

Code of Practice Consultation

Code of Practice for services, public functions and associations consultation

Q1. Are you happy to provide feedback as part of this consultation?

Yes

Lesbian Persistence **About you**

Q2. Are you responding as an individual or from an organisation?

An organisation

About you

Q3. Where do you access services?
Select all that apply.

No Response

About you

Q4. Do you consider yourself to be a legal professional?

No Response

About your organisation

Q5. What kind of organisation are you responding on behalf of?

A civil society organisation (e.g. charity, union, not-for-profit)

About your organisation

Q6. Does your organisation provide services?

Yes

About your organisation

Q7. Where does your organisation provide services?
Select all that apply.

Scotland

About your organisation

Q8. Where is your organisation based?
Select all that apply.

No Response

Protected characteristics

Q9. Which of the following characteristics protected under the Equality Act 2010 are relevant to your response?

Gender reassignment

Sex

Sexual orientation

How you use the Code of Practice

Q10. Have you used this Code of Practice in the past?

No

How you use the Code of Practice

Q11. Why haven't you used the Code of Practice in the past?
Select all options that apply.

No Response

How you use the Code of Practice

Q12. What have you used the Code of Practice for in the past?
Select all options that apply.

No Response

How you use the Code of Practice

Q13. What have you used the Code of Practice for in the past?
Select all options that apply.

No Response

How you use the Code of Practice

Q14. Will you use the updated Code of Practice in the future?

Yes

How you use the Code of Practice

Q15. What would make you more likely to use the Code of Practice?
Select all that apply.

No Response

How you use the Code of Practice

Q16. What will you use the Code of Practice for in the future?
Select all that apply.

To help my organisation understand our responsibilities as a service provider

To help my organisation understand our responsibilities as an association

To inform the development of policies and practices for my organisation

How you use the Code of Practice

Q17. What will you use the Code of Practice for in the future?
Select all that apply.

No Response

How you use the Code of Practice

Q18. Will your organisation make any changes as a result of the updates to the Code of Practice?
For example, any changes to your policies, procedures or practices.

No

How you use the Code of Practice

Q19. What changes might your organisation make as a result of the updates to the Code of Practice?

This answer can be no longer than 150 words.

No Response

The Code of Practice - Chapter 1 (Introduction)

Q20. Would you like to provide feedback on chapter 1 of the Code of Practice?

No

The Code of Practice - Chapter 1 (Introduction)

Q21. Please indicate the extent to which you agree/disagree with the following statement:

The explanation of the legal rights and responsibilities set out in this chapter are clear.

No Response

Q22. Is there anything you would change to make the explanation of the legal rights and responsibilities clearer?

This answer can be no longer than 250 words.

No Response

Q23. In your view, does this chapter include all relevant changes to the law in this area?

No Response

Q24. What changes do you think are relevant that haven't been included?

No Response

The Code of Practice - Chapter 2 (Who has rights under Part 3 (services and public functions) and Part 7 (associations) of the Act?)

Q25. Would you like to provide feedback on chapter 2 of the Code of Practice?

Yes

The Code of Practice - Chapter 2 (Who has rights under Part 3 (services and public functions) and Part 7 (associations) of the Act?)

Q26. Please indicate the extent to which you agree/disagree with the following statement:

The explanation of the legal rights and responsibilities set out in this chapter are clear.

Strongly disagree

Q27. Is there anything you would change to make the explanation of the legal rights and responsibilities clearer?

This answer can be no longer than 250 words.

It is important to us that "sex" is clearly defined as we're an association for lesbians (same-sex attracted women) only. Code needs to make clear that men with PC of GR are not to be considered as "women".

As lesbians, it is vital it is clear that "same sex attraction" does not EVER include attraction to a man with/without the PC of GR, with/without a GRC. Some lesbians/groups believe they are forced to consider men as "lesbians" if they say they are. This potentially leads to sexual abuse, rape and harassment. And to a great deal of distress, especially to younger lesbians just coming out. We know women who've been told this.

Code needs a much clearer definition of PCs of "sex" and "gender reassignment". Code uses term "trans" in a more limited way than it is used today in ordinary language, which now covers large kinds of "identity" which don't equate to "gender reassignment." (eg, Non-binary or gender-fluid which may not have the PC.) Code talks about transitioning to "Another" sex (which implies many possibilities). It should be "THE other" sex.

s2.39 refers to a "transman" as "spending rest of HIS life.... It is important to use correct pronouns for females / males to avoid confusion. A woman expressed the intention to spend HER life living as a man. The law does not require the use of wrong-sex pronouns. Code should not go above and beyond legal requirements.

s2.82 unclear what "Sex does not include gender reassignment" means.

Q28. In your view, does this chapter include all relevant changes to the law in this area?

Some of the changes

Q29. What changes do you think are relevant that haven't been included?

Various cases - especially FWS - have made clear that men are not to be considered "women" unless they have a GRC. The guidance is not clear on this point. It is very important because of the widespread misunderstanding that self-ID is lawful / required / acceptable as a means of determining who should be admitted to women's spaces and facilities. Allowing some men (at least those without a GRC) into women's facilities etc. makes them mixed sex, and it would therefore become illegal to exclude other men.

FWS appeal at Ct of Session said men with GRC are to be considered "women" in MOST but not ALL circumstances - that is not clear. The exceptions need to be explained in the guidance.

This seems to be a strange time to issue new guidance since the FWS case at the Supreme Court may well affect the legal definition of "woman" / or "sex" so may well need to be amended again

The Code of Practice - Chapter 3 (Who has obligations under Part 3 (services and public functions) and Part 7 (associations) of the Act?)

Q30. Would you like to provide feedback on chapter 3 of the Code of Practice?

No

The Code of Practice - Chapter 3 (Who has obligations under Part 3 (services and public functions) and Part 7 (associations) of the Act?)

Q31. Please indicate the extent to which you agree/disagree with the following statement:

The explanation of the legal rights and responsibilities set out in this chapter are clear.

No Response

Q32. Is there anything you would change to make the explanation of the legal rights and responsibilities clearer?

This answer can be no longer than 250 words.

No Response

Q33. In your view, does this chapter include all relevant changes to the law in this area?

No Response

Q34. What changes do you think are relevant that haven't been included?

No Response

The Code of Practice - Chapter 4 (Direct discrimination)

Q35. Would you like to provide feedback on chapter 4 of the Code of Practice?

No

The Code of Practice - Chapter 4 (Direct discrimination)

Q36. Please indicate the extent to which you agree/disagree with the following statement:

The explanation of the legal rights and responsibilities set out in this chapter are clear.

No Response

Q37. Is there anything you would change to make the explanation of the legal rights and responsibilities clearer?

This answer can be no longer than 250 words.

No Response

Q38. In your view, does this chapter include all relevant changes to the law in this area?

No Response

Q39. What changes do you think are relevant that haven't been included?

No Response

The Code of Practice - Chapter 5 - Indirect discrimination

Q40. Would you like to provide feedback on chapter 5 of the Code of Practice?

No

The Code of Practice - Chapter 5 - Indirect discrimination

Q41. Please indicate the extent to which you agree/disagree with the following statement:

The explanation of the legal rights and responsibilities set out in this chapter are clear.

No Response

Q42. Is there anything you would change to make the explanation of the legal rights and responsibilities clearer?

This answer can be no longer than 250 words.

No Response

Q43. In your view, does this chapter include all relevant changes to the law in this area?

No Response

Q44. What changes do you think are relevant that haven't been included?

No Response

The Code of Practice - Chapter 6 (Discrimination arising from disability)

Q45. Would you like to provide feedback on chapter 6 of the Code of Practice?

No

The Code of Practice - Chapter 6 (Discrimination arising from disability)

Q46. Please indicate the extent to which you agree/disagree with the following statement:

The explanation of the legal rights and responsibilities set out in this chapter are clear.

No Response

Q47. Is there anything you would change to make the explanation of the legal rights and responsibilities clearer?

This answer can be no longer than 250 words.

No Response

Q48. In your view, does this chapter include all relevant changes to the law in this area?

No Response

Q49. What changes do you think are relevant that haven't been included?

No Response

The Code of Practice - Chapter 7 (Disabled people: reasonable adjustments)

Q50. Would you like to provide feedback on chapter 7 of the Code of Practice?

No

The Code of Practice - Chapter 7 (Disabled people: reasonable adjustments)

Q51. Please indicate the extent to which you agree/disagree with the following statement:

The explanation of the legal rights and responsibilities set out in this chapter are clear.

No Response

Q52. Is there anything you would change to make the explanation of the legal rights and responsibilities clearer?

This answer can be no longer than 250 words.

No Response

Q53. In your view, does this chapter include all relevant changes to the law in this area?

No Response

Q54. What changes do you think are relevant that haven't been included?

No Response

The Code of Practice - Chapter 8 (Harassment)

Q55. Would you like to provide feedback on chapter 8 of the Code of Practice?

Yes

The Code of Practice - Chapter 8 (Harassment)

Q56. Please indicate the extent to which you agree/disagree with the following statement:

The explanation of the legal rights and responsibilities set out in this chapter are clear.

Strongly disagree

Q57. Is there anything you would change to make the explanation of the legal rights and responsibilities clearer?

This answer can be no longer than 250 words.

It must be made clear that using correct terminology to describe someone's sex - which some people consider "misgendering" - is not harassment. Calling a man a "man" is the exercise of our free speech. It cannot be correct to demand that people use compelled speech. See also our response to chp 2 re the demand to consider men as "lesbians"

As lesbians it is essential to us that we are able to choose to be in spaces/facilities that are women-only (or prisons, where there is no choice to leave). Organisations admitting males to those spaces constitutes sex-based harassment, as it undermines our privacy, dignity, and emotional as well as physical safety. e.g. Having male genitalia on display in women's changing rooms may be particularly distressing and frightening to lesbians (and other women, especially those who have experienced sexual abuse) who have never seen a naked man. Similarly being medically examined by a male when we have requested a woman constitutes sexual harassment. We be harassed if males are allowed into e.g. a lesbian disco. Many lesbians have reported to us that the lesbian dating sites are full of male "lesbians" and they experience being messaged by men as harassment.

Q58. In your view, does this chapter include all relevant changes to the law in this area?

No Response

Q59. What changes do you think are relevant that haven't been included?

No Response

The Code of Practice - Chapter 9 (Victimisation and other unlawful acts)

Q60. Would you like to provide feedback on chapter 9 of the Code of Practice?

No

The Code of Practice - Chapter 9 (Victimisation and other unlawful acts)

Q61. Please indicate the extent to which you agree/disagree with the following statement:

The explanation of the legal rights and responsibilities set out in this chapter are clear.

No Response

Q62. Is there anything you would change to make the explanation of the legal rights and responsibilities clearer?

This answer can be no longer than 250 words.

No Response

Q63. In your view, does this chapter include all relevant changes to the law in this area?

No Response

Q64. What changes do you think are relevant that haven't been included?

No Response

The Code of Practice - Chapter 10 (Positive Action)

Q65. Would you like to provide feedback on chapter 10 of the Code of Practice?

Yes

The Code of Practice - Chapter 10 (Positive Action)

Q66. Please indicate the extent to which you agree/disagree with the following statement:

The explanation of the legal rights and responsibilities set out in this chapter are clear.

No Response

Q67. Is there anything you would change to make the explanation of the legal rights and responsibilities clearer?

This answer can be no longer than 250 words.

It is important to be clear about the meaning of "woman" so that any positive action to help women overcome past discrimination and disadvantage is not also made available to males, which would defeat the whole purpose of such action.

Q68. In your view, does this chapter include all relevant changes to the law in this area?

No Response

Q69. What changes do you think are relevant that haven't been included?

No Response

The Code of Practice - Chapter 11 (Services and public functions)

Q70. Would you like to provide feedback on chapter 11 of the Code of Practice?

Yes

The Code of Practice - Chapter 11 (Services and public functions)

Q71. Please indicate the extent to which you agree/disagree with the following statement:

The explanation of the legal rights and responsibilities set out in this chapter are clear.

No Response

Q72. Is there anything you would change to make the explanation of the legal rights and responsibilities clearer?

This answer can be no longer than 250 words.

It needs to be explicit that our provision of services only to lesbian women does not constitute illegal discrimination.

Q73. In your view, does this chapter include all relevant changes to the law in this area?

No Response

Q74. What changes do you think are relevant that haven't been included?

No Response

The Code of Practice - Chapter 12 (Associations)

Q75. Would you like to provide feedback on chapter 12 of the Code of Practice?

Yes

The Code of Practice - Chapter 12 (Associations)

Q76. Please indicate the extent to which you agree/disagree with the following statement:

The explanation of the legal rights and responsibilities set out in this chapter are clear.

Disagree

Q77. Is there anything you would change to make the explanation of the legal rights and responsibilities clearer?

This answer can be no longer than 250 words.

The section on associations is fundamental to Lesbian Persistence as we are a lesbian association. s. 12.72 states "a women's association must not exclude anyone who is legally of that sex, as determined by their birth certificate or Gender Recognition Certificate." Whilst we accept that this appears to be correct under the FWS Ct of Session recall motion decision, this question was central in the recent Supreme Court appeal and the law is likely to be subject to change. It is therefore worrying that the EHRC has decided to issue this guidance when it will potentially become out of date as early as the spring. The EHRC must therefore be ready to issue a suitable amendment immediately in the event FWS wins its appeal.

Q78. In your view, does this chapter include all relevant changes to the law in this area?

No Response

Q79. What changes do you think are relevant that haven't been included?

No Response

The Code of Practice - Chapter 13 (Exceptions)

Q80. Would you like to provide feedback on chapter 13 of the Code of Practice?

Yes

The Code of Practice - Chapter 13 (Exceptions)

Q81. Please indicate the extent to which you agree/disagree with the following statement:

The explanation of the legal rights and responsibilities set out in this chapter are clear.

Strongly disagree

Q82. Is there anything you would change to make the explanation of the legal rights and responsibilities clearer?

This answer can be no longer than 250 words.

Single-sex organisations like Lesbian Persistence do not need to consider inclusion of men on a case-by-case basis.. Especially in light of the widespread misunderstandings about our right to self-organise, it is important that the code provides an example of a lesbian organisation as being legal.

Complex processes to balance "rights" are not mandatory and are unworkable. Single-sex facilities/spaces are legal and this must be clear in the Code. A space is either single sex or it is mixed. If it is mixed, it should not be portrayed as single-sex and it would be illegal to exclude some men and not others.

Belief organisations - Code needs to include an example of gender-critical belief as protected. There is widespread, illegal harassment against us on this basis.

Equality Act provisions do not apply to "transpersons" but to those with PC of GR. EA refers to SEX not gender identity. Code should use correct language and concepts

s13.94 It's not necessary to admit men to single-sex services. This should be provided separately to men. s.13.96 is extremely important. Many leisure centres no longer provide women-only sessions because of the difficulties of implementation. Code must make clear that self-ID has no legal basis.

s.13.102 - see our earlier comments about the provision of changing rooms in relation to lesbians.

s.13.107 & 13.121 Policies should not be "flexible" - that introduces uncertainty. 13.108 only requires a policy which admits under-8s.

13.112 "legal sex" does not exist - there is only sex modified by a GRC

Q83. In your view, does this chapter include all relevant changes to the law in this area?

No Response

Q84. What changes do you think are relevant that haven't been included?

No Response

The Code of Practice - Chapter 14 (Enforcement)

Q85. Would you like to provide feedback on chapter 14 of the Code of Practice?

No

The Code of Practice - Chapter 14 (Enforcement)

Q86. Please indicate the extent to which you agree/disagree with the following statement:

The explanation of the legal rights and responsibilities set out in this chapter are clear.

No Response

Q87. Is there anything you would change to make the explanation of the legal rights and responsibilities clearer?

This answer can be no longer than 250 words.

No Response

Q88. In your view, does this chapter include all relevant changes to the law in this area?

No Response

Q89. What changes do you think are relevant that haven't been included?

No Response

The Code of Practice - Appendix (The meaning of disability)

Q90. Would you like to provide feedback on the appendix of the Code of Practice?

No

The Code of Practice - Appendix (The meaning of disability)

Q91. Please indicate the extent to which you agree/disagree with the following statement:

The explanation of the legal rights and responsibilities set out in this chapter are clear.

No Response

Q92. Is there anything you would change to make the explanation of the legal rights and responsibilities clearer?

This answer can be no longer than 250 words.

No Response

Q93. In your view, does this chapter include all relevant changes to the law in this area?

No Response

Q94. What changes do you think are relevant that haven't been included?

No Response

The Code of Practice - Chapter Feedback

Q95. Do you have any other feedback about the content of the Code of Practice that you haven't already mentioned?
Please include references to paragraph numbers where relevant.

No Response

The format of the Code of Practice

Q96. How easy or difficult is the format of the updated Code of Practice to use?

Difficult

The format of the Code of Practice

Q97. What, if anything, would you change to make it easier to use?

This answer can be no longer than 100 words.

No Response

More about your organisation

Q98. What is the name of your organisation?

Lesbian Persistence

More about your organisation

Q99. What is the size of your organisation?

10 to 49 people

More about your organisation

Q100. Which area does the organisation work in?

Other (please specify):
Leisure, support and politics.

Further research

Q101. If you would like to be contacted by the EHRC about opportunities to take part in future research, enter your email address below:

lesbianpersistence@gmail.com