

## OFFICIAL

Dear Mr Halliday,

Further to the publication of draft guidance on the recording of sex and gender in data, please find below a response from Police Scotland.

The observations we offered you previously (November 24, 2020) remain valid. Those were the outcome of discussions at the Police Scotland Equality, Diversity and Human Rights Strategy Group.

- Police Scotland have developed an "if asked" position on the subject of sex and gender data recording. A copy of this was provided to you (February 7, 2020) to assist in your deliberations. The "if asked" position remains unchanged at this time.
- Within the Equality Act 2010 sex is defined as binary, and it is becoming clear that the legal and statutory definitions are very important. Unless, and until, the statutory definitions in the Equality Act are updated, then any guidance the Working Group provides may be impeded by the existing 'narrow' and 'binary' definitions contained in the 2010 Act.
- An independent Equality and Human Rights Impact Assessment should be provided for the guidance that has been drafted, before it is finalised. This may help reduce any risk of unforeseen adverse impacts of the guidance, either on data processors, wider equalities and human rights matters or the Equality Act 2010.
- It has been suggested that there may be concern around some of the advice provided by the Equality and Human Rights Commission in Scotland. We anticipate that these concerns would be addressed before the guidance is published.

Police Scotland have noted an uplift in the public debate around the issues of sex and gender. Some of that debate appears to echo issues raised by us and, in addition, some fresh concerns. For example, the below press reports and articles all offer commentary of relevance to the draft Guidance that you have published.

<https://www.bbc.co.uk/news/uk-scotland-55579700>

<https://mbmpolicy.files.wordpress.com/2021/01/invisible-women.-mbm-briefing-note-on-draft-guidance-on-collecting-data-on-sex-and-gender-january-2021.pdf>

<https://www.scottishlegal.com/article/ehrc-sex-data-advice-misrepresents-the-law>

<https://womansplaceuk.org/2020/12/11/ehrc-misrepresents-the-law-on-collecting-sex-data/>

I hope that this response is of assistance to you and the Working Group in your deliberations.

Analysis and Performance Unit, Statistical Unit  
Police Scotland, Clyde Gateway