

In December 2020 the Scottish Government published the Chief Statistician's draft guidance on the collection of data on sex and gender for public bodies. As part of my degree, many years ago at Edinburgh University, I was required to study statistics for a year. Even with a rudimentary grasp of the subject, I was able to understand that stats are the easiest measures available to manipulate data, by omission and inclusion. It is obvious that the aim of the draft guidance is to gather data which is skewed in favour of the gender reform policies of the Scottish Government and as such, it is flawed, biased, distorted and not fit for purpose. To pretend otherwise is disingenuous and treats the general public with contempt.

It is a fact that the Working Group which was involved in the draft guidance consists of representatives from bodies who have either: implemented gender self-identification for the purposes of data recording (Police Scotland, NHS Scotland); actively supported conflating sex and gender identity in data collection (Office of National Statistics, National Records of Scotland, EHRC); already introduced policies based on gender self-identification ***ahead of legal change***, or actively supported such an approach (Scottish Prison Service, COSLA); or are in the process of introducing legislation to provide for gender self-identification in law (Scottish Government). Such bias cannot be left unchallenged and is not unnoticed.

The draft guidance states that ***'questions about a person's biology should not be asked, except potentially where there is direct relevance to a person's medical treatment'***. It states further, ***'in a small number of instances, it may be necessary to record a person's legal sex' but cautions 'this would be on an individual basis for a very specific purpose'***. These proposals mean firstly, that in most instances, organisations should not collect data on sex at all, no matter how defined. And secondly, that when organisations do collect data termed 'sex', it should purposively conflate two separate demographic categories. An accompanying Scottish Government summary states ***'in most cases... data should be collected on the basis of gender identity rather than sex'***.

Please consider the following points in terms of my response to the draft guidance:

- ***Gender identity is defined as 'a personal, internal perception of oneself'***. The draft does not consider how relying on such a subjective concept might affect data quality/reliability or

acknowledge that gender identity is a contested concept that some people strongly reject.

- ***The draft cites an EHRC submission, which states collecting data on biological sex raises privacy concerns, and may be unlawful.*** This submission has since been assessed as ‘wrong or misleading or incomplete, in a legal opinion from Aidan O’Neill QC commissioned by Woman’s Place UK. The legal opinion states that privacy rights are not absolute: data on biological sex may be collected providing it is for a legitimate aim. The draft ignores that organisations sometimes need to know staff or users’ sex to operate sex-specific services, such as recently agreed for forensic examinations for rape victims.
- ***The draft relies heavily on an assumption that only small numbers will answer sex and gender identity differently.*** This assumption is untested and based on an estimate produced in 2011, drawing on a limited source. The draft ignores the clear evidence of a large rise since 2011 in those identifying as trans, concentrated in younger age groups, especially girls.
- ***No consideration is given to the potential impact of the proposal on the reliability of sub-group analysis, particularly by age and sex.*** This omission is surprising, given that both the Office for Statistics Regulation and UK Statistics Authority’s Methodological Assurance Review Panel for the Census have recently intervened in this area.
- ***‘Invisible Women’ by Caroline Criado Perez is cited in support of assuming sex ‘may not give a full picture of inequalities’, because ‘many people take the view that the term ‘gender’ also raises important issues’.*** This spectacularly misreads Criado Perez’s argument, which is the persistent failure to recognise in data the distinct needs and experiences of females. The draft indeed quotes her explanation that ‘gender’ is ‘the social meaning that we ascribe’ to ‘the female body’.

Biological sex is well-understood to exert a key influence over experiences and outcomes from birth onwards. It is one of the most important variables for the purposes of policy, planning and research. The draft does not discuss why current gender identity is now seen as more useful to collect. Scotland is already at serious risk of losing the capacity to gather data that, for decades, has provided the building blocks for policy-makers and researchers to monitor and tackle discrimination based on sex, through the adoption of data collection practices that muddy sex and gender self identification. If accepted, the draft proposals are likely to cement this loss.

Please take my objections to the draft guidance on board when it is reviewed.

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