

EHRC releases guidance for employers after Supreme Court ruling on definition of woman

06 May 2025  Jennifer Jenkins

The Equality and Human Rights Commission (EHRC) has issued short interim non-statutory guidance following the Supreme Court's decision in *For Women Scotland v The Scottish Ministers*, which confirmed that the legal definition of a 'sex' is to be based on biological sex rather than certified sex for the purposes of the Equality Act 2010.

See our previous article ['The concept of sex is binary: Supreme Court case explained'](#) for our case summary.

Interim EHRC guidance

The interim guidance highlights that the main consequences of the judgment are that it is compulsory for employers to provide sufficient single sex-toilets as well as single sex changing and washing facilities where needed. However, it also confirms that trans people should not be put in a position where there are no facilities for them to use.

The guidance advises:

- Where possible, mixed-sex toilet, washing or changing facilities in addition to sufficient single-sex facilities should be provided.
- Where toilet, washing or changing facilities are in lockable rooms (not cubicles) which are intended for the use of one person at a time, they can be used by either women or men.

The provision of lockable room or sufficient mixed-sex facilities may not be common in most workplaces and the introduction of them will be a long-term rather than short-term measure.

However, the guidance doesn't offer any short-term solutions or address how employers should balance the provision of single-sex facilities against the rights of trans people not to experience gender reassignment discrimination or harassment. Therefore, employers are left in the undesirable position of risking a sex discrimination claim if they don't adhere to the EHRC guidance but a claim under the gender reassignment provisions if they do.

The decision has been welcomed by those who say that allowing trans women into female spaces jeopardises the safety of women and girls but has been widely condemned by the trans community and its supporters.

EHRC next steps

1. Code of Practice on Services, Public functions and Associations

The EHRC has confirmed it will provide an updated Code of Practice on Services, Public functions and Associations to the UK Government by the end of June for ministerial approval.

2. public consultation

A public consultation will be launched in mid-May to understand the consequences of the Supreme Court's ruling.

3. Employment Code of Practice

The EHRC has not confirmed the timeline for updating its Employment Code of Practice to take account of the Supreme Court’s decision. The provision of services is dealt with in a separate section of the Equality Act 2010 to the employment provisions.

Consequently, there are exceptions that apply to services providers that do not apply to employers, most notably protection from trans-related discrimination claims in respect of single or separate sex facilities.

Position for employers

Until further clarity and guidance is given the position for employers remains unclear.

In the meantime, employers should continue to take care to balance the rights and dignity in respect of all employees.

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