GOVERNANCE & COMPLIANCE

A ProArtsPlus briefing note

The EHRC's new Code of Practice for Services, Public Functions and Associations

Single-sex provision for creative organisations

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ProArts+

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1 INTRODUCTION

1.1 This note has been prepared for ProArtsPlus clients and contacts across the creative sector, ahead of a significant change in statutory equality law guidance. It explains what has changed, what it means in practice, and where the law is still genuinely unsettled. ProArtsPlus supports the trans community, unequivocally, and we have written this note in that spirit.

1.2 Nothing in the new Code requires your organisation to be anything other than genuinely welcoming, in its values and in its everyday practice, to trans people. The statutory guidance is only that, guidance. Nothing in the guidance changes all of the duties and obligations contained in health and safety laws.

1.3 What the EHRC Code changes is the basis on which any single-sex provision you choose to offer must operate; it does not, and cannot, reduce the wider protection trans people continue to have under the Equality Act 2010, which we set out in full below. Handled well, compliance and inclusion point in the same direction far more often than they conflict; there is no need to treat them as opposing goals.

1.4 Remember that sex and gender reassignment are only two of the nine characteristics protected by the Equality Act 2010, alongside age, disability, marriage and civil partnership, pregnancy and maternity, race, religion or belief, and sexual orientation. This note necessarily concentrates on the single-sex exceptions, because that is what the new Code addresses, but every person benefits from all nine protections at once, and nothing that follows should be read as suggesting otherwise. We've always found ways for different characteristics to be protected even in circumstances when they sit uncomfortably with each other. Sometimes those compromises have led (and continue to lead) to hurt and damage to wellbeing. But that doesn't stop us all trying to find better ways to preserve our own and each other's dignity.

> The Equality and Human Rights Commission's updated statutory Code of Practice for Services, Public Functions and Associations was laid before Parliament on 21 May 2026. It cleared its 40-day parliamentary scrutiny period on 9 July 2026, and commences, as a formal statutory Code, on 5 August 2026. The 2011 Code is revoked on the same date.

1.5 The Equality Act 2010, the Supreme Court's ruling and the Code discussed throughout this note apply across England, Scotland and Wales, since equality law is reserved to Westminster rather than devolved. They do not apply in Northern Ireland at all. Northern Ireland has its own separate sex discrimination legislation, its own regulator, and its own unresolved legal position. If your organisation operates in Northern Ireland, please treat this note as covering only your Great Britain operations, and seek local advice.

1.6 This note focuses on your organisation's public-facing duties, as a service provider and, where relevant, as a membership association, because that is what the new Code covers. More guidance is expected for employers. This note amounts to general guidance, not legal advice on your organisation's particular circumstances. Please seek specific advice before adopting or changing a policy, and certainly before acting on a specific complaint or incident.

2 THE LEGAL BACKGROUND

2.1 The Equality Act 2010 prohibits discrimination, harassment and victimisation because of defined protected characteristics, including sex and gender reassignment, subject to specific, narrowly drawn exceptions.

2.2 In April 2025, the Supreme Court decided, in a case called *For Women Scotland Ltd v Scottish Ministers*, that sex in the Equality Act 2010 means biological sex. A Gender Recognition Certificate does not change a person's legal sex for the purposes of the Equality Act. This was a ruling on the meaning of existing legislation, not a change in the law itself, but it required the EHRC to rework its guidance on how single-sex and separate-sex services should operate.

2.3 Throughout this note, and throughout the Code, "biological sex" and "sex at birth" are used interchangeably, and mean exactly what the Supreme Court says they mean: the sex of a person at birth, unaffected by a Gender Recognition Certificate, medical transition, or any later change to a passport, driving licence or birth certificate, all of which can be changed with or without a GRC and are, for that reason, treated by the Code as unreliable evidence of a person's sex (para 13.179). Neither the Supreme Court's judgment nor the Code sets out a fresh scientific test to determine someone's biological sex; both refer back to earlier case law, rather than defining the term afresh.

2.4 The EHRC's revised Code went through two rounds of consultation, was submitted to government in September 2025, and was laid before Parliament in May 2026. A Code of Practice does not itself create legal obligations, and only the courts can authoritatively interpret the law. However, courts and tribunals must take relevant parts of the Code into account, and following it is likely to help an organisation show that it acted reasonably. How far an organisation can depart from the Code depends on the point in question. Where the Code restates the Supreme Court's ruling on the meaning of sex, departure is not realistically open, because that ruling binds every lower court whatever the Code says. Where the Code goes further, applying the ruling to particular settings or predicting how a court would decide, there is more room for an organisation to reach a different, documented view, although the High Court's decision in the Good Law Project case, below, has so far supported the Code's approach.

2.5 This remains a live and contested area. The Good Law Project and others brought a judicial review of the EHRC's earlier interim guidance. The High Court dismissed that challenge in February 2026. It held that Good Law Project itself lacked standing to bring the claim, but it considered and rejected each ground brought by the individual claimants, and stated that one clear consequence of the Supreme Court's ruling is that a service used by both women and trans women is not a single-sex service. That litigation, and an employment tribunal decision in December 2025 involving an NHS health board (*Peggie v Fife Health Board and Dr Upton*), both show how closely this area is being tested from more than one direction. The sector's own response has been mixed, and it is widely anticipated that the position will continue to evolve through further litigation, over the Code itself or over how organisations apply it.

2.6 None of this is a reason to wait. In practical terms:

(a) base your policies on the Code as it stands today, rather than holding out for a certainty that may not arrive for years;

(b) write down the reasoning behind each decision you take, so that if the legal position shifts later, you can show you acted reasonably on the information available at the time;

(c) build a short review date into anything you adopt now, six to twelve months is a sensible starting point; and

(d) treat this area as a standing item for your senior team, or your trustee board, to revisit periodically, rather than a one-off project to close out and forget.

2.7 Failing (or refusing) to follow the Code is not, by itself, a legal wrong: claims are based on a breach of the Equality Act 2010 itself, with the Code used as evidence of what a reasonable organisation would have done. Formal complaints can be made in different ways:

(a) A claim under the Equality Act itself. For services and associations, this is brought in the county court (the sheriff court in Scotland), not an employment tribunal, which only has jurisdiction over the separate employment provisions discussed below. Available remedies include a declaration, an injunction, and compensation, which is uncapped and can include an award for injury to feelings. Claims must normally be started within six months minus one day of the act complained of, although the court can extend that period if it is just and equitable to do so (Code para 14.13).

(b) EHRC enforcement action, brought by the regulator rather than an individual. The Commission can investigate a suspected breach, issue an unlawful act notice requiring an action plan, or accept a binding agreement in lieu of formal proceedings. This sits alongside, not instead of, an individual's right to bring their own claim.

(c) Judicial review, for organisations covered by the public sector equality duty (section 17). A decision can be quashed for failing to have 'due regard' to the duty, whether or not any actual discrimination is later found to have occurred. An application must be made promptly, and in any event within three months of the grounds for the claim first arising (Code para 14.37).

(d) Regulatory and funding consequences: a charity's trustees risk a charity regulator's own powers for a breach of duty (section 12), and a funded organisation risks its funding agreement being enforced by the funder directly (section 17), regardless of whether a discrimination claim is ever brought.

2.8 Reputational risks exist. They can arise whichever way an organisation decides to answer a genuinely contested question, not only from getting it wrong. Treat 'we followed the Code' as helpful evidence of reasonableness, not as a guarantee against any of the above; the safest position remains the documented, case-by-case approach set out throughout this note.

3 SCOTLAND, WALES AND NORTHERN IRELAND

3.1 Everything in this note so far applies across England, Scotland and Wales in the same way, since equality law, including the single-sex exceptions and the definition of sex, is reserved to Westminster rather than devolved. The Act, the Supreme Court's ruling and the Code apply directly and identically in Scotland and Wales.

3.2 Public authorities in Scotland and Wales have their own additional specific duties, under the Equality Act 2010 (Specific Duties) (Scotland) Regulations 2012 and the Equality Act 2010 (Statutory Duties) (Wales) Regulations 2011 respectively, covering matters such as equality objectives, strategic equality plans and equality impact assessments, on top of the general public sector equality duty discussed later in this note.

3.3 Scottish charities answer to the Office of the Scottish Charity Regulator (OSCR) rather than the Charity Commission for England and Wales discussed later in this note; OSCR has not, at the date of this note, issued anything equivalent to the Charity Commission's 21 July statement, leaving Scottish charity trustees without sector-specific regulatory guidance to rely on. We would suggest Scottish charities take independent legal advice on this point specifically, rather than assuming the Charity Commission's guidance, once published, will simply be read across.

3.4 Northern Ireland is different in substance, not just administratively. The Equality Act 2010 does not extend to Northern Ireland, which has its own separate legislation, the Sex Discrimination (Northern Ireland) Order 1976, regulated by the Equality Commission for Northern Ireland (ECNI) rather than the EHRC. ECNI's own stated position is that the Supreme Court's ruling in For Women Scotland is highly persuasive but not binding in Northern Ireland, since it interprets a statute that does not apply

there. ECNI has itself sought an advisory declaration from the Northern Ireland High Court on how sex should be interpreted under Northern Ireland's own equality law; that case is not expected to be heard until December 2026. Charities registered in Northern Ireland answer to the Charity Commission for Northern Ireland, under Northern Ireland's own charity legislation. If your organisation operates in Northern Ireland, this note, and the Code, do not apply to that part of your operation, and you should take separate, Northern Ireland-specific advice rather than assuming the position in the rest of this note applies.

4 THE PROPORTIONALITY TEST

4.1 Providing a service only to one (biological) sex is, on the face of it, direct sex discrimination. It is only lawful where a specific exception in the Equality Act applies, and Chapter 13 of the Code sets out how those exceptions should be approached in practice.

4.2 **The test has two parts**. First, is there a legitimate aim, such as safety, privacy, decency or dignity? Second, is providing the service on a single-sex or separate-sex basis a proportionate way of achieving that aim? The Code puts it this way:

> When considering whether providing a separate or single-sex service is proportionate, the service provider ... should consider all potential service users and whether there is a fair balance between: 1. the benefits of offering the service as a separate or single-sex service, and 2. the needs of those who are accessing it, and 3. the impact on those who are excluded from accessing it.
> Code of Practice, para 13.115

4.3 On the benefits side, the Code lists specific factors that tend to justify single-sex provision: whether users are likely to be in a state of undress, whether they have limited ability to leave or choose an alternative, whether the service is connected with male violence against women, and whether physical differences between the sexes are relevant to the experience of the service (para 13.116). On the exclusion side, the impact on trans people specifically has to be considered, since a trans man is excluded from a men-only service (his biological sex being female) and a trans woman is excluded from a women-only service (her biological sex being male), and trans people are likely to be disadvantaged by this compared with people who are not trans (para 13.119).

4.4 **If a service described as women-only admits trans women,** the Code is confident about the legal characterisation, and noticeably more guarded about what follows from it:

> If a service provider ... admits trans people to a service intended for the opposite sex, then it can no longer rely on the exceptions ... This means that if a service is provided only to women and trans women or only to men and trans men, it is not a separate-sex or single-sex service under the Equality Act 2010. A service like this is very likely to amount to unlawful sex discrimination against the people of the opposite sex who are not allowed to use it.
> Code of Practice, paras 13.130 to 13.131

The first sentence (that this is not a single-sex service at all) is the Code's confident reading of the statutory definition, and follows directly from the Supreme Court's ruling that sex means biological sex. The second, that this is "very likely" unlawful, is the Code's own prediction, not a reported decision on this precise scenario. Direct sex discrimination cannot generally be defended by showing a legitimate aim and a proportionate means; that balancing exercise only exists because Parliament built it into the single-sex service exception itself. Once a service falls outside that exception, because it is in substance mixed-sex, there is no fallback proportionality argument available, and no other exception in Schedule 3 is likely to assist a life-drawing class, a private view or a similar activity. The one remaining route is positive action under section 158 of the Act, discussed in section 9. It can

support a measure for women, defined by sex, and separately a measure for people with the protected characteristic of gender reassignment, but not a single class defined as "women and trans women". The "very likely" is best read as reflecting that no tribunal has yet ruled on this specific scenario.

4.5 This means that there is a risk of a claim from the men who are excluded, and the Code also flags a separate risk of a claim from the women who use the service, in either case brought against the organisation, not against the trans person concerned. The Code confirms it remains possible to offer a mixed-sex service alongside a single-sex one, provided the mixed-sex option is genuinely open to all service users (para 13.131).

4.6 An organisation that instead operates a genuine biological-sex policy, and occasionally exercises individual discretion to accommodate a specific trans person on the facts of that case, is doing something legally different from adopting the blanket combined category the Code rules out. That discretion carries its own risks, including inconsistent treatment between individuals, a claim from men excluded from the same service, since admitting some people of the male sex undermines its single-sex character, potential indirect discrimination claims from trans people not accommodated, and a harder task justifying the decision if challenged, so it is not a safe shortcut. Any such decision should be individual, documented and genuinely exceptional, not a disguised version of the policy addressed above.

BUT

4.7 **Excluding a trans person from a facility matching their biological sex must itself be proportionate.** It will rarely be proportionate to leave someone with no facility at all that they are permitted to use, particularly for something as basic as a toilet: the Code says this is ‘very unlikely to be proportionate’ (para 13.148). Providers are expected to consider whether a less restrictive option, such as an additional mixed-sex facility, would meet the aim without excluding anyone outright (paras 13.120, 13.137 to 13.141).

4.8 The test decides whether your organisation may operate a service on a single-sex basis at all, and who that legitimately excludes, as a question about the category of service, not about any individual. It does not touch the separate question of how that decision is then carried out towards a specific person, which is governed by the protections summarised in section 5. A lawful decision to exclude, wrongly implemented, for example through a public challenge, an aggressive door check, or an unnecessary disclosure of someone's trans status, can still found a discrimination or harassment claim in its own right, entirely separate from whether the underlying policy was itself proportionate.

4.9 A blanket policy, in either direction, is the highest-risk approach. A case-by-case, documented judgement, applied consistently, is what the Code expects, and it says explicitly that it is good practice to keep a record of the reasoning (para 13.129).

5 THE WIDER LEGAL PROTECTIONS FOR TRANS PEOPLE

5.1 The single-sex exceptions above are exactly that: narrow exceptions to a much broader set of protections that continue to apply in full, and which the new Code does not reduce.

5.2 Gender reassignment is a protected characteristic in its own right. It is defined broadly to cover a person at any stage of proposing to undergo, undergoing, or having undergone a process to reassign sex, whether or not they have a Gender Recognition Certificate, and whether or not any medical treatment is involved. Trans people are protected from direct discrimination, indirect discrimination, harassment and victimisation related to gender reassignment, in exactly the same way as for any

other protected characteristic, across every part of your public-facing activity other than any service covered by one of the narrow exceptions discussed elsewhere in this note.

5.3 Positive action is available to support trans inclusion. The same provisions discussed in sections 9 and 11 (section 158 of the Act; Chapter 10 of the Code) allow proportionate action to overcome disadvantage, meet different needs, or encourage participation by an underrepresented group, and there is no reason this could not support, for example, targeted outreach to trans-led community groups, or a proportionate scheme to encourage participation by trans artists or visitors in an activity where they are underrepresented. A measure of this kind is for everyone who shares the protected characteristic of gender reassignment, trans men as well as trans women, and needs its own evidence: evidence that women are underrepresented does not show that trans people are.

5.4 Confidentiality, privacy and data protection, which each apply once your organisation holds or seeks information about someone's sex or trans status, raise distinct duties of their own; we deal with them in section 16 below.

5.5 Whether a service may lawfully be restricted to one sex, and who that excludes, is answered by reference to biological sex, under the proportionality test in section 4; a trans woman excluded from a women-only service is excluded because her biological sex is male, not because she is trans, even though the practical effect on her is the same. That legal distinction does not make the disadvantage disappear, which is exactly why the Code requires the impact on trans people specifically to be weighed as part of the proportionality assessment (para 13.119), rather than assumed away.

5.6 A trans person cannot be singled out, harassed, humiliated, or have their trans status disclosed, in the way any decision to exclude them from a same sex service is carried out. Get the policy right and implement it badly, or get the policy wrong but treat the individual with complete respect, and either way you may still have a claim to answer, just under different parts of the Act.

5.7 We also want to be honest about something the legal analysis above doesn't capture on its own: having a right and being able to exercise it are not the same thing. For any individual to raise a complaint, or bring a claim, can mean disclosing trans status or gender critical beliefs to strangers, absorbing the cost and stress of a formal process, and doing so alone against an organisation with far greater resources. None of that makes the right any less real. We would encourage anyone who feels they have been treated unlawfully to seek support.

6 GENDER-CRITICAL AND OTHER PROTECTED BELIEFS

6.1 Sex and gender reassignment are not the only protected characteristics relevant to this area. Since 2021, employment tribunals have confirmed that a 'gender-critical' belief (broadly, that sex is biological, binary and immutable) can qualify as a philosophical belief protected under the Equality Act's religion or belief characteristic, in exactly the same way that a belief in trans inclusion or in gender self-identification can also be protected. Holding either set of views is not, in itself, unlawful or a reason to treat someone less favourably.

> [Holding a protected gender-critical belief does not mean] those with gender-critical beliefs can indiscriminately and gratuitously refer to trans persons in terms other than they would wish. Such conduct could, depending on the circumstances, amount to harassment of, or discrimination against, a trans person.
> Forstater v CGD Europe and Others [2021] UKEAT/0105/20/JOJ, para 4

6.2 Holding a gender-critical view is protected; so is holding a trans-inclusive view. What can cross the line into unlawful harassment or discrimination is how a belief is expressed or acted on. Gratuitous, humiliating or persistent misgendering of a colleague, or refusing to work with, promote or provide

training to someone because of their gender identity, can each amount to unlawful harassment related to gender reassignment, regardless of the belief behind it. The reverse is equally true: treating someone less favourably, or subjecting them to abuse or exclusion, because they hold gender-critical views is also capable of being unlawful.

6.3 In *Taylor v Jaguar Land Rover Limited*, a tribunal found that a non-binary employee had been discriminated against and harassed when their employer failed to support them against adverse comments from colleagues, awarding substantial damages. Cases like this turn on whether the conduct in question is a proportionate, respectful expression of a protected belief, or did it cross into harassment of someone else's protected characteristic? That is a case-by-case judgement, which a blanket policy in either direction cannot safely make in advance.

(a) Keep dignity-at-work and anti-harassment policies up to date, and make sure they read as protecting everyone, whichever protected characteristic is engaged, rather than as protection for one group only.

(b) Train staff and volunteers to focus on behaviour and its effect, not on which belief someone holds, and to respond to a complaint from any direction with the same care and process.

(c) Resist blanket rules. An assumption that hosting a gender-critical group's event is never acceptable, or that expressing gender-critical views at work is automatically misconduct, both risk unlawful discrimination, just in different directions.

(d) If your organisation hires out space, remember that refusing a booking simply because you disagree with a hirer's protected beliefs is generally not open to you. A refusal is more defensible where there are genuine grounds to believe the event will encourage harassment, violence or unlawful discrimination against a protected group, and that judgement is best taken with advice, not as a standing policy.

(e) Respond to the substance of a complaint, not the profile or politics of whoever raised it.

6.4 The employment tribunal's findings in *Peggie v Fife Health Board and Dr Upton* (discussed further in section 8.3) illustrate the same lesson from the other direction: it was the employer's delay in responding to a colleague's concern, not the underlying facilities decision, that amounted to unlawful harassment. Whichever belief or characteristic is in play, tribunals consistently focus on how promptly, consistently and respectfully an organisation responded, not on which side of a contested debate it ultimately came down on.

7 TOILETS AND CHANGING FACILITIES

7.1 This is likely to be the most common practical question for any organisation with its own premises. The Code provides some examples:

> A service provider operates a shopping centre and decides to renovate the centre. It initially intends to only provide separate-sex toilets to improve the safety and comfort of users. This disadvantages trans people ... The service provider therefore decides to also provide toilets in individual lockable rooms with hand basins, which can be used by people of either sex.
> Code of Practice, para 13.123 (adapted example)

> A community group is opening a small advice centre. It decides to provide separate-sex toilets for women and men, and it extends the use of the accessible toilet with baby changing facility so it can also be used as a mixed-sex toilet for anybody who does not wish to use the toilet for their sex. This is likely to be proportionate given the size and resources of the centre ... If the community group is exercising public functions, this will also be relevant as part of their duties under the Public Sector Equality Duty.
> Code of Practice, para 13.124

7.2 Where you have the space and budget to do so, offering a mix, separate-sex facilities plus at least one lockable, gender-neutral option, tends to satisfy the safety and privacy aim while reducing the impact on trans people. It is also, helpfully, the same model that satisfies a separate legal regime governing staff facilities specifically. See section 15 on health and safety obligations.

7.3 If your only baby-changing facility sits inside one single-sex toilet, that can exclude a parent of the opposite sex just as much as it can exclude a trans parent. A standalone or gender-neutral baby-change facility avoids that problem entirely.

7.4 On staff asking questions at the door: the Code is unusually direct that this is generally the wrong approach for facilities like toilets. It says it is 'unlikely to be either practical or appropriate to approach any particular individual to make enquiries about their sex in relation to facilities, such as toilets, which are incidental to the primary service' (para 13.170). Clear signage, not challenge, is the tool the Code expects you to rely on (paras 13.166 to 13.167).

8 BACKSTAGE, DRESSING ROOMS AND PERFORMER FACILITIES

8.1 The Code does not deal with performance facilities by name, but the same principles apply, and the setting raises its own practical issues: dressing rooms and costume-fitting areas necessarily involve undressing, which the Code recognises as a context where someone may reasonably object to sharing with a person of the opposite sex (para 13.107).

8.2 Because performers and crew are usually workers rather than members of the public, this sits closer to your position as an employer than as a service provider, and this Code does not directly govern it (see section 14). Equity, the performing arts union, takes a similarly individual approach in its own guidance for theatre employers: management should not assume which dressing room or facility a trans performer or crew member would prefer, and this should be worked out through discussion with the individual concerned, ideally before a production begins rather than once a dispute has arisen:

(a) build flexibility into scheduling and room allocation, rather than assuming a rigid single-sex rule for every production;

(b) where you have more than one dressing room, allocate with individual preferences in mind rather than a fixed formula;

(c) screened or curtained individual changing areas within a shared space can resolve most concerns without needing a separate room at all;

(d) talk to the individuals concerned and agree an approach before a production starts, rather than resolving it for the first time when someone objects.

8.3 In *Peggie v Fife Health Board and Dr Upton*, an employment tribunal found that it was lawful for the health board to allow a trans doctor to use a particular changing room, but that failing to put a temporary, practical fix in place once a colleague raised a concern amounted to unlawful harassment. The lesson is less about which underlying arrangement an organisation chooses, and more about

acting promptly, sensitively and practically once a concern is raised. The decision is a first-instance tribunal ruling, which does not bind other tribunals, and it is the subject of an appeal to the Employment Appeal Tribunal.

9 SINGLE-SEX EVENTS, TOURS AND SESSIONS

9.1 Some organisations run women-only private views, life-drawing classes, retreats, workshops or study days, often with a genuinely inclusive aim, such as encouraging participation by a group that is underrepresented in a particular art form or audience.

9.2 The Code's own illustration of how flexible this can be lawful comes from a leisure centre, but it translates directly:

> If a leisure centre offers women-only water aerobics sessions, and it is approached by a man who would like to access the service, the leisure centre should consider whether it could offer a water aerobics session that is also open to men at a different time or on a different day. If it is possible to do so, the service would remain a separate or single-sex service, but with an additional separate service that is also open to men.
> Code of Practice, para 13.139

9.3 The same logic applies to a women-only private view or study day: consider whether running an additional, similarly designed session open to everyone would meet the wider aim, while keeping the original session single-sex. Where your primary aim is encouraging participation by an underrepresented group rather than restricting attendance on grounds of privacy or decency, consider using the Act's positive action provisions (section 158 of the Act) to target outreach and support. Positive action can go further than outreach. The Code's own examples include providing services specifically aimed at a disadvantaged group (paras 10.15 and 10.20), so a women-only development programme, bursary, workshop or networking event can be lawful under section 158 without needing to fit the single-sex service exception. Schedule 3 remains the relevant test if the reason for single-sex provision is privacy, decency or safety, as with changing or life-modelling sessions.

9.4 Section 158 applies if your organisation reasonably thinks that people who share a protected characteristic suffer a disadvantage connected to it, have needs different from those of people who do not share it, or that their participation in an activity is disproportionately low. It permits action that is a proportionate means of addressing that. The Code accepts that the evidence need not be sophisticated statistical data or research: participant profiles, take-up rates, consultations, surveys and published research can all support it (paras 10.7 and 10.8). On proportionality, record whether something less restrictive, such as ring-fenced places, targeted outreach or additional support within a mixed programme, would meet the aim, and set a date to review the measure.

9.5 A section 158 measure for women is a measure for women as the Act defines them, by biological sex. It cannot include trans women on the basis that they are women. It does include trans men, who are biologically female, and excluding a trans man from a women-targeted programme because he identifies as a man is likely to be gender reassignment discrimination. Outside facilities such as toilets and changing rooms, that exclusion is unlikely to be proportionate.

9.6 If your organisation wants a programme open to women and to trans people, the Act supports a measure with two separately justified limbs: one for women, and one for people with the protected characteristic of gender reassignment, which includes trans men as well as trans women. Each limb needs its own evidence and its own proportionality reasoning. That is legally different from a single class of "women and trans women", which corresponds to no protected characteristic in the Act. No

court has yet considered a two-limb measure of this kind, so the reasoning behind each limb should be written down at the time the decision is made.

9.7 A scheme that offers training for employment, or work experience, provides vocational training, which makes it an employment service under Part 5 of the Act (sections 55 and 56) rather than a service to the public. Section 158 still supports outreach, encouragement and targeted training. But if the scheme is, or includes, a service for finding employment, such as placing participants into paid roles, any preference at the point of selection falls under section 159 instead. Section 159 permits preferring one candidate over another only if they are as qualified as each other, and only if the organisation does not have a policy of automatic preference. A blanket women-only eligibility rule at that selection stage does not meet that test.

9.8 As noted above, it may be possible to justify exceptions for specific cases.

9.9 Whichever route you rely on, it is good practice, and the Code says as much, to keep a short written note of the aim you were pursuing, and why you concluded that a single-sex format, rather than a less restrictive alternative, was a proportionate way of achieving it (para 13.129).

10 ASSOCIATIONS AND SUPPORTER SCHEMES

10.1 Part 7 of the Equality Act, and Chapter 12 of the Code, deals separately with associations. This is a narrower category than it sounds. An association only exists, for these purposes, where a body has at least 25 members and admission to membership is regulated by the body's rules and involves a selection process (para 12.2). The Code is explicit that an organisation which simply requires payment of a fee to join, without any form of selection, is not an association under the Act, whatever it calls itself or its members:

> An organisation that merely requires members of the public to pay a fee to join it without any form of selection, such as a nightclub or a gym, is not an association under the Act. It does not matter whether it describes itself as a 'club' or refers to customers as 'members'. Such bodies are involved in the provision of services to the public or a section of the public.
> Code of Practice, para 12.7

10.2 In practice, this means most supporter schemes, open to anyone who pays the subscription, are services, governed by the same single-sex-service test discussed in sections 4 and 9, not the association exception below.

10.3 Where Part 7 does apply, the test is more straightforward than the services test. Associations of any size or character, other than registered political parties, may restrict membership to people who share a protected characteristic, with no proportionality test to satisfy at all, and the only absolute bar is that membership can never be restricted based on skin colour (para 12.66, schedule 16). This extends to who the association treats as an associate or invites as a guest (para 12.70).

> A trans woman applies to join a women-only association and her application is refused. This would be lawful because membership is based on [biological] sex and restricted to women and, under the Act, she does not share that protected characteristic.
> Code of Practice, para 12.68

10.4 The same permissive rule cuts both ways. The Code gives an equally lawful example the other side of this coin:

> A lesbian, gay, bisexual and trans (LGBT) support group is set up to include gay, bisexual and trans people. Its membership is restricted to people with the protected characteristic of any of those sexual

orientations, or gender reassignment. This is permitted under the Act.
Code of Practice, para 12.77

10.5 The associations exception permits restricting membership by a single protected characteristic, sex, or separately, gender reassignment, but "women and trans women" corresponds to neither: it is narrower than sex, since a trans woman does not share the protected characteristic of being female, and broader than gender reassignment, which would also include trans men and would not exclude cis women.

10.6 The permissive rule applies to a single protected characteristic used on its own, not to a bespoke combination of two. An association could not lawfully restrict membership to "women and trans women", excluding men, because that class corresponds to neither the protected characteristic of sex, which, following the Supreme Court's ruling, would exclude trans women, nor the protected characteristic of gender reassignment, which would also include trans men and would not exclude cis women. The same reasoning applies here as for services in section 4: no protected characteristic in the Act maps onto "women and trans women" as a single group.

10.7 If you do run a genuinely selective, single-characteristic tier of this kind, it is worth considering how it is constituted.

11 IF YOUR ORGANISATION IS ITSELF SINGLE-SEX

11.1 Some creative organisations are themselves set up for one sex, sometimes established to create opportunities for women in an art form or role where they remain underrepresented. This raises a different set of questions from the facilities and events covered so far, and the right answer depends heavily on how the organisation is actually constituted.

11.2 **If you are a registered charity** with an object to benefit one sex, the charities exception is likely to be your primary legal basis. This route is common enough, and raises enough questions of its own, including whether a charity can campaign publicly on trans rights, that we deal with it separately and in full in section 12.

11.3 **If you operate as a genuine membership association** meeting the 25-member and selection-process test in section 10, the more permissive schedule 16 exception may apply instead: restricting membership, associate status or guest invitations to one sex, with no proportionality test required. This governs who can be a member of the collective, not who your work is aimed at as an audience, and not who you employ or cast.

11.4 **If neither applies,** for example, an unincorporated or company-structured group without a formal charitable purpose or a genuine selection-based membership, the strongest available basis is usually the Act's positive action provisions (section 158), which permit proportionate action to overcome disadvantage, meet different needs, or encourage participation by an underrepresented group. Positive action supports targeted opportunities and programmes; it sits less comfortably with a permanent, blanket exclusion of everyone else from the organisation altogether.

11.5 Whichever basis applies, a group defined by reference to women includes trans men, who are biologically female. If your organisation relies on the charities exception or on positive action, excluding trans men needs its own justification, which will rarely be available outside facilities such as toilets and changing rooms.

11.6 In many cases, what is really being described is not a service or membership question at all, but a question about who the company casts, commissions or employs. That is a matter for the Equality Act's employment provisions, including the genuine occupational requirement exception, which this new Services Code does not cover.

12 CHARITIES: RESTRICTING BENEFITS BY SEX, AND CAMPAIGNING FOR TRANS RIGHTS

12.1 If your organisation is a registered charity with an object to benefit one sex, section 193 of the Equality Act 2010 (paras 13.46 to 13.62 of the Code) is likely to be your primary legal basis for doing so, separate from the services and associations exceptions discussed elsewhere in this note. It is lawful to provide benefits only to people who share a protected characteristic where this is set out in your charity's governing document, and is either a proportionate means of achieving a legitimate aim, or is for the purpose of preventing or compensating for a disadvantage linked to that characteristic, such as women's continuing underrepresentation in directing or technical roles in theatre.

12.2 The Code is clear that trustees need to keep this under active review, not treat it as settled once at incorporation:

> If a charity had been established to provide benefits to the sons of retired Army officers, the trustees would need to consider whether this restriction would meet either of the two tests under the Act. If it does not, they may need to apply to the charity regulator to amend their aims.
> Code of Practice, para 13.61

12.3 Section 193 permits restricting benefits to people who share a single protected characteristic; it does not extend to a bespoke combination such as "women and trans women", which corresponds to neither the protected characteristic of sex, since a trans woman does not share it, following the Supreme Court's ruling, nor gender reassignment, which would also include trans men and would not exclude cis women. A charity whose governing document benefits "women and trans women", to the exclusion of men, could not rely on section 193 to justify excluding those men, and would very likely be acting unlawfully in doing so. A charity whose benefits are for women also benefits trans men, who are women as the Act defines them, and excluding them needs separate justification.

12.4 The Charity Commission issued an interim statement on 21 July 2026 confirming that the Code will have legal status for charities, and urging trustees not to wait for the Commission's own fuller guidance, which it expects to publish in autumn 2026, before taking steps towards compliance:

> Charities do not need to wait for the Commission's guidance to comply with the Act and the Code. It is the responsibility of trustees to ensure their charity is compliant with the Code, once it is legally enforceable, and unreasonable delays in taking steps towards compliance may be considered a breach of those responsibilities.
> Charity Commission, 21 July 2026

12.5 The Commission has also confirmed that its forthcoming guidance will explain how the charities exception above and the positive action provisions can apply to charities, without altering the underlying legal position that sex means biological sex following the Supreme Court's ruling. At the Charity Law Association's conference in October 2026, the Commission indicated they still intend to publish guidance in autumn 2026.

12.6 **For Scotland**: Everything above concerns the Charity Commission for England and Wales. Charities registered in Scotland answer to the Office of the Scottish Charity Regulator (OSCR) instead, under separate Scottish charity legislation. The underlying section 193 exception in the Equality Act applies to Scottish charities in exactly the same way, since equality law is reserved, but OSCR has not, at the date of this note, issued anything equivalent to the Charity Commission's 21 July statement, leaving Scottish charity trustees without sector-specific regulatory guidance to rely on. We would suggest Scottish charities take independent legal advice on this point specifically, rather than assuming the Charity Commission's guidance, once published, will simply be read across.

12.7 **For Northern Ireland**: Charities registered in Northern Ireland answer to the Charity Commission for Northern Ireland, and are governed by Northern Ireland's own, separate sex discrimination legislation rather than the Equality Act 2010. The whole of this section, and the Code it discusses, is accordingly of background interest only to a Northern Ireland charity, not a direct statement of the law that applies to it; see section 3 for more on the distinct and still-unresolved position there.

12.8 All charities can campaign for rights for trans people, provided the campaigning is a means of furthering the charity's own purposes rather than an end in itself. The Charity Commission's guidance on campaigning and political activity (CC9, Campaigning and political activity guidance for charities) confirms that charities may campaign and undertake political activity as a positive way of furthering their purposes, provided campaigning does not become the charity's continuing and sole activity, the charity never supports or opposes a political party or candidate, and trustees are satisfied that the activity is a reasonable and proportionate use of the charity's resources.

12.9 For a creative organisation with charitable objects that touch on education, access, diversity or equality, public support for trans inclusion, for example a statement of values, participation in Trans Day of Visibility, or an exhibition addressing trans history, is capable of being a proportionate way of furthering those objects. The less a proposed activity connects to the charity's stated objects, the more trustees need to think, and document, why it is nonetheless a proper use of charity resources.

12.10 This is a genuinely contested area in practice, not just in theory. In *Mermaids v Charity Commission and LGB Alliance*, a tribunal spent seven days in 2022 considering a challenge to the Charity Commission's decision to register LGB Alliance, an organisation whose activities focus heavily on opposing trans rights reforms, as a charity. The tribunal's decision, handed down in July 2023, dismissed the challenge on the technical ground that Mermaids lacked standing to bring it; the two judges were reported to be split on the underlying question of whether LGB Alliance should have been registered at all, so the point was never authoritatively resolved. The case shows that both sides of this debate have used, and are likely to continue using, charity registration and regulation as a battleground, and that a cultural charity taking a public position on trans rights, in either direction, should expect the possibility of challenge or criticism.

12.11 Practically, this means:

(a) tie any campaigning or public statement clearly back to a specific charitable object, not just to trustees' or staff's personal views;

(b) keep the activity proportionate to the charity's overall size and resources;

(c) have trustees consider, and ideally minute, the decision, including reputational considerations and the potential impact on beneficiaries, staff, donors and funders; make sure any factual claims used are accurate and evidenced; and

(d) take advice before a significant public campaign or statement, in the same way you would before changing a facilities policy.

13 BEING A WELCOMING ORGANISATION

13.1 Complying with the law and being a genuinely welcoming organisation are not, in most practical situations, in tension. The proportionality test that the Code sets out already asks providers to weigh the impact on trans people properly, rather than treating exclusion as the default:

(a) Offer a gender-neutral or accessible facility as standard wherever your building and budget allow, rather than only as a fallback when someone raises an objection.

(b) Brief front-of-house, box-office and volunteer-facing staff in advance on how to respond calmly and consistently if a visitor is challenged or a complaint is made, rather than leaving an individual member of staff to work it out on the spot.

(c) Use clear, matter-of-fact signage. The Code treats clear communication, signage, website information and what visitors are told at admission or induction, as the main tool for making single-sex provision workable in practice (paras 13.166 to 13.167).

(d) Avoid asking anyone to justify or prove their sex unless there is a specific, proportionate reason to. Appearance alone is not a reliable indicator, and the Code itself accepts there is 'no type of official record or document in the UK which provides reliable evidence of sex' (para 13.179).

(e) If a genuine concern does arise, handle it away from public view, and never in a way that singles out or humiliates an individual visitor, member or volunteer.

13.2 One practical rule of thumb: for a facility that is genuinely essential and has no realistic alternative, such as the only toilet in a small venue, it is very unlikely ever to be proportionate to leave a trans visitor with nothing they are permitted to use (para 13.148). If you can only provide one set of facilities, a mixed-sex or gender-neutral design is usually both the safer legal choice and the more welcoming one.

13.3 For practical, sector-specific ideas beyond the legal minimum, the University of Leicester's Trans-Inclusive Culture guidance for museums, galleries, archives and heritage organisations, and Gendered Intelligence's training and consultancy, are both aimed squarely at organisations like yours; see section 21 for details.

14 WORKERS

14.1 This new Code covers services, public functions and associations. It does not apply to your organisation's duties as an employer, which remain governed by a separate statutory Employment Code of Practice, itself still based on the 2011 approach and not yet updated to reflect the Supreme Court's ruling.

14.2 That gap in the guidance is not the same as a gap in the law. The Supreme Court's ruling on the meaning of sex applies equally to the employment provisions of the Equality Act 2010. An old staff policy built around gender identity rather than sex, for facilities, uniforms or anything else, cannot safely be assumed to remain lawful simply because the Employment Code has not yet caught up. Health and safety obligations for staff facilities specifically are covered in section 15, and the position on gender-critical and other protected beliefs among staff is covered in section 6.

14.3 We recommend treating staff and volunteer-facing policies, covering recruitment, facilities and dignity at work generally, as a distinct piece of work from the visitor-facing points in this note, rather than by extension from this briefing.

15 HEALTH AND SAFETY OBLIGATIONS

15.1 For staff and volunteer facilities, and any visitor facilities they also use, there is a separate, longstanding legal duty that sits alongside the Equality Act position: the Workplace (Health, Safety and Welfare) Regulations 1992.

> Suitable and sufficient sanitary conveniences shall be provided at readily accessible places ... Separate rooms containing conveniences [shall be] provided for men and women except where and so far as each convenience is in a separate room the door of which is capable of being secured from inside.
> Workplace (Health, Safety and Welfare) Regulations 1992, regulation 20

15.2 In practice, this gives an organisation two lawful models for staff and shared facilities: conventional separate-sex facilities, or individual, fully enclosed, lockable rooms that anyone can use. A halfway house, for example open-plan 'gender-neutral' facilities without individually lockable rooms, does not satisfy this specific regulation, whatever the position under the Equality Act.

15.3 Helpfully, this is the same model the Code favours for the Equality Act reasons discussed in section 7: separate-sex facilities plus at least one lockable individual room. Adopting that approach as your starting point tends to satisfy both regimes at once.

15.4 This particular duty sits with you as an employer, so it belongs in your health and safety policy and risk assessment as well as your equality policy. If you have not reviewed your staff and volunteer facilities specifically against this regulation, that is worth doing alongside the equality-focused review elsewhere in this note (see the checklist in section 19).

16 CONFIDENTIALITY, PRIVACY AND DATA PROTECTION

16.1 Article 8 of the European Convention on Human Rights protects a person's private life, including information about their sex and trans status. The Code says this is precisely why a service provider must be able to objectively justify asking anyone about their sex, and should only do so where it is a proportionate means of achieving a legitimate aim (paras 13.161 to 13.165). In practice, this means having a genuine operational reason before asking the question at all, not asking as a matter of routine or curiosity. The Code adds that whether someone has a Gender Recognition Certificate is unlikely to be relevant information for this purpose at all, unless there is a specific operational reason to know (para 13.181).

16.2 If, in the course of such an enquiry or otherwise, your organisation acquires information that someone has a Gender Recognition Certificate, or has applied for one, disclosing that information, or their sex, to anyone else without consent may be a criminal offence, separately from anything in the Equality Act:

> ...onward disclosure of either that information or their sex without consent may be a criminal offence in some circumstances (read section 22 of the Gender Recognition Act 2004).
> Code of Practice, para 13.181

Restrict knowledge of this kind of information to those who genuinely need it for a specific purpose. Never share it as general office knowledge, even informally, and never disclose it to reassure a third party who has raised a concern. Make sure anyone likely to encounter this information, such as HR, safeguarding leads or senior managers, understands that disclosure can be a criminal offence, not simply a breach of policy.

16.3 Where you hold information about a person's trans status, medical transition, or Gender Recognition Certificate, this constitutes special category data under Article 9 of the UK GDPR (as data concerning health or sex life), requiring an explicit processing condition in addition to a standard lawful basis.

16.4 Note that while paragraph 13.182 of the EHRC Code suggests that information about biological sex itself is 'likely to constitute special category data,' this is subject to some debate under data protection law: ordinary data on biological sex is standard personal data. However, because asking about sex in practice often reveals trans status or medical history, providers should handle any enquiries with equivalent care, limiting collection, restricting access, and setting clear retention periods. Consider a data protection impact assessment before adopting any policy that involves systematically asking about or recording this information.

16.5 If your equality monitoring forms record gender identity, and your reports count trans women as women and trans men as men, the figures describe gender identity, not sex as the Act defines it. A

measure for women that relies on evidence of underrepresentation needs evidence about women by sex, so collect sex and gender identity as separate questions, report them separately, and label which basis each figure uses. A question framed as "gender assigned at birth" works better as a direct question about sex. The Code recognises equality monitoring and service planning as legitimate purposes for holding information about sex (para 13.182). Before changing the basis of figures you report to a funder, check the funder's own reporting requirements.

16.6 This is a genuinely separate compliance duty from the Equality Act analysis elsewhere in this note, and a narrower one than data protection law generally. It does not replace your organisation's existing data protection policies or your data protection officer or adviser; it simply flags the specific point at which this area of work intersects with them.

17 LOCAL AUTHORITY-RUN ORGANISATIONS

17.1 Many creative organisations, particularly museums, galleries and theatres, are run directly by a local authority, or by a charitable trust that has taken over a council service, or otherwise carry out functions on a council's behalf. Where that is the case, the public sector equality duty in section 149 of the Equality Act 2010 applies in addition to everything discussed above. It requires public authorities, in the exercise of their functions, to have due regard to the need to eliminate discrimination, harassment and victimisation, to advance equality of opportunity between people who share a protected characteristic and those who do not, and to foster good relations between them.

17.2 The Code itself flags exactly this in its own example of a small advice centre reviewed in section 7: 'if the community group is exercising public functions, this will also be relevant as part of their duties under the Public Sector Equality Duty' (para 13.124). In practice, this generally means keeping a written record of how you assessed the impact of a decision on different groups, including trans people, rather than simply reaching a reasonable-looking outcome without documenting how you got there.

17.3 This duty applies in the same way to local authorities in England, Scotland and Wales. Northern Ireland local authorities are instead subject to a separate statutory duty under section 75 of the Northern Ireland Act 1998, requiring an approved equality scheme rather than the section 149 duty described here; that is outside the scope of this note.

17.4 The duty is not confined to councils. A body that is not a public authority but exercises public functions must have due regard to the same matters when exercising those functions (section 149(2)). An organisation that distributes public or National Lottery funding, or regrants on a public funder's behalf, needs to consider whether its grant-making is a public function of that kind; if it is, the same written record of due regard applies to the design of its funding programmes.

18 WHAT REMAINS UNCERTAIN

18.1 We want to be candid rather than falsely reassuring: several aspects of this area do not yet have settled answers. The Museums Association and the University of Leicester's Trans-Inclusive Culture team have both said publicly that the final Code has, in their view, generated further confusion rather than the clarity it promised, and that the legal and practical position is likely to keep evolving through further litigation.

(a) Reception across the sector has been openly critical in places. Gendered Intelligence's published response to the Code raises concerns about its practical workability and its impact on the safety and dignity of trans people. Disability Rights UK has gone further, describing the Code as setting 'a dangerous precedent for the erosion of other protected characteristics.'

(b) The Code is guidance, not legislation. Courts must have regard to it, but it is not the final word, and further case law testing how the proportionality test applies to particular settings is likely.

(c) Asking about sex remains one of the more awkward practical areas. The Code allows providers to ask in limited, proportionate circumstances, but is cautious about how, and accepts there is no reliable official document that proves someone's biological sex (para 13.179).

(d) Neither the Supreme Court's judgment nor the Code addresses in any detail how the definition of biological sex applies to intersex people, or people with variations in sex characteristics, where the traditional indicators do not always align. This is a real gap rather than a hypothetical one: the Code makes no comment on how an intersex person should be accommodated in single-sex service provision.

(e) No court has yet considered a positive action measure with separate limbs for women and for people with the protected characteristic of gender reassignment, or how far excluding trans men from women-targeted programmes can be justified.

(f) The Code's characterisation of information about a person's sex as special category data (para 13.182, discussed in section 16) has been disputed by some commentators. We have followed the Code's own description in this note, but flag that this specific point is contested rather than settled.

(g) Further developments are expected once the separate Employment Code is updated, and once the Charity Commission publishes its fuller guidance in autumn 2026, either of which could indirectly affect how this area is understood more widely.

18.2 Given all this, we would suggest treating any policy you adopt now as provisional. Build in an early review date, six to twelve months is sensible, rather than treating today's position as settled once and for all.

19 PRACTICAL CHECKLIST

- Review current toilet, changing and baby-change provision: single-sex facilities plus at least one lockable, gender-neutral option, where space and budget allow.
- Separately, check staff and volunteer facilities against the Workplace (Health, Safety and Welfare) Regulations 1992 specifically, not just against the Equality Act position.
- Review who has access to any information you hold about a person's sex, GRC status or trans status, and treat it as special category data under UK GDPR with a defined retention period.
- Check whether backstage or fitting-room arrangements ever force someone to share while undressing, and build flexibility into scheduling and room allocation.
- List any single-sex events, tours or sessions you run, and record the legitimate aim behind each and why a less restrictive alternative would not achieve it.
- Check whether any supporters scheme, society or membership tier genuinely meets the association test, and if so, whether a sex restriction still serves a clear, current purpose.
- If any part of your organisation is itself constituted as single-sex, identify which legal basis applies to it, and keep that reasoning under review.
- If you are a charity, ensure your trustee board specifically considers and minutes this note, given the Charity Commission's warning about delay.

- If you are a charity considering any public campaigning or statement on trans rights or related issues, tie the activity back to a specific charitable object and have trustees consider and minute the decision.
- Ensure dignity-at-work and anti-harassment policies address gender-critical and other belief-related conduct as well as gender reassignment, and that staff are trained accordingly.
- If you are run by, or deliver services on behalf of, a local authority, keep a written record of your public sector equality duty analysis for any decision in this area.
- Brief front-of-house, box-office and volunteer-facing staff on how to respond calmly and privately to a complaint or challenge.
- Review your signage so that it is clear rather than silent on what facilities are available.
- For any women-only or women-targeted programme, define eligibility by sex, check that trans men are not excluded without separate justification, and keep a written positive action assessment with a review date.
- Review equality monitoring forms so that sex and gender identity are collected and reported separately.
- Set a review date, six to twelve months, for any policy you adopt now.
- Take separate advice on staff and volunteer-facing policies specifically; do not assume this note, or the Services Code, covers that ground.

20 FREQUENTLY ASKED QUESTIONS

Q. A visitor who appears to be a man wants to use the women's toilets. What do we do?

A. If your women's toilets are genuinely single-sex, and you have no clear, proportionate reason to question this particular visitor, there is usually no issue: sex is not the same as appearance, and the Code itself says it is generally not practical or appropriate to question anyone about their sex in relation to a facility like a toilet (para 13.170). If in doubt in the moment, direct any concerned party to a mixed-sex or accessible facility rather than confronting anyone.

Q. Can we just make all our toilets gender-neutral, to avoid the issue altogether?

A. It is a lawful option under the Equality Act, and for some smaller venues it is the simplest one, but check it against the health and safety position in section 15: open-plan gender-neutral facilities without individually lockable rooms will not satisfy the Workplace Regulations for staff use. Consider too whether any of your visitors have a specific safety, dignity or vulnerability reason to need a single-sex option.

Q. A member of the public complains that a trans woman used the women's toilets. What now?

A. Acknowledge the complaint courteously, but do not take any action against the individual visitor on the spot. Handle it afterwards, calmly, and with reference to your organisation's own written policy. If your facilities already include a gender-neutral or mixed option, you can point the complainant to that choice for the future without needing to resolve who was 'right' in the moment.

Q. We run a women-only life-drawing class. Is that still allowed?

A. Very possibly, if you can point to a genuine legitimate aim, such as encouraging participation by women in a setting where they would otherwise be underrepresented or uncomfortable, and you have thought about whether running an additional, similarly designed session open to everyone (as the Code's own water aerobics example suggests, para 13.139) would meet the wider aim while keeping the original session

single-sex. Keep a short written note of that reasoning, and talk to us if you are not sure the aim still holds. If the aim is participation rather than privacy, positive action under section 158 (see section 9) is usually a stronger basis than the single-sex service exception.

Q. Do we need to rewrite our supporters membership terms?

A. Usually not. Most schemes are open to anyone who pays, which means they are a service, not an association, under the Act. There is nothing to change unless a specific tier genuinely involves a selection or vetting process and is restricted by sex.

Q. We're a women-only theatre company. Are we still lawful?

A. Possibly, but the answer depends on how you are constituted, whether as a charity, a genuine membership association, or neither, and on whether the real question is about your audience, your membership, or who you cast and employ.

Q. As a charity, can we publicly campaign or make statements in support of trans rights?

A. Yes, provided the activity clearly furthers one of your charitable objects, is a proportionate use of your resources, and steers clear of party politics.

Q. We're a local authority-run venue or organisation, or a trust delivering services on a council's behalf. Does anything extra apply to us?

A. Yes. The public sector equality duty requires you to actively consider, and be able to show that you considered, the impact of any decision on people with different protected characteristics, including trans people, rather than simply reaching a reasonable-looking outcome without a documented process.

Q. A member of staff has asked to use the changing room matching their gender identity rather than their sex. What do we do?

A. This is an employment question, not one the new Code directly covers, and it deserves individual advice rather than a general answer in this note.

Q. What happens after 5 August 2026 if we have not reviewed anything yet?

A. Nothing changes automatically at your venue on that date, but from then on, the new Code is what a court or tribunal would look to if a complaint arose. There is no formal transition period built in for individual organisations, so it is worth working through the checklist in section 19 beforehand rather than waiting for an incident to prompt it.

Q. Can we still describe ourselves as a trans-inclusive organisation?

A. Yes. Nothing in the Code prevents an organisation from holding and stating inclusive values, or from making practical choices, such as gender-neutral facilities where feasible, that go further than the legal minimum. What the Code changes is the basis on which any single-sex provision you do offer must operate: on sex, not gender identity, if it is to keep the benefit of the single-sex exception at all.

21 SOURCES AND FURTHER READING

This note draws on the following sources, current as at 28 July 2026, with the sections revised in the November 2026 edition checked against sources current at 11 November 2026. We have separated primary legal and regulatory sources from sector support resources aimed at helping organisations act well on inclusion; the latter are not legal advice and take differing views on aspects of the Code.

Primary legal and regulatory sources

- For Women Scotland Ltd v The Scottish Ministers [2025] UKSC 16.

- Equality and Human Rights Commission, Code of Practice for Services, Public Functions and Associations (2026), as laid before Parliament; GOV.UK, accompanying explanatory memorandum, equality impact assessment and final stage impact assessment.
- Equality and Human Rights Commission, 'UK Supreme Court ruling on the meaning of sex in the Equality Act: our work', equalityhumanrights.com.
- Charity Commission for England and Wales, 'Charities urged to prepare for compliance with EHRC Code of Practice', GOV.UK, 21 July 2026.
- Charity Commission for England and Wales, Campaigning and political activity guidance for charities (CC9).
- Mermaids v Charity Commission for England and Wales and LGB Alliance, First-tier Tribunal (General Regulatory Chamber), decision of 6 July 2023.
- Good Law Project and others v Equality and Human Rights Commission, [2026] EWHC 279 (Admin), 13 February 2026.
- Peggie v Fife Health Board and Dr Upton, employment tribunal judgment, 8 December 2025.
- Equality Act 2010, sections 55, 56, 149, 158 and 159, and Schedule 3, Part 7.
- Forstater v CGD Europe and Others [2021] UKEAT/0105/20/JOJ.
- Taylor v Jaguar Land Rover Limited, ET/1304471/2018 (2020).
- Workplace (Health, Safety and Welfare) Regulations 1992 (SI 1992/3004), regulation 20, and the associated HSE Approved Code of Practice (L24).
- Information Commission's Office, guidance on special category data under the UK GDPR, ico.org.uk.
- Gender Recognition Act 2004, section 22.

Sector support and further reading

- Trans-Inclusive Culture: guidance on advancing trans inclusion for museums, galleries, archives and heritage organisations, Research Centre for Museums and Galleries, University of Leicester (version 3, updated June 2026), endorsed by the Museums Association and ICOM UK, among others.
- Gendered Intelligence, response to the updated EHRC Code of Practice, and its training and consultancy services for arts and heritage organisations, genderedintelligence.co.uk.
- Disability Rights UK, statement on the new EHRC guidance, disabilityrightsuk.org.
- Museums Association, statement on the updated EHRC Code of Practice, June 2026.
- Equity, guidance for theatre employers on dressing rooms and facilities, via the gender equality resources pages of UK Theatre and the Society of London Theatre (SOLT).
- Arts Professional, 'Guide: What does the EHRC advice mean for venues?', 22 May 2026, and its wider policy and funding coverage, artsprofessional.co.uk: a sector-wide, cross-artform overview of how the Code applies across all nine protected characteristics, not only single-sex provision.
- Freelancers Make Theatre Work, LGBTQIA+ resources and advocacy for freelance creative workers, freelancersmaketheatrework.com: practical support aimed at individuals working across the sector rather than at venues specifically.
- Equality Advisory and Support Service (EASS), an independent advice service for members of the public: 0808 800 0082.