

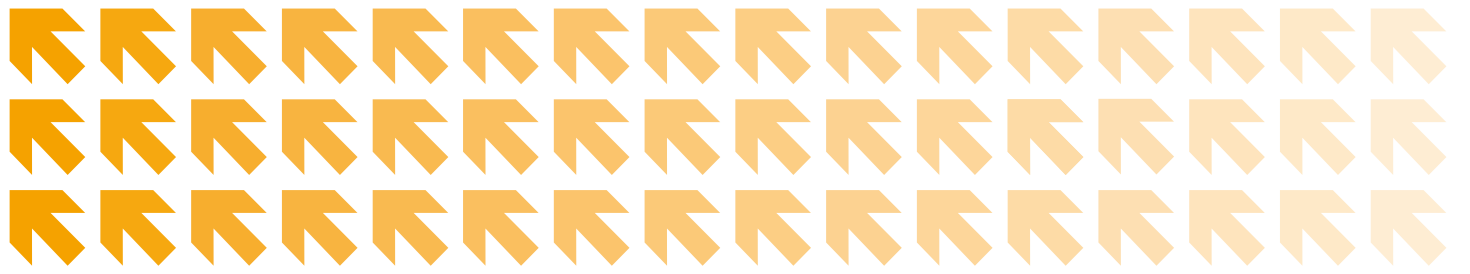


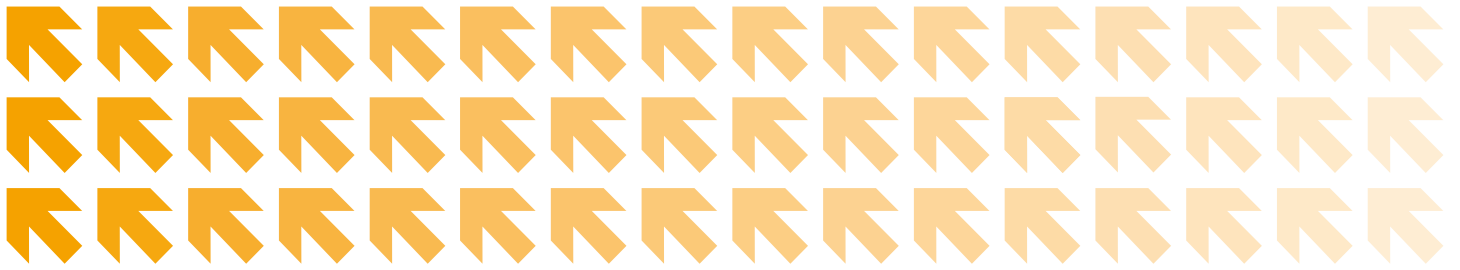
Government
Equalities Office

Putting equality at the heart of government

EQUALITY ACT 2010: WHAT DO I NEED TO KNOW? A QUICK START GUIDE FOR PRIVATE CLUBS AND OTHER ASSOCIATIONS



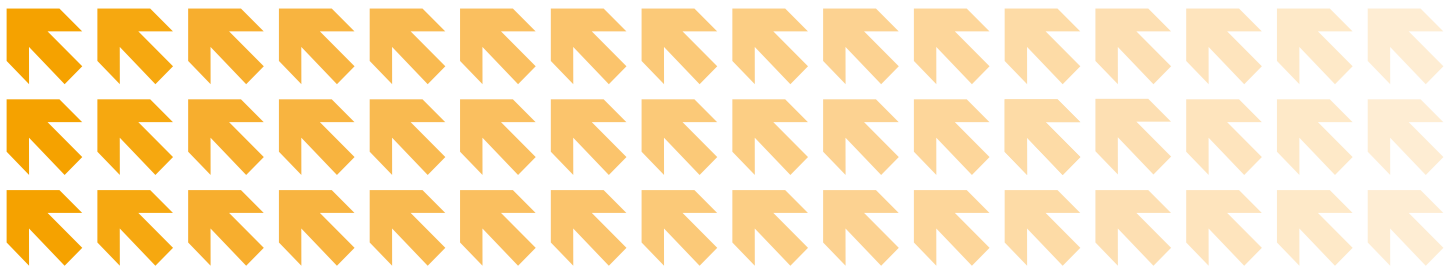




Foreword

The Equality Act 2010 replaces previous anti-discrimination laws with a single Act. It simplifies the law, removing inconsistencies and making it easier for people to understand and comply with. It also strengthens the law in important ways to help tackle discrimination and inequality.

This quick start guide tells you how the Act regulates the way in which private clubs and other types of associations treat their members, associates and guests. It also explains when a private club can restrict its membership and membership benefits to people who share a particular protected characteristic. As the relevant provisions of the Act came into force on 1 October 2010, clubs will need to ensure that they are complying with their obligations.



Introduction

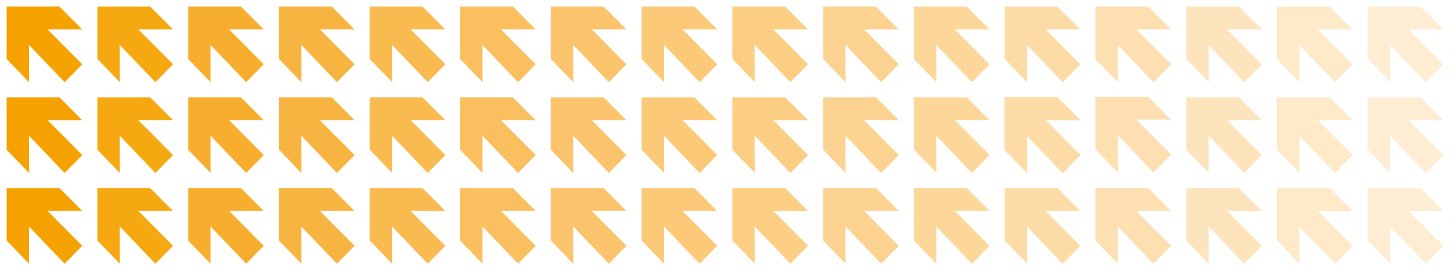
The Equality Act 2010 brings together, harmonises and in some respects extends previous equality law. It aims to make it more consistent, clearer and easier to follow, in order to make society fairer. As a private club or other association admitting members and providing benefits, facilities and services, your responsibilities remain largely the same, but there are some differences that you need to be aware of.

The main change is that the Act builds on the previous obligations on associations not to discriminate because of disability, race and sexual orientation by extending the ban on discrimination to also cover gender reassignment, pregnancy and maternity, religion or belief and sex. The Act also contains provisions prohibiting age discrimination by private clubs and other associations, but these have not yet been brought into force. The Government is currently looking at how these and other age discrimination provisions in the Act can be implemented in the best way for business and others affected, and will make an announcement in due course.

This quick start guide explains how the Act regulates the way private clubs and other types of associations behave towards their members, associates and guests.

However, as an association there may be other parts of the Act that you need to be aware of. You may therefore want to read the further information available about:

- your responsibilities as an employer (www.acas.org.uk/CHttpHandler.ashx?id=2833&p=0), and
- your responsibilities as a service provider (www.equalities.gov.uk/pdf/GEO_EqualityLaw_Business_acc2.pdf).



What is an association covered by the Act?

The Act defines an association as an organisation that:

- has 25 or more members, and
- has rules (not necessarily formal or written) regulating who can be a member and there is a genuine selection process for members.

Examples of associations include private clubs such as golf and other sports clubs, ex-forces clubs, alumni clubs, social clubs, working men's clubs, gaming clubs and drinking clubs. Some charities also meet the definition of an association, for example, the Scout Association and Girlguiding UK. Such charities are also subject to additional provisions relating to the provision of charitable benefits.

Political parties are also covered, and are subject to additional provisions dealing with the selection of election candidates.

An association is not:

- a club which is open to members of the public simply on payment of an entry fee, such as a night club or a gym – these are covered by different provisions which apply to service providers
- a trade organisation.

Who is protected?

The Act protects people from discrimination on the basis of 'protected characteristics'. The relevant characteristics for private clubs and other associations are:

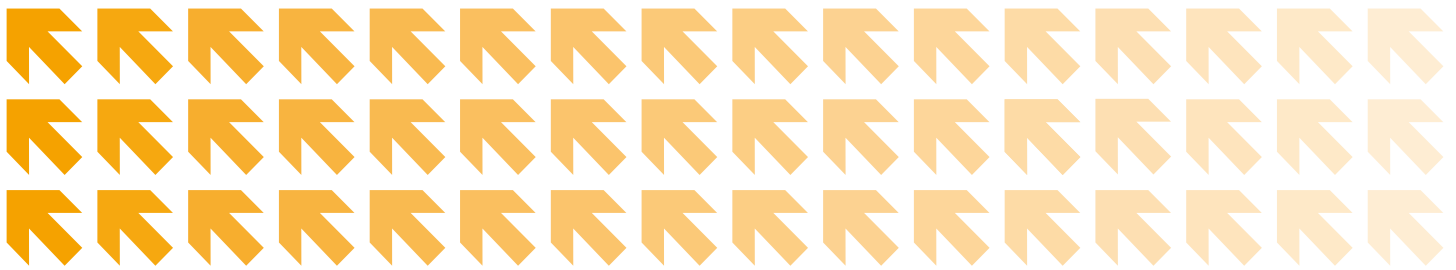
- disability
- gender reassignment
- pregnancy and maternity
- race – this includes ethnic or national origins, colour and nationality
- religion or belief – this includes lack of belief
- sex, and
- sexual orientation.

Except in the case of pregnancy and maternity, people who are protected do not actually have to possess the protected characteristic themselves. Protection also applies, for example, where the person is treated unfairly because they are wrongly perceived to have a particular characteristic (or are treated as though they had it) or because they are linked with someone who has the characteristic.

What has changed?

The protected characteristic of disability applies to a person who has a physical or mental impairment that has a substantial and long-term adverse effect on their ability to carry out normal day-to-day activities. To qualify for protection from discrimination, a disabled person no longer has to show that their impairment affects a particular 'capacity', such as mobility or speech, hearing or eyesight.

For further details see the Disability Quick Start Guide (www.equalities.gov.uk/pdf/401727_EDF_Disability_acc.pdf).



The protected characteristic of gender reassignment applies to a person who is proposing to undergo, is undergoing or has undergone a process to change their sex. To qualify for protection from discrimination a transsexual person no longer has to show that they are under medical supervision.

For further details see the Gender Reassignment Quick Start Guide (www.equalities.gov.uk/pdf/14314%20EDF%20Gender%20Quick%20start%2011th.pdf).

Previously, protection extending wider than the person's own protected characteristic (such as protection from discrimination because of perception or association) applied only to race, religion or belief and sexual orientation. Now it also applies to sex, disability and gender reassignment.

Example

James, whose mother is disabled, wants to join his local tennis club. The club's membership committee thinks that James will not be reliable in turning up for practice sessions and matches because of his caring responsibilities for his mother. They therefore refuse to admit him as a member. This is unlawful discrimination because of James's association with his disabled mother.

How does the Act apply to private clubs and other associations?

Members and associates

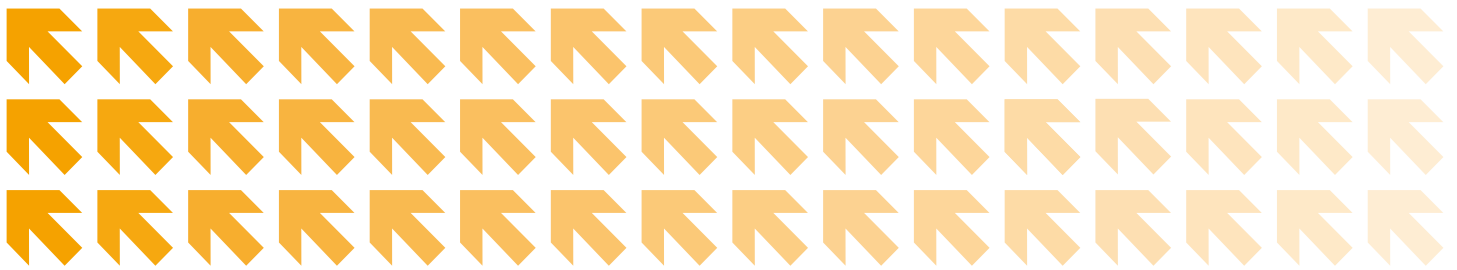
It is unlawful for a private club or other association to discriminate against, harass or victimise an existing or potential member or an associate. (An associate is someone who is not a member but who has some or all of the rights of a member because they are a member of an affiliated private club.) A club cannot refuse membership, or grant membership on less favourable terms (such as by applying different conditions or fees) because the person has a protected characteristic – disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex or sexual orientation.

What has changed?

Previous legislation outlawed discrimination by associations against existing or potential members and associates because of race, disability and sexual orientation. The Act extends this protection to gender reassignment, pregnancy and maternity, religion or belief and sex.

Example

Louise is a member of a golf club and the club only allows her to play on weekdays because she is a woman. This is unlawful sex discrimination against a member of a private club.



Example

Yasmine visits a bridge club as an associate as it is affiliated with her home bridge club. While waiting for her match, Yasmine overhears the club manager make abusive remarks about her being a Muslim which she finds humiliating and offensive. This would be unlawful harassment of an associate.

Example

Jason and Natalie are both members of a salsa club. Natalie has previously made a complaint against the club about sexual harassment. Jason supported Natalie's complaint. For this reason, both members are denied access to the club until the outcome of the harassment complaint has been determined. This is victimisation of members and is unlawful.

However, a club or other association can restrict membership (and access to benefits by associates and guests) to people who share a particular protected characteristic (see the section below on clubs and other associations for people who share a protected characteristic, for more information).

Guests

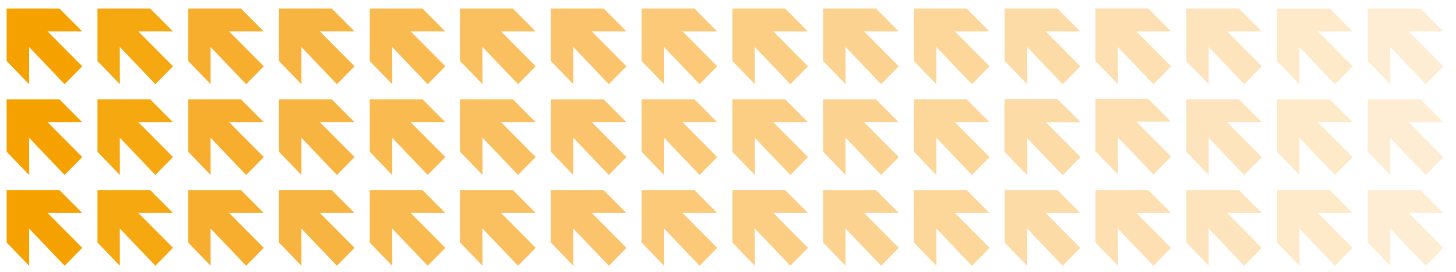
It is unlawful for a private club or other association to discriminate against, harass or victimise a guest or potential guest of the association. A private club cannot refuse to invite a person as a guest of the club, or invite the person on less favourable terms, such as by imposing special conditions, because of the guest's protected characteristic.

What has changed?

Previously, guests and potential guests were protected from discrimination only because of disability. The Act extends protection for guests to also cover gender reassignment, pregnancy and maternity, race, religion or belief, sex and sexual orientation.

Example

Peter invites his sister Moira to his golf club on a Thursday as a guest. The golf club does not allow Moira to play because female guests are only allowed to play on Tuesdays. However, male guests are allowed to play Monday to Friday. This is direct discrimination against Moira because of sex.



Example

Walter invites his friend Angelina, a transsexual woman, to his university alumni association's annual dinner as a guest. The president of the alumni association makes remarks during the after-dinner speech about transsexual people which Angelina finds offensive and degrading. This is unlawful harassment of Angelina related to gender reassignment.

Example

Tim invites his friend Amira as a guest to his gentlemen's club. Amira is refused service in one of the club lounges because she is a Muslim. Amira brings a successful claim against the club for discrimination because of religion or belief. Amira is again invited to the club by Tim and denied access because she brought a claim against the club. This is unlawful victimisation.

However, it is not unlawful for a club that restricts membership to people who share a particular protected characteristic to only admit guests who also share that protected characteristic (see the section below on clubs and other associations for people who share a protected characteristic, for more information).

Reasonable adjustments for disabled members, associates and guests

Private clubs and other associations must make reasonable adjustments to allow disabled people to become members or associates and for them and any disabled guests to participate in their activities. A club may need to make adjustments to a policy or practice, such as relaxing a ban on animals for people who use assistance dogs. It may have to provide an auxiliary aid, such as providing information in accessible formats. It may have to make physical adjustments to parts of its premises. A club is only required to make adjustments that are reasonable in all the circumstances. What is reasonable will depend on factors such as the practicability and cost of making the adjustment. A private club is not required to do anything that will alter the fundamental nature of the club and what it does.

What has changed?

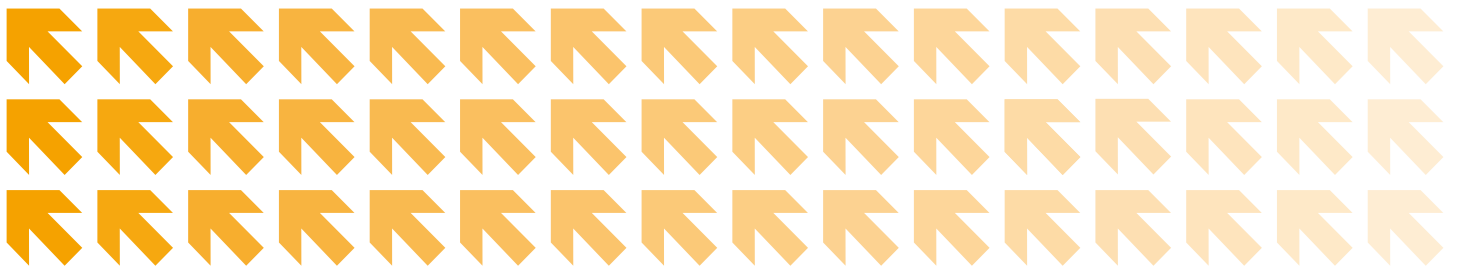
The point at which the duty to make reasonable adjustments arises has changed. Reasonable adjustments need to be made to avoid a disabled person experiencing a substantial disadvantage in comparison with non-disabled people.

Clubs and other associations for people who share a protected characteristic

The Act allows private clubs and other associations (except political parties) to restrict membership to people who share protected characteristics.

What has changed?

The Act maintains the previous exceptions allowing clubs to restrict their membership according to race and sexual orientation and extends it, in line with the extended protection from discrimination, to also cover gender reassignment, pregnancy and maternity, religion or belief, and sex.



Example

It is lawful to have a private club for women, for people from Australia, for transsexual people or for people who are HIV positive.

However, it is still unlawful for a private club that restricts its membership to people who share particular protected characteristics to discriminate against members, associates, or guests because of other protected characteristics.

Example

Ahmed is a Muslim gay man and would like to join a city choir specifically for gay men. The choir can restrict its membership based on the protected characteristics of sex and sexual orientation, but cannot discriminate against Ahmed because of his religion. Therefore the choir cannot refuse membership to Ahmed, or treat him less favourably, because he is a Muslim.

In the case of disability, sharing a protected characteristic means sharing the same disability. Such a club may refuse membership to a disabled person who does not have the particular impairment it caters for.

Example

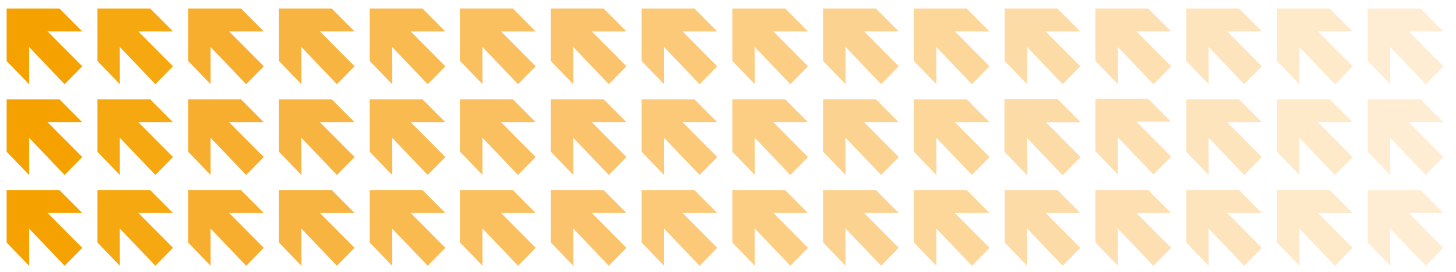
A private club for deaf people restricts membership to people who are deaf and partially deaf. The club can refuse membership to a person with a different disability, such as a person who is blind, unless that person also has a hearing impairment.

A private club or other association cannot restrict membership on the basis of skin colour, but can restrict membership based on ethnic origin. However, although the rules defining who can join must not use colour, a club could have a name that refers to colour.

Example

The constitution of the Black Women's Culture Club states that membership is open to any woman whose national origins are in Africa or the Caribbean. This would be permitted because, even though colour is referred to in the name, it restricts membership based on ethnic origin rather than colour.

A private club that restricts membership to people with a particular protected characteristic may also place similar restrictions on access by associates and guests.



Example

Ben and Annie are members of a golf club which has agreements with a men-only golf club and a women-only golf club in neighbouring towns. These agreements allow members to play at each other's clubs, but the men-only golf club allows only male associates from Ben and Annie's golf club to use its facilities, and the women-only golf club allows only female associates. This would be lawful.

Positive action

Some people with protected characteristics are disadvantaged or under-represented, or have particular needs linked to their characteristic. Positive action provisions in the Act enable private clubs and other associations to take proportionate steps to encourage membership among under-represented groups, or to help people overcome their disadvantages, or to meet their needs.

Example

A mixed-sex rugby club wants to encourage more women to join because participation by women is disproportionately low. It therefore runs a series of "taster" sessions open only to women, to encourage them to come along and try out the facilities. This is likely to be allowed under positive action provisions, as a proportionate way of encouraging more women to participate.

Frequently asked questions

Can private clubs still offer different types of membership?

Private clubs will still be able to offer different types of membership at different prices or on different terms, providing each type of membership is open to all regardless of a person's protected characteristics.

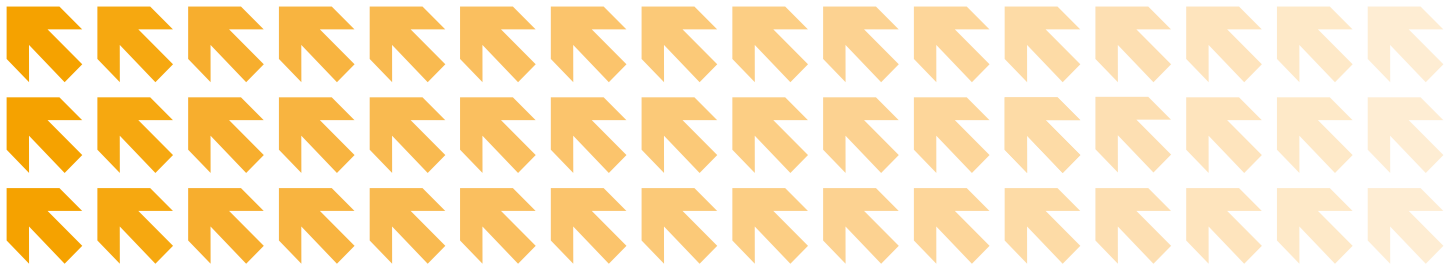
Example

A golf club cannot restrict female members to playing only on certain days if male members are permitted to play every day. This would be direct discrimination because of sex. Membership terms must be the same for all members, regardless of their protected characteristics. However, a golf club can offer differential rates based on time of day (peak and off-peak, for example). As long as both rates are available to all members regardless of their protected characteristics, this is allowed.

Can private clubs still offer discounts or different types of membership based on age?

Yes. There has been no change to the law affecting the ability of golf clubs to offer discounted or different membership rates for younger or older members.

Although the Act includes provisions enabling introduction of a ban on age discrimination by private clubs against their members, associates and guests, these provisions were not commenced



on 1 October 2010. The Government is currently considering further how these provisions can be implemented in the best way for business and others affected.

Taking forward an age discrimination ban would require secondary legislation to be made, setting out the circumstances in which it would remain lawful to use age as a reason for treating people differently. This could include allowing clubs and service providers to continue to treat people of various ages differently where there are beneficial or justifiable reasons for doing so, for example to be able to offer concessions and benefits to older people. This would need to be the subject of public consultation.

Can private clubs hold separate sporting competitions for men and women?

Private clubs will still be able to treat men and women differently in any sport, game, or activity of a competitive nature where the physical strength, stamina or physique of the average woman puts her at a disadvantage compared with the average man, or vice versa.

Example

Golf clubs are allowed to hold separate competitions for men and women because the physical strength, stamina or physique of an average woman would put her at a disadvantage compared with an average man.

Can a private club treat pregnant members differently?

Private clubs and other associations are allowed to treat a pregnant member, associate or guest differently from other members, associates and guests, if they reasonably believe that in doing so they are protecting her health and safety and they would treat those with other physical conditions in the same way. Although pregnant members can be excluded from certain activities, associations cannot refuse membership altogether because of pregnancy.

Further sources of information

The Equality and Human Rights Commission is the statutory body established to help eliminate discrimination and reduce inequality. It produces statutory Codes of Practice explaining the law in more detail. It also produces a range of material providing practical guidance on equality law and good practice.

www.equalityhumanrights.com
0845 604 6610

Citizens Advice
www.citizensadvice.org.uk

Government Equalities Office
www.equalities.gov.uk

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