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FAQs: how do things stand for employers following the new Services Code?

For Women Scotland Ltd v The Scottish Ministers [2025] UKSC 16 held that in the Equality Act 2010 (**EqA**) "*the words "sex", "woman" and "man"…mean (and were always intended to mean) biological sex, biological woman and biological man*". This represented a shift from the widely held interpretation prior to that judgment.

In light of the judgment, an updated version of the Equality and Human Rights Commission's (**EHRC**'s) Statutory Code of Practice for Services, Public Functions and Associations (the **Services Code**) - statutory guidance on what the provisions of the EqA mean in practice for service providers - was laid before Parliament on 21 May 2026 and will take effect on 5 August 2026.

We summarised the new Services Code in a briefing note dated 2 June 2026 (the **Briefing Note**), to which we will refer in these FAQs. It sits alongside a decision-making framework for service providers considering offering a single- or separate-sex service, also dated 3 August 2026 (the **Framework**).

Set out below is a high-level response to some of the questions Stonewall has received from Proud Employers since the Services Code was published. This note is intended to provide an indication of how to think about the issues, and is not legal advice for reliance upon by any particular organisation – the application of the law in this area can be very fact specific.

General considerations for employers

1. **What action should we take in our workplaces in light of *For Women Scotland* while the Employment Code has not been updated?**

While the EHRC has not yet updated its dedicated Code for employers, the new Services Code gives a good indication of what is now expected of employers with regard to the application of the EqA. Employers can also see examples of the Employment Tribunal's approach in its post-*For Women Scotland* decisions, albeit these are not binding precedent and to some degree conflict with one another (and with the new Services Code). The key recent Tribunal cases are as follows (although this is likely to be an area which sees further litigation and these are merely snapshot of recent decisions):

- *Lockwood v Cheshire & Wirral NHS Trust & Ors*, which held that a non-binary employee did not, in light of *For Women Scotland*, have the protected characteristic of gender reassignment;[1]

- *Kelly v Leonardo UK Ltd*, which held that the requirements for separate-sex toilets in the *Workplace (Health, Safety and Welfare) Regulations 1992* (the **1992 Regulations**) did not necessarily have to be interpreted as referring to biological sex, and that the employer's provision – trans-inclusive women's toilets, alongside separate single-occupancy toilets – was lawful;[2]

[1] Gender identity, protected beliefs, and single-sex facilities in the workplace: a review of Lockwood v Cheshire and Wirral NHS Trust & Others | Bates Wells
[2] Gender identity, protected beliefs, and single-sex facilities in the workplace: a review of Kelly v Leonardo UK Ltd | Bates Wells

- *Peggie v Fife Health Board & Anor*, which held that "*it is potentially but not necessarily lawful under the [EqA] to permit a trans woman to use a female only space, such as the changing room, in the context of work*";[3]

- *Hutchinson & Ors v County Durham and Darlington NHS Foundation Trust*, which held that the 1992 Regulations must be interpreted as referring to biological sex, and that requiring the claimant (a cis women) to share a changing room with a trans woman constituted unlawful harassment;[4] and

- *LS v NHS England*, which found that the defendant's policy of allowing trans women to use the women's toilets was unlawful, and that they should have provided additional unisex facilities instead.[5]

Further (binding) guidance was provided by the High Court in *R (Good Law Project & Ors) v EHRC [2026] EQHC 279 (Admin))* (***Good Law Project***). The Court held that workplace toilets should be provided on the basis of biological sex, but that trans people should not be left with no (or no appropriate) provision, and should be provided with additional mixed-sex or gender-neutral facilities. However, the claimants have sought permission to appeal, and elements of the decision are in tension with the subsequent EHRC Services Code.[6]

Although the Employment Code is expected to be updated in due course, no timetable has yet been provided for its publication.

In the meantime, employers should not assume that compliance can be delayed while we await the Employment Code. Employers are required to comply with the law as it currently stands and should take steps to ensure organisational understanding of the relevant statutory provisions - including both the EqA's prohibitions on discrimination, and the provisions about single-sex toilets and changing rooms in the 1992 Regulations- and the case law.

2. We're both an employer and a service provider (or public body), so how do we tell what guidance applies to a given space or decision, particularly where the same facility serves staff and the public?

In general, when you are dealing with your employees, the Employment Code provides the relevant guidance, and when you are dealing with the public / your service users, the Services Code applies. Everything comes back to the EqA itself, which both Codes seek to provide guidance on.

There will be scenarios where you have to consider your duties as both an employer and a service provider, for example:

[3] Gender identity, protected beliefs, and single-sex facilities in the workplace: a review of Peggie v (1) Fife Health Board and (2) Dr Upton | Bates Wells
[4] Gender identity, protected beliefs, and single-sex facilities in the workplace: a review of Hutchinson | Bates Wells
[5] Gender identity, protected beliefs and single-sex facilities in the workplace: a review of LS v NHS England | Bates Wells
[6] Most significantly, the High Court's suggestion that it would not constitute direct discrimination against cis men to exclude them from a trans-inclusive women's toilet - provided alternative facilities were available – appears to be rejected in the Services Code

a. if your toilets are shared by service users and staff. The requirements in relation to toilets are similar, save that employers are required to make some form of separate-sex provision under the 1992 Regulations, and service providers are only expected to do so (as confirmed by the Services Code). In this case, the stronger requirements of the 1992 Regulations should prevail (see Q3 below).

b. if e.g. your employee code of conduct governs how your employees engage with service users. You may have to (for example) balance the right of your employees to hold protected gender critical beliefs, with the right of your trans service users to be treated with dignity and respect (see Q7 below). This is the kind of balancing exercise the EqA is designed to accommodate, but will need to be carried out (and recorded carefully).

Single- or separate-sex spaces, including toilets

3. We have limited space, budget, or control over our estate, so what's genuinely expected of us, and how does this sit with building regulations?

In relation to toilets (and changing rooms), service providers are now expected to provide "biologically" separate-sex facilities, and a failure to do could give rise to discrimination claims under the EqA.

Employers are required by the 1992 Regulations to have separate toilets - and (where needed) washing and changing facilities - for male and female staff, and the High Court's judgment in *Good Law Project* has confirmed that this now means "biologically" male and female. A failure to provide biologically separate-sex facilities in the workplace could, as well as breaching the 1992 Regulations, give rise to challenges under the EqA.

In both cases, however, biologically separate-sex provision is a floor not a ceiling – service providers and employers can provide additional facilities, and may well be required to. The Services Code (and the High Court's judgment in *Good Law Project)* confirm that it is unlikely to be proportionate, and might be discriminatory, to leave trans people with no (or no appropriate) provision. In practice, that will mean providing – in addition to "biologically" separate-sex facilities - trans-inclusive or mixed-sex facilities, which could be in the form of an individual lockable cubicle available to all (e.g. a repurposed accessible toilet).

Service providers who are unable to make that kind of additional provision face a difficult balancing exercise, in which the views of their service users might be a relevant factor (see paragraphs 21-31 of our Briefing Note and the Framework). Employers will have to carry out a similar exercise, but weighing the additional factor of the 1992 Regulations.

The expectations on service providers when it comes to monitoring toilet use are set out in our Briefing Note at paragraphs 39-43, which explains that it is unlikely to ever be appropriate to ask a service user to confirm their sex in order to gain access to the toilets. A more proactive approach may be required from employers, since the workplace toilets will be being used regularly by the same, known people. This is a matter that the Employment Code is likely to shed more light on in due course.

4. If we believe our only option is to make accessible workplace facilities mixed sex, how do we reduce and mitigate the impact on people with access needs?

For many organisations that cannot realistically expand their toilet facilities, repurposing an existing accessible toilet as a mixed-sex toilet available to all will be the only way to make additional provision

for trans people. Whether that is proportionate and appropriate will depend on the organisation's resources, the size of the workplace, and the needs / views of the workforce. It may be sensible to consult on any proposed changes and to keep them under review. Many employers will have limited space, together with employees with access needs, employees who are trans, and employees who wish to use single-sex facilities in their workforces – and there are no easy solutions for those employers to balance those competing pressures.

The Services Code is clear that service providers (and in particular public authorities) should monitor any detriment an arrangement of this nature causes to disabled people, and/or to trans people, and the same can be expected to apply to employers. That will certainly mean keeping a record of any complaints, and may also require proactively surveying staff from time to time.

5. **What are the expectations on an organisation to monitor and restrict access to spaces, are we expected to train staff to do this and how can we manage the risks involved?**

The Services Code explains that providers operating (biologically) separate- or single-sex spaces should only ask someone's sex when doing so is proportionate. There are likely to be better ways of supporting the operation of such services in the first instance (such as clear signage and communications in onboarding documents etc) – it should be clear who a particular service is for, and users should have all the information they need to allocate themselves correctly. If all of your services are trans-inclusive or mixed sex, that should also be made clear.

Asking someone's sex should in effect be a last resort when there is clear evidence of misuse of a single- or separate-sex service. That evidence might include observations made by staff (or complaints by other service users) based on the appearance of people using the service, but appearance is accepted in the Services Code to be an unreliable indicator of sex. Where such requests are considered necessary, they should be made discretely and politely. It will never be appropriate to ask for proof of sex.

All of this is complex and potentially risky (given that inappropriate challenges could constitute harassment); it would be sensible to provide written guidance and/or training to frontline staff, and to make sure they have clear lines of escalation / support if issues arise.

If you provide toilets for service users alongside your main service, it is unlikely to ever be practical or appropriate to ask a toilet user to confirm their sex (see paragraphs 39-43 of our Briefing Note.) Staff should be clear on what the toilet use policy is so that they can clarify it for those who ask, and should record any complaints in a neutral, factual way - but should be clear that they are not required to actively monitor toilet use, and be prepared to explain that to any service users who complain.

Employers should have clear, legally compliant policies in place, which are up to date, communicated to staff and kept under regular review. Managers and HR should be provided with appropriate training on these policies. If complaints are made by employees that these policies are not being adhered to, complaints should be responded to and addressed promptly, sympathetically and with an open mind.

6. How can we design mixed sex or 'third space' provision in a way that includes trans people but does not single them out?

The Services Code says that the primary means of ensuring that separate-sex services are operated lawfully will be clear communication about who they are for, "using proportionate means which are likely to be effective" [13.167]. In the case of mixed-sex / trans-inclusive provision made in addition to "biologically" separate-sex provision, that is likely to mean clear labelling explaining that the facility is "open to all" / "gender-neutral" etc. (It does not necessarily mean labelling the main provision as being e.g. for "biological women only" - there is a good argument that "women" can now be assumed to mean "biological women" in this context - though the Courts have not yet considered this.)

It can be assumed that there are additional obligations on employers (as opposed to service providers) to have internal employee policies / handbooks etc which expressly explain the policy on (e.g.) toilet use, and provide an avenue for employees to raise any concerns. Again, it will be important to appropriately address and record any allegations about inappropriate use, and if necessary issue additional guidance to staff.

Other workplace policies

7. What might this mean for our trans inclusion policy?

It is still perfectly lawful for organisations to have policies aimed at boosting the inclusion of trans staff and (for example) encouraging staff to engage respectfully with trans and non-binary colleagues. It should be made clear that bullying or harassment in any form is unacceptable.

The potential tension arises from the fact that gender critical beliefs (namely a belief that sex is biological and immutable) are – since the case of *Forstater v CGD Europe*[7] – protected under the EqA, and the rights of staff to hold and express such beliefs has to be balanced alongside the rights of trans and non-binary employees. Simply prohibiting employees from expressing their gender critical views, including on social media or internal staff forums, may well be unlawful discrimination on the basis of belief.[8]

Any expression of gender critical beliefs must, however, be appropriate; conduct that is grossly offensive of wilfully provocative is not protected, even if it is based on protected beliefs, and employers can still prohibit such conduct. In *Orwin v East Riding of Yorkshire Council*,[9] an employee's decision to change his email signature to "XYchromosomeGuy/AdultHumanMale" - in response to his employer's optional invitation to employees to cite their pronouns in their email signatures - was held to be an "objectionable manifestation" of a belief and therefore not protected. It was a "deliberately provocative act…mocking the idea of gender self-identification", and he had refused to consider whether there was a less offensive way to express his beliefs.

Employers should seek to ensure that their workplace fosters inclusivity for, and balances the needs and rights of, all protected groups, including where those rights could be considered to be in opposition to one another.

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[7] [2021] 6 WLUK 104

[8] See *Higgs v Farmor's School* [2025] EWCA Civ 109, where the claimant's re-posts about "the LGBT crowd…destroying the minds of normal children" were held to be "stupidly rhetorical exaggeration" but not "grossly offensive".

[9] Employment Tribunal, 6000146/2022

It may be wise for policies to be relatively high level, emphasising the fundamental requirement of mutual respect, and mirroring the wording of the legislation to describe what is prohibited.

8. **How does this apply to our staff networks, and any membership bodies, what are our options for running inclusive women's networks?**

As explained at paragraphs 44-52 of our Briefing Note, any formal membership association (a group with 25+ members and rules about joining) can restrict its membership to (say) women only on the basis of the "single characteristic associations" exception at schedule 16(1) EqA, provided they define "women" as meaning "biological women".

The Services Code suggests, however, that the exception can be interpreted to also allow associations to include combinations of protected groups – e.g. it uses the example of associations for LGBT people. The Code's Equality Impact Assessment[10] suggests that the interpretation put forward by the Code "*provides an opportunity for trans inclusion, e.g. a women and trans women association*". That proposition has been questioned by commentators, however, and will likely be tested in Court.

Smaller / informal groupings are free to make any arrangements they like for their membership. Staff networks with no real selection process or rules for joining – e.g. a women's network open to all, including allies– is likely not a membership association for EqA purposes and so can define "women" however it wants. However, a practice of being only for women (however defined) is likely to be seen effectively as a rule about joining (particularly if men have been refused membership in the past).

Insofar as the network is overseen by or operated by the employer, the usual prohibition on discriminating against employees would apply, meaning the exclusion of men from the network would have to be justified. Depending on the context, it might well be possible to justify it as a "positive action" (under s158 EqA) in favour of women (including trans women), and/or as a proportionate means of achieving a legitimate aim, in each case subject to sufficient evidence being available and documented to support that rationale.

3 August 2026

[10] Equality impact assessment - GOV.UK