

Dear sir/madam,

I wish to express some feedback on the draft guidance for collecting data on sex and gender. Sex is an important datum and should not be considered expendable in the collection of data, nor conflated with gender (which should remain an entirely separate factor in any data set if it is to be robust). It is clearly and widely established that sex (as in a biological and physical characteristic) is a key factor affecting experiences and outcomes from birth onwards. Sex is therefore one of the most important variables used in policy, planning and research. The draft does not establish any valid reasons why gender identity should override and obscure sex, nor how and why it can be a more useful data point in any future data collection.

In particular I would also hope the following points are taken into consideration:

1) The reliance on the subjectivity of gender identity (defined as 'a personal, internal perception of oneself') is likely to affect data quality and reliability. The draft does not take into account the fact that gender identity is a contested concept that some people strongly reject, and others might be confused by, or deliberately misconstrue.

2) There is no attempt in the draft to address how the proposal will adversely affect the reliability of sub-group analysis, particularly by age and sex. It is important to note that the Office for Statistics Regulation stated that it was '*essential*' that concerns raised by users, including senior statisticians, about proposed sex question guidance were considered, and the impact that loss of data quality made on the analysis of small sub-groups of the population (Sept 2020). Further, the UK Statistics Authority's Methodological Assurance Review Panel for the Census cautioned against 'possible bias or distortive effects, both directly on the question itself, and also on other aspects of the methodology of the census, such as approaches to linkage, undercount and imputation, and future uses of the census' (October 2020). Both these points need to be taken seriously.

3) The assumption that collecting data on biological sex may raise concerns about privacy is erroneous and indeed may be unlawful. The legal advice provided by Aidan O'Neill QC to Woman's Place UK asserts that privacy rights are not absolute: data on biological sex may be collected providing it is for a legitimate aim. Key organisations and services do need to know staff or users' sex in order to operate sex-

specific services, such as those recently agreed for forensic examinations for rape victims.

4) Under the current draft, there appears to be a serious risk of Scotland losing the capacity to collect data that will be valid, robust and useful for research and policy in relation to discrimination based on sex and the sex-based rights of women and girls. This data has been available for past decades, but comparisons with the past would be made more difficult, and perhaps impossible to judge improvements or otherwise to women's lives in the past. Conflating and confusing sex and gender carries the danger of affecting data reporting in and for education, criminal justice, single sex services, etc. If accepted, the draft proposals are likely to create a substantive loss of data quality and negatively affect the robustness of any data analysis.

I hope therefore that you will seriously reconsider the changes proposed.

Yours faithfully,

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