

## **Change 13.1: Updated section on competitive sport - Changes we are consulting on in chapter 13**

### Changes we are consulting on in chapter 13

The Equality Act 2010 (the Act) contains exceptions which permit conduct that would otherwise be unlawful under the Act in the provision of services, the exercise of public functions and the activities of associations. Chapter 13 explains those exceptions.

We have included the changes to this chapter that we are consulting on in the following sections.

### Change 13.1: Updated section on competitive sport

This section has been updated to explain the circumstances in which it may be lawful to exclude participation in competitive sporting events in relation to the protected characteristics of sex and gender reassignment. It also sets out considerations that should factor into policy decisions regarding the exclusion of trans people from competitive sporting events.

### Updated content - Competitive sport

13.1.1 The Act includes four types of exceptions that may apply in relation to the participation of a competitor in a sport, game or other activity of a competitive nature (s.195). These relate to sex, gender reassignment, nationality or birthplace, and age.

### Competitive sport – sex

13.1.2 It is not a breach of the Act for a person to organise single-sex or separate-sex events for male and female competitors in a sport, game or other activity of a competitive nature in specific circumstances (s.195(1) and (3)). These circumstances are where an average person of one sex would be at a disadvantage as a competitor against an average person of the other sex due to their physical strength, stamina or physique (referred to in the Act as a 'gender-affected activity'). Where there is no disadvantage due to these factors, organising single-sex or separate-sex events may be unlawful sex discrimination.

Example - 13.1.3 The organisers of a 5-a-side football event decide that it is necessary to hold separate competitions for men and women. This is likely to be permitted under the Act. Physical strength, stamina and physique are all

significant factors in a 5-a-side football match. An average man has an advantage compared to an average woman because men are on average taller and stronger and have more overall muscle mass than women.

13.1.4 This exception also applies to children's sport (s.195(4)). However, organisers must consider whether there are significant differences in physical strength, stamina or physique at the age and stage of development of the children competing in the activity.

Example - 13.1.5 A primary school only has a boys' under-7 football team as there are not enough girls for a full team. A girl requests to join the team. It may be unlawful to decline this request unless the school can demonstrate that there are differences in physical strength, stamina or physique between boys and girls under 7 years old that would disadvantage girls taking part in football. Examples of disadvantage could be unfair competition or risks to health and safety.

#### Competitive sport – gender reassignment

13.1.6 In the context of a gender-affected activity (read paragraph 13.1.2), the Act allows trans people to be excluded from an event or treated differently, which would otherwise constitute unlawful gender reassignment discrimination, when necessary for reasons of safety or fair competition. If it is not necessary for these reasons, it is likely to be unlawful to exclude trans people.

13.1.7 Consequently, if a person is organising single-sex or separate-sex events for men and women in a gender-affected activity, they should consider their approach to trans competitors' access to the service (s.19 and s.195(2)).

13.1.8 Direct gender reassignment discrimination can occur if a policy or decision to restrict participation of trans people is made on the grounds of gender reassignment.

13.1.9 This would be the case, for example, if a trans man, who is a woman under the Act, is excluded from a women's event because of his gender reassignment characteristic. Read our changes to chapter 2 for more information on the meaning of gender reassignment.

13.1.10 Indirect gender reassignment discrimination can occur if a provision, criterion or practice puts trans people (including the individual trans person

concerned) at a particular disadvantage compared to people who are not trans and it cannot be justified.

13.1.11 However, in the context of a gender-affected activity, the Act provides an exception to a claim of gender reassignment discrimination if a person restricts participation of a trans person in a gender-affected activity and can show it is necessary to do so for reasons of fair competition or the safety of competitors (s.195(2)).

13.1.12 This means that organisers can prevent trans people from participating in a gender-affected sporting activity if it is necessary to do so because their participation would create a competitive advantage or disadvantage, or would potentially endanger their own safety or that of other participants.

Example - 13.1.13 A boxing gym runs a boxing competition for men. A trans man wishes to compete. The gym declines his request because they are concerned about the safety of trans men taking part in the full-contact sparring with men due to physiological differences. This is likely to be lawful if the gym can demonstrate that there would be a genuine health and safety risk if trans men were allowed to join the competition.

13.1.14 In some circumstances, limiting, modifying or excluding the participation of trans people for the reasons of fair competition or safety may be necessary to avoid discrimination against other competitors. Section 195(1) provides organisers of separate sporting events for men and women with an exception for sex discrimination when providing separate men's and women's events. The law on the interpretation of this provision is not settled and there is therefore uncertainty as to how this provision applies.

13.1.15 Section 195(1) is likely to only apply where a person has decided to organise the gender-affected activity as a single-sex or separate-sex event. A claim of direct or indirect sex discrimination cannot be brought about the participation of a person in an event which has been organised as a single-sex or separate-sex event.

13.1.16 Where an organiser chooses to offer a mixed-sex gender-affected activity, then this activity is not protected by the exception in section 195(1) and participants may bring claims of direct and indirect sex discrimination about it.

**Example - 13.1.17** An athletics club chooses to organise an athletics event that includes women and trans women. The trans women who participate are significantly faster and have a physical advantage. A woman may be able to bring a claim for indirect sex discrimination due to the provider's decision not to limit or modify the participation of trans women placing her at a particular disadvantage.

**13.1.18** Given the physiological differences between men and women, it will often be necessary for organisations to develop general policies to guide and inform their decision making in this area. Policies should be supported by a clear rationale and evidence base, and will often wish to draw upon guidance from sporting authorities. Relevant factors may include:

- whether an activity is primarily competitive, or competitive but with a significant social and recreational purpose, and whether it is a mass participation event
- whether there are safety risk factors such as those arising from physical contact between men and women
- the extent to which there are competitive advantages arising from sex-based physiological factors such as physical strength, stamina or physique
- whether such competitive advantage can be sufficiently reduced through medical intervention, such as drugs to reduce levels of testosterone, to make the competition fair

**Change 13.1: Updated section on competitive sport**

This section has been updated to explain the circumstances in which it may be lawful to exclude participation in competitive sporting events in relation to the protected characteristics of sex and gender reassignment. It also sets out considerations that should factor into policy decisions regarding the exclusion of trans people from competitive sporting events.

35. 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 competitive sport are clear. - required

- Strongly Agree
- Agree
- Disagree
- Strongly Disagree
- Do not know

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

**Example Response:**

**Chapter 13.1, addresses exceptions for competitive sport under the Equality Act 2010 (the Act).** My feedback centres on safeguarding, women's rights, and the protection of biological sex-based categories, in light of the UK Supreme Court ruling in *For Women Scotland Ltd v The Scottish Ministers* (16 April 2025). I aim to ensure that the guidance upholds fairness, safety, and clarity in the application of the Act, particularly for women and girls in competitive sports. The updated guidance in Chapter 13.1 seeks to clarify the application of exceptions under section 195 of the Act for sex and gender reassignment in competitive sports. While I welcome the attempt to provide clarity following the Supreme Court ruling, I have concerns about ambiguities, inconsistencies, and areas where the guidance could better prioritise fairness and safety for female competitors, especially in gender-affected activities.

**Clarity and Application of Sex-Based Exceptions (13.1.2–13.1.5)**

The guidance correctly acknowledges that single-sex or separate-sex

events are permissible under section 195(1) and (3) for gender-affected activities where physical strength, stamina, or physique creates a disadvantage for one sex (female). The example of a 5-a-side football event (13.1.3) appropriately highlights physiological differences between men and women, such as height and muscle mass, as justification for separate competitions.

However, the guidance on children's sport (13.1.5) is less clear. The example suggests that excluding a girl from an under-7 boys' football team may be unlawful unless significant physical differences can be demonstrated. This risks undermining the ability of organisers to maintain single-sex provisions for young children, where physiological differences may not yet be pronounced but where privacy, dignity, and safeguarding concerns remain relevant. I urge the EHRC to clarify that organisers may maintain single-sex teams for children based on broader considerations, including parental preferences and safeguarding, rather than requiring evidence of physical disadvantage at young ages. **Recommendation:** Amend 13.1.5 to explicitly recognise that single-sex provisions for children's sports can be justified for reasons beyond physical differences, such as safeguarding, privacy, and parental consent, to align with women's and girls' rights to fair and safe environments.

### **Gender Reassignment Exceptions and Fairness (13.1.6–13.1.13)**

The guidance on gender reassignment (13.1.6–13.1.13) permits excluding trans individuals from gender-affected activities for reasons of safety or fair competition. This is a step toward acknowledging the need to protect female competitors in sports where physiological advantages (e.g., retained male strength or stature) could undermine fairness or safety. The boxing gym example (13.1.13) is helpful in illustrating how safety concerns can justify exclusion. However, the guidance lacks specificity on how organisers should assess “**fair competition**” or “**safety.**” For instance, it does not address the significant body of evidence showing that trans women (biological males) may retain physiological advantages (e.g., muscle mass, bone density) even after testosterone suppression. This omission risks leaving organisers uncertain about how to apply the exception without facing legal challenges.

Additionally, the reference to “**direct gender reassignment discrimination**” (13.1.8–13.1.9) is confusing, clarify that “fair competition”

assessments should prioritise evidence-based physiological differences, referencing studies (e.g., Hilton & Lundberg, 2021) that show retained male advantages in trans women after hormone therapy. Revise 13.1.9 to confirm that trans men (biological females) are eligible for women's events unless exclusion is justified by safety or fairness, aligning with the Act's definition of sex, based on the addition of hormones, that have altered her physical strength, and psychological chemistry. Organisers may have to consider anti-doping regulations in respect of their sport before including the trans man in the female competition. This would exclude the trans man under doping regulations and would not be discrimination on the basis of gender reassignment.

***(Prior to gender affirming hormones, transmen performed 43% fewer push-ups and ran 1.5 miles 15% slower than their male counterparts. After 1 year of taking masculinising hormones, there was no longer a difference in push-ups or run times, and the number of sit-ups performed in 1 min by transmen exceeded the average performance of their male counterparts)*** Roberts TA, Smalley J, Ahrendt DEffect of gender affirming hormones on athletic performance in transwomen and transmen: implications for sporting organisations and legislatorsBritish Journal of Sports Medicine 2021;55:577-583. Provide clearer guidance on the threshold for "safety" and "fairness," including examples of objective criteria (e.g., strength tests, injury risk data) to support organisers' decisions.

### **Mixed-Sex Events and Indirect Sex Discrimination (13.1.16–13.1.17)**

The example of an athletics club allowing trans women to compete in a mixed-sex event (13.1.17) correctly identifies the potential for indirect sex discrimination against women due to physiological advantages. This is a critical acknowledgment of the impact on female competitors when biological males participate in women's or mixed-sex categories. However, the guidance does not go far enough in supporting organisers to prioritise women's rights. It implies that mixed-sex events are inherently open to claims of discrimination without offering practical solutions for organisers to balance inclusion with fairness. For example, it could suggest creating open categories alongside single-sex women's categories to protect female competitors while accommodating trans participants. Strengthen 13.1.17 by recommending that organisers consider open or separate categories for trans competitors to avoid indirect discrimination against women, ensuring that female-only categories remain protected for biological females.

**Policy Development and Evidence Base (13.1.18)** The guidance on developing policies (13.1.18) is a positive step, emphasising the need for a clear rationale and evidence base. **However, it lacks specificity on what constitutes a robust evidence base.** For example, it mentions medical interventions like testosterone suppression but does not address the scientific consensus that such interventions often fail to fully mitigate male physiological advantages in sports (e.g., Handelsman et al., 2018). Additionally, the guidance does not explicitly prioritise women’s and girls’ rights to fair and safe competition, which is critical given the Supreme Court’s clarification on biological sex. Policies should explicitly centre the protection of female categories to prevent erosion of women’s rights under the guise of inclusion.

Expand 13.1.18 to include references to specific scientific studies or governing body guidelines (e.g., World Athletics) that organisers can rely on to justify single-sex policies. Explicitly state that policies should prioritise the protection of female categories in gender-affected activities to safeguard women’s and girls’ rights to fair and safe competition.

**Legal Uncertainty and the Supreme Court Ruling (13.1.14–13.1.15)**

The acknowledgment of legal uncertainty in applying section 195(1) (13.1.14) is concerning, as it undermines the clarity needed for organisers to confidently implement single-sex provisions. The Supreme Court ruling in *For Women Scotland* clarified that sex in the Act refers to biological sex, which should provide a clear foundation for single-sex sports categories. The guidance should reflect this ruling more robustly to avoid confusion and ensure that biological sex protections are upheld. Revise 13.1.14–13.1.15 to affirm that the Supreme Court ruling establishes biological sex as the basis for single-sex provisions under section 195(1), reducing perceived legal uncertainty and reinforcing organisers’ rights to maintain female-only categories.

While Chapter 13.1 makes progress in addressing the complexities of competitive sport under the Equality Act, it requires further refinement to ensure clarity, protect women’s and girls’ rights, and align with the Supreme Court’s ruling on biological sex. My recommendations focus on strengthening the guidance to prioritise fairness and safety for female competitors, clarifying the application of exceptions, and providing organisers with robust, evidence-based tools to implement single-sex



policies. I urge the EHRC to incorporate these suggestions to safeguard biological sex protections and uphold women's rights in competitive sports.