

Guidance for Transgender Inclusion in Domestic Sport – Summary of Background Documents



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Introduction

This document provides a summary of the background documents, which are:

- Transgender International Research Literature Review 2021
- Transgender International Policy Review 2021
- Summary of the Gender Recognition Act 2004
- Summary of the Equality Act 2010.

It should be read alongside all of the additional documents, including the overall Guidance, which can be found at <https://equalityinsport.org/resources>.

During 2020 the Sports Councils' Equality Group (SCEG), made up of representatives from each of the UK's Sports Councils, commissioned a review of its existing Guidance (2013, revised 2015) for Transgender (Transsexual) Inclusion in Sport. This document sets out the findings from the current review and focuses on those factors which were highlighted by SCEG.

The initial scoping document as outlined by SCEG in its initial tender document included pertinent statements regarding the proposed review:

- *"...we're also fighting to get people who are less active exercising more regularly. Groups that are traditionally less active – disabled people, some ethnic groups, women and parts of the LGBT+ community – are a core focus of our work."*
- *"Inclusion of transgender people in sport competition is a complicated area and needs to be explored further, but we also need to look to develop a more nuanced approach to inclusion across the sector, which this guidance will aim to do."*
- *"This is a sensitive and politically high-profile area at the moment and the awardee will need to ensure that they are listening to the views of everyone potentially involved and affected by this area of work."*

Legal framework in sport

The Sports Councils' Equality Group aims to “*promote and develop equality in sport across all the equality strands*”.

These strands constitute the nine ‘protected characteristics’ in accordance with the Equality Act (2010) and are:

- Age
- Disability
- Gender reassignment
- Marital or civil union status
- Pregnancy and maternity
- Race
- Religion or belief
- Sex
- Sexual orientation.

Laws across the UK set out legal protections for gender reassignment (and for all protected characteristics) within the Equality Act (EA 2010): People with a protected characteristic may not be discriminated against (either directly or indirectly) on the basis of that characteristic.

Direct discrimination is where a person is treated less favourably on account of their protected characteristic. Indirect discrimination occurs when a policy or practice applies in general, but a group is treated less favourably by that policy as a result of their shared characteristic.

However, there is specific provision within the Act for policy and rules in sport in relation to gender reassignment, as well as sex, age, and nationality (or place of birth). The Equality Act 2010 states:

“A person does not contravene... so far as relating to gender reassignment, only by doing anything in relation to the participation of a transsexual person as a competitor in a gender-affected activity if it is necessary to do so to secure in relation to the activity-

- a) Fair competition, or*
- b) The safety of competitors.*

A gender-affected activity is a sport, game or other activity of a competitive nature in circumstances in which the physical strength, stamina or physique of average persons of one sex would put them at a disadvantage compared with average persons of the other sex as competitors in events involving the activity.”

Definitions and terminology

Gender reassignment in the Equality Act is defined as “a person ...who... is proposing to undergo, is undergoing, or has undergone a process (or part of a process) for the purpose of reassigning the person’s sex by changing physiological or other attributes of sex” and refers to a transsexual person.

Transition is an individual process, and for many it will be a personal journey which may or may not involve any physical or medical intervention. In this way, some transgender people will seek a surgical and medical pathway, while others will assume a social transition alone with no – or limited – medical treatment. Some people may consider themselves ‘transitioning’ over an extended period, some do not transition, and others may be gender fluid. Consequently, as the intention is to include all people within the ‘trans umbrella’, this presents challenges to sport as many people do not conform within the existing categories based on the sex binary.

Terminology within the transgender community is evolving and may not be consistent for the duration in which this Guidance is in effect. For clarity, this document will use the terms: transsexual, transgender people, transgender woman, transgender man, non-binary person, gender fluid, male, and female.

It is acknowledged that the notions of inclusion, fairness and safety may not have the same connotation for all people: in this document ‘inclusion’ relates to the inclusion of transgender people within the existing binary sex categories of their choice in domestic sport, while ‘fairness’ infers competitive fairness and adherence to rules and which is underpinned by the definitions of gender-affected sport within the Equality Act, and ‘safety’ means physical safety from injury.

Background to existing policies in sport

The International Olympic Committee (IOC) published the first international Consensus Statement on Sex Reassignment in Sports in 2003. At that time, full surgical transition to the acquired sex was required two years prior to becoming eligible for Olympic competition.

By 2015, the IOC updated the Consensus Statement with an acknowledgement that surgery was no longer mandated and instead, suppression of blood testosterone levels through the use of hormones and/or other medication would be required for transgender women. Transgender men are permitted to compete with no further requirement. Non-binary and gender fluid people are not mentioned in the statement.

The IOC stated that:

“It is necessary to ensure insofar as possible that trans athletes are not excluded from the opportunity to participate in sporting competition.

The overriding sporting objective is and remains the guarantee of fair competition.

Restrictions on participation are appropriate to the extent that they are necessary and proportionate to the achievement of that objective.

Nothing in this policy contravenes WADA (World Anti-Doping Agency) policy.” (IOC 2015)

The Consensus Statement of the IOC, with some modifications, has been adopted by most of the international sports federations across the world. While the IOC requires a testosterone blood level below 10nmol/L for transgender women for 12 months prior (and then during) competition, several international sports now require levels below 5nmol/L. The accepted testosterone level for males is 8 – 29 nmol/L and for females is generally below 2nmol/L.

The existing guidance from SCEG was issued in 2013 and updated in 2015. Due to the timeframe, it refers to the original IOC guidance which required surgical transition, as well as the option for testosterone suppression in transgender women.

Sports science

It is well established that physical activity is an important public health measure for improved health and wellbeing, and organised sport offers important social and mental health benefits for participants. Many reports indicate that transgender people have experienced barriers to participation in physical activity and sport. For this reason, efforts have been made to facilitate the inclusion of transgender people within sport, and this is evidenced within the existing policies of some National Governing Bodies (NGBs). The Sports Councils are committed to finding practical solutions to increase physical activity and facilitate access to sport for everyone.

Many sports will favour faster, bigger, stronger people in a physically competitive event. The Equality Act recognises this through the 'gender-affected' nature of many sports, and this can be further understood through an analysis of the physical and performance differences between the sexes.

Adult male athletes have on average a 10-12% performance advantage over female competitors in swimming and running events, around 20% advantage in jumping events, and 35% greater performance in strength-based sports (e.g. weightlifting) for similar-sized athletes. When average-sized males are compared with average-sized females, the difference is such that the males are half as strong again as females.

According to data from the NHS, 50% of males are taller than more than 95% of females, with longer, straighter limbs, and bigger hands and feet. Males have greater muscle mass (concentrated in the upper body), bigger hearts and lungs, and greater stamina through higher hemoglobin (oxygen carrying capacity) than females.

The difference in performance, even at the lower range of 10-12%, is not small in terms of competitive outcomes; and would result in Adam Peaty being beaten by half the pool length in a short-course 100m breaststroke competition, Dina Asher Smith by more than 20m in the 200m track sprint, and Sir Mo Farah being lapped twice in the 10,000m track race.

The reality that males and females do not often play competitive sport against each other makes it difficult to appreciate the difference in physical capacity in most cases, particularly in team sports. However, an understanding of the gap between the two sexes can be recognised by results of practice matches between national senior women's football teams against under-age boys' teams in recent years: the national teams from Australia, USA and Brazil were beaten comprehensively (7-0, 5-2, 6-0 respectively) by club teams of 14 and 15-year-old boys.

Research on children indicate that there is a significant difference in strength, stamina, and physique at all ages, and this has been recorded from six years until maturation in comprehensive data sets. While the difference between the sexes increases after puberty, there is a brief period around the age of 10-11 in which females attain parity in height due to their naturally occurring earlier onset of the growth spurt of maturation.

Current scientific evidence indicates that the difference between the strength, stamina, and physique between the sexes is largely due to the higher testosterone levels of males during their lifetime. While this is not universally accepted, it is the basis for limitation of testosterone levels as required by the IOC for those transgender women wishing to compete at the Olympics. Such regulations have been adopted by most international governing bodies of sport, and by many NGBs in the UK.

The expectation has been that the suppression of hormone levels will create the guarantee of fairness as outlined by the IOC, as well as restitution of disadvantage within gender-affected sports as per the provisions in the Equality Act 2010 in relation to gender reassignment.

However, at this time, emerging evidence does not support the view that testosterone suppression for 12 months will achieve parity of strength, stamina and physique for transgender women compared with females; and hence cannot guarantee fairness. Rather, there appears to be a retention of physical capacity in transgender people who suppress testosterone from male levels. Research has only been collected for less than two decades and does not include longitudinal objective measurements of high-level transgender athletes. There is, however, considerable evidence which collectively demonstrates modest reduction in muscle mass and strength following testosterone suppression when compared with the average difference between the sexes, and this reduction may be further minimised with physical training. Testosterone suppression beyond 12 months may result in further strength reduction, but this does not reach parity with female levels up to the three years of current study length. Physique factors such as skeletal height, as well as lung size and bone density, also remain largely unchanged by testosterone suppression. However, stamina is likely to be affected as haemoglobin levels (which impacts oxygen carrying capacity in blood) decrease to those of females within 12 months of therapy; but the evidence for comparative performance loss is equivocal.

On the other hand, testosterone supplementation in transgender men (and non-binary or gender fluid people assigned female at birth), appears to create parity within the parameters of the strength and speed of males. Skeletal size and bone conformation will remain more in keeping with female normative data and should be considered in those sports in which safety is relevant.

Findings of the review

The review identified seven main themes:

Two groups with different value systems: There was a fundamental division between two distinct groups of respondents to the surveys and interviews:

One group believed primarily in the value of social inclusion, and the other to value of the fair competition and the observance of rules. Neither group necessarily denied the alternate issues of fairness or inclusion, but these were considered subservient to their main aim.

Support for transgender people: People in sport are sympathetic and supportive of transgender people and their need for inclusion and acceptance across society.

Transgender focus on recreation sport: The majority of transgender people and their advocates sought opportunity for community sport rather than high performance.

Intersectionality of inclusion: It was widely acknowledged by the project respondents that there was a tension between the inclusion of transgender people and some other groups in sport.

No solutions: No-one was able to offer a single solution which would resolve all the identified issues, or that would satisfy all stakeholders.

Frustration, animosity and emotion: Many people voiced their unhappiness at the current situation.

The system requires a reset: There is an overwhelming requirement from those in sport for clarity and transparency – and for everyone to work together to make enduring solutions for sport.

From these themes, along with the associated analysis of scientific research, 10 principles were outlined within the Guidance. The overarching recommendation from the review is that NGBs and Scottish Governing Bodies of sport (SGBs) are encouraged to enter into a decision-making process in which they can best accommodate transgender inclusion, fairness, and safety in their sport.

The Sports Councils acknowledge that in summarising the information used to review the content of the Guidance, there is much more that is available. If you wish to access further information, there is more detailed content available at <https://equalityinsport.org/resources>.