

THE COUNTESS

Women and girls deserve fair sport: The Countess position on Sport

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Introduction

As an organisation focused on promoting and facilitating fact-based dialogue and advocacy to safeguard the rights of women and children, The Countess has identified Sport as one of its Eight Pillars of Concern.

This paper outlines the evidence for retaining the female category in sport based on sex identified at birth and offers perspectives on common concerns relating to how this could be enforced. It also covers the science of male physical advantage and how this pertains to fairness and safely for women and girls, as well as outlining our concerns around privacy and dignity. It will also provide you with some information on Irish law as it relates to sex, gender identity, sport, and safeguarding.

It is our position that women's and girls' sport must be explicitly protected by policies that are clear and unambiguous about who may enter the female category or take the female position in a mixed team event. This applies across elite, amateur, and recreational levels. Policies that frame themselves as 'trans-inclusive' are exclusionary to women and girls. These policies place women's and girls' rights to fair and safe competition and to privacy and dignity in changing areas in second place to the 'inclusion' of males who identify as transgender.

Definitions

For the avoidance of doubt, the following are the definitions applied in this guide and in all our work.

- Woman: 'Adult human female'
- Man: 'Adult human male'
- Girl: 'Female child or adolescent'
- Boy: 'Male child or adolescent'
- Sex: 'Either of the two categories (male and female) into which humans and most other living things are divided on the basis of their reproductive functions'

Scientific Background

Testosterone exposure during male development (in the womb, in early childhood, and during puberty) results in physical and physiological differences between male and female bodies. These differences cannot be negated in any meaningful way. These differences include skeletal size and shape (men on average are taller, with longer limbs, wider shoulders, narrower hips, differences in pelvic shape); greater upper and lower body muscle mass and differences in muscle tissue type; greater lung surface/capacity and a larger heart (greater left ventricular mass); and more haemoglobin (the oxygen carrying molecule) in males.

These physical and physiological differences result in performance differences such as greater VO_2max (maximum amount of oxygen which can be used to produce energy), faster sprinting, cycling, and swimming speeds, higher vertical jump, longer horizontal jump, greater grip strength, and higher force production, to name a few. These differences create an advantage for males in any athletic activity where strength, speed, power, or stamina are determinants of performance. The physical, physiological, and performance differences between male and female are so large that sports require a separate category to exclude attributes that result from 'normal' male development (even within other categories, e.g., there are weight categories in boxing as well as sex categories).

> The average difference between males and females is:
>
> Upper body strength 50–60%, Speed 10– 15%, Strength to weight/power to weight 30–40%.

Testosterone as a Driving Factor in Male Advantage

There are three major spikes in testosterone production in males – once in utero, once in the first few years of life, and finally during puberty. These testosterone spikes contribute to male physical development and advantages.

Testosterone production by the testes drives male puberty; however sex-specific genes and postnatal hormone differences can also contribute to differences between males and females even before puberty.

Even when supressing testosterone, trans-identified males retain these differences in skeletal size and shape, muscle mass, strength, and other physical advantages compared to females. Male performance advantage cannot therefore be eliminated.

Testosterone Suppression

Males can lower circulating levels of testosterone using anti-androgen drugs. Some sports authorities have suggested that males should be able to compete in the female category if they maintain a serum testosterone level of less than 10 nmol/L for 2 years (International Olympic Committee 2015). Females typically have a testosterone level of less than 2 nmol/L. Using current testosterone level to determine eligibility of trans-identified males to participate in the female category ignores the irreversible effects of male development that have already occurred. There is no plausible physiological mechanism by which testosterone suppression could alter an individual's height or skeletal shape or reverse male development and thereby remove male advantage.

Puberty Suppression

Some sporting organisations have developed policies which exclude anyone who has experienced male puberty, rather than only including females. While these policies do go some way to improving the situation for women and girls, there are a number of issues remaining and thus The Countess does not support this type of policy.

Male advantage exists before puberty, and girls of all ages deserve fairness in their sport. Males who have had puberty suppressed will likely still reach their male adult height and will retain the innate male skeletal, cardiac,

VO_2max, and muscle differences. Post puberty, women and girls must deal with menstruation, hormone cycles, pregnancy, birth, and menopause, all of which affect training and competition performance.

Puberty starts at different times in everyone, making a standard cutoff point impossible to determine. There is no plausible policy that could ensure 'anyone who has experienced male puberty' is excluded from the female category.

There is considerable evidence that GnRH agonists (puberty blockers) used to suppress natural sex hormone production at puberty are dangerous and result in long-term harm to children who take them. There is no evidence to support their use in these children. Many health authorities have prohibited or restricted their use. Furthermore, a policy which may inadvertently encourage use of drugs with no proven benefit and clear evidence of harm is irresponsible (see for example UK Athletics Statement). The Countess is opposed to the use of 'puberty blockers' in children who are experiencing confusion about their sex.

Disorders of Sexual Development (DSDs)

Some people are born with differences in the development of their sexual and reproductive organs. These disorders are sometimes grouped under the outdated umbrella term of 'intersex'. In rare cases the infant's sex cannot be determined by observation alone, however for the vast majority of these cases the sex can be determined by chromosomal analysis. The presence of a Y chromosome signifies male sex (with the exception of a single disorder called Swyer Syndrome).

Most males with DSDs will go through normal male puberty, with very rare exceptions. The inclusion of DSDs within 'transgender inclusive' policies is inappropriate and they should be dealt with under separate guidelines.

The Countess supports calls for cheek swab sex testing to be reintroduced at elite levels, with appropriate pre-test counselling and robust protocols for support in the event of an unexpected result. For all other levels, the sex recorded at birth should be used to determine eligibility for the female category.

Safety

Physiological differences between males and females mean that there are different safety considerations for the two categories. The smaller and less dense bones of the female skeleton, different connective tissue make up, hormonal influences, and smaller average size of women means that injury risk, even in non-contact sports, is increased for women and girls where males are allowed to enter their category. High-risk sports include combat sports, martial arts, contact field games, and races where collision can occur. However, women have sustained life-altering injuries even in non-contact sports like volleyball, where a young woman sustained a brain injury after a direct hit to the face by a ball spiked by a male player on the opposing team. The force of the strike was much higher than a girl would be able to achieve.

It is especially concerning that many 'inclusive' policies state that other competitors should not be informed that there may be a trans-identified male participating in their category, meaning women and girls cannot assess their own risks and consent or not as they see fit. The Countess calls for all Sporting Bodies to recognise their obligations to reduce safety risks to female players by protecting the female category.

Fairness

The male advantage is carried into any activity where sex divisions exist. It goes without saying that this translates into unfairness for women and girls, who will stand to lose opportunity, earnings, podium places, and of course motivation and confidence as well. Even at recreational level, fairness is a key tenet of sporting endeavours. To undermine this in the name of inclusion means that young girls with potential will simply leave sport or move to sports where their category is protected. Grassroots sport feeds into elite and gives vital

opportunities to girls and women for achievement, fitness, and fun. It is not appropriate for this to be undermined in the name of 'inclusion', especially when keeping teenage girls playing sports is a recognised priority.

Privacy and Dignity

Women and girls have a right to single-sex changing room, toilets, and showers. They should never have to share these spaces with males. Some women, especially those from certain religions (Islam, Judaism), will not partake in mixed-sex sports (such as when males are included). These minority women deserve sport as much as everyone else.

Sporting bodies, clubs, and organisations take great care to ensure that child safeguarding procedures are followed. This includes same-sex supervision. The Countess is concerned that coaches or managers who identify as trans could be approved to supervise young people of the opposite sex in areas like changing rooms and toilets, especially given the tendency to conceal the sex of the trans-identified person and the implications this has for valid consent. Parents and guardians have a right to expect their children's privacy and dignity to be maintained.

Sex/Gender and the Law in Ireland: A Quick Guide

The following is a brief guide to the Irish law as it relates to gender recognition, single-sex spaces, and sports.

The Gender Recognition Act, 2015

The Gender Recognition Act, 2015 ('GRA') is an Act to:

1. Recognise change of gender.
2. Introduce and govern how gender recognition certificates are issued (GRC).[1]
3. Amend other legislation to allow for the legal change of gender to be recognised on formal documentation.[2]

How it works

- A person of 18 years or older can apply for a GRC by simply applying. Details of the process can be found at https://www.gov.ie/en/service/b55abf-gender-recognition-certificate/.
- A person aged 16 or 17 years must apply for a Court Order to be allowed to apply for a GRC.
- A person under 16 years is not eligible to apply for a GRC.
- The Act also allows for the reversal of a GRC if the applicant wishes to change his/her mind.

*If a person does not have a Gender Recognition Certificate, there is **no obligation** to treat them as the opposite sex. If a person does have a Gender Recognition Certificate, then their legal gender has changed and you may be obliged to treat them as such in certain circumstances. There are allowable exceptions to this, as outlined in the Equal Status Acts.*

From 2015 to 2022, 18 gender recognition certificates were granted to people aged under 18.

[1]A GRC is a certificate issued by the Minister for Justice on behalf of the State to officially document and recognise that a person has legally changed their gender.

[2]The GRA 2015 amends the Irish Nationality and Citizenship Act 1956, the Civil Registration Act 2004, the Passports Act 2008, and the Adoption Act 2010.

Equal Status Acts 2000–2018 ('the Acts')

The Equal Status Acts 2000–2018 ('the Acts') make it unlawful to discriminate against people when providing goods and services, accommodation, or education if that discrimination is based on their belonging to one of nine specific social groups. Those groups are:

1. Gender 2. Marital status 3. Family status 4. Age 5. Disability 6. Sexual orientation 7. Race 8. Religion 9. Membership of the Traveller community.

Section 3(2) of the ESA further sets out that it is expressly allowed to discriminate on the gender grounds where the presence of the opposite sex would infringe privacy or cause embarrassment. This allows for the provision of female-only toilets and for changing rooms and sleeping areas to be segregated on the basis of sex and not gender identity.

- Section 3(2) As between any two persons, the discriminatory grounds are [this refers to the grounds on which one is allowed to discriminate]
  (g) that one is male and the other is female (the 'gender ground').

Section 5 (1) a person shall not discriminate in disposing of goods to the public generally or section of public.
BUT
(c) Differences in the treatment of persons on the gender ground in relation to services of an aesthetic, cosmetic or similar nature, where the services require physical contact between the service provider and the recipient.
(g) Differences in the treatment of persons on the gender ground where embarrassment or infringement of privacy can reasonably be expected to result from the presence of a person of another gender.

There is **no right in law to use the intimate spaces** (toilets, changing rooms, dormitories) of the opposite sex. Therefore there is no obligation whatsoever to grant these rights to either club members/students or adults who are involved in an organisation.

People who identify as the opposite sex can be advised to use multi-use single unit toilets, changing areas, and single sleeping accommodations and in that way not impinge on the privacy and dignity of those of the opposite sex.

Sports Exemption in the Equal Status Act

The Equal Status Act Section 5 allows for discrimination in regard to sports:

> "(*f*) differences in the treatment of persons on the gender, age or disability ground or on the basis of nationality or national origin in relation to the provision or organisation of a sporting facility or sporting event to the extent that the differences are reasonably necessary having regard to the nature of the facility or event and are relevant to the purpose of the facility or event.

This section allows sporting national governing bodies, clubs, and event organisers to protect the female category and require all males, regardless of expressed identity, to compete against other males.

Personal and Corporate Liability

Boards of Management, staff, volunteers, and anyone misapplying the law, even if directed by other organisations (e.g. certain NGOs who produce 'inclusion guides') cannot rely on that misdirection as an excuse to avoid prosecution or legal recourse from a person injured by those decisions. There may be considerable liability in the event of an injury caused by or exacerbated by a male who has been allowed to enter the female category.

Summary

- Male physical advantage in sport begins before puberty and cannot be negated.
- Male inclusion in female sport is unfair and unsafe and undermines privacy and dignity for women and girls.
- Women and girls are discriminated against by policies that support male inclusion (transgender inclusion), and that causes exclusion of women and girls.
- Women and girls are losing opportunities, medals, sponsorship, and careers as a result of these policies.
- Irish law allows for the protection of the female category in sport.
- Irish law allows for single-sex spaces to be maintained where necessary for privacy and dignity.
- Groups have a responsibility to protect their female athletes and also to maintain existing child safeguarding procedures.

Resources and References

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About The Countess

The Countess is a non-profit, volunteer-led organisation formed to promote the rights and interests of women and children in Ireland. Inspired by her significant contribution to Irish public life, we take our lead and our name from Countess Constance Georgine Markiewicz who, as Minister for Labour in the First Dáil, was the first female cabinet minister in all of Europe. Countess Markiewicz blazed a trail for women's rights at a time when they were severely restricted. A fundamental part of the Irish revolution championed by Markiewicz, and her contemporaries, was achieving equality for women and affording adequate social and economic protection to all children. Sadly, though Ireland's statehood was eventually won, the rights of women and safeguarding of children has remained elusive for much of our first century as an independent State. The Countess was formed to address this through campaigning, awareness raising, policy development, advocacy, and constructive dialogue.

Our Work

Though we have a broad interest in women's rights and child safeguarding, The Countess was initially established in 2020 to focus attention on the conflict of rights and child safeguarding issues emerging from the Gender Recognition Act 2015. This Act allows legal self-identification of a 'preferred gender', meaning a man can be legally recognised and a woman and vice versa, with no caveats, checks, or restrictions. This is referred to as 'self-ID'.

We promote constructive, respectful, and rights-focused dialogue on this issue, and wish to see a balanced approach to gender recognition that will:

- Vindicate the rights of women,
- Achieve best practice in safeguarding for children and young people,
- Defend the hard-won rights of same-sex attracted people to love who they love, and
- Ensure those with gender questioning identities are treated equally to all others in society.

At our core is the belief that by virtue of our common humanity, all groups in society must be afforded the ability to live with dignity, respect, and safety.

Membership

Our membership is a diverse cross-section of people concerned by the conflict of rights and child safeguarding issues arising out of gender self-ID. We are volunteer-led, self-funded, and not affiliated with any political party or religion.

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