

# **Sex and Gender in Data guidance**

## **Equality Impact Assessment Record**

**September 2021**

## Equality Impact Assessment Record

<b>Title of policy/ practice/ strategy/ legislation etc.</b>	Sex and Gender in Data guidance	
<b>Minister</b>	Cabinet Secretary for Social Justice, Housing and Local Government/Minister for Equalities and Older People	
<b>Lead official</b>	Roger Halliday – Chief Statistician	
<b>Officials involved in the EQIA</b>	<b>Name</b>	<b>Team</b>
	Poppy Wilson  Members of the Sex and Gender in Data Working Group	Office of the Chief Statistician  SG, Public Bodies, UK Government
<b>Directorate: Division: Team</b>	Digital Directorate, Statistics and Data Access division, Office of the Chief Statistician	
<b>Is this new policy or revision to an existing policy?</b>	Revised policy – data on sex and gender is already routinely collected by Public Bodies in Scotland	

### Screening

#### Policy Aim

The aim of producing guidance is to improve the collection of data about sex and gender by public bodies in Scotland, to encourage this, to support bodies to analyse and present it more effectively, and for this data to be used. A key aim is to encourage data to be disaggregated between men and women, to highlight where more needs to be done to tackle inequalities. The aim of the work isn't simply guidance for its own sake, but to create the conditions where data on sex and gender is routinely collected and used by Scottish public bodies to design, plan, monitor and evaluate services that are sensitive to the needs of all of Scotland. This includes helping organisations to understand not just the issues on sex and gender, but on the intersectionality between this and other socio-demographic characteristics (including the protected characteristics in the Equality Act 2010). This should most importantly enable them to develop better policy and services which deliver better and more equal outcomes.

Contributes to all National Outcomes in the sense that we need data on men and women to monitor performance against these Outcomes.

## **Who will it affect?**

The policy will affect public bodies - i.e. the way that they collect data from people, what data is collected and published and how the question is asked. Because the guidance relates primarily to the collection of data about women and men, these are the people most likely to be impacted. But also trans people who are sensitive to the way in which this data is collected. It may affect how younger/older age groups respond to questions, or disabled people. Cognitive testing should explore any age or disability related effects of the way the data is collected.

## **What might prevent the desired outcomes being achieved?**

Technology - existing systems used to collect data from people who use public services may not be easy to update with new guidance.

Buy in - there may be lack of buy in from public bodies and they may not have the resource to review and decide whether their data collection systems should be updated. Data may be collected differently across organisations which will limit the extent of any data linkage and wider utility from the data.

Culture change - there may be instances where data on men and women is already being collected but isn't then disaggregated or analysed. Some stakeholders have called for researchers to be made more aware of this when using data so that proper insights are revealed.

## **Stage 1: Framing**

### **Results of framing exercise**

The guidance is needed because currently there is no standard way that data on men and women is being collected, and when it is collected it is often not being used. This impacts on our understanding of how people of certain groups/characteristics access, use and experience public services, and/or experience discrimination.

Better data collection should mean a higher quality of data available for public bodies and the government to use to base decisions on. Collecting data in a way that captures the diversity of people in Scotland ought to reflect the population and enable the design of appropriate services.

It will affect a large number of people - women, men, service users, service providers generally because it will determine how data is collected from them. It is also likely to affect women - some argue that it is important to collect data on the basis of biological sex as they consider discrimination against women is mostly rooted in their biology. It will also impact trans people who will be asked to complete the data capture forms and therefore the recommended questions should be capable of capturing their sex and trans status.

In time, there should be a marked improvement in the quality of data collected on men and women, and a source of data on trans population in Scotland.

### **Extent/Level of EQIA required**

A full equality impact assessment is required. Ultimately the recommended questions in the guidance will influence how data on women, men and trans people are collected (sex and gender reassignment are the protected characteristics). The guidance will also be used to encourage an intersectional approach, and therefore have potentially wider impacts on equality groups.

## Stage 2: Data and evidence gathering, involvement and consultation

Include here the results of your evidence gathering (including framing exercise), including qualitative and quantitative data and the source of that information, whether national statistics, surveys or consultations with relevant equality groups.

Characteristic <sup>1</sup>	Evidence gathered and Strength/quality of evidence	Source	Data gaps identified and action taken
<b>Age</b>	Currently some questions on gender identity or trans status/history are asked only of people aged 16 years and over. The guidance will need to consider whether the recommended questions should be asked of all people or should be restricted by age.	<a href="https://scotlandscensus.gov.uk">Sex and Gender Identity Topic Report.pdf (scotlandscensus.gov.uk)</a> – this was explored in cognitive and public acceptability testing carried out in preparation for the Scotland's Census 2022.	Incorporate this into cognitive testing of the proposed recommended questions.
<b>Disability</b>	Intellectual disabilities may impact on an individual's understanding of a question asking them about their sex, or trans status/history.	<a href="https://bps.org.uk">Guidance on Neuropsychological Testing with Individuals who have Intellectual Disabilities (bps.org.uk)</a>	Incorporate this into ongoing cognitive testing of the recommended questions. Potential to include guidance of when someone should respond to these questions on behalf of someone else.
<b>Sex</b>	There are different interpretations of the word sex, and these views are often in conflict. For example, some people think sex is biological and a question should therefore ask about a person's sex at birth, whereas other people think sex can be lived sex, or self-identified sex.		

<sup>1</sup> Refer to Definitions of Protected Characteristics document for information on the characteristics

	<p>The way that sex is defined in the guidance, and the recommendations made, could impact on the fostering of good relations between different groups if one group (e.g. women) feel that their views have not been taken into account in favour of another group (e.g. trans people), or vice versa.</p> <p>Sex as defined in the Equality Act is simply female or male. Data is required to be collected on men and women to highlight/eliminate discrimination and meet a public body's obligations under the PSED.</p>		
<b>Pregnancy and Maternity</b>	<p>The guidance will not set out how data on men and women should be collected in a medical setting specifically; therefore, it is unlikely to impact on the provision of pregnancy and maternity services, and/or the collection of data from mothers.</p>		
<b>Gender Reassignment</b>	<p>The guidance will set out a recommended question for public bodies to use to collect data on trans status and history. The trans status question should help to build up a source of data on the trans population in</p>		

	Scotland to support the elimination of discrimination, fostering good relations between groups and promoting equality of opportunity.		
<b>Sexual Orientation</b>	The guidance will not specifically cover the collection of data on sexual orientation, but will encourage public bodies to take an intersectional approach to data analysis.		
<b>Race</b>	The guidance will not specifically cover the collection of data on race, but will encourage public bodies to take an intersectional approach to data analysis.		
<b>Religion or Belief</b>	The guidance will not specifically cover the collection of data on religion or belief, but will encourage public bodies to take an intersectional approach to data analysis.		
<b>Marriage and Civil Partnership</b> (the Scottish Government does not require assessment against this protected characteristic unless the policy or practice relates to work, for example HR policies)	n/a.		

and practices - refer to Definitions of Protected Characteristics document for details)			
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**Stage 3: Assessing the impacts and identifying opportunities to promote equality**

**Do you think that the policy impacts on people because of their age?**

<b>Age</b>	<b>Positive</b>	<b>Negative</b>	<b>None</b>	<b>Reasons for your decision</b>
Eliminating unlawful discrimination, harassment and victimisation			X	
Advancing equality of opportunity			X	Likely to be different views on the age that someone should be before they are asked about their trans status. Some may argue that everyone should be asked regardless of age whereas others may think only those aged over 16 or above should be asked. Lack of data on trans people who are under 16.
Promoting good relations among and between different age groups			X	

**Do you think that the policy impacts disabled people?**

<b>Disability</b>	<b>Positive</b>	<b>Negative</b>	<b>None</b>	<b>Reasons for your decision</b>
Eliminating unlawful discrimination, harassment and victimisation			X	
Advancing equality of opportunity			X	Human Rights Considerations - Everyone has the right to participate in decisions that affect their human rights. Participation must be active, free, meaningful and give attention to issues of accessibility, including access to

				information in a form and a language which can be understood.
Promoting good relations among and between disabled and non-disabled people			X	

**Do you think that the policy impacts on men and women in different ways?**

<b>Sex</b>	<b>Positive</b>	<b>Negative</b>	<b>None</b>	<b>Reasons for your decision</b>
Eliminating unlawful discrimination	X			Disaggregating data between men and women may enable more action to be taken to eliminate discrimination.
Advancing equality of opportunity	X			Disaggregating data between men and women may enable more action to be taken to advance equality of opportunity.
Promoting good relations between men and women	X			Disaggregating data between men and women may enable more action to be taken to eliminate discrimination and advance equality of opportunity, which may help to promote good relations.

**Do you think that the policy impacts on women because of pregnancy and maternity?**

<b>Pregnancy and Maternity</b>	<b>Positive</b>	<b>Negative</b>	<b>None</b>	<b>Reasons for your decision</b>
Eliminating unlawful discrimination			X	

Advancing equality of opportunity			X	
Promoting good relations			X	

**Do you think your policy impacts on people proposing to undergo, undergoing, or who have undergone a process for the purpose of reassigning their sex? (NB: the Equality Act 2010 uses the term ‘transsexual people’ but ‘trans people’ is more commonly used)**

<b>Gender reassignment</b>	<b>Positive</b>	<b>Negative</b>	<b>None</b>	<b>Reasons for your decision</b>
Eliminating unlawful discrimination	X			- Having better data on the trans population will build an understanding of areas where trans people may be experiencing unlawful discrimination.
Advancing equality of opportunity	X			- Having better data on the trans population will build an understanding of how trans people access services and may face barriers. This will support the design of better, more inclusive services and public bodies that advance equality of opportunity for trans people.
Promoting good relations	X			- Some women’s groups would disagree that data on men and women should be collected on the basis of gender identity or self-identified/lived sex. A recommendation in the guidance to do this may cause friction rather than good relations between groups. - A trans status/history question asked alongside a sex question would be more likely to promote good relations between groups.

**Do you think that the policy impacts on people because of their sexual orientation?**

<b>Sexual orientation</b>	<b>Positive</b>	<b>Negative</b>	<b>None</b>	<b>Reasons for your decision</b>
Eliminating unlawful discrimination			X	
Advancing equality of opportunity			X	

Promoting good relations			X	

**Do you think the policy impacts on people on the grounds of their race?**

<b>Race</b>	<b>Positive</b>	<b>Negative</b>	<b>None</b>	<b>Reasons for your decision</b>
Eliminating unlawful discrimination			X	
Advancing equality of opportunity			X	
Promoting good race relations			X	

**Do you think the policy impacts on people because of their religion or belief?**

<b>Religion or belief</b>	<b>Positive</b>	<b>Negative</b>	<b>None</b>	<b>Reasons for your decision</b>
Eliminating unlawful discrimination			X	
Advancing equality of opportunity			X	
Promoting good relations			X	

**Do you think the policy impacts on people because of their marriage or civil partnership?**

<b>Marriage and Civil Partnership<sup>2</sup></b>	<b>Positive</b>	<b>Negative</b>	<b>None</b>	<b>Reasons for your decision</b>
Eliminating unlawful discrimination			X	

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<sup>2</sup> In respect of this protected characteristic, a body subject to the Public Sector Equality Duty (which includes Scottish Government) only needs to comply with the first need of the duty (to eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Equality Act 2010) and only in relation to work. This is because the parts of the Act covering services and public functions, premises, education etc. do not apply to that protected characteristic. Equality impact assessment within the Scottish Government does not require assessment against the protected characteristic of Marriage and Civil Partnership unless the policy or practice relates to work, for example HR policies and practices.

## Stage 4: Decision making and monitoring

### Identifying and establishing any required mitigating action

Have positive or negative impacts been identified for any of the equality groups?	Yes. Positive impacts for the protected characteristics of sex and gender reassignment.
Is the policy directly or indirectly discriminatory under the Equality Act 2010 <sup>3</sup> ?	No
If the policy is indirectly discriminatory, how is it justified under the relevant legislation?	Not applicable
If not justified, what mitigating action will be undertaken?	Not applicable

### Describing how Equality Impact analysis has shaped the policy making process

It is expected that the guidance will improve the collection of data about sex and gender by public bodies in Scotland. This will have wider policy implications in the analysis and presentation of these breakdowns to highlight where more needs done to tackle inequalities and identify potential discrimination. This would have the impact of improving outcomes for people and communities in society.

Human Rights consideration - Are there procedures in place for staff or service users who feel that their human rights have been or are in danger of being breached to hold the organisation to account?

It has highlighted that more disaggregation of data between men and women and obtaining more data on trans people may help tackle discrimination.

### Monitoring and Review

In this section, explain how you will monitor and evaluate this policy to measure progress on equality issues identified in the EQIA. Include information on when the monitoring and evaluation will take place, and who is responsible for undertaking it. This should be part of the regular monitoring and evaluation mechanisms you devise for your policy.

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<sup>3</sup> See EQIA – Setting the Scene for further information on the legislation.

## Stage 5 - Authorisation of EQIA

Please confirm that:

- ◆ This Equality Impact Assessment has informed the development of this policy:

Yes  No

- ◆ Opportunities to promote equality in respect of age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex and sexual orientation have been considered, i.e.:

- Eliminating unlawful discrimination, harassment, victimisation;
- Removing or minimising any barriers and/or disadvantages;
- Taking steps which assist with promoting equality and meeting people's different needs;
- Encouraging participation (e.g. in public life)
- Fostering good relations, tackling prejudice and promoting understanding.

Yes  No

- ◆ If the Marriage and Civil Partnership protected characteristic applies to this policy, the Equality Impact Assessment has also assessed against the duty to eliminate unlawful discrimination, harassment and victimisation in respect of this protected characteristic:

Yes  No  Not applicable

### Declaration

I am satisfied with the equality impact assessment that has been undertaken for the collection of sex and gender in data and give my authorisation for the results of this assessment to be published on the Scottish Government's website.

**Name: Roger Halliday**

**Position: Chief Statistician, Scottish Government**

**Authorisation date: 22 September 2021**



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