

Chapter 13.1, addresses exceptions for competitive sport under the Equality Act 2010 (the Act). I aim to ensure that the guidance upholds fairness, safety, and clarity in the application of the Act, particularly for women and girls in competitive sports. The updated guidance in Chapter 13.1 seeks to clarify the application of exceptions under section 195 of the Act for sex and gender reassignment in competitive sports. I have concerns about ambiguities, inconsistencies, and areas where the guidance could better prioritise fairness and safety for female competitors, especially in gender-affected activities. (13.1.2–13.1.5) The guidance correctly acknowledges that single-sex or separate-sex events are permissible under section 195(1) and (3) for gender-affected activities where physical strength, stamina, or physique creates a disadvantage for one sex (female). The example of a 5-a-side football event (13.1.3) appropriately highlights physiological differences between men and women, such as height and muscle mass, as justification for separate competitions. However, the guidance on children's sport (13.1.5) is less clear. The example suggests that excluding a girl from an under-7 boys' football team may be unlawful unless significant physical differences can be demonstrated. This risks undermining the ability of organisers to maintain single-sex provisions for young children, where physiological differences may not yet be pronounced but where privacy, dignity, and safeguarding concerns remain relevant. Recommendation: Amend 13.1.5 to explicitly recognise that single-sex provisions for children's sports can be justified for reasons beyond physical differences, such as safeguarding, privacy, and parental consent, to align with women's and girls' rights to fair and safe environments. The guidance on gender reassignment (13.1.6–13.1.13) permits excluding trans individuals from gender-affected activities for reasons of safety or fair competition. This is a step toward acknowledging the need to protect female competitors in sports where physiological advantages (e.g., retained male strength or stature) could undermine fairness or safety. The boxing gym example (13.1.13) is helpful in illustrating how safety concerns can justify exclusion. However, the guidance lacks specificity on how organisers should assess "fair competition" or "safety." For instance, it does not address the significant body of evidence showing that trans women (biological males) may retain physiological advantages (e.g., muscle mass, bone density) even after testosterone suppression. This omission risks leaving organisers uncertain about how to apply the exception without facing legal challenges. Additionally, (13.1.8–13.1.9) is confusing, clarifying that "fair competition" assessments should prioritise evidence-based physiological differences, referencing studies (e.g., Hilton & Lundberg, 2021) that show

retained male advantages in trans women after hormone therapy. Revise 13.1.9 to confirm that trans men (biological females) are eligible for women's events unless exclusion is justified by safety or fairness, aligning with the Act's definition of sex, based on the addition of hormones, that have altered her physical strength, and psychological chemistry. Organisers may have to consider anti-doping regulations in respect of their sport before including the trans man in the female competition. This would exclude the trans man under doping regulations and would not be discrimination on the basis of gender reassignment. (Prior to gender affirming hormones, transmen performed 43% fewer push-ups and ran 1.5 miles 15% slower than their male counterparts. After 1 year of taking masculinising hormones, there was no longer a difference in push-ups or run times, and the number of sit-ups performed in 1 min by transmen exceeded the average performance of their male counterparts) Roberts TA, Smalley J, Ahrendt D Effect of gender affirming hormones on athletic performance in transwomen and transmen: implications for sporting organisations and legislators British Journal of Sports Medicine 2021;55:577-583. Provide clearer guidance on the threshold for "safety" and "fairness," including examples of objective criteria (e.g., strength tests, injury risk data) to support organisers' decisions. Mixed-Sex Events and Indirect Sex Discrimination. The example of an athletics club allowing trans women to compete in a mixed-sex event (13.1.17) correctly identifies the potential for indirect sex discrimination against women due to physiological advantages. This is a critical acknowledgment of the impact on female competitors when biological males participate in women's or mixed-sex categories. It implies that mixed-sex events are inherently open to claims of discrimination without offering practical solutions for organisers to balance inclusion with fairness. Strengthen 13.1.17 by recommending that organisers consider open or separate categories for trans competitors to avoid indirect discrimination against women, ensuring that female-only categories remain protected for biological females. (13.1.18) The guidance on developing policies is a positive step, emphasising the need for a clear rationale and evidence base. However, it lacks specificity on what constitutes a robust evidence base. It mentions medical interventions like testosterone suppression but does not address the scientific consensus that such interventions often fail to fully mitigate male physiological advantages (e.g., Handelsman et al., 2018). Additionally, the guidance does not explicitly prioritise women's and girls' rights to fair and safe competition, which is critical given the Supreme Court's clarification on biological sex. Policies should explicitly centre the protection of female categories to prevent erosion of women's

rights under the guise of inclusion. Expand 13.1.18 to include references to specific scientific studies or governing body guidelines (e.g., World Athletics) that organisers can rely on to justify single-sex policies. Explicitly state that policies should prioritise the protection of female categories in gender-affected activities to safeguard women's and girls' rights to fair and safe competition. Legal Uncertainty and the Supreme Court Ruling (13.1.14–13.1.15) The acknowledgment of legal uncertainty in applying section 195(1) (13.1.14) is concerning, as it undermines the clarity needed for organisers to confidently implement single-sex provisions. The Supreme Court ruling in *For Women Scotland* clarified that sex in the Act refers to biological sex, which should provide a clear foundation for single-sex sports categories. The guidance should reflect this ruling more robustly to avoid confusion and ensure that biological sex protections are upheld.