is there anything you would change to make the explanation of the legal rights and responsibilities in this section clearer?

Acas response:

Please refer to our previous answer at survey question 6 (regarding the updated legal definition of sex): updating the Code of Practice on Services, Public Functions and Associations but not the parallel Code of Practice on Employment is highly likely to cause significant

confusion for organisations.

We recommend that the EHRC reconsider their approach and update the two Codes in parallel or, at a minimum share guidance on how employers should reconcile the two while the Code of Practice on Employment is updated.

While we don't disagree that this particular change is clear, we are unable to agree that the explanation of the legal rights and responsibilities in general is clear due to the inconsistent approach between the Code of Practice on Services, Public Functions and Associations and the Code of Practice on Employment.

Question 37: Will your organisation make any changes as a result of the update to this section of the code of practice? For example, any changes to your policies, procedures or practices

Acas response: No

Change 5.1: New example on sex discrimination – same disadvantage

From EHRC: This example explains how indirect sex discrimination can occur when people experience the same disadvantage, even if they do not share the same protected characteristic. The example is in the context of sex and gender reassignment.

Question 40: To what extent do you agree or disagree with the following statement?

EHRC statement: 'The explanation of the legal rights and responsibilities set out in the new example on sex discrimination – same disadvantage is clear.'

Acas response: Disagree

Question 41: Is there anything you would change to make the explanation of the legal rights and responsibilities in this update clearer?

Acas response:

Please refer to our previous answer at survey question 6 (regarding the updated legal definition of sex): updating the Code of Practice on Services, Public Functions and Associations but not the parallel Code of Practice on Employment is highly likely to cause significant confusion for organisations.

We recommend that the EHRC reconsider their approach and update the two Codes in parallel or, at a minimum share guidance on how employers should reconcile the two while the Code of Practice on Employment is updated.

While we don't disagree that this particular change is clear, we are unable to agree that the explanation of the legal rights and responsibilities in general is clear due to the inconsistent approach between the Code of Practice on Services, Public Functions and Associations and the Code of Practice on Employment.

Question 42: 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.

Acas response: No

Change 8.1: Updated example on harassment related to sex

We produced a new example to explain how harassment can occur based on a perceived protected characteristic, in the context of sex and gender reassignment.

We have included additional information to provide context for this example. We are only looking for feedback on the example in paragraph 8.1.6b.

Question 47: To what extent do you agree or disagree with the following statement?

EHRC statement: 'The explanation of the legal rights and responsibilities set out in the updated example on harassment related to sex is clear.'

Acas response: Disagree

Question 48: Is there anything you would change to make the explanation of the legal rights and responsibilities in this update clearer?

Acas response:

Please refer to our previous answer at survey question 6 (regarding the updated legal definition of sex): updating the Code of Practice on Services, Public Functions and Associations but not the parallel Code of Practice on Employment is highly likely to cause significant confusion for organisations.

We recommend that the EHRC reconsider their approach and update the two Codes in parallel or, at a minimum share guidance on how employers should reconcile the two while the Code of Practice on Employment is updated.

While we don't disagree that this particular change is clear, we are unable to agree that the explanation of the legal rights and responsibilities in general is clear due to the inconsistent approach between the Code of Practice on Services, Public Functions and Associations and the Code of Practice on Employment.

Question 49: 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

Acas response: No

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.

Question 61: To what extent do you agree or disagree with the following statement?

EHRC 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.'

Acas response: Disagree

Question 62: Is there anything you would change to make the explanation of the legal rights and responsibilities in this update clearer?

Acas response:

Please refer to our previous answer at survey question 6 (regarding the updated legal definition of sex): updating the Code of Practice on Services, Public Functions and Associations but not the parallel Code of Practice on Employment is highly likely to cause significant confusion for organisations.

We recommend that the EHRC reconsider their approach and update the two Codes in parallel or, at a minimum share guidance on how employers should reconcile the two while the Code of Practice on Employment is updated.

While we don't disagree that this particular change is clear, we are unable to agree that the explanation of the legal rights and responsibilities in general is clear due to the inconsistent approach between the Code of Practice on Services, Public Functions and Associations and the Code of Practice on Employment.

Question 63: 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.

Acas response: No

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.

Question 66: To what extent do you agree or disagree with the following statement?

EHRC 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.'

Acas response: Strongly disagree

Question 67: Is there anything you would change to make the explanation of the legal rights and responsibilities in this update clearer?

Acas response:

Please refer to our previous answer at survey question 6 (regarding the updated legal definition of sex): updating the Code of Practice on Services, Public Functions and Associations but not the parallel Code of Practice on Employment is highly likely to cause significant confusion for organisations.

We recommend that the EHRC reconsider their approach and update the two Codes in parallel or, at a minimum share guidance on how employers should reconcile the two while the Code of Practice on Employment is updated.

If employers attempt to use the amended Code for Services, Public Functions and Associations, in relation to this update they could run into the following risks:

- We anticipate the main issues here could be uncertainty about and potential legal challenge for decisions being taken about providing services for single or mixed-sex facilities (in workplaces, we expect this will primarily be toilet facilities and changing rooms for staff) and how employers can and should be using the law and best practice to make a decision. This is particularly the case given that the two codes of practice are not being updated in parallel, leading to uncertainty and inconsistency, and employers potentially taking a different approach for staff than that taken for customers.

- The updated materials don't explain how employers can or should weigh up the risks and benefits of a decision to help them navigate the change in legal interpretation. As the Supreme Court ruling has given no clear legal approach for an employer to take to 'police' such services, clear guidance would be useful. Lack of clarity could open employers up to legal challenge.
- Employers risk excluding or disadvantaging disabled people if they follow EHRC advice on discontinuation of accessible toilet facilities to make way for mixed-sex toilets. Acas encourages the EHRC to reconsider this point.
- Employers may avoid providing mixed-sex facilities if they interpret Paragraph 13.3.20 as stating that a mixed-sex service could automatically be direct or indirect sex discrimination. We recommend clarity on this point.

Question 68: 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.

Acas response: Yes

Question 69: What changes might your organisation make as a result of this update to the code of practice?

Acas response:

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We expect this advice needs updating in the light of the Supreme Court ruling. However we require the updated EHRC Code of Practice on Employment in order to update our advice.

We will review our advice but, without the Employment Code, we will not have the clarity we require to update our advice in a way which is aligned with EHRC Codes. This risks employers being unclear whether to follow EHRC Service Code, EHRC Employment Code or Acas advice and they will not have consistency.

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Without clarity regarding the position on employers, we may be unable to give clarity to employers and employees contacting us through these channels.

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.

Question 71: To what extent do you agree or disagree with the following statement?

EHRC 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.'

Acas response: Disagree

Question 72: Is there anything you would change to make the explanation of the legal rights and responsibilities in this update clearer?

Acas response:

Please refer to our previous answer at survey question 6 (regarding the updated legal definition of sex): updating the Code of Practice on Services, Public Functions and Associations but not the parallel Code of Practice on Employment is highly likely to cause significant confusion for organisations.

We recommend that the EHRC reconsider their approach and update the two Codes in parallel or, at a minimum share guidance on how employers should reconcile the two while the Code of Practice on Employment is updated.

If employers attempt to use the amended Code for Services, Public Functions and Associations, in relation to this update they could run into the following risks:

Employers may find the paragraph at 13.4.2 misleading or confusing. It appears contradictory in that it states 'permissible', then 'not permissible'. We would encourage the development of a clearer paragraph.

Question 73: 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.

Acas response: Yes

Question 74: What changes might your organisation make as a result of this update to the code of practice?

Acas response:

Acas is a statutory, non-departmental public body with a duty to improve employment relations in Great Britain. The advice for employers and employees on our website includes topics such as [discrimination](#), the [protected characteristic of sex](#), and the [protected characteristic of gender reassignment](#).

We expect this advice needs updating in the light of the Supreme Court ruling. However we require the updated EHRC Code of Practice on Employment in order to update our advice.

We will review our advice but, without the Employment Code, we will not have the clarity we require to update our advice in a way which is aligned with EHRC Codes. This risks employers being unclear whether to follow EHRC Service Code, EHRC Employment Code or Acas advice and they will not have consistency.

In the absence of any imminent changes to the Employment code of practice, we may need to consider alternate steps to ensure our existing guidance is accurate following the Supreme Court ruling.

Our national helpline handles 598,500 calls from individuals and employers each year and our website reaches 20 million users. Last year over 68,500 (11.5%) of our calls related to discrimination in general and nearly 250 related to gender reassignment specifically (0.04%).

The Acas website also received 7.2 million recorded visits from individuals seeking advice and support, including 1,900 visits to advice about gender reassignment, which was first published 29 October 2024 (estimated website visits including those where cookies were rejected is around 20.5 million).

Without clarity regarding the position on employers, we may be unable to give clarity to employers and employees contacting us through these channels.

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.

Question 76: To what extent do you agree or disagree with the following statement?

EHRC 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.'

Acas response: Disagree

Question 77: Is there anything you would change to make the explanation of the legal rights and responsibilities in this update clearer?

Acas response:

Please refer to our previous answer at survey question 6 (regarding the updated legal definition of sex): updating the Code of Practice on Services, Public Functions and Associations but not the parallel Code of Practice on Employment is highly likely to cause significant confusion for organisations.

We recommend that the EHRC reconsider their approach and update the two Codes in parallel or, at a minimum share guidance on how employers should reconcile the two while the Code of Practice on Employment is updated.

If employers attempt to use the amended Code for Services, Public Functions and Associations, in relation to this update they could run into the following risks:

In our experience, employers are already unsure and anxious about facilities being used by trans people and any further code changes should be used to create certainty and legal accuracy. It could be a benefit to focus on how trans people can be properly and sensitively integrated into single-sex or separate spaces without additional legal risk or resources being needed.

Question 78: 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.

Acas response: Yes

Question 79: What changes might your organisation make as a result of this update to the code of practice?

Acas response:

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We expect this advice needs updating in the light of the Supreme Court ruling. However we require the updated EHRC Code of Practice on Employment in order to update our advice.

We will review our advice but, without the Employment Code, we will not have the clarity we require to update our advice in a way which is aligned with EHRC Codes. This risks employers being unclear whether to follow EHRC Service Code, EHRC Employment Code or Acas advice and they will not have consistency.

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Without clarity regarding the position on employers, we may be unable to give clarity to employers and employees contacting us through these channels.

Any other feedback from your organisation

Question 85: 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

Acas response:

Updating the Code of Practice on Services, Public Functions and Associations but not the parallel Code of Practice on Employment is highly likely to cause significant confusion for organisations.

That risk has been exacerbated by the [EHRC's interim update from 25 April 2025 on the practical implications of the Supreme Court judgment](#) heavily referencing employers and workplaces.

Without a Code for Employment and a Code for Services, Public Functions and Associations published together and with consistency between the two, employers may follow divergent practices regarding treatment of staff versus treatment of customers. Or employers may inappropriately rely on the Code for Services, Public Functions and Associations to guide their approach to employees.

This seems likely to cause an inconsistency of approach, and opens employers up to litigation risk due to the lack of update on employment code.

We recommend that the EHRC reconsider their approach and update the two Codes in parallel or, at a minimum share guidance on how employers should reconcile the two while the Code of Practice on Employment is updated.

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Without clarity regarding the position on employers, we may be unable to give clarity through these channels.

We encourage EHRC to amend the employment code of practice at the earliest opportunity to provide consistent and clear guidance for employers. We would warmly welcome the opportunity to respond to the subsequent consultation.

From our advisory, training and conciliation work, we find that employers are unsure how to best support trans workers, especially in relation to ensuring that facilities and toilet access is both appropriate and respectful.

Clear consistent guidance on the employer's responsibility for both customers and staff is required so that employers and workplaces know when it's appropriate and lawful to implement single sex spaces but equally important how to ensure that trans workers are fully supported and given the facilities they need to use. The information provided by this code should provide that ideally without the requirement for complex legal advice or additional financial expense on top.

On language, we note that the amendments to the code use various terms: legal sex, biological sex, birth sex, and sex recorded at birth. While it appears they are intended to be analogous, we do not find them to be.

'Biological sex', while used in the Supreme Court judgement, was used to distinguish from 'certified sex', and without this comparator present is ambiguous (without definition, it could include or exclude: chromosomes, genitals, secondary sexual characteristics, etc).

'Sex recorded at birth' presumably refers to what is recorded on someone's birth certificate – some people do not have a birth certificate, and some people will have had their birth certificate corrected for reasons outside of gender reassignment: intersex people being initially assumed to be a different sex, or just administrative error. This means what it says now is different to what was 'recorded at birth'.

'Legal sex' was not included in the previous code of practice (though it did appear in separate guidance) and could easily be misinterpreted.

This variety of terminology will make it hard for us as advice providers to choose what language to use, and for people using the code or our advice to understand what it actually means.