

INPUT FROM FAIR PLAY FOR WOMEN TO WELSH GOVERNMENT LGBTQ+ POLICY CONSULTATION

Q2: Do you agree with the overarching aims? What would you add or take away in relation to the overarching aims?

Q4: What are the key challenges that could stop the aims and actions being achieved?

Fair Play For Women is recognised as an authoritative and constructive group which seeks to find solutions that are fair for all. We have been consulted by many sports bodies including the IOC, World Athletics and World Rugby. We have contributed to the UK Sports Councils' review of their transgender inclusion guidelines.

We support sport for all, and we applaud your aim with this policy development process. We recognise that it is not easy to find the right balance, and that constructive voices are needed across all stakeholder groups to enable a fair approach to be identified. Failure to do so could result in unintended consequences, as detailed below – in particular, that efforts to increase inclusion of one group come at the expense of another group who find themselves excluded.

To develop effective policy that will achieve the aims, it is essential to separate out the approach for different protected characteristics. The term “LGBT+ people” covers two different protected characteristics: sexual orientation, which covers LGB, and gender reassignment, which covers T. These cannot be addressed with a single blanket approach.

Sexual orientation is not relevant in sport. We agree that it should not be a barrier to participation and that no one should feel excluded because of their sexual orientation. While some sports are welcoming of gay men and women, others are notable for their total absence of “out” gay players. We look forward to seeing proposals to address this, so that no one is deterred from playing sport because of their sexual orientation, and no one who does play feels they have to conceal their orientation.

Trans identity should not be a barrier either. Policies should be developed to facilitate free gender expression and to provide a welcoming environment for all, but this cannot mean replacing the protected characteristic of sex with the separate concept of gender identity. We support the ambition to ensure that the benefits of sport are open to all. But we cannot consider sport without considering bodies, which have a sex not a gender identity. Male people should be able to play in Open, Men's or Mixed sport categories and competitions. Female people should be able to play and compete in Open events but they also need a category which excludes anyone with a male body. This must apply regardless of that person's gender identity, because the male performance advantage is not removed by identification, nor by any known form of medical transition. Studies by academics on both sides of the debate about trans inclusion in women's sport have published peer-reviewed papers showing that even after three years of testosterone suppression, a significant male advantage remains. This is not surprising, since the anatomical and physiological differences enacted by male puberty are not reversed by hormone treatment – factors such as the narrower male pelvis which power a more efficient gait, the stiffer tendons which increase muscle efficiency, as well as many more familiar differences such as much greater muscle mass, larger lungs, less body fat, and so on. Therefore, sport policies must not replace the protected characteristic of sex with the separate concept of gender identity.

Your statement says that the Q is for “queer or questioning people (LGBTQ+) with the + representing other sexual identities”. If these are sexual orientations then they are covered within the protected

characteristic of sexual orientation. If by sexual identities you mean gender identities then, like everyone else, they will be held by people who also have a sex, male or female, and it is their sex and not their gender identity which matters for sport. Queer or questioning does not negate one's birth sex, therefore they, too, are covered as above.

Q6: Do you feel the LGBTQ+ Action Plan adequately covers the intersection of LGBTQ+ with other protected characteristics, such as race, religion or belief, disability, age, sex, and marriage and civil partnership? If not, how can we improve this?

There is a critical intersection between the characteristics covered by LGBT and the protected characteristic of sex.

In considering sport policies to accommodate the needs of transgender people, it is essential to consider the impact on females.

There are significant performance differences between men and women, and a large and lasting performance advantage is conferred by male puberty. Therefore, being male or female is relevant in almost all sports, as recognised in section 195 of the Equality Act. It is lawful to segregate sports by sex at every age, if the sport is considered to be "gender-affected". This does not mean gender identity; it means biological sex. It is about bodies and not about identities or expression. Most sports governing bodies in Wales have used this exception in the EA to permit sex segregation. Without it, female players would not have access to safe, fair sport. It is essential that this is factored in to any policy in sport, including your developing LGBT+ policies.

Other aspects of policy such as guidance for changing room access also need to weigh up the needs of transgender people and females for privacy. The law permits single-sex facilities and the exclusion of all males, even those with a Gender Recognition Certificate, from spaces where women or girls may be undressed or vulnerable. This includes sports changing rooms.

We welcome the proposal in this draft policy to work with Sport Wales and national governing bodies to address the findings of the review of Transgender Inclusion in Domestic Sport. We have contributed to this review, although it has not yet been published and we do not know its recommendations. Unlike the previous version produced by the Sports Councils Equality Group, we understand that this review has recognised that changing the eligibility rules to include certain males has a negative impact on women and girls. In this way, a policy intended to increase inclusion of one group may inadvertently trigger exclusion of another group, either by losing places to those with performance advantage, or by self-exclusion through fear of injury, discomfort at mixed changing facilities, or recognition of unfairness.

Fair Play For Women would be pleased to offer assistance and support to the Welsh government, Sport Wales and any NGBs who want to ensure the resulting policies and actions work equally well for both trans inclusion and female inclusion in sport.

Dr Nicola Williams

Director, Fair Play For Women Ltd

nicolawilliams@fairplayforwomen.com