EHRCJ/S7/26/11/1

Equalities, Human Rights and Civil Justice Committee
Thursday 19 November 2026
11th Meeting, 2026 (Session 7)

Implementation of the EHRC revised code of practice for services, public functions and associations

Overview

1. In concluding its report on the Operation of the Public Sector Equality Duty last session the predecessor Committee said it intended to return to consider the Equality and Human Rights Commission's (EHRC) revised Code of Practice on Services, Public Functions, and Associations once it had been approved by the UK Parliament.

2. That process only concluded in summer 2026 and as such the predecessor committee was not in a position to undertake that work.

3. In its legacy report it urged its successor committee to pursue this issue with a focus on how the revised Code is being implemented.

4. At its meeting on 1 October 2026 the Committee agreed to hold sessions on the implementation of the revised Code by public service providers in Scotland.

5. The purpose of this paper is to provide information to inform this evidence session. At this meeting the Committee will hear from two panels. Firstly, the Committee will hear from:

    - Dr Mhairi Crawford, Chief Executive, LGBT Youth Scotland;
    - Florence Oulds, Policy and Public Affairs Coordinator, Scottish Trans;
    - Vic Valentine, Scottish Trans Manager, Equality Network.

    The Committee will then hear from:

    - Dr Mary-Ann Stephenson, Chair, Equality and Human Rights Commission,
    - Penny Hobman, Deputy Chief Executive, Equality and Human Rights Commission; and
    - Jennifer Laughland, Head of Scotland Legal, Equality and Human Rights Commission.

6. This is the second of three evidence sessions the Committee is holding. On 12 November the Committee heard from Police Scotland, the Scottish Prison Service, Community Leisure UK and the NHS followed by For Women Scotland, the Women's Rights Network and Sex Matters.

7. In addition, Murray Blackburn Mackenzie has provided a written submission to inform the Committee's work as has the Equality Network and Scottish Trans.

8. More information on the revised code and the Committee's session on 12 November can be found in the briefing from SPICe at the Annexe to this paper.

Next Steps

9. The Committee will hold a further evidence session on the implementation of the revised Code on 26 November where it will take evidence from the Minister for Equalities and International Development.

Conclusion

10. The Committee is invited to consider the information provided in this paper in its evidence session.

Clerks to the Committee
November 2026

Annexe

Implementation of the EHRC revised code of practice for services, public functions and associations

Introduction

This briefing provides information for the Committee's consideration of the practical implementation of the Equality and Human Rights Commission's (EHRC) Code of Practice on Services, Public Functions and Associations (the Code). It updates the briefing provided for the meeting on 12 November 2026 with an "evidence heard" section.

The updated Code is intended to help organisations apply the Equality Act 2010. It came into force on 5 August 2026 and the 2011 Code was revoked.

The Code of Practice has been updated in a range of areas to reflect changes in law, but it has also undergone substantial changes following the UK Supreme Court's judgment on the meaning of sex in the Equality Act.

For service providers, public bodies and associations, the key issue is how to make lawful, evidence-based decisions in the provision of separate and single-sex services. The Code confirms that separate and single-sex services remain lawful, but only where they are justified, evidence-based and proportionate. Organisations need to make careful judgements in sensitive circumstances, balancing privacy, dignity, safety and inclusion.

On 19 November 2026 the Committee will hear from trans and LGBT organisations, and the EHRC, and will consider their perspective on the implementation of the Code undertaken by public service providers in Scotland.

Evidence heard to date

Last week the Committee heard evidence on the implementation of the Code from two panels: public service providers (from the Scottish Prison Service, NHS, Police Scotland, and leisure providers), and women's organisations that advocate for separate and single-sex services (For Women Scotland, Sex Matters and the Women's Rights Network). This section summarises the evidence heard on 12 November 2026.

Implementation of the Code

Each witness on Panel 1 indicated that implementation work is underway across their organisations. However, implementation is happening at different rates. For example:

- Leisure service providers are carrying out audits of facilities across different sites.

- Work is ongoing across the vast NHS estate and while there is a need for a nationally consistent approach, any work undertaken needs to be proportionate.

- The Scottish Prison Service (SPS) said its understanding of the legal framework has changed, both through the Code and following legal clarification, where the Outer House of the Court of Session ruled that the SPS policy of housing some trans prisoners based on their gender identity, rather than biological sex, was unlawful. The SPS has looked at a range of issues, including the rules around searching, the buildings in the prison estate, toilet facilities, staffing and recruitment, and the complexities of data collection.

- SPS also confirmed that following the court ruling in June 2026, there are no trans women accommodated in the female estate.

- Police Scotland said that the Code was not the catalyst for making changes. Rather, in September 2024 it committed to reviewing its data recording in terms of sex and gender. Following the Supreme Court ruling in April 2025, it issued interim guidance in three key areas – data recording, search, and facilities – ahead of the Code.

The three organisations on Panel 2 expressed concern at the pace of implementation across the public sector. It was argued that:

- The legal position has been clear for some time.

- Some organisations have delayed implementation while waiting for the Code.

- Progress varies considerably between sectors and organisations.

The Women's Rights Network (WRN) said there is "inertia" across Scotland in implementing the Code and suggested that some witnesses on the first panel exemplified this by referring to reviews rather than taking action to make changes.

Across different sectors, it was suggested that the private sector has acted more quickly, the public sector response has been more mixed, and that some in the third sector have been more resistant to the change.

It was also suggested that, within the public sector, the NHS is furthest from implementation. For Women Scotland (FWS) said that NHS Scotland should have its own guidance, as in England.

Sex Matters (SM) said that one thing to watch is whether some organisations are moving away from providing single-sex services and opting for mixed-sex services only. While it would not be unlawful, it would be problematic from a Public Sector Equality Duty (PSED) point of view.

Evidence and balance in service provision

The witnesses on Panel 1 described how they have engaged with their stakeholders to support implementation of changes and ensure balance. For example:

- Police Scotland referred to its engagement with a wide range of stakeholders. It has made efforts to provide suitable and sufficient facilities that are gender neutral or single occupancy, in addition to single-sex facilities, which it flagged as a way to avoid any perceived "double exclusion".

- UK Active undertook a wide range of consultation when developing its guidance for the leisure sector.

The witnesses on Panel 2 were asked whether they had been consulted by public bodies in terms of implementing changes in the Code, and they reported varying levels of engagement, for example:

- FWS said they might have been invited to one Police Scotland event, along with very many other people, and that they had no contact with the SPS, the NHS or leisure services. "As people who understand the law, because we won the case that has brought in the Code, it would be helpful if some of these organisations would start to consult more broadly." (Susan Smith, For Women Scotland).

- SM said that they are all tiny organisations, the law is clear, and organisations need to follow the law. Sex Matters is launching an App/online service, to collate some of the evidence on who is and who is not following the law.

- WRN said they went to a Police Scotland engagement event and have been consulted by the Scottish Government on a range of issues, some in large meetings and some in individual meetings. There has been more attempt to consult with them since the Supreme Court ruling.

In response to concerns that trans people have experienced fear, exclusion and harassment, the witnesses on Panel 2 emphasised their focus on women's rights, while stating that harassment and abuse of any group are unacceptable. The discussion highlighted that there are different perspectives on how sex-based rights and the rights of trans people should be balanced in practice. It was also suggested that improved sex-based data collection would support implementation and monitoring.

Impact of service changes and access to services

There was broad agreement on Panel 1 that while there is a need to follow the law, it is also important that public services are inclusive to all people.

Police Scotland said that it has made sure facilities are available for all, including gender non-conforming people, and that staff have been trained to ensure people are treated with dignity and respect.

There was recognition from the public sector that some trans people may experience "double exclusion" in the use of some services. Police Scotland said that there is no hierarchy in human rights and that everyone should be treated with dignity and respect.

On Panel 2, the witnesses argued that it is unhelpful to suggest that people who are gender non-conforming may be challenged in single-sex facilities for a range of reasons, including:

- The experience of being challenged has happened to gender non-conforming people for a long time.

- It is problematic that gender non-conforming men are pushed out of men's spaces because they might not feel safe. It is concerning because it means women's spaces become a repository for men who are at risk.

- Recognising a person's biological sex is not transphobia, and there is nothing to fear about that. The Committee heard that having the protected characteristic of gender reassignment does not change your sex; it is the law. "If we don't understand that, organisations will keep being confused about what the law is, what their obligations are, and they will keep giving confusing messages to people who identify as trans and non-binary…" (Maya Forstater, Sex Matters)

Monitoring and evaluation

Witnesses on Panel 1 described how they are monitoring their implementation of the Code, and gave reflections on safeguarding, for example:

- The leisure industry already has robust mechanisms in place to record incidents. Incidents are categorised in detail, and safeguarding and health and safety are represented at board level. Integrated impact assessments are being used to support decision making.

- The NHS recognises the need to record decisions. Safeguarding is important, and this is balanced with other NHS priorities - clinical need and a patient-centred approach.

- Police Scotland set up a sex and gender oversight group, which provides scrutiny and accountability. It also has independent scrutiny from the Scottish Police Authority. On strip searching, a trans person can be searched according to their gender. This requires consent from both the officer and the individual, and approval by an inspector. Police Scotland said it has had no complaints relating to strip searching, and that consent has been required on only four occasions since the guidance has been in place.

Communication of service changes

In the leisure industry, members are reviewing their policies and there is work underway on developing communications. Signage in leisure facilities has been

updated where relevant and is in line with the law. Some facilities have changing villages, which are mixed-sex and often used by families.

Police Scotland said it sent regular communications to staff following the Supreme Court ruling, advising of changes.

Guidance and training

The witnesses on Panel 1 recognised the importance of additional guidance and training, especially for frontline staff, for example:

- In the leisure industry, many staff members are young and work part-time, and will need the confidence to deal with issues on a case-by-case basis.
- UK Active, an organisation used by the leisure sector, published guidance the day after the Code was published.
- NHS Scotland would welcome national guidance, similar to that which has been published for NHS England.

Organisational issues

The witnesses on Panel 1 referred to the need to make changes to the physical estates in their respective sectors, acknowledging the size and age of the estates, and potential costs of changes. For example:

- The provision of single-sex, mixed-sex and single occupancy facilities where available.
- Infrastructure constraints within existing estates. For example, much of the leisure sector's infrastructure dates from the 1970s and needs upgrading regardless of the Code. Some leisure facilities have gender-neutral changing villages, while others have separate male and female facilities.
- The need to ensure all users can access facilities while maintaining compliance with legal requirements. This includes providing single-sex spaces for biological women and gender-neutral spaces for trans people.
- Disability groups have raised concerns that, across the NHS estate in Scotland, labelling accessible toilets as gender-neutral reduces their availability for the people who need them.

Governance and accountability

Police Scotland said that it had established a governance structure with a chief officer lead. Communication and engagement was one of the strands of that structure.

Background

On 16 April 2025, the UK Supreme Court delivered a judgment in For Women Scotland Ltd v The Scottish Ministers. The Court held that the words “sex”, “man” and “woman” in the Equality Act 2010 refer to biological sex. It also held that a Gender Recognition Certificate (GRC), or “certificated sex”, does not change a person’s sex for the purposes of the Equality Act.

The Court said that reading sex as certificated sex would make parts of the Act incoherent, including provisions about pregnancy, maternity, sexual orientation and separate or single-sex services.

Where a service provider relies on the Equality Act exceptions for a separate or single-sex service, the service must be organised by biological sex. However, service providers are not necessarily required to offer such services in every context.

The EHRC is Britain’s equality regulator. It issues statutory Codes of Practice to help organisations understand and comply with the Equality Act. Codes do not change the law or impose new legal duties, but courts and tribunals must take relevant parts of a statutory Code into account.

There are two other statutory Codes of Practice on Equal Pay and Employment, but these have not been updated following the Supreme Court ruling.

Development of the updated Code

The EHRC said the Supreme Court judgment clarified the legal position and was effective immediately.

It had already consulted on updating the Code in 2024, but following the Supreme Court ruling it ran a second consultation. The second consultation closed on 30 June 2025.

A draft Code was submitted to the UK Government on 4 September 2025. In October 2025, the EHRC wrote to the Minister for Women and Equalities, Bridget Phillipson MP, urging approval, noting that organisations continue to rely on outdated guidance.

In April 2026, the EHRC confirmed that it had made further amendments following feedback from the UK Government and had resubmitted the draft Code for approval.

The UK Government laid the updated draft Code of Practice in Parliament on 21 May 2026. The updated draft Code of Practice included changes on its content on sex and gender reassignment, following the Supreme Court ruling in For Women Scotland Ltd v The Scottish Ministers (16 April 2025), as well as other changes in law since 2011.

The Code of Practice does not change the law; it is there to provide guidance to assist courts, as well as lawyers and advisers, on the technical detail. The Equality Act 2010 remains the law.

The EHRC has also published background information on the two aspects of the consultation: Consultation 1 report and Consultation 2 report. These provide detail on the responses received and changes made to the Code.

Sex and gender reassignment

The Code sets out the Equality Act definitions of sex and gender reassignment:

- **Sex** refers to a male or a female of any age (section 11(a) and (b) and section 212, paragraph 1). The Supreme Court ruled that 'sex', 'woman' and 'man' in the Act mean biological sex, biological woman and biological man.
- **Gender reassignment** includes people who are proposing to undergo, are undergoing or have undergone a process (or part of a process) to reassign their sex by changing physiological or other attributes of sex (section 7).

The Code uses the term "trans" to refer to someone with the protected characteristic of gender reassignment. It also explains that trans people may be protected from discrimination because of gender reassignment, because of sex, or because of perception or association in particular circumstances.

Separate and single-sex services

The Code confirms that a separate and single-sex service can be lawful, but only where there is a legitimate aim and the approach is proportionate. Legitimate aims may include protecting privacy, dignity or safety. Service providers must be able to explain why the approach is needed and why a less restrictive option would not achieve the same aim.

- For separate-sex services, a joint service for men and women must be less effective than separate provision.
- For single-sex services, at least one statutory condition must be met, for example where the service is used by more than one person at the same time and users may reasonably object to the presence of someone who is not of the sex for which the service is provided.

Balancing competing needs

A key message of the Code is that decisions must balance the needs and rights of all potential service users. This includes considering the benefits of a separate or single-sex service, the needs of people with different protected characteristics, and the impact on anyone excluded from the service.

In some cases, a mix of provision may be proportionate, such as separate, single-sex and mixed-sex options. In other cases, building constraints, cost, the nature of the service or the needs of users may mean that alternatives are not realistic.

The Code also says that if a service is described as for women but is open to both women and trans women, it is not a separate or single-sex service under the Equality Act: it is a mixed-sex service.

However, if no separate or single-sex option is provided, this could potentially amount to discrimination against women using the service; it will depend on the service, the users affected, the statutory exception relied on, and whether the provider's approach is proportionate. For that reason, the Code recommends recording the evidence and reasoning behind decisions. A clear record can help show that an organisation has considered proportionality, assessed the impact on affected groups and avoided simply applying a blanket rule.

Excluding or limiting access

The Code says it may be lawful to exclude, limit or modify a trans person's access to a separate or single-sex service, where doing so is a proportionate means of achieving a legitimate aim. This includes situations where a person seeks to use the service for their biological sex, but their presentation may cause "reasonable objection" from other users.

For example, the Code refers to a trans man who may be excluded from a women-only service if the provider decides that, because he presents as a man, other users could "reasonably object" to his presence and exclusion is proportionate. However, the Code also warns that decisions should be made carefully. If a trans person is left unable to access a service that is necessary for everyone, such as toilets, that may amount to unlawful discrimination unless the approach can be justified.

Asking about biological sex

The Code says that the main way to manage separate or single-sex services should be clear communication, such as signage, policies and information for service users. Where there is evidence that someone who is not of the sex for which the service is provided is accessing, or seeking to access, that service, it may be legitimate to ask them to confirm their sex. The Code says this should be done sensitively and with respect for privacy.

The Code also recognises that this can be difficult in practice. It says there is no official UK document that provides reliable evidence of sex for Equality Act purposes: passports and driving licences can be changed without a GRC, and birth certificates may reflect acquired gender where a person has a GRC.

If there is concern about the accuracy of a response, providers should consider what action is proportionate, taking account of the nature of the service and the potential risks to the individual and to other users.

Responses to the updated Code

The Scottish Government, in a statement to Parliament on 22 April 2025, by Shirley-Anne Somerville MSP, the then Cabinet Secretary for Social Justice, accepted the Supreme Court ruling and said it would support the EHRC as it updates its guidance on the Equality Act. This position has been repeated at various points, including in the Programme for Government 2025-26 which said a working group (established in April 2025) was considering the ruling's impact on policies, guidance and legislation, "to ensure we are ready to take all necessary steps when the Equality and Human Rights Commission (EHRC) publishes its revised Code of Practice and updated guidance."

An update on the new Code of Practice was published on 5 August 2026, which states:

> "It remains the responsibility of duty bearers to interpret and comply with their legal obligations under the Equality Act 2010. Following the guidance in the Code may help service providers, those who provide a public function and associations to avoid an adverse decision in legal proceedings brought under Parts 3 and 7 of the Act."

Responses to the Code have been mixed. Some organisations have welcomed the clarity it provides for service providers, while others have raised concerns about its impact on trans people. A selection of these views is set out below.

Regulator and human rights bodies

When the Code came into force on 5 August 2026, the EHRC said it "does not make new law or create any new legal obligations" and that it provides guidance on existing law. Its Chair, Dr Mary-Ann Stephenson, said it would help services comply with the Equality Act, protect service users from discrimination and harassment and reduce the risk of litigation. The Chair also said that the EHRC will continue to monitor compliance and take enforcement action, where proportionate and necessary.

The Scottish Human Rights Commission's statement of 4 August 2026 focuses on how Scottish public authorities can implement the Code consistently with human rights law. It highlights engagement with those affected by policies and practices, and the collection of data to monitor how the Code operates in practice.

Organisations welcoming the Code

Sex Matters welcomed the Code for providing practical clarification of the Supreme Court judgment and the lawful provision of single-sex services. On 21 May 2026 it said that publication of the Code removes a justification for delaying policy changes.

Women's Aid welcomed the laying of the Code on 21 May 2026, and said it hoped the guidance would give its member services the clarity they need to support survivors of domestic and sexual abuse in a legally compliant way. It also noted that some services supporting trans survivors may no longer be able to do so in the same way, that those survivors may need to be referred to alternative support, and called on the government to ensure sustainable funding for specialist services for all survivors, including trans survivors.

Organisations raising concerns

Scottish Trans issued a statement on 5 August 2026, when the Code came into effect, and said:

> "Today marks a massive step backwards. We now have Government-sanctioned guidance that places us totally out of step with how liberal democracies across the world approach upholding the equality and human rights of trans people, and which has been cautioned against by international human rights experts for months."

Over 160 MPs signed an Early Day Motion (EDM 240) indicating they did not want the Code approved. However, the Code was laid for 40 days and neither House passed a resolution disapproving it, so it completed the statutory approval process and took effect on 5 August 2026.

Trade unions have raised concerns about the potential impact on trans and non-binary people, including in employment, which is not directly covered by the Code.

Policy changes from public service providers

Following a judicial review, brought by For Women Scotland, the SPS was required to change its policy on housing trans prisoners. On 19 June 2026, the Outer House of the Court of Session ruled that the SPS policy of housing some trans prisoners in the estate based on their gender identity, rather than biological sex, was unlawful. The SPS withdrew its policy on 22 June, and the Scottish Government said that work was underway to implement transfers of prisoners on 23 June 2026. The Scottish Government said, on 23 June 2026, that it would not appeal the ruling.

While the Code of Practice was not in force at that point, the Court of Session did refer to the Supreme Court ruling on 16 April 2025, which clarified that the meaning of sex in the Equality Act is biological.

NHS England published Privacy, dignity and safety in hospital accommodation on 15 October 2026. The guidance sets out the requirements for meeting the NHS Constitution's same-sex accommodation pledge, explains how the term 'same-sex' should be interpreted in light of the EHRC's Code and describes how organisations should manage and report breaches of the same-sex accommodation requirements.

It is unclear to what extent Scottish public bodies have implemented changes as a result of the EHRC's Code of Practice.

Themes for discussion

Members may wish to explore the following themes with witnesses:

Implementation of the Code

Whether policy and operational reviews have been undertaken in light of the updated Code, and the timescale to implement any changes.

- **Trans and LGBT organisations:** What changes have your members and service users seen in public services since the Code came into force on 5 August 2026, and do these differ between sectors such as health, policing, prisons and leisure?
- **EHRC:** Witnesses on 12 November described implementation as uneven, with some organisations waiting for the Code before acting. What is the EHRC's assessment of progress across Scottish public bodies?

Evidence and balance in service provision

How service providers are establishing the need for separate, single-sex or mixed provision, and how they are making assessments of needs and recording their reasoning.

Impact of service changes and access to services

The practical impact of applying service changes on women, trans people and other user groups. For example, how it impacts on an individual's privacy, dignity and safety, whether a service is available and accessible to all, and whether there are any unintended consequences.

Monitoring and evaluation

How organisations will assess the impact of implementing the Code over time, including what data is being collected, how complaints, feedback and incidents are monitored, and whether there are arrangements to review or revise policies.

Communication of service changes

How policies are explained through signage, published information and frontline practice. This is likely to include how uncertainty or potential disputes are handled and how privacy and confidentiality can be protected.

Guidance and training

Whether the Code provides clarity for service providers on applying the Equality Act. Whether staff training is required, and if so, how that is being delivered.

Organisational issues

For example, any issues with costs or staffing that affect the implementation of the Code.

Governance and accountability

Who is responsible for decisions, how risks are escalated, oversight arrangements, and how complaints and legal challenges are handled.

SPICe

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