

I think the guidance could go further in setting out a core data collection plan which public bodies would be expected to adhere to unless they can justify deviating from it. A useful way of summarising the guidance might be to have a table setting out common variations of the questions and the pros and cons of each.

Although questions on gender, gender identity and sex have been proposed I think the messaging in the guidance on which of these questions should be used could be made more explicit. The preamble to the guidance on the webpage states “In most cases this draft guidance suggests data should be collected on the basis of gender identity rather than sex”, however this conclusion wasn’t clear to me on reading the guidance document. The guidance does state that “In a small number of instances, it may be necessary to record a person’s legal sex but this would be on an individual basis for a very specific purpose and it would be up to public bodies who need this data to develop the best approach to do this.” But it is not clear if gender identity should be collected instead in instances other than those described.

The argument for recommending a legal sex question that is different to the one used for census 2022 could perhaps be strengthened. The guidance offers a reasonable justification of the position NRS have adopted in asking a binary sex question. However, the guidance was a little light in justification to persuade public bodies to reject the “extensive testing and feedback” that led to the decision NRS made and instead adopt the question recommended in the guidance.

The guidance doesn’t explain the justification for collecting a free text description for those that respond “in another way” to the gender identity question. Providing this would help public bodies using the recommended questions to explain the purpose of collecting that data. It would also be helpful if the separate guidance on publishing data on non-binary groups covered the analysis and presentation of this free text.

Similarly, providing a justification in the guidance for asking the trans question of those age 16 or over only would allow public bodies to explain why they are not collecting this information from those under 16. It would also be helpful if the guidance explained why that justification doesn’t apply to questions on legal sex and gender identity (assuming that is the case).

Publishing this guidance, which recommends questions that involve collection of data on non-binary groups, before guidance is available on presentation of data on non-binary groups leaves a major gap in the advice available to public bodies. Presentation of the data on non-binary groups is a significant challenge and the absence of guidance on this is likely to mean that data is collected and not published, which may create a conflict with the stated purpose for collecting the data.