

Preventing discrimination against transsexual people in sport: a sportscotland guidance note

Sex Discrimination (Amendment of Legislation) Regulations 2008

The Sex Discrimination Act (SDA) was amended in 2008 via the Sex Discrimination (Amendment of Legislation) Regulations 2008 ('the Regulations'). This means that transgender people are now protected from discrimination and harassment in relation to the access and supply of goods, facilities and services.

Because of the change to the SDA, sports organisations (including those from the public, private and voluntary sectors) must now take steps to ensure they do not discriminate against transgender people when exercising any of their service delivery functions. This includes: club membership rights; access to facilities - including changing facilities; inclusion on committees; participation in events; access to competitions (although there are exceptions which relate to transgender people competing in 'gender affected sports' – see below); access to coaching courses; etc.

It is also vital that sports organisations ensure that their equity or equal opportunities policies specifically cover the protection of transgender people in relation to both employment and access to goods, facilities and services. Policies should now also make specific reference to the appropriate legislation, including the new regulations.

Other legislation which impacts on transsexual people

The Gender Recognition Act 2004 makes it possible for transsexual people to gain full legal recognition in their new gender. Under the Act, transsexual people can be recognised in the eyes of the law as belonging to the gender with which they identify. Briefly, legal recognition in the acquired gender entitles a transsexual person to obtain a certificate stating the acquired gender (a 'Gender Recognition Certificate'), to marry in that gender, and to enjoy all the other rights and responsibilities appropriate to someone of that gender. Transsexual people have to go through a number of steps before they will be provided with a Gender Recognition Certificate and can be recognised in their acquired gender.

The Sex Discrimination Act 1975 (SDA) (as amended by the Sex Discrimination (Gender Reassignment) Regulations 1999 and by the Gender Recognition Act 2004) prohibits discrimination, harassment and victimisation in the fields of **employment and vocational training** on the ground that a person intends to undergo, is undergoing or has undergone gender reassignment (i.e. the process of changing from one sex to the other or any part of that process).

Section 44 of the SDA provides an exception in relation to single-sex sporting activities. It relates only to those sports, games or competitive activities in which the physical strength, stamina or physique of the average woman puts her at a disadvantage to the average man or vice versa – so it would apply, for example to football, tennis or athletics but not to bridge or chess. It states that nothing in the Act applies to the participation of a person as a competitor in single-sex events involving such sports.

This exception therefore means that discrimination in the employment or vocational training of transsexual people as competitors in single-sex competitive sport is not unlawful under the SDA. However it does not permit discrimination against transsexual people in relation to their employment in ancillary roles such as coaches, referees or line judges, which does not involve participation as a competitor in the sport itself.

Given that section 44 applies only to competitors, sporting organisations need to be aware of their obligation under the SDA not to discriminate against transsexual people in relation to sports-related employment or vocational training.

Other than where a section 44 exception applies, sports organisations must not treat transsexual people less favourably than any other individual in any aspect of the recruitment, employment or training processes. Transsexuals should be recognised in their acquired gender throughout the process.

Transsexuals in competitive sport

Section 19 of the Gender Recognition Act relates to sport. It makes clear that those bodies responsible for regulating participation of competitors in sporting events are not required to permit transsexual people to compete in their acquired gender in all circumstances. In certain circumstances transsexuals may be restricted or prohibited from doing so to ensure fair competition or the safety of competitors. This may only be done where all of the following conditions apply:

- The body is responsible for regulating the participation of persons as competitors in an event or events in the sport in question; and
- The sport is a “gender-affected sport”, which means one where the physical strength, stamina or physique of average persons of one gender would put them at a disadvantage to average persons of the other gender; and
- The prohibition or restriction is necessary to secure fair competition or the safety of competitors (including the safety of transsexual competitors).

Where these conditions are not fully met, transsexual competitors should be allowed to compete in their acquired gender.

This exemption only covers those participating in the sport as 'competitors' and cannot be applied to people participating in the sport as non-competitors, e.g. referees or line judges. Neither can the exemption be applied to those involved in or connected with the sport, e.g. managers, coaches, spectators, supporters, or sports-ground staff.

In terms of high performance sport, the international federations of sports should be encouraged to have a policy in place which sets out how they will address the issue of transsexuals competing in the sport. The International Olympic Committee has set out its policy on selection and participation in the Olympic Games by transsexual athletes, and this may form the basis upon which International Federations set their own policies and direct their national federations.

Helpful resources

For more information on the law and issues affecting transgender people in sport and the workplace, please access the following documents and links.

For further information on the Sex Discrimination (Amendment of Legislation) Regulations 2008, including a brief fact sheet, please visit the website of the Government Equalities Office at this link
<http://www.equalities.gov.uk/legislation/index.htm>

Press for Change is the UK's leading organisation campaigning for the rights of transgender people. It has produced a very useful document called '**Transgender people in sport**' <http://www.pfc.org.uk/node/76> (please note that the original leaflet was published before the 2008 Regulations as summarised above. However, Press for Change will be updating the leaflet to take account of the new Regulations.)

Press for change has also published useful guidance on how to monitor transgender people in the workplace <http://www.pfc.org.uk/node/1408>

In 2004, **UK Sport and DCMS** published a useful resource called '**Transsexuals in Sport**' which addresses the key issues affecting transgender people in sport. This can be accessed from the UK Sport website at this link
http://www.uksport.gov.uk/assets/File/Generic_Template_Documents/Standards_in_Sport/transsexuals.pdf