

# EQUALITY ACT 2010

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## EXPLANATORY NOTES

### COMMENTARY ON SECTIONS

#### **Part 16: General and Miscellaneous**

#### *Schedule 3: Services and public functions: exceptions*

#### **Part 7: Separate and single services**

#### **Separate services for the sexes: [paragraph 26](#)**

##### **Effect**

729. This paragraph contains exceptions to the general prohibition of sex discrimination which allow the provision of separate services for men and women.
730. A provider can deliver separate services for men and women where providing a combined service would not be as effective. A provider can deliver separate services for men and women in different ways or to a different extent where providing a combined service would not be as effective and it would not be reasonably practicable to provide the service otherwise than as a separate service provided differently for each sex. In each case such provision has to be justified.
731. The exceptions also cover the exercise of public functions in respect of the “back-room” managerial, administrative and finance decisions which allow separate services to be provided.

##### **Background**

732. This paragraph replaces similar provisions in the Sex Discrimination Act 1975 that only cover public functions. The exceptions have been extended to cover all services, whether privately or publicly provided.

##### **Example**

- It would not be unlawful for a charity to set up separate hostels, one for homeless men and one for homeless women, where the hostels provide the same level of service to men and women because the level of need is the same but a unisex hostel would not be as effective.

#### **Single-sex services: [paragraph 27](#)**

##### **Effect**

733. This paragraph contains exceptions to the general prohibition of sex discrimination to allow the provision of single-sex services.
734. Single sex services are permitted where:
- only people of that sex require it;
  - there is joint provision for both sexes but that is not sufficient on its own;

*These notes refer to the Equality Act 2010 (c.15)  
which received Royal Assent on 8 April 2010*

- if the service were provided for men and women jointly, it would not be as effective and it is not reasonably practicable to provide separate services for each sex;
- they are provided in a hospital or other place where users need special attention (or in parts of such an establishment);
- they may be used by more than one person and a woman might object to the presence of a man (or vice versa); or
- they may involve physical contact between a user and someone else and that other person may reasonably object if the user is of the opposite sex.

735. In each case, the separate provision has to be objectively justified.

736. These exceptions also cover public functions in respect of the “back-room” managerial, administrative and finance decisions which allow such single-sex services to be provided.

#### Background

737. This paragraph replaces some similar provisions that only covered public functions and some that applied to services in the Sex Discrimination Act 1975. These exceptions have been extended to cover both services and public functions.

#### Examples

738. These exceptions would allow:

- a cervical cancer screening service to be provided to women only, as only women need the service;
- a fathers’ support group to be set up by a private nursery as there is insufficient attendance by men at the parents’ group;
- a domestic violence support unit to be set up by a local authority for women only but there is no men-only unit because of insufficient demand;
- separate male and female wards to be provided in a hospital;
- separate male and female changing rooms to be provided in a department store;
- a massage service to be provided to women only by a female massage therapist with her own business operating in her clients’ homes because she would feel uncomfortable massaging men in that environment.

### **Gender reassignment: paragraph 28**

#### Effect

739. This paragraph contains an exception to the general prohibition of gender reassignment discrimination in relation to the provision of separate- and single-sex services. Such treatment by a provider has to be objectively justified.

#### Background

740. This paragraph replaces a similar provision in the Sex Discrimination Act 1975.

#### Example

- A group counselling session is provided for female victims of sexual assault. The organisers do not allow transsexual people to attend as they judge that the clients who attend the group session are unlikely to do so if a male-to-female transsexual person was also there. This would be lawful.

### **Services relating to religion: paragraph 29**

#### Effect

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741. This paragraph contains an exception to the general prohibition of sex discrimination to allow ministers of religion to provide separate and single-sex services.
742. The minister can provide such services so long as this is done for religious purposes, at a place occupied or used for those purposes and it is either necessary to comply with the tenets of the religion or for the purpose of avoiding conflict with the strongly held religious views of a significant number of the religion's followers. This does not apply to acts of worship (which are not themselves "services" within the meaning of the Act so no exception is required).

**Background**

743. This paragraph replaces a similar provision in the Sex Discrimination Act 1975. The requirement regarding avoiding conflict with the religion's followers has been altered in order to give consistency within the Act and some explanatory provisions have been added for the same reason.

**Example**

- A synagogue can have separate seating for men and women at a reception following a religious service.

**Services generally provided only for persons who share a protected characteristic: [paragraph 30](#)**

**Effect**

744. [Paragraph 30](#) provides that a service provider does not breach the requirement in section 29 not to discriminate in the provision of a service if he or she supplies the service in such a way that it is commonly only used by people with a particular protected characteristic (for example, women or people of Afro-Caribbean descent) and he or she continues to provide that service in that way. If it is impracticable to provide the service to someone who does not share that particular characteristic, a service provider can refuse to provide the service to that person.

**Background**

745. This is designed to replicate the effect of provisions previously contained in the Sex Discrimination Act 1975 and the Equality Act 2006, and extends the clarification they provide across all other protected characteristics for the first time.

**Examples**

- A hairdresser who provides Afro-Caribbean hairdressing services would not be required to provide European hairdressing services as well. However, if a white English person wanted his hair braided and there was no technical difficulty to prevent that, it would be unlawful for the hairdresser to refuse to provide her services to him.
- A butcher who sells halal meat is not required also to sell non-halal meat or kosher meat. However, if a non-Muslim customer wanted to purchase the meat that was on offer, he could not refuse to sell it to her.