



## Background

1. The issue of trans-women participating in women's sport is an important and sensitive topic with strong opinions on all sides of the debate. UKA respects the legitimate views of all those involved in athletics and encourages others to do the same. We urge all participants in athletics to share their thoughts in a way that is respectful of the differing opinions and sensitive nature of the debate.
2. UKA has been engaged in the debate about the participation of trans-women in the sport from an early stage. We have been grateful for all communications we have received on this topic, which have been discussed at the appropriate levels of the organisation. Following the publication of the UK Sports Council Equality Group ("SCEG") Guidance in September 2021, UKA appointed a Transgender Project Group comprising volunteers with relevant legal, medical, human rights, ethics and research expertise.
3. The Project Group made a set of recommendations to the UKA Board in June 2022. However, this work was paused in November 2022 following 1) World Athletics' stated intention to consult Member Federations about changes to its Transgender and DSD Regulations; and 2) legal advice from Leading Counsel in relation to the interaction between the sporting exemption in s.195 of the Equality Act 2010 ("EA 2010") and the Gender Recognition Act 2004 ("GRA 2004") (see further below).
4. UKA has this week responded to the World Athletics Consultation. UKA fully respects the confidentiality of that consultation but also wishes to update all stakeholders in the sport on the work that it has undertaken and the challenges that are likely to lie ahead.

## UKA Position

5. UKA does not agree with the use of testosterone suppression for transgender women:
  - a. Scientific evidence, as detailed in the SCEG Guidance is that transgender women retain a testosterone/puberty advantage over biological females regardless of the reduction of post puberty testosterone levels.
  - b. There is currently no scientifically robust, independent research showing that all male performance advantage is eliminated following testosterone suppression.
  - c. UKA has seen no evidence that it is safe for transgender women to reduce their hormonal levels by testosterone suppression. Further, there is insufficient research to understand the effects on transgender women if such testosterone suppression is carried out suddenly.
  - d. The category of "women's athletics" arose as a way of enabling the inclusion of women in athletics. Women who wished to compete in athletics could not do so fairly with men, because of the physical advantages men enjoy due to their (male) biological sex. Therefore, the decision was made to create a separate, sex-based category in which people of the female sex could fairly compete against one another. The category of women's sport arose not as a response to women's social role or personal gender identity,



but to ensure fair competition amongst female athletes by eliminating the advantages enjoyed by male athletes on account of their sex.

6. In recognition of the available scientific evidence, UKA believes that efforts should be made to:
  - a. fairly and safely include transgender women in an “open” category, which would replace the current male category and be open to athletes of all sexes; and
  - b. reserve the women’s category for competitors who were female at birth, so that they can continue to compete fairly.

#### The UK Sports Councils Equality Group Guidance

7. The UK Sports Councils Equality Group consists of the relevant officers from all the UK Sports Councils and aims to promote and develop equality in sport across all the equality strands. It issued [Guidance](#) in September 2021 concluding, *inter alia*, that “the inclusion of transgender people into female sport cannot be balanced regarding transgender inclusion, fairness and safety in gender-affected sport where there is meaningful competition”.
8. The SCEG Guidance derives from the scientific evidence that trans women athletes maintain the physical advantages of the male sex class even after transition. To include individuals with those physical advantages in female athletics competition is unfair to female competitors who do not enjoy those advantages. Accordingly, the inclusion of trans women athletes in female athletics is, in our view, incompatible with fair competition amongst female athletes. UK Athletics takes this stance to be correct, whilst acknowledging that it is a) contested by the trans community and others and b) may be open to change as further scientific evidence becomes available.

#### Legal issue

9. UKA takes its responsibilities to act in accordance with the law seriously. We have set out below the main legal challenge we perceive to UKA’s position.
10. There is a duty in s.9(1) of the GRA 2004 to treat those trans women with a Gender Recognition Certificate as female for all purposes. Although the GRA 2004 originally contained (in s.19) a wide exemption for the organisation of sporting events, that exemption was repealed with effect from 1 October 2010. At the same time, a ‘sporting exemption’ provision in s.195 of the EA 2010 was introduced.
11. UK Athletics does not believe that the ‘sporting exemption’ in s.195 of the EA 2010 applies to the GRA 2004 and so, at present, we could not lawfully exclude trans women in possession of a Gender Recognition Certificate from the female category. That is because:
  - a. The wording of the exemption in s.195 of the EA 2010 refers consistently to “this Act” (see subsections (1), (5) and (7)) or to specific provisions of the EA 2010 (see subsection (2)), and so does not extend the exemption to the GRA 2004.
  - b. The GRA 2004 used to contain a bespoke sporting exemption, but Parliament repealed it. EA 2010 s.195 does not indicate any intention to alter the operation of s.9 GRA 2004. If



that was the intention, subsection (1) could be expected to read “A person does not contravene this Act or the Gender Recognition Act 2004”. That would extend the exemption to s.9(3) GRA 2004. But s.195 of the EA 2010 does not do that.

12. The advice received by UK Athletics appears to be consistent with the recent Opinion of Lady Haldane in the Outer House, Court of Session in the Petition of For Women Scotland Limited. The [Opinion](#) is consistent with the analysis that the right in s.9 GRA 2004 cannot be read as impliedly subject to restrictions or limitations contained in the EA 2010 unless that intention is made clear in the EA 2010 (which it is not).<sup>1</sup>
13. UKA therefore requests that a legislative change is made to extend the sporting exemption in the EA 2010 to cover the GRA 2004. This would enable UKA and other sporting bodies the ability to ensure the women’s category can be lawfully reserved for female competitors.

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<sup>1</sup> See paras 45-53 which deal in some detail with the relationship between the GRA 2004 and the EA 2010.