

Introduction

Sport England is an arm's length body of the Department for Digital, Culture, Media and Sport with the responsibility in England to transform people's lives by getting them active and playing sport. We are committed to using our advocacy, insight and investment of Exchequer and National Lottery funding to harness the wide-ranging benefits of sport and physical activity for individuals and communities across the country.

Executive Summary

1. We are committed to working with the Government, equality partners and the wider sport and physical activity sector to ensure that everyone can take part in opportunities to be active, and enjoy the benefits that this brings, no matter their age, ability, background, or gender identity.

Q: Are there challenges in the way the Gender Recognition Act 2004 and the Equality Act 2010 interact?

2. We acknowledge that both pieces of legislation interact with and support each other, however the differences between the two and the specific ways in which they interact are not always clear. We would welcome further guidance on the inter-connection of both pieces of legislation for those who are not equality experts.
3. We recognise that the GRA concerns the process of transitioning and that the Equality Act exists to protect all individuals with certain characteristics and contains specific exemptions in order to do so. There are some challenges in the interaction between the two documents however, most notably the interchangeable use of the terms 'sex' and 'gender' within the legislation.
4. The interchangeable use of both terms means that it is difficult to separate the biological nature of sex from more socially constructed concepts around gender. This presents challenges for those seeking to interpret the legislation to make recommendations around specific action. In a sport-specific context, the ability to separate sex and gender-based activities is vital when providing guidance to service providers around the use of single-sex spaces and single-sex participation, as Sport England is working to do.
5. It is important to ensure that any guidance is specific and accurate in order to be confident of consistent delivery, to create good awareness of the intricacies around

sex and gender and that parties are working to ensure that everyone's experience is safe and supported.

6. It is crucial that the Government provides clarity and consistency of language when discussing sex, gender and the interaction of the GRA and the Equality Act.

Q: Are the provisions in the Equality Act for the provision of single-sex and separate-sex spaces and facilities in some circumstances clear and useable for service providers and service users? If not, is reform or further guidance needed?

7. There are some concerns across the sport and physical activity sector around single sex provision and the practical application of the Equality Act exemptions.
8. More information is needed on what is considered a "proportionate means of achieving a legitimate aim", when deciding if a course of action is objectively justified in practice. We are concerned that the current language may allow for too broad an interpretation of what is proportionate and may in turn exclude trans people arbitrarily, and there is no supplementary guidance as to what constitutes either proportionate means or a legitimate aim.
9. Many organisations in the sport and physical activity sector will lack the resources or the expertise to interpret relevant legislation here. These organisations should be empowered to make informed decisions about the application of the exceptions where necessary, and without concern.
10. More practical guidance is needed to clarify legislation in this area, specifically for the sport and physical activity sector, with emphasis on the practical application of the exceptions in the Equality Act, such as the provision of single sex services. As Sport England, we are working with a wide range of organisations - including women's and trans groups, as well as safeguarding and legal experts - to help produce guidance which will support their work in this area. Further support from the Government around the provision of single-sex spaces will be crucial here.
11. All of our guidance for facility providers is about providing a positive, inclusive and welcoming environment for anyone who wishes to participate in sport and exercise, no matter their age, ability, background, or gender identity.
12. Wider consultation on facility inclusion and accessibility is needed to design and develop more inclusive, accessible and safer sporting environments, in order to

allow everyone in the population to access sport and physical activity and have a great experience when they are doing so.

Q: Are legal reforms needed to better support the rights of gender-fluid and non-binary people? If so, how?

13. Sport England is observing an increase in participation in sport and physical activity from the gender-fluid and non-binary communities.
14. Non-binary and gender-fluid identities present a number of challenges for sport and physical activity, more obviously so in the provision of single sex services and in gender-affected sports competition.
15. Some sports are already exploring how non-binary competition works in practice, but this does not come without further challenges, particularly around the equal recognition of performance across male and female counterparts, and the risk of some competitors potentially abusing a more inclusive competition system.
16. We acknowledge that there is more for the sport and physical activity sector to do to learn about how to offer opportunities that are inclusive for non-binary and gender-fluid participants. More specific and detailed guidance should be offered by the Government to support the rights of gender-fluid and non-binary people.

Further information

17. Sport England is grateful for the opportunity to contribute to this inquiry. Should the Committee have any questions about this submission or require any further information, please contact:

Sport England

November 2020