

# TransActual Briefing for MPs on EHRC Draft Code of Practice

## Key Lines

- Proposed changes to the EHRC's Code of Practice are discriminatory and unworkable. They would lead to segregation, harassment and exclusion of trans and gender non conforming people. It would be a **Bathroom Ban**.
- The code would align the UK's approach with that of US Republican States' so-called "bathroom bills" and likely would **conflict with our human rights obligations** under the European Court of Human Rights.
- If the Government passes this unworkable code into law with no scrutiny or transparency from MPs, it would **define Labour's legacy on LGBTQ+ rights**.

## Recommendations for MPs

- Write to the Minister for Women and Equalities, Bridget Phillipson MP demanding that she:
  - **Reject the proposed Code of Practice** sending it back to the EHRC if it does not offer guidance on how providers can remain trans inclusive
  - Ensure any guidance makes clear how providers can **lawfully include trans people** in facilities according to their lived gender.
- Speak with and listen to the stories of people who have already faced segregation, exclusion and harassment as a result of the Supreme Court judgement.

## Background

- In April 2025, the Supreme Court handed down a judgment stating that references to the words "sex", "man" and "woman" in the Equality Act 2010 refer to "biological sex" which they define as someone's sex assigned at birth.
- Following this, the Equality and Human Rights Commission undertook a consultation garnering over 50,000 responses with a view to changing its Code of Practice on how providers meet obligations in the Equality Act.
- The Code does not impose legal obligations rather it is the EHRC's statutory guidance on how providers should apply the Equality Act. Its scope is the provision of services to the public whether in the private, public or voluntary sectors.
- A draft Code of Practice went out for public consultation in May 2025, with the final draft currently sitting with the Minister for Women and Equalities awaiting approval.
- If approved, the Code of Practice would automatically become statutory, unless a motion rejecting it is voted for by MPs within 40 days.

## Why are we opposing the proposed Code of Practice?

LGBTQ+ organisations, human rights groups, businesses and trade unions have highlighted **significant concerns with the draft Code** that was consulted on in May 2025. We outline some of these key concerns:

### The Equality Act 2010

- For many years, The Equality Act 2010 has enabled everyone to use gendered spaces [safely and without harassment](#), in line with their lived gender rather than solely according to their sex assigned at birth.
- Under the previous Code, there were some exceptions to this with providers having to show that the exclusion of trans people from services that align with their gender is “a proportionate means to meet a legitimate aim.”
- **The draft Code would stop providers from safely including trans people in gendered spaces according to their lived gender even where they want to.**

### International Concern

- Concerns the risk of discrimination arising from the code have been publicly raised by [the Council of Europe’s Commissioner](#), [ILGA-Europe](#); [multiple UN Independent Experts](#); for Human Rights; [the Scottish Government](#); the [Scottish Human Rights Commission](#); [Human Rights Watch](#); and the [Lemkin Institute for Genocide Prevention](#).
- [Legal experts](#) have flagged that the Code, for the reasons stated above, is incompatible with the Convention Rights under the European Court of Human Rights. Specifically, Article 8 denying people’s right to a private life and Article 14 prohibiting discrimination. **Passing laws outside the ECHR would align the UK with Belarus and Russia.**
- In 2023, Russia passed [laws banning gender marker changes](#) requiring trans people to keep their sex assigned at birth on their ID. This functions similarly to the UK ban, where trans people risk harassment and segregation where bathroom providers demand people show their ID when accessing single sex spaces.
- Several U.S. “red” states, including [Florida](#), [Oklahoma](#), [Mississippi](#), [Nebraska](#), and [soon Texas](#), have passed similar legislation that compels people to use toilets and changing facilities according to sex assigned at birth, often with criminal or disciplinary penalties. **The draft code goes further than these Republican states**, in compelling not just public providers, but also private businesses to segregate by sex assigned at birth.
- When the state of North Carolina implemented similar “bathroom bans” in 2016, the UK Foreign Office [issued a travel advisory for LGBT](#) visitors to the state.

- If implemented, the EHRC's code will put the UK significantly [out of step](#) with progressive Governments across the world in terms of its stance on trans rights.

### Unworkable

- The Code would prevent trans men from using men's facilities and trans women from using women's facilities. Additionally, the Code suggests that trans men can be excluded from women's services, and trans women can be excluded from men's services as their presence may cause "alarm and distress" to other users. Significant numbers of individuals - both trans and non-trans - [report experiencing](#) questioning and **harassment whether they try to follow the proposed EHRC guidance or not.**
- The draft EHRC Code states that providers are at risk of discriminating if they provide mixed-sex services only, trans-inclusive single-sex services, or services based on "biological sex" only. The result is that all business and services would be required to provide both single sex **and** mixed-sex / gender neutral facilities. This is likely to be costly, and for some small business or services, logistically impossible.
- Where providers offer gender neutral spaces, these are often pre-existing accessible facilities leading to a significant reduction in the availability of accessible toilets for disabled people. Disability groups such as Inclusion London have stated their [opposition](#) to the EHRC's proposals.

### Case Studies of Impact on Business

- Museums and Galleries Scotland stated that [they would have to close some locations](#) to avoid breaching the law.
- Director of UK housing developer KIN [said that proposals](#) are completely unworkable, especially for small businesses resulting in significant admin cost and risk.
- [Over 650 businesses have signed a letter](#) coordinated by the [Trans Solidarity Alliance](#) clearly stating that "compliance would mean costly changes to facilities, such as retrofitting spaces or converting them entirely to gender-neutral provision. For small and medium-sized enterprises in particular, this **financial burden could be severe and would threaten economic viability** for some."
- The outcome is that many trans people will be faced with the choice of either outing themselves, breaking the law, or being unable to access gendered public services altogether. Legal experts have stated that **the code may lead to providers acting unlawfully**, either [breaching human rights law](#) or [discriminating against](#) those with the protected characteristic of gender reassignment. The unworkability of the current approach will lead to a **raft of legal challenges** against providers following the EHRC's Code.

## Privacy and Harassment

- Since the EHRC's [interim update](#), many people have reported increased **intrusion, harassment and questioning** when using single sex facilities. This includes both trans and non trans people, particularly those who do not conform to conventional gender presentations.
- This has created a **“lose-lose” situation** for many people: experiencing an increase in questioning, harassment and exclusion whether they follow the code, or whether they do not. In particular, many gender non conforming people who were assigned female at birth [have reported](#) experiencing abuse when trying to use toilet facilities since the Supreme Court's ruling. Equally, many trans women have been [mocked and degraded](#) when trying to use men's facilities.
- In workplaces, many trans people have been [forcibly outed](#) to their colleagues following the EHRC's interim update.

### Example of impact on privacy in workplaces

TransActual were informed of a case following the publication of the draft code where a trans man was no longer allowed to use men's changing rooms at work. This forces him either to “out” himself as trans to colleagues by using the women's or disabled facilities, or leave his job altogether.

- Demanding someone disclose their sex assigned at birth, is a [significant intrusion of their privacy](#). It is unclear about what information providers would require to enforce the code. Is the EHRC suggesting that there should be mandatory sex testing to determine whether someone should be able to use a toilet?
- Similarly, it is unreasonable to require staff members at providers to demand “proof” or “verification” that an individual has the right to access a certain space. It would be entirely inappropriate to ask staff to make a judgement about someone's sex assigned at birth on the basis of their appearance or presentation. This will likely lead to discrimination against those who present outside conventional gender norms.
- If enforced, this code will lead to **increased harassment of people, both trans and non-trans**, when accessing gendered spaces. It will also risk providers unlawfully intruding on the privacy of those accessing their facilities.

### For more information

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