# Extracts from Making Music response to EHRC Code of Practice consultation

# This is an extract of the Making Music response to the EHRC - Code of practice for services, public functions and associations: consultation 2025. We have made this available for Making Music members so they can prepare their own response to the consultation.

# The full consultation documents, and link to survey are here: [Code of practice for services, public functions and associations: consultation 2025 | EHRC](https://www.equalityhumanrights.com/equality/equality-act-2010/codes-practice/code-practice-services-public-functions-and-associations)

# N.B. This document does not reproduce all the questions, only those that Making Music will respond to. The responses we have published here are an extract from our full response.

# Making Music RESPONSES (in blue)

## Change 2.2: New content on asking about sex at birth

This section gives information on how requests about sex at birth should be made. It outlines the circumstances in which making such requests, with or without evidential proof of birth sex, may be unlawful.

### To what extent do you agree or disagree with the following statement: The explanation of the legal rights and responsibilities set out in the new content on asking about sex at birth is clear.

* Strongly Disagree

### Is there anything you would change to make the explanation of the legal rights and responsibilities in this update clearer?

2.2.2 to 2.2.6. - In these points of guidance there are several different phrases used to guide on when it would be appropriate to ask a person’s birth sex; “reasonable and necessary”, “necessary and proportionate” and “necessary and justified”. Using several phrases does not help clarity. Organisations are being asked to make a call here about when to ask about birth sex. What one person thinks is reasonable/ necessary/ proportionate/ justified etc is different to another and we are concerned that the confusing language here will not help if opinions differ. Using a consistent phrase would help clarity.

Providing more examples of what would and would not be considered reasonable/ necessary/ proportionate/ justified would help so groups could better make that call (as at 2.2.7).

2.2.8 - We think it is highly unlikely our members (groups of people making music in their leisure time) would be in a situation where it could be considered proportionate or reasonable to request a Birth Certificate as proof of sex. Clarification in 2.2.2. to 2.2.6 would help avoid groups taking discriminatory action by requesting BCs unnecessarily.

At 2.2.8, the guidance suggest a Birth Certificate could be requested as an accurate statement of birth sex, but also that it may not be a definitive indication of birth sex, as it may be an amended birth certificate. There is no guidance as to how a person inspecting a BC would know if it was amended. If BCs are to be used as evidence of legal sex, those inspecting them need to know what to look for to identify them as original or amended, and therefore when a further enquiry could be considered proportionate to ascertain birth sex. If the inspecting person could not ascertain whether a BC is amended, BCs will not provide them with any definitive statement of birth sex, and therefore the exercise of requesting it has been pointless, and could be considered discriminatory.

### What changes might your organisation make as a result of this update to the code of practice?

We will use the updated Code of Practice to guide member associations who have a legitimate reason to exclude men/women, or groups who are providing single sex services on when it is reasonable/ necessary / proportionate/ justified to ask about birth sex.

We are likely to guide them that it is highly unlikely that it would be considered reasonable/ necessary / proportionate/ justified for a music group to request to see a Birth Certificate as proof of sex. Given that our members are mostly volunteers, it is unlikely they will have the knowledge to know whether a Birth Certificate is amended or not, so for them a BC will be an unreliable document. We are therefore likely to guide our members NOT to request BCs as proof of sex.

**Change 12.1: New example on women-only associations**

The example in this section explains when applications to an association can be lawfully refused based on a protected characteristic, in the context of sex and gender reassignment. We have included additional information to provide context for this example. We are only looking for feedback on the example in paragraph 12.1.3. **You do not need to provide feedback for every change.**

### To what extent do you agree or disagree with the following statement:The explanation of the legal rights and responsibilities set out in the new example on women-only associations is clear.

* Disagree

### Is there anything you would change to make the explanation of the legal rights and responsibilities in this update clearer?

12.1.3 – We do not think that this example provides all the clarity that is required for women only associations. The example given makes it clear that a group in our membership e.g. a choir for women could choose to operate as for women only and therefore exclude men, and therefore necessarily have to exclude trans women. However, it is unclear in the guidance whether an association would be permitted under the Equalities Act to operate as for women and trans women if they chose to do so i.e. in relation to your example, if the trans woman applied to the women-only association and her application was accepted.

We are unclear if a choir for women and trans women would be considered to be discriminating against some men, as they were excluding some men and not others (i.e. trans women). Would a choir for women and trans women have to be considered as a mixed sex group, and therefore necessarily be open to all men as well? This is not clear in the guidance. An additional point, and an example would help clarify.

We note that there IS clarification on service provision for the same situation:

“13.3.19 If a service provider (or a person providing a service in the exercise of public functions) admits trans people to a service intended for the opposite biological sex, then it can no longer rely on the exceptions set out at paragraphs 13.2.3 to 13.2.22. This means that if a service is provided only to women and trans women or only to men and trans men, it is not a separate-sex or single-sex service under the Equality Act 2010. A service like this is very likely to amount to unlawful sex discrimination against the people of the opposite sex who are not allowed to use it. A service which is provided to women and trans women could also be unlawful sex discrimination or lead to unlawful harassment against women who use the service. Similar considerations would apply to a service provided for men and trans men.”

Does this also apply to associations? If so, similar guidance should be repeated in this section for associations.

### What changes might your organisation make as a result of this update to the code of practice?

We will provide guidance for our members (leisure time music groups) who are established as for women only or men only that they cannot include trans people of that acquired gender e.g. male voice choirs whose membership rules exclude women cannot include trans men. We think this would apply to groups who had exclusions in their constitution or terms of membership, membership application forms or other defining documents.

We are likely to guide our members that if they wish to include women and trans women for example, that they should remove any membership rules that relate to sex e.g. a female voice choir could remove any rules that relate to the exclusion of men, and instead select members according to their vocal range; people that sing in alto / soprano register.

We are still unclear as to whether we could guide members that they would be permitted to establish a choir (by membership) that was for women and trans women.

**Change 13.3: New section on justification for separate and single-sex services**

This section sets out the considerations that should be given to all potential service users when deciding whether separate and single-sex services are a proportionate means of achieving a legitimate aim. It also sets out circumstances in which mixed-sex services may be necessary, and the potential legal implications of providing only mixed-sex services.

### To what extent do you agree or disagree with the following statement: The explanation of the legal rights and responsibilities set out in the new section on justification for separate and single-sex services is clear.

* Disagree

### Is there anything you would change to make the explanation of the legal rights and responsibilities in this update clearer?

13.3 – whole section. We think that groups in our membership (leisure time music groups) who provide a single sex service may find it difficult to ascertain if single sex provision is “a proportionate means of achieving a legitimate aim”. While for some groups it may be more obvious e.g. a choir for breastfeeding mothers, for others this will be less so.

Would a choir leader, who provided a workshop for male singers be considered to be excluding women as employing ‘a proportionate means of achieving a legitimate aim’? There are a number of reasons why they may choose to do so:

* Because men and women’s voices tend to be in different registers, so the workshop will be more suitable (generally) for men than women.
* Because having a men only space will encourage more men (who are less well represented in singing community) to participate
* Because the repertoire will be Male Voice Choir repertoire, and they are seeking to preserve the character of this traditional form of music making
* Because the workshop is to support men’s mental health, which is a distinct area of health provision

We are not ourselves sure which of these could be considered a legitimate aim, and more examples or a clearer definition could help.

The principle of “proportionate means …legitimate aim” seems crucial to clarify now, as excluding people of one sex also now means excluding trans people from services, as is acknowledged in clause 13.3.7 “In separate or single-sex services, a trans man will be excluded from the men-only service because his biological sex is female, and a trans woman will be excluded from the women-only service because her biological sex is male” so excluding e.g. women from a men’s singing workshop now also means trans men are denied this service. If our groups cannot clearly identify their single sex service as “a proportionate means of achieving a legitimate aim”, we are likely to guide them to provide this service as mixed sex so as to avoid unnecessarily excluding trans people.

All the examples given in 13.3 relate to toilets, changing rooms, or other services which require people to change – swimming pools and gyms. What about an example of a single sex service which would be considered to have “a proportionate means of achieving a legitimate aim” where people are NOT likely to be undressed?

Music workshops with the aim of supporting men’s mental health? A ‘come and sing’ event for new mothers?

We are finding that separating guidance for single sex associations and single sex services is causing us some confusion. Is a choir with a membership always an association, or if they offer a ‘come and sing’ day that is open to those out of membership, do they now fall under the guidance for a service? This has been less important previously, but we are now wondering if the “a proportionate means of achieving a legitimate aim” test needs only to be applied where associations could be considered to be providing a service, or should also be applied when activity is available to members only.

13.3.4 – This guidance should surely have women/men both in the clause i.e. “the service provider (including a person providing a service in the exercise of public functions) should think about whether women’s (OR MEN’S) safety, **privacy and / or dignity** would be at risk in the service if it was shared with men (OR WOMEN).” The second half of this clause is an example and should be separated from the clause.

In our membership there are men only groups eg. a Male Voice Choir who require changing facilities for their barbershop concert. This guidance could help them decide if their decision to exclude women was proportionate – men as well as women may require the privacy and dignity that is afforded women here.

### What changes might your organisation make as a result of this update to the code of practice?

We will use this section of the Code of Practice to provide guidance for music groups providing a single sex service e.g. a female barbershop group providing singing workshops only to women, on whether this would be considered to be a “a proportionate means of achieving a legitimate aim” or whether the service should not be exclusively for a single sex. Therefore, it is important that we ourselves understand what would be considered proportionate and legitimate – The guidance as it is does not provide us with that understanding.

## Change 13.5: Updated section on separate or single-sex services in relation to gender reassignment

This section explains that service providers should consider their approach to trans people’s use of their services when deciding whether to provide a separate or single-sex service. It includes examples of relevant considerations when deciding whether the exclusion of trans people from a separate or single-sex service is a proportionate means of achieving a legitimate aim.

### To what extent do you agree or disagree with the following statement:The explanation of the legal rights and responsibilities set out in the updated section on separate or single-sex services in relation to gender reassignment is clear.

* Disagree

### Is there anything you would change to make the explanation of the legal rights and responsibilities in this update clearer?

13.5.5 “For example, a trans man might be excluded from the women-only service if the service provider decides that, because he presents as a man, other service users could reasonably object to his presence, and it is a proportionate means of achieving a legitimate aim to exclude him.”

Previously, guidance is clear that a women only service means that service is for all women including trans men. This clause suggests there are situations where a woman (who is a trans man) could be excluded from a service for the reason that other women in the group ‘reasonably object’. This seems very contradictory guidance and can only lead to confusion. What is ‘reasonable objection’ is not clear and is likely to be different for different people, opening up the possibility of conflict within a group.

13.5.10 “If the nature of a service means that it is only, or generally, used by women or by men, this does not mean that it is necessarily a separate or single-sex service under the Act. A service like this does not need to operate according to the rules and principles described in paragraphs 13.2.10 to 13.5.9.”

We think that groups in our membership are likely to fall under this exception i.e. they are male or female voice choirs, or in some cases identified by name and in current membership as for ‘ladies’ or other gendered terms; in few cases the membership rules explicit exclude the opposite sex; they could be considered as service providers as they are providing music teaching. Is this clause suggesting they would NOT have to operate under the principles as they are not necessarily a single-sex service?

If this is the case, then it would be helpful to state this earlier in the guidance – perhaps at 13.2 or 13.3. This would avoid a group reading through guidance that was not relevant to them. It would also be helpful to give examples of when a group would not necessarily be considered as providing a single-sex service even if they were called e.g. a ‘female voice choir’.

### What changes might your organisation make as a result of this update to the code of practice?

We will use this section of the Code of Practice to provide guidance for music groups providing a single sex service e.g. a female barbershop group providing singing workshops only to women, so they can ensure they are not unnecessarily excluding trans people.