

Gwasanaethau Cyfreithiol | Legal Services

LEGAL ADVICE NOTE TO THE HEALTH, SOCIAL CARE AND SPORT COMMITTEE (“the Committee”)

THE EQUALITY ACT 2010 AND GENDER SEGREGATION IN SCHOOL SPORT

This legal advice note sets out the circumstances in which gender segregation in school sports may be permitted.

The Equality Act 2010 (“the 2010 Act”)

The 2010 Act forbids discrimination in relation to access to benefits, facilities and services; however, competitive sport is exempt from some aspects of the 2010 Act in particular, discrimination in a gender-affected activity.

Section 195 of the 2010 Act permits single-sex sports and applies to participation in any sport or game, or other activity of a competitive nature, where the physical strength, stamina or physique of the average woman (or girl) would put her at a disadvantage in competition with the average man (or boy).

Also, section 195(4) of the 2010 Act stipulates that “ in considering whether a sport, game or other activity is gender-affected in relation to children, it is

Paratowyd y ddogfen hon ar gyfer Aelodau Cynulliad Cenedlaethol Cymru ac mae'n destun braint broffesiynol gyfreithiol. Ni dderbynnir cyfrifoldeb am unrhyw ddibyniaeth a roddir arni gan drydydd partion.

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appropriate to take account of the age and stage of development of children who are likely to be competitors”.

So, in a school setting this exception would permit single sex sports for older children as it could be considered to be objectively justified and/or proportionate due to differences in average physical strength/physique between sexes. It might be less easy to justify for younger children i.e. infants whom ordinarily are not segregated for physical activity. Notwithstanding this, it may still be justifiable to segregate younger children. An assessment would have to be undertaken on a case-by-case basis.

Whilst section 195 would permit a mixed school to have a boys-only football team, a school under the Equality Act 2010 would still have to allow girls equal opportunities to participate in comparable sporting activities. It would also, be unlawful discrimination for a school to treat one group (i.e. girls) less favourably than another group (i.e. boys) for example, by providing the boys' hockey or cricket team with much better resources than the girls.

To date, there have been no reported cases in relation to gender segregation of sports in a school setting under the Equality Act 2010.

Legislative competence

Under Schedule 7A to the Government of Wales Act 2006, the Assembly does not have competence to modify provisions of the 2010 Act in relation to this particular matter. It is reserved to the UK Parliament.

Legal Services

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