

No safe option in times of crisis:

Why the EHRC Code cannot be
applied safely to trans and non-binary
people in an emergency response.

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About this briefing

DRR Dynamics is an independent research and advocacy group working to ensure that people most often excluded from disaster planning are properly included.

We oppose the overall direction and purpose of the Equality and Human Rights Commission's 2026 Code of Practice on services, public functions and associations. We consider its approach to be transphobic and harmful, not only to trans and non-binary people but also to anyone whose appearance or identity does not conform to traditional expectations of gender.

This briefing examines what the Code is likely to mean for people seeking help during an emergency. It asks whether emergency planners, service providers, frontline responders and volunteers can apply it safely and consistently when a disaster occurs.

Our conclusion is that they cannot. The Code creates a foreseeable risk of intrusive questioning, public humiliation, exclusion from essential services and people being deterred from seeking help altogether. Trans, non-binary and gender non-conforming people are likely to bear the consequences.

However, opposition to the Code does not remove the reality that it will come into force on 5 August 2026 and will apply across England, Scotland and Wales. Emergency managers and disaster risk reduction professionals therefore need to prepare for its implementation, identify where it may cause harm and put safeguards in place before an emergency occurs. This should not be understood as support for the Code, but as a practical response to a policy that organisations will be expected to navigate.

The Code is statutory guidance rather than new law. A short note on the legal background appears at the end of this briefing for readers who need it.

This briefing is not legal advice. It sets out DRR Dynamics' position on the Code and our understanding of what its implementation is likely to mean in emergency settings.

Summary

From 5 August 2026, new guidance from the Equality and Human Rights Commission changes how services decide who may use women's and men's provision. It follows a 2025 UK Supreme Court ruling that, for equality law, a person's sex is the sex they were recorded as at birth, whether or not they hold a Gender Recognition Certificate (Code, paras 2.88 to 2.89). Much of the discussion so far has been about gyms, changing rooms and hospital wards. Almost none of it has been about rest centres, refuges and emergency shelters.

The Code assumes that service providers can weigh each situation carefully: identify the purpose of a restriction, assess its effect on everyone involved and choose the least restrictive workable option (Code, paras 5.49 to 5.53 and 13.120). Many organisations may be able to do that in advance, with legal advice, policies and trained staff. Emergency responders often cannot. A local authority opening a rest centre in the middle of the night at very short notice makes immediate decisions with limited staff, incomplete information, little privacy and no time to seek advice.

Unless organisations decide in advance how the Code will be applied in emergency settings, contested decisions will fall to individual staff and volunteers at the door. Where those decisions are handled poorly, trans and non-binary people amongst others who do not meet or appear to rigid perceptions of binary gender, may be questioned publicly, denied access to facilities, separated from family or support networks, or discouraged from seeking help at all (D'Ooge, 2008; Seglah & Blanchard, 2023). After all, more than a decade of research shows these groups already face discrimination and heightened risk in disasters (Dominey-Howes, Gorman-Murray & McKinnon, 2013; Gorman-Murray et al. 2017; Goldsmith, Raditz & Méndez, 2022).

This briefing does not argue that responders should disregard equality law or the Code. It argues that the Code cannot be applied safely, consistently or fairly in an emergency unless its implications have been worked through beforehand. The response phase is the wrong time to decide who may enter a place of safety, use an essential facility or receive support. The starting point should be a clear default:

Nobody seeking help should be refused immediate admission to a place of safety while questions about facilities or eligibility are considered.

Where the Code meets the disaster cycle

This table lines up each part of the Code with the phase of a disaster where it's relevant, the point at which it is likely to fail in practice, and the steps needed to sort it out ahead of time. It is a working aid for people writing plans, not a legal summary. The rest of the briefing explains each row.

What the Code says	Point of failure	Where it goes wrong	What to sort out in advance
Sex now means birth sex; a certificate does not change it	Planning and booking-in	A male or female box cannot capture something invisible and undocumented, so different staff sort the same person differently	Design booking-in that does not force disclosure, and agree a safe default before anything happens
Single-sex rules for refuges, wards, washing, toilets, personal care	Response	Trans people can be shut out of the service that fits their life, in the very facilities a disaster relies on	Offer mixed-sex space alongside single-sex, and make private facilities the norm
Being shut out of the service for your own birth sex too	Response	Taken with the above, a person can be left with nowhere they are allowed to go	Guarantee at least one usable facility for everyone, and de-escalate objections rather than exclude
Refuge and violence-against-women provision after a disaster	Response and recovery	Survivors turned away during a surge when there is no other service to send them to	Agree inclusive referral routes with commissioners in advance
"Nowhere left to go" for things everyone needs	Response	An emergency cannot conjure a third space, so the Code's own safeguard fails	Build private, lockable toilets and washing into the design of the centre
Being asked to prove your sex on appearance or complaint	Response and booking-in	Visibly different people singled out, with a real chance of being outed in public	Lead with dignity, handle any question privately, never challenge on looks alone
Confidentiality around Gender Recognition Certificates	Response and recovery	Shared systems make confidentiality hard to keep, with criminal risk attached	Put data-protection routines and staff training in place beforehand
Deciding each case on its merits	Every phase	Careful judgement demanded in conditions that rule careful judgement out	Move the decision into planning and write down the reasoning
Recording sex as birth sex and holding it as sensitive data	Recovery	Long caseloads mean repeated re-outing and records that do not match	Keep recorded sex data to a minimum, limit who sees it, follow data-protection duties

Where the Code applies in an emergency

The Code appears to be concerned mainly with settings such as gyms, swimming pools and changing rooms and makes no reference at any point to disasters, emergencies, evacuation, rest centres or temporary accommodation. In practice, many of the services and public functions that communities rely on during an emergency fall within its scope. Local authorities exercise public functions and provide services, and may be subject to both sets of duties depending on the activity (Code, paras 3.2 to 3.3): they commonly coordinate welfare support during emergencies, including temporary shelter through rest centres and assistance with temporary accommodation (IGLHRC/SEROVie, 2011; Yamashita et al., 2017; Seglah and Blanchard, 2023). Other services used during a crisis, including domestic and sexual violence support, hospital services, shared washing and changing facilities, toilets and communal sleeping accommodation, may be organised on a separate or single-sex basis (Code, paras 13.95, 13.104 to 13.106 and 13.154 to 13.156). These are precisely the settings in which exclusion, harassment and abuse of trans and gender-diverse people have been documented after disasters (IGLHRC/SEROVie, 2011; Yamashita et al., 2017; Seglah and Blanchard, 2023). Decisions made through Local Resilience Forum arrangements and by the local authorities that run rest centres can therefore engage the Equality Act even when equality law is nowhere near the front of anyone's mind.

The effect is that a trans woman is treated as a man when deciding access to these services, and a trans man is treated as a woman, whatever their documents say (Code, para 13.119). Non-binary people sit in a more uncertain position again. What is important for this briefing is that none of this is something a responder can work out at a registration desk, and none of them should be trying. Anyone whose appearance, name or paperwork does not match what a stranger expects is the person most likely to be stopped and questioned, whatever the legal fine print would eventually say about them. Identification that does not reflect a person's gender identity or appearance is a long-standing barrier to accessing assistance in disasters, and has excluded people from relief entirely (Pincha, 2008a; Pincha, 2008b; The New Humanitarian, 2014; Blanchard, 2024).

The Code also acknowledges a crucial practical difficulty: no official record or document in the UK provides reliable evidence of a person's sex for these purposes. Passports and driving licences can be changed without a certificate, and the birth certificate of a person with one may show their acquired gender. The Code therefore accepts that seeking documentary evidence is unlikely to be proportionate or practical (Code, para 13.179). Emergency personnel may nevertheless be expected to make access decisions using information that is invisible, unverifiable and deeply private, at the first point of contact and before anyone's safety or welfare needs have been met.

The problem starts at shelter registration

Registering someone at a rest centre, allocating shelter, recording casualty information, preparing an evacuation list or making a referral may all involve forms or systems that use simple male and female categories. Categories of this kind have excluded people from relief altogether, from the aravanis denied ration cards after the 2004 Indian Ocean tsunami to households and individuals who do not fit the options a form allows (Pincha, 2008a; Gorman-Murray et al., 2014; Pride in the Humanitarian System, 2018). Organisations should not assume that information about sex is required in every case. The Code requires any request for information about sex to be objectively justified as a proportionate means of achieving a legitimate aim, and the measures used to be no more than necessary to establish eligibility (Code, paras 13.162 to 13.164 and 13.171). Sex is also a separate protected characteristic from gender reassignment (Code, paras 2.90 and 2.96), so a person's sex for Equality Act purposes is not the same question as how they live, present or wish to be addressed.

Where sex genuinely determines eligibility for a single-sex service, staff without a clear reason for the question or an agreed procedure for uncertainty will fall back on appearance, the information offered, the documents to hand or their own assumptions. None of these resolves the question. The likely result is not consistency but variation: the same person could be recorded differently at two nearby centres, depending on the registration system and the judgement of whoever happens to be on duty. That classification may then follow the person through sleeping arrangements, facilities, referrals and onward support, and into the records that determine who is recognised and who is not (Seglah and Blanchard, 2022; Blanchard, 2024).

For a trans or non-binary person, access to safety may therefore depend on a rapid judgement made under pressure by a stranger. This is not a remote risk; it is the foreseeable consequence of asking frontline personnel to apply a category that may be unnecessary for the immediate response and cannot be reliably established at speed. Plans and registration systems should determine in advance when information about sex is genuinely required, keep its collection to a minimum and prevent unresolved questions from delaying anyone's access to safety. Collecting this information carries its own risks, and there is little established guidance on how to do it safely in a disaster context (Seglah and Blanchard, 2021; Seglah and Blanchard, 2022).

No safe option for trans/non-binary folk

The law does allow women-only and men-only services, provided the organisation can show that separating them is a fair and necessary way of achieving a genuine purpose (Code, paras 13.92 to 13.112). These provisions reach many of the facilities people depend on after a disaster: rest centres, temporary shelters, refuges, shared

washing facilities, toilets and communal accommodation. Sanitation and washing facilities are a recurring point of failure, including documented cases of trans people unable to wash or change for days (Humanitarian Advisory Group, 2016; Yamashita et al., 2017; Seglah and Blanchard, 2021). In ordinary circumstances, a person turned away can often go elsewhere. During an emergency, the service in front of them may be the only available source of safety, with no transport, no alternative accommodation and no safe place to wait. Where trans people have been admitted to shelters, harassment, verbal abuse, detention and sexual violence have all been recorded (IGLHRC/SEROVie, 2011; Yamashita, 2012; Yamashita et al., 2017; Seglah and Blanchard, 2023).

Under the Code's interpretation, a trans woman may be excluded from a women's service because she is treated as male, and a trans man from a men's service because he is treated as female. A trans person can also be kept out of the service matching their birth sex, if the organisation decides that other people using it might reasonably object to their being there (Code, paras 13.119 and 13.145 to 13.147). Combined, these provisions create the possibility that a trans person is denied both available facilities. The Code is clear that leaving a trans person with no toilet they are allowed to use is almost never acceptable (Code, para 13.148), and gives an example in which barring a trans man from the changing room he has been using, with no alternative available, may be a disproportionate decision (Code, para 13.151). That principle is important, but worryingly the Code gives no operational answer for the moment when the building has only women's and men's toilets, no private room exists, roads are closed and other centres are full. A responder cannot conjure a third space at the point when someone arrives. Where no safe option exists, some people avoid official shelter entirely and take their chances with the disaster instead (Blanchard, 2023; Seglah and Blanchard, 2023).

The Code's preferred mitigations, private lockable facilities usable by anyone alongside separate provision (Code, paras 13.123 and 13.140), are only truly useful when time is allowed to plan. They depend on space, rooms, staff and time, which are precisely the resources an emergency removes. The safeguards are least available in the circumstances where they are most needed.

Safeguarding decisions under pressure

The most serious concerns involve services supporting survivors of domestic and sexual violence. Disasters can increase exposure to abuse and make it harder to leave, at the same time as refuge places, staffing, transport and referrals are disrupted. Gender-based and sexual violence against LGBTQIA+ people in disaster settings is documented, including within shelters themselves, and crisis conditions have been associated with heightened risk of family and domestic violence (Pincha, 2008b; IGLHRC/SEROVie, 2011; Bishop, 2020). The Code gives an example in which a trans man is excluded from group counselling for female survivors, and concludes

the provider is likely to be acting lawfully in the circumstances described (Code, para 13.150). Applied in the aftermath of a flood or fire, that approach could deny a trans survivor the service that reflects how they live, and separate them from an established counsellor or support network at a moment of heightened risk, at precisely the point when demand for psychosocial support tends to rise (Gorman-Murray et al., 2018; Mawjoudin, 2020; Fundación Amal Argentina, 2020; Haworth, 2022).

The Code says providers should consider whether a suitable alternative exists (Code, paras 13.137 to 13.139 and 13.148). During a surge there may be no other provider, no spare refuge place and no safe way to travel elsewhere. A referral is not a safeguard unless the receiving service exists, has confirmed capacity and can meet the survivor's needs. No survivor should be turned away from immediate safety on the assumption that someone else will help.

A further risk runs through all of these situations: in a crowded, fast-moving setting, distinguishing a genuine safeguarding concern from a discriminatory objection is hard, and exclusion can become the simplest response to conflict (Dominey-Howes et al., 2016; Goldsmith et al., 2022). Plans should require responders to address behaviour and actual risk, use de-escalation, and never treat a person's trans status as evidence of danger. Any restriction should follow an agreed procedure, be escalated to a trained manager and come with a safe, genuinely equivalent arrangement.

Questions that should be asked discreetly

Being asked about your sex is intrusive, and human rights law treats it as private information (Code, para 13.161). An organisation has to be able to explain why it is asking. The Code says questioning may be legitimate where there is clear evidence of an issue, and lists a person's physique or appearance, their behaviour and concerns raised by other service users among the factors that may prompt it, while acknowledging in the same breath that sex cannot reliably be determined from appearance (Code, paras 13.168 to 13.169). It also states that questioning anyone about their sex is unlikely to be practical or appropriate in relation to facilities incidental to the primary service, such as toilets (Code, para 13.170). The people most likely to be challenged at the point of seeking safety are therefore those who do not conform to the traditional physical/appearance based standards of gender.

The Code's safeguards, that questions be necessary, sensitive, private and asked by trained staff (Code, paras 13.165, 13.171, 13.173 and 13.174), are difficult to maintain in a queue, a shared hall or a tent staffed partly by volunteers using paper records. A procedure that is discreet in a planned service can out someone in front of a room during a live response. Forced disclosure in shelter settings is well documented, and anonymity has been treated as a protective measure in its own right by organisations working with displaced LGBTQIA+ people (Yamashita, 2012;

Breen and Millo, 2013; Yamashita et al., 2017). And the consequences are immediate: a person who confirms they are not of the eligible sex may be required to leave, which in a disaster can mean leaving the only available place of safety. Where uncertainty cannot be resolved, the Code leaves the provider to weigh the circumstances and decide (Code, paras 13.178 to 13.180). Emergency guidance should establish instead that unresolved questions must not delay assistance or result in refusal of admission, and that any genuinely necessary question is dealt with later, privately, by a trained person following an agreed procedure. Advance training and the designation of sensitised staff are established mitigations in humanitarian settings (UNHCR, 2015; Dominey-Howes et al., 2016; Gender in Humanitarian Action, 2017).

Records, referrals and repeated outing

The same handling rules apply wherever this information turns up, at registration, in shared systems and months later in recovery casework. Recording someone's sex is not in itself high-risk data handling, but it can reveal that a person is trans, and that in turn can reveal things about their health and medical history. Fear about disclosure and confidentiality is itself a documented barrier to seeking help (Breen and Millo, 2013; Seglah and Blanchard, 2022). Information about a Gender Recognition Certificate is more sensitive still. Passing on the fact that someone holds one, or has applied for one, can in some circumstances be a criminal offence under section 22 of the Gender Recognition Act 2004, and the Code states that whether someone holds a certificate is unlikely to be relevant information (Code, para 13.181).

In a multi-agency response, records move between local authorities, emergency services, health providers, voluntary organisations and accommodation partners, and recovery casework can run for months or years. A classification made quickly at a front desk can therefore expose a person to repeated outing with every new referral or caseworker (Seglah and Blanchard, 2022; Blanchard, 2024). The discipline is simple to state: establish in advance what information is genuinely needed, collect the minimum, restrict access, anonymise monitoring data, and delete records when the purpose has passed (Code, paras 13.175 and 13.182).

The wider cost is deterrence. Evidence from disaster settings already shows trans and non-binary people avoiding formal support because of discrimination, fear of harassment or previous bad experiences (Goldsmith et al., 2022; Haworth et al., 2022; Blanchard, 2023; Seglah and Blanchard, 2023). If people believe they may be questioned about their sex, refused shelter or exposed in front of others, some will not come at all, leaving those most at risk least visible to responders.

Fast moving decisions that require more time

Almost every hard question in the Code comes down to the same demand. Before turning anyone away, the organisation is expected to work out what it is actually trying to achieve, whether excluding this person achieves it, what it will cost the person excluded, and whether there is a gentler option that would work. The Code accepts this is difficult, describing the law in this area as complex and suggesting that specific legal advice may be needed (Code, paras 13.135 and 13.164). Doing it properly takes evidence, discussion and a written record, and the Code treats both a written policy and a record of the reasoning as good practice (Code, paras 13.129 and 13.134).

A live emergency provides none of this. Decisions fall to public-sector staff, contractors, volunteers and community members, some with no training in equality law, working with limited information, no private space and no alternative facilities. Where emergency plans have been examined against the needs of sexual and gender minorities, the absence of prior guidance has been a consistent finding (Yamashita, 2012; Dominey-Howes et al., 2016). Asked to make a complex legal and ethical judgement within minutes, people fall back on whatever seems simplest, which may mean excluding a trans person without considering the consequences, or admitting them without any consistent policy behind the decision. Neither outcome is the fault of the person at the door. They are being left to make decisions the responsible organisation should already have made. In practice, it is trans and non-binary people seeking safety who experience the immediate consequences of that failure.

What planners are already required to do

None of this is new work sitting outside the job. Public bodies already have to think about who their decisions affect, already have to respect people's privacy, and already have to plan accessibility in advance rather than improvising it when a disabled person turns up at the door (Code, paras 7.22 to 7.23 and 7.25 to 7.26). This is important here in a specific way: if the answer to a shortage of private space is to repurpose the accessible toilet, the plan has solved one problem by creating another, and a disabled trans person is left with nothing at all. The Code's own example of extending an accessible toilet for mixed-sex use asks providers to monitor the impact on both trans and disabled people on an ongoing basis (Code, para 13.124).

Applied to emergency planning, the requirement is straightforward. Look at how your shelter, sanitation, registration and referral arrangements will affect people before you need them, recognising that people hold more than one relevant characteristic at once (Crenshaw, 2013; Kadetz and Mock, 2018; Vickery, 2018; Andharia, 2020; Paupini and Gjørseter, 2021). Ask the people likely to be affected.

Write down how you weighed the competing needs. An organisation that has done this can explain its decisions afterwards. One that has not will struggle to explain anything. These duties sit alongside international human rights obligations that apply in disaster settings, including the right to an adequate standard of living and the right to non-discrimination (CESCR, 1991; UNGA, 2010; Report of the Special Rapporteur, 2011; HRC, 2012; Rolnik, 2018; Simm, 2021; Seglah and Blanchard, 2024).

Recommendations

The recommendations below rest on one principle: the questions the Code raises must be answered during preparedness and planning, because they cannot be answered safely for the first time during a response. Nobody seeking help should be refused immediate admission to a place of safety while questions about facilities, accommodation or eligibility are considered, and no such decision is left to an individual member of staff or volunteer at the point of entry.

For central government and the EHRC

- Publish guidance specifically for emergency settings, covering rest centres, emergency accommodation, communal sleeping, sanitation, domestic and sexual violence services and recovery support, with clear and lawful default approaches for situations offering limited time, information, privacy, staffing or space.
- Make immediate safety the starting point: unresolved questions about sex must not delay urgent assistance or result in refusal of admission to a place of safety.
- Clarify what providers should do when the Code's suggested alternatives, such as a private or mixed-sex facility, do not exist, and establish that another person's discomfort or objection does not by itself justify exclusion.
- Set out clearly how information about sex, gender and trans status should be handled when it moves between councils, emergency services, health providers and voluntary organisations, and what must never be recorded or passed on.

For Local Resilience Forums and local authorities

- State in plans that immediate admission and safety come before questions about placement or facilities, and that nobody waits outside, leaves a place of safety or travels elsewhere unless a safe alternative has been confirmed.
- Make private, accessible, lockable toilets, washing and changing facilities a standard requirement when selecting, designing or procuring venues, alongside separate and mixed-sex provision, and without reducing accessible facilities for disabled people.
- Decide in advance when information about sex is genuinely needed, design registration so nobody discloses private information in front of others, and record the reasoning behind the agreed approach.
- Build a simple escalation procedure into every relevant plan, and test the arrangements through exercises with realistic constraints.

For frontline responders and rest-centre teams

- Admit, register and support people without unnecessary questioning about sex or gender. Never challenge someone solely because of their appearance, name, voice, clothing or another person's assumption, and never ask about a Gender Recognition Certificate.
- Leave nobody without a safe, usable toilet, washing facility, sleeping area or source of immediate support. Where the preferred arrangement is unavailable, follow the plan and escalate rather than improvising an exclusion at the front desk.
- Handle objections from other service users through calm communication and de-escalation, focusing on behaviour and evidence of risk, never on a person's trans status. Any temporary restriction should be brief, explained to the person affected and kept under review.
- Protect personal information: record or share details about sex, gender identity, trans status or medical history only where there is a clear and lawful reason.

For refuge, violence-against-women and welfare partners

- Develop referral arrangements that never leave a trans or non-binary survivor without immediate safety and appropriate support, and treat a referral as an alternative only where the receiving service has confirmed it can accept the person and meet their needs.
- Agree with commissioners and partners how access will be maintained when accommodation, staffing, transport and specialist provision are under pressure, including what happens when the preferred service is full or unreachable.
- Make sure staff know that the examples in the Code are illustrations of principles and concepts, not standing orders (Code, para 1.24). An example about one counselling group does not settle what happens at your door on the night of a flood.

For everyone

- Train staff and volunteers before an emergency on inclusive practice, equality and human rights duties, privacy, de-escalation and information handling, using practical scenarios, and give them a short operational guide for use during a response.
- Monitor how trans, non-binary and disabled people experience emergency services, collect only what that monitoring needs, and keep anonymous equality monitoring separate from records used to determine individual access.
- Include organisations led by trans and non-binary people as partners from the earliest design stage, and use post-exercise and post-emergency reviews to remove foreseeable points of exclusion before the next crisis.

Conclusion

The people registering families at a rest centre at two in the morning are not lawyers, and they should not be expected to make complex legal judgements. Yet this is what the Code may require of them during an emergency. It places difficult and uncertain decisions at the entrance to a place of safety, at a time when staff have limited information, little privacy and no opportunity to seek advice. Where those decisions go wrong, it is the trans or non-binary person seeking help who bears the consequences.

The Code is not workable in these conditions, and we are concerned that the uncertainty it creates may lead to intrusive questioning, humiliation and exclusion. The answer is neither to disregard the law nor to accept these outcomes as unavoidable. It is advance planning: decisions made around a planning table, with time to assess legal duties, consult affected communities, identify workable alternatives and design services that protect everyone's safety and dignity. These issues must be resolved before the emergency begins, because the response phase is no place to work them out for the first time.

Note on the legal background

Some readers will want the underlying legal position set out plainly. In 2025 the Supreme Court ruled that "sex", "woman" and "man" in the Equality Act 2010 mean biological sex, which the judgment described as the sex a person was recorded as at birth. A Gender Recognition Certificate does not change that for the purposes of this Act. The EHRC then updated its Code of Practice on services, public functions and associations to reflect the ruling. That 2026 Code was issued after parliamentary scrutiny and takes effect on 5 August 2026, replacing the 2011 version.

The Code is guidance. It does not create new duties, and only the courts can say what the law requires in a given case. It still matters a great deal in practice: courts must take account of any relevant part of it, it can be used as evidence, and following it helps an organisation show it has acted properly (Code, paras 1.5 to 1.7).

Equality law in Northern Ireland works differently and is not covered here.

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