

A decorative border of colorful human icons surrounds the central text. The icons are stylized, flat figures of people in various colors (green, purple, pink, blue, orange, grey) and are arranged in a grid-like pattern. The central text is contained within a white rectangular box that has a thin black border.

# Review of data, statistics and research on sex and gender



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# Report structure

The report is structured in three parts.

## **Part One: Background to the Review, Executive summary and recommendations**

Part one sets out the Executive Summary followed by the recommendations. The recommendations are supported by specialist legal advice commissioned for the Review, which is presented in appendix one.

## **Part Two: Introduction and conceptual framework**

Chapter one introduces key issues around data collection on sex and gender identity. The chapter discusses why it is important to collect robust data on sex, the importance of data on sex, how sex is defined, and how it is modelled in law. The chapter also discusses data collection on gender identity and identifies some of the challenges. The final part of the chapter proposes a way forward for data collection in this contested area of data collection on sex and gender identity.

Chapter two sets out the key principles of good question design.

Chapter three looks at developments around data collection on gender identity and trans status, and highlights some of the main challenges in this area, including the difficulties that arose in the 2021 England and Wales Census.

Chapter four provides a summary of key themes from the stakeholder interviews conducted as part of this Review.

## **Part Three: Review of data collection on sex**

Part three provides a broad-ranging assessment of data collection practices, policies, and guidance on sex, gender, and gender identity.

Chapter five reviews a range of publications that provide guidance on how to collect data on sex. This includes guidance published by public bodies, non-departmental government bodies, market research and survey companies, and charities. The chapter also looks at how key organisations, for example, the Office for National Statistics and Equality and Human Rights Commission approach data collection on sex, and how this has changed over time.

Chapter six provides high-level findings from the review of data collection practices. The chapter also provides information about the methodology and limitations.

Chapter seven draws on over 500 studies lodged with the UK Data Service to show how data collection practices on sex have changed from the 1940s onward.

Chapters eight to sixteen provide more detailed insights into contemporary data collection practices. The chapters are structured thematically, by policy area, as shown below. The analysis in these chapters looks at administrative datasets, large-scale surveys, and data collection policies, largely focusing on current data collection practices, and any recent changes.

- Chapter 8: Health and social care
- Chapter 9: Criminal and civil justice
- Chapter 10: Education and early years
- Chapter 11: Employers and employees
- Chapter 12: Labour market, income, and housing
- Chapter 13: Social and political attitudes
- Chapter 14: Sport, leisure and recreation
- Chapter 15: Travel and Transport
- Chapter 16: General Household Surveys

## **Appendices**

Appendix one presents the specialist legal advice commissioned by the Review from Timothy Pitt Payne KC to ensure that the recommendations are compliant with relevant legal frameworks.

Appendix two presents written evidence submitted to the Review from the Welsh Government Chief Statistician.

Appendices three and four present submissions to the open call for evidence on examples of flawed data collection on sex and/or gender identity. Appendix four presents general submissions submitted to the Review and appendix five shows submissions solicited by a third-party organisation (Feminist Gender Equality Network).



# **Part One**

# **Background to the review, executive summary and recommendations**

# Background to the review

This independent review was commissioned in February 2024 by the Secretary of State for Science, Innovation and Technology. The aims of the review are as follows:

- i. Identifying obstacles to accurate data collection and research on sex and on gender identity in public bodies and in the research system
- ii. Setting out good practice guidance for how to collect data on sex and gender identity

All public bodies, as defined by the Cabinet Office, are in scope of the review. The review also considers research institutions and organisations from outside the public sector, where relevant to the aims of the review. The review is UK wide, respecting the devolved nature of areas of responsibility within the research and development landscape and the collection of relevant areas of data and statistics.

This report concerns data and statistics. A further report will examine barriers to research.

The review is led by Professor Alice Sullivan, University College London, assisted by policy analysts Murray Blackburn Mackenzie, and Dr Kathryn Webb, University of Oxford.

## Approach to the review

- We carried out a review of policies, guidance, datasets and statistics, including administrative data, major flagship surveys, independent academic studies, clinical trials, polling data, and marketing exercises.
- We held over 30 stakeholder interviews with organisations ranging from government departments, regulators and other public sector organisations to fieldwork agencies and those campaigning for the rights of women and LGBT advocacy groups.
- We held an open call for submissions, which ran from 7 May to 1 July 2024. Individuals were invited to submit examples of UK data collection on sex and/or gender identity which they perceived as inadequate or flawed.
- We commissioned a legal opinion to ensure recommendations were compliant with relevant legal frameworks, such as GDPR and ECHR Article 8 rights.

# Executive Summary

Sex is a key demographic variable and collecting high quality, robust data on sex is critical to effective policymaking across a wide range of fields, from health and justice to education and the economy. It enables policymakers to measure and address disparities between women and men, and girls and boys. The Government has a strong interest in promoting high-quality data on sex, both in its role as a funder of research and as a producer and user of statistics. Accurate record keeping is also vital for operational purposes, for safeguarding and, within the healthcare system, for patient safety and care.

Stakeholders have told us that they recognise the importance of collecting data on sex. Confusion regarding the legal position has posed a barrier to collecting data on sex for some organisations. This report includes specialist legal advice which is presented in appendix one.

Both people's material circumstances and their identities are important to their lives. We know that sex affects many dimensions of people's lives, and we have much to learn about the ways in which having a transgender identity matters too. Rather than removing data on sex, government and other data owners should collect data on both sex and transgender identities, in order to develop a better understanding of the influence of both factors and the intersection between them. Collecting data on sex does not reduce people to biological categories, neither does it imply that people should conform with the stereotypes associated with those categories, nor does it deny the existence or experience of people with diverse gender identities. Indeed, people with diverse gender identities are being let down by data collection practices which conflate sex and gender identity, making it impossible to track the outcomes of distinct groups.

Respondents may understandably question why they are being asked for certain information. It is vital that everyone participating in research or providing data for administrative purposes is treated with respect and is informed about the reasons for data collection and reassured about the way their data will be processed and used. Some respondents may be reluctant to provide data on sex while others are reluctant to provide data on gender identity. In both cases, the purposes of the data collection, including potential benefits to the individual and society, should be explained.



## Terminology used in the review

For clarity, the term ‘sex’ when used in this report without any qualifier simply means sex, in other words biological sex, which can also be termed natal sex or sex at birth. These terms have the same ordinary meaning, and this report uses them interchangeably. ‘Legal sex’ on the other hand is a shorthand for a categorisation which includes holders of a Gender Recognition Certificate (GRC) as the opposite sex. This can also be phrased as ‘sex subject to a GRC’.

We have documented arguments against treating sex as a binary variable. These include arguments which instrumentalise the lives of people with Differences of Sex development (DSD) and propagate myths such as the claim that these rare conditions are ‘as common as red hair’ or that people with DSD do not have a sex. This has resulted in inappropriate and intrusive questions being asked about DSD.

Censuses and surveys internationally are increasingly seeking to capture information about the trans and/or gender-diverse population. They have approached these questions in different ways and with varying results. It is critical to establish a clear target for any question on gender identity. Stakeholders have expressed a need for clear guidance on data collection in this area. Questions which conflate sex and gender identity have become common, but do not effectively identify the gender diverse population.

In order to test hypotheses regarding the importance of sex *and* gender identity in any context, distinct variables are required in order to avoid the multicollinearity which arises when a sex/gender hybrid variable is used in the same analysis as a sex variable. Multicollinearity refers to a high degree of correlation between explanatory variables in a statistical analysis. Sex/gender hybrid questions are not useful in disentangling the effects of sex and gender identity because in practice these questions elicit information on sex from most respondents.

In some cases, the conflation of sex and gender identity has been embedded in shared IT systems, posing a barrier to organisations wishing to collect data on sex. For example, a data management system used by rape crisis centres in Scotland uses the following ‘gender’ fields for both victims and alleged perpetrators: Male/Female/Intersex/Gender queer/Other.

In the absence of a single source of authoritative guidance on data collection on sex and gender, various organisations have developed their own guidance. We

reviewed guidance produced by national governments, non-departmental public bodies including regulators, prominent organisations engaged in market research, and a small number of charities working on issues relating to sex and gender. We found that guidance produced by many of these organisations lacked conceptual clarity, often eliding data on sex with data on self-declared gender identity.

There are well-established principles of question design which should be applied to any topic (we outline these in chapter two). These principles have sometimes been overlooked in the field of sex and gender due to the politicisation of these questions. It is important to remember that the purpose of survey data collection is to gather data about populations rather than to provide an opportunity for each individual to express the full complexity and richness of their identity.

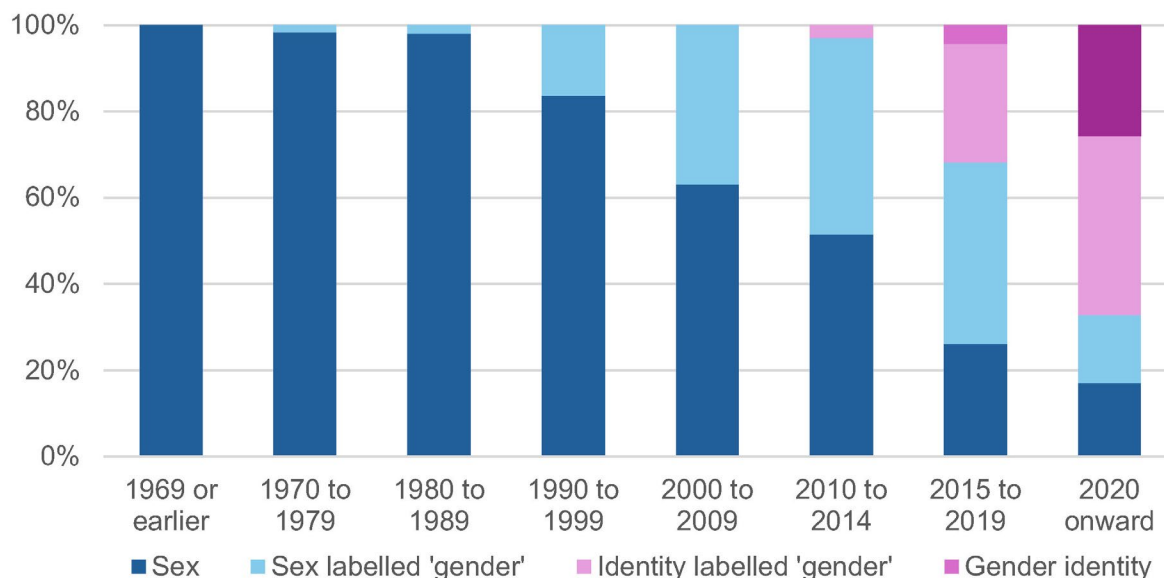
We recognise the high standards which the Office for National Statistics (ONS) typically upholds. However, we have seen evidence of a partisan climate on certain issues, including gender, within the organisation (see chapter five). Political impartiality (which must be understood broadly, not simply in terms of party politics) is a principle of the Nolan Principles of Public Life. In addition, the UK Statistics Authority Code of Practice states that ‘People in organisations that release statistics should be truthful, impartial and independent, and meet consistent standards of behaviour that reflect the wider public good’.

## Review of data collection practices

As part of the Review, we examined over 800 administrative and research datasets, surveys, and data collection policies. Our analysis revealed that:

- The meaning of sex is no longer stable in administrative or major survey data. This instability is evident across key policy areas including health and justice. This has led to a widespread loss of data on sex.
- In some cases, the loss of data on sex poses risks to individuals. This is particularly apparent within health and social care. These risks are especially high in the case of minors.
- How sex is defined is rarely made apparent in published outputs, including accredited official statistics. Some publications provide this information in accompanying documentation.
- Some publications present binary data on sex but are underpinned by survey instruments that included additional response options, such as ‘other’.

Figure 1. Sex and gender questions in surveys held by the UK Data Service, 1946 to 2023



- These practices do not meet the standards set out by the Office for Statistics Regulation for collecting and reporting data about sex and gender identity in official statistics. The Standards state that data about sex and gender identity ‘should be explained and defined for the purpose of a particular set of statistics, and terms, including gender, should not be used interchangeably or as a substitute for each other’.<sup>1</sup>
- The loss of data on sex is a relatively recent phenomenon. Our analysis indicates that in the context of data collection, the term ‘gender’ gained traction as a synonym for sex in the 1990s. More fundamental changes have taken place within the last decade, which has seen both the reframing of ‘gender’ as a synonym for gender identity, and the replacement of sex questions with gender-identity questions. Figure 1 shows these trends, based on a review of over 500 surveys and questionnaires lodged with the UK Data Service.<sup>2</sup>

## Call for evidence

Members of the public submitted a wide range of examples showing a loss of data collection on sex across public and private organisations. These are shown in appendix three. The submissions

further demonstrate the loss of data on sex and its replacement with gender identity data across a diverse range of policy areas, including health and social care; crime and justice; and education, and across different forms of data collection, including patient data, public consultations, equalities monitoring, and visitor surveys.

## Taking forward the recommendations of this review

The generation of high-quality data for research and policymaking is a collective cross-government task, covering departments with responsibility for particular areas of government and those in central co-ordinating roles, including Cabinet Office. It also covers specialist statistical bodies, such as the Office for National Statistics and the Office of Statistics Regulation. We hope that this review will provide clarity regarding data on sex and gender identity for those engaged in data collection within government and beyond.

## Acknowledgements

The review team are grateful to the stakeholders who agreed to be interviewed and to all those who submitted evidence<sup>3</sup>. We acknowledge support from the Economic and Social Research Council (ESRC), grant reference ES/X004627/1.

<sup>1</sup> Office for Statistics Regulation (2024), *Collecting and reporting data about sex and gender identity in official statistics: A guide for official statistics producers*. <https://osr.statisticsauthority.gov.uk/publication/collecting-and-reporting-data-about-sex-and-gender-identity-in-official-statistics-a-guide-for-official-statistics-producers/>

<sup>2</sup> The UK Data Service is a digital repository for quantitative and qualitative social science and humanities research data

<sup>3</sup> Those organisations whose general impact on data collection practices is considered in the review were also offered the opportunity to comment on the factual accuracy of relevant parts of the report in draft. These were: the Office of National Statistics, the Scottish Government, the Welsh Government, the Home Office, the Equality and Human Rights Commission, NHS England, Arts Council England, the Financial Conduct Authority, Advance HE, Stonewall, IPSOS and the Market Research Society. Responses were received from the majority of those contacted. For the very large further number of organisations for which examples are provided of data collection practices, it was not practical to make direct contact in each case, but references are provided to relevant sources throughout.

# Recommendations

## Key recommendations

This section highlights ten key recommendations before providing the full set of detailed recommendations below.

1. In line with the UK Statistics Authority (UKSA) Inclusive Data Taskforce recommendations,<sup>4</sup> data on 'sex, age and ethnic group should be routinely collected and reported in all administrative data and in-service process data, including statistics collected within health and care settings and by police, courts and prisons'.
2. Data on sex should be collected by default in all research and data collection commissioned by government and quasi-governmental organisations. By default, both sexes should be included in all research, including clinical trials, and sex should be considered as a factor in analysis and reporting. As a general rule (with some obvious exceptions), a 50/50 sex ratio is desirable in studies.
3. The default target of any sex question should be sex (in other words, biological sex, natal sex, sex at birth). Questions which combine sex with gender identity, including gender identity as recognised by a Gender Recognition Certificate (GRC) have a mixed target. Sex as a biological category is constant across time and across jurisdictions, whereas the concept of 'legal sex' subject to a GRC may be subject to change in the future and varies across jurisdictions. Using natal sex future-proofs data collection against any such change, ensuring consistency.
4. The form of the question should follow the UK Censuses (England and Wales, Northern Ireland, Scotland) question and response categories.
 

**What is your sex?**  
**Response categories: Female, Male**
5. As sex and gender identity are distinct concepts, questions which combine sex and gender identity in one question should not be asked. We have observed a trend for questions which attempt to combine sex and gender diverse identities in one question. Such hybrid questions aim to solicit information on sex from the majority of respondents but on gender identity from some respondents. As such, the target of the question is muddled. Questions that mix sex and gender risk organisations being in breach of the PSED, as they do not identify either the protected characteristic of sex or the protected characteristic of gender reassignment.
6. The word 'gender' should be avoided in question wording, as it has multiple distinct meanings, including: a synonym for sex; social structures and stereotypes associated with sex; and gender identity. If a question targeting gender identity is worded as a question on gender, this is likely to mislead many respondents. Questions on sex have also often been labelled as 'gender'. Change in the use of the term 'gender' means that it is important that questions on sex are labelled explicitly as such.
7. The NHS should cease the practice of issuing new NHS numbers and changed 'gender' markers to individuals, as this means that data on sex is lost, thereby putting individuals at risk regarding clinical care, screening, and safeguarding, as well as making vital research following up individuals who have been through a gender transition across the life course impossible. In the case of children, this practice poses a particularly serious safeguarding risk, and should be suspended as a matter of urgency.
8. Questions on sex and/or gender identity should not contain an additional category for people with DSD conditions, sometimes also known as 'intersex'. People with DSD have a sex, they are not a third sex or sexless category, and to imply that they are is likely to cause offence. DSD is an umbrella term without a single agreed definition, and the question of which conditions are included is contested. Under conventional definitions, people with DSD are estimated to make up 0.018% of births, i.e. fewer than 2 in 10,000. Asking for DSD status is highly intrusive, poses a risk of identifiability, and is unwarranted given the lack of analytical use for data on such a small group. Asking for this information would need to be via a distinct question, not part of a question on sex or gender identity and is likely to be justified only in the context of specialist medical studies.

<sup>4</sup> UK Statistics Authority (2022), *Inclusive Data Taskforce recommendations* <https://uksa.statisticsauthority.gov.uk/publication/inclusive-data-taskforce-recommendations-report-leaving-no-one-behind-how-can-we-be-more-inclusive-in-our-data/>

9. Data providers often default to using ONS Census questions. However, the ONS 2021 Census question 'Is the gender you identify with the same as your sex registered at birth' has been shown to be flawed<sup>5</sup>. The Office for Statistics Regulation (OSR) has stated that the statistics produced by this Census variable do not comply with important quality aspects of the Code of Practice for Statistics and has de-accredited these as official statistics<sup>6</sup>. This question (and variants of it) should not be used.
10. As organisations increasingly seek to collect data on gender identity, the problems identified with the ONS 2021 Census question have left a user need for a simple question which can be used in data collection with the general population. Organisations wishing to collect data on gender identity will need to be clear on the target of their question. We have identified three distinct possible targets for such a question: 1/The protected characteristic of gender reassignment; 2/ Trans identification; 3/ Identification as trans and/or gender diverse.

## Full recommendations

The majority of these recommendations have broad relevance across government. A number of recommendations are directed particularly towards specific bodies. These are: recommendation 12 (NHS); 13 (Home Secretary and Police Forces); 23 (Scottish Government and Scotland's Chief Statistician); 24 (EHRC); 51, 53, 54 and 55 (Office for National Statistics); 55, 56 and 59 (UK Statistics Authority).

## Sex

1. In line with the UK Statistics Authority (UKSA) Inclusive Data Taskforce recommendations,<sup>7</sup> data on 'sex, age and ethnic group should be routinely collected and reported in all administrative data and in-service process data, including statistics collected within health and care settings and by police, courts and prisons'.
2. Data on sex should be collected by default in all research and data collection commissioned by government and quasi-governmental organisations. By default, both sexes should be included in all research, including clinical trials, and sex should be considered as a factor in analysis and reporting. As a general rule (with some obvious exceptions), a 50/50 sex ratio is desirable in studies.
3. The default target of any sex question should be sex (in other words, biological sex, natal sex, sex at birth). Questions which combine sex with gender identity, including gender identity as recognised by a Gender Recognition Certificate (GRC) have a mixed target. Sex as a biological category is constant across time and across jurisdictions, whereas the concept of 'legal sex' subject to a GRC may be subject to change in the future and varies across jurisdictions. Using natal sex future-proofs data collection against any such change, ensuring consistency.

<sup>5</sup> Biggs, M., 2024. Gender identity in the 2021 census of England and Wales: How a flawed question created spurious data. *Sociology*. <https://doi.org/10.1177/00380385241240441>

<sup>6</sup> Office for Statistics Regulation (2024) Review of statistics on gender identity based on data collected as part of the 2021 England and Wales Census: Final report <https://osr.statisticsauthority.gov.uk/publication/review-of-statistics-on-gender-identity-based-on-data-collected-as-part-of-the-2021-england-and-wales-census-final-report/>

<sup>7</sup> UK Statistics Authority (2022), *Inclusive Data Taskforce recommendations* <https://uksa.statisticsauthority.gov.uk/publication/inclusive-data-taskforce-recommendations-report-leaving-no-one-behind-how-can-we-be-more-inclusive-in-our-data/>

- The form of the question should follow the UK Censuses (England and Wales, Northern Ireland, Scotland) question and response categories.

#### What is your sex?

**Response categories: Female, Male**

- For some purposes, it may be appropriate to make providing information on sex optional for respondents. This can be done by allowing non-response, for example by allowing respondents to move to the next item in an online survey without responding to the sex question, by stating that responding to any question is optional, or more explicitly, via a 'prefer not to say' option. Different approaches may have different implications for non-response in different contexts, and data owners will need to consider these.
- Omitting or discouraging the option of non-response may be appropriate where failing to collect data on sex would be unsafe, either for the respondent or for others. Examples where a non-response option may not be appropriate would include medical information and data used for safeguarding purposes.
- Guidance for the sex question should provide clarity on the target of the question as follows. 'This question is about your sex at birth'.
- We recommend against using the phrase 'sex assigned at birth'. This phrasing is inaccurate and misleading, as sex is determined at conception and typically observed in utero or at birth. An individual's sex is not *determined by* their birth certificate, it is merely *recorded on* their birth certificate. In very rare cases an infant's sex may be inaccurately recorded at birth, but this does not imply that sex is merely an assigned label rather than an inborn characteristic.
- The concept of 'legal sex' is contested and has been subject to change over time and differences between jurisdictions. Therefore, advice on capturing this variable could change. In addition, the concept of 'legal sex' has been seen as ambiguous because, in the UK, state-issued documents, such as passports and birth certificates, can record a different sex for the same individual. If data on a person's sex modified by GRC status, rather than simply their sex, is identified as being required for a specific purpose, we recommend using the England and Wales Census question on sex as above, with the guidance that was used in the Census: 'If you are considering how to answer, use the sex recorded on your birth certificate or Gender Recognition Certificate.'
- Whenever sex is recorded, it should be made clear what is intended: whether this refers simply to sex, or to 'legal sex' modified for some individuals by a Gender Recognition Certificate (GRC). If a document or record is intended to refer to the latter, this should be subject to change only on provision of a GRC.
- Organisations that allow sex markers to be changed on official documents should keep records of the number of documents changed annually with basic demographic information attached such as age and sex.
- The NHS should cease the practice of issuing new NHS numbers and changed 'gender' markers to individuals, as this means that data on sex is lost, thereby putting individuals at risk regarding clinical care, screening, and safeguarding, as well as making vital research following up individuals who have been through a gender transition across the life course impossible. In the case of children, this practice poses a particularly serious safeguarding risk, and should be suspended as a matter of urgency.
- The Home Secretary should issue a mandatory Annual Data Requirement (ADR) requiring the 43 territorial police forces of England and Wales and the British Transport Police (BTP) to record data on sex in all relevant administrative systems. Relatedly, police forces should cease the practice of allowing changes to be made to individual sex markers on the Police National Computer (PNC).
- In some cases, changing data on sex held within administrative systems may have been motivated by a desire to ensure that service users are addressed as they wish to be addressed. Service users should of course be treated with respect and addressed by their preferred name and title. It should be possible to store information on forms of address as distinct from information on sex and ensure that relevant people have access to this as required.

15. We are advised that, from a legal perspective, data on sex is close enough to data on sex subject to modification by a GRC to fulfil the PSED, even if a GRC is held to affect a person's status under the Equality Act. Given the desirability of a single meaningful and constant target for any question on sex both within and between organisations, a question on sex (i.e. natal, biological sex) is preferable for all purposes. Particularly if data on sex is multi-purpose, for example if it is designed to be used for research and/or operational reasons as well as compliance with the PSED, data on sex, (for the avoidance of doubt, meaning natal/biological sex), only should be collected. Collecting both sex and 'legal sex' would be unduly onerous and would risk identifying individuals with GRCs.
16. As noted by the Office for Statistics Regulation's guidance on 'Collecting and reporting data about sex and gender identity in official statistics', the conflation of terms relating to sex and gender leads to a lack of clarity for both respondents and users of data:
- 'Through our work, we have seen instances where there is a lack of consistency and clarity around the term 'gender', both in data collection, and in statistical reporting. In some cases, it is not clear whether producers are using the term gender as a substitution for sex or gender identity.'*<sup>8</sup>
- Sex and gender identity are distinct concepts and, in line with the Office for Statistics Regulation guidance, these concepts should not be conflated or combined.
17. As sex and gender identity are distinct concepts, questions which combine sex and gender identity in one question should not be asked. We have observed a trend for questions which attempt to combine sex and gender diverse identities in one question. Such hybrid questions aim to solicit information on sex from the majority of respondents but on gender identity from some respondents. As such, the target of the question is muddled. Questions that mix sex and gender risk organisations being in breach of the PSED, as they do not identify either the protected characteristic of sex or the protected characteristic of gender reassignment.
18. The word 'gender' should be avoided in question wording, as it has multiple distinct meanings, including: a synonym for sex; social structures and stereotypes associated with sex; and gender identity. If a question targeting gender identity is worded as a question on gender, this is likely to mislead many respondents. Questions on sex have also often been labelled as 'gender'. Change in the use of the term 'gender' means that it is important that questions on sex are labelled explicitly as such.
19. Questions on sex and/or gender identity should not contain an additional category for people with DSD conditions, sometimes also known as 'intersex'. People with DSD have a sex, they are not a third sex or sexless category, and to imply that they are is likely to cause offence. DSD is an umbrella term without a single agreed definition, and the question of which conditions are included is contested. Under conventional definitions, people with DSD are estimated to make up 0.018% of births, i.e. fewer than 2 in 10,000. Asking for DSD status is highly intrusive, poses a risk of identifiability, and is unwarranted given the lack of analytical use for data on such a small group. Asking for this information would need to be via a distinct question, not part of a question on sex or gender identity, and is likely to be justified only in the context of specialist medical studies.
20. In some face-to-face contexts, sex is recorded based on observation rather than by asking a question. Asking for a person's sex in the context of a face-to-face interaction can be perceived as rude. Observed sex is used in operational contexts where asking for an individual's sex may reduce rapport or exacerbate a potentially fractious situation, for example in the context of policing. Similarly, in face-to-face surveys, sex is sometimes recorded based on the interviewer's observation. The potential dissonance and break of rapport generated by asking a person's sex in the context of a face-to-face interaction may be particularly undesirable in surveys which contain sensitive or potentially distressing questions.
21. Data owners should be reassured that it is lawful to collect observational data on sex in both operational and research settings. However, the record must state that this is

<sup>8</sup> Office for Statistics Regulation (2024), *Collecting and reporting data about sex and gender identity in official statistics*. <https://osr.statisticsauthority.gov.uk/publication/collecting-and-reporting-data-about-sex-and-gender-identity-in-official-statistics-a-guide-for-official-statistics-producers/pages/2/>

based on observation only. This is in line with the general principle that the way in which a variable has been captured should be recorded explicitly in all datasets. Further detail on this point is available in the legal appendix.

22. We have noted some apparent confusion between the concepts of self-reported sex and self-identified gender identity. These are distinct concepts and should not be confused in data collection or guidance. Self-report simply means that the information is reported by the respondent.
23. The Office for Statistics Regulation has written to Scotland's Chief Statistician regarding the Scottish Government's 2021 guidance for public bodies on the data collection and publication of sex, gender identity and trans status, suggesting that this guidance would benefit from clarification taking on board developments since the guidance was published.<sup>9</sup> Further to this, the Scottish Government guidance should be reviewed to take account of the recommendations of this review, and to consider our legal advice.
24. The Equality and Human Rights Commission (EHRC) should review the material available on its website and either archive or clearly flag documents and guidance that are not consistent with its current view that sex in the Equality Act 2020 refers to 'legal sex' meaning sex subject to modification by a GRC.

## Gender identity

25. Data providers often default to using ONS Census questions. However, the ONS 2021 Census question 'Is the gender you identify with the same as your sex registered at birth' has been shown to be flawed<sup>10</sup>. The Office for Statistics Regulation (OSR) has stated that the statistics produced by this Census variable do not comply with important quality aspects of the Code of Practice for Statistics and has de-accredited these as official statistics. This question (and variants of it) should not be used.
26. Questions on gender identity should recognise that the concept of gender identity as such will be unfamiliar, unclear or irrelevant to some respondents, and that many respondents may not perceive themselves as having a gender identity. Questions should not assume that respondents will agree that they have a gender identity.
27. As organisations increasingly seek to collect data on gender identity, the problems identified with the ONS 2021 Census question have left a user need for a simple question which can be used in data collection with the general population. Organisations wishing to collect data on gender identity will need to be clear on the target of their question. We have identified three distinct possible targets for such a question: 1/The protected characteristic of gender reassignment; 2/ Trans identification; 3/ Identification as trans and/or gender diverse.
28. For organisations wishing to capture the protected characteristic of gender reassignment for the purposes of equalities monitoring, a question on trans status lacks sufficient specificity, and therefore will not assist in compliance with the PSED. To capture the protected characteristic of gender reassignment, we recommend asking a direct question addressed to this target, such as: 'Do you have the protected characteristic of gender reassignment?' Response options: Yes/No/ Don't know/Prefer not to say.

<sup>9</sup> Office for Statistics Regulation (2024), *Ed Humpherson to Alastair McAlpine: Regulatory guidance on collecting and reporting data about sex and gender identity in official statistics* (29 February 2024). <https://tinyurl.com/v34n574y>

<sup>10</sup> Biggs, M., 2024. Gender identity in the 2021 census of England and Wales: How a flawed question created spurious data. *Sociology*. <https://doi.org/10.1177/00380385241240441>

29. We acknowledge that gender reassignment will be an unfamiliar concept for many respondents. A guidance note should be included prominently alongside the above question as follows: ‘A person has the protected characteristic of gender reassignment if the person is proposing to undergo, is undergoing or has undergone a process (or part of a process) for the purpose of reassigning the person’s sex by changing physiological or other attributes of sex’.
30. For organisations wishing to capture trans identification, we recommend asking a question clearly directed towards this target. Questions which meet this specification would follow the following format: ‘Are you’ [or ‘Do you identify as’ or ‘Do you consider yourself to be’] ‘transgender’ [or ‘trans’]?’ with response options such as: Yes, Trans woman/Yes, Trans man/Yes, Non-binary/Yes, Other, please specify if you wish [open text]/ No/Don’t know/ Prefer not to say.
31. The small differences in the options provided above reflect the fact that different formulations have been used and recommended across different data collection exercises, with apparent success, and we are not in a position to know whether these differences may affect response in any way. In order to settle on a single agreed formulation, it would be desirable to conduct question testing.
32. Further quantitative research should be undertaken to assess what the general public takes as the meaning of key words which may be used in data collection in this area, including ‘transgender man’, ‘trans man’, ‘transgender’, ‘trans’, ‘transsexual’, and ‘gender reassignment’, along the lines of polling which has already been carried out on the words ‘trans woman’ and ‘transgender woman’.<sup>11</sup>
33. If guidance is required, we recommend the following: ‘Some people describe themselves as transgender when they do not identify with their sex at birth’.
34. If there is a need and sufficient space for more detailed guidance, we suggest providing the Stonewall definition: ‘Trans people may describe themselves using one or more of a wide variety of terms, including (but not limited to) transgender, transsexual, gender-queer (GQ), gender-fluid, non-binary, gender-variant, crossdresser, genderless, agender, nongender, third gender, bi-gender, trans man, trans woman, trans masculine, trans feminine and neutrois.’
35. It is likely that, for some research purposes, a broader question will be desirable. A question on wider gender-diverse identities may be required, for example to identify respondents expressing a non-binary identity who may or may not identify as trans. If the target of the question is to identify those with gender-diverse identities including, but not limited to, those who identify as trans, we recommend asking a question which makes this clear. For example: ‘Are you [or ‘Do you identify as’ or ‘Do you consider yourself to be’] transgender [or trans], non-binary or gender diverse?’, with response options: Yes, Trans woman/Yes, Trans man/ Yes, Non-binary/Yes, Other, please specify if you wish [open text]/No/Don’t know/Prefer not to say.  
As this question is novel, it will require full question testing.
36. Organisations considering collecting data on gender reassignment or trans status will need to consider both the fact that this is sensitive personal information and that it identifies a small group. Whether it is appropriate to collect this data will depend on a number of factors, including: the size of the dataset; the prevalence of trans identities in the population of interest; and the proposed use of the data. Organisations should only collect data which they intend to process. The PSED does not imply a duty to collect data which is unlikely to be useful.

<sup>11</sup> For similar polling in this area, see: MurrayBlackburnMackenzie (2023), *Clarity matters: how placating lobbyists obscures public understanding of sex and gender*. 7 August 2023. <https://murrayblackburnmackenzie.org/2023/08/07/clarity-matters-how-placating-lobbyists-obscures-public-understanding-of-sex-and-gender/>



## Reporting on data

37. All databases should provide a clear record of how data on sex is defined and collected. All reports using data analysis on sex should provide a clear account of how data on sex is defined and collected, and whether and how this varies between different databases or systems. Any changes to how data on sex is defined over time should be made clear. Data producers should provide a clear audit trail on how data on sex is collected. For example, where appropriate, reporting should include copies of questionnaires and instructions to interviewers. If survey data is collected by a third party using pre-recruited panellists, the source definition should be stated.
38. Analysts must be able to use clear and familiar language in reporting findings on sex. Terms such as women, men, boys and girls are synonymous with (respectively) adult human females and males and children of each sex. Similar considerations apply to terms such as mothers and fathers, sons and daughters. While all language concerning sex and gender has become contested to some degree, those reporting on sex-disaggregated data should not be dissuaded from using familiar sexed terms. Sensitivities which may apply when referring to specific individuals should not apply at the aggregate level. Any guidelines on language use in reporting on data and research should foreground clarity and ease of communication.

## Clear language in legislation, guidance and discourse

39. Previously a polite synonym for sex, 'gender' now has multiple distinct meanings. Legislation referring to 'gender' is now open to misinterpretation, even in cases where it may appear clear that, at the time the legislation was enacted, gender meant sex. It is desirable that legislation should refer clearly to sex and/or to gender reassignment as appropriate rather than using the term 'gender'. This has direct implications where data collection is mandated via legislation. Where organisations feel constrained by the use of 'gender' in relevant governing statutes when it comes to collecting data, the government should consider amending that legislation so that it refers to sex.
40. When reporting on or discussing issues relating to sex, it would be desirable to see a shift to using the term 'sex' instead of gender, given the ambiguity of the term 'gender'. This should be reflected in government language and guidance. For example, guidance for employers on 'gender pay gap' reporting should refer to 'sex pay gap' reporting.

## Publishing data on individuals

41. Some organisations may wish to publish data on individual sex. For example, in athletics, race organisers typically publish results according to sex/age categories which are used for competition purposes and to compute sex/age adjusted performance gradings. In other contexts, the sex of a practitioner may be published so that members of the public can be informed of this information where relevant.
42. Published information on individuals must be accurate and accurately recorded and conveyed. Data on sex should not be reported as being data on gender identity or vice versa, and the two concepts must not be combined.
43. Individuals should typically be given the option of not having their sex published.

## Opinion research

44. When asking for respondents' opinions, it is vital that respondents can understand what is being asked, so that they can provide accurate information on their views. In cases where sex and gender identity are relevant to the target of the question, clarity on these concepts is important. It should be borne in mind that language which is familiar to some groups of respondents may be unfamiliar or misunderstood by others. For example, it has been shown that some respondents take the term 'trans woman' to mean the opposite of what is actually intended, i.e. some respondents assume that a 'trans woman' is a female who identifies as a man, rather than a male who identifies as a woman. Clear language should be used to identify sex where relevant. For example, 'Should males who identify as women be allowed to compete in female sports categories?' is clearer than 'Should trans women be allowed to compete in women's sports categories?'.

## Developing and Reviewing Questions

45. Some stakeholders perceive a pressure to keep data categories under regular review. We would emphasise that continuity is desirable, and change should only be implemented where there is a good reason. Some categories are subject to real social change, for example, the ethnic composition of the UK has changed over time. Other categories, such as sex and age, are unaffected by societal change.
46. Consistency throughout the data landscape is desirable, for purposes of comparability and data linkage. Data providers should default to standard ONS categories unless there is a compelling reason to do otherwise. By the same token, the ONS should recognise their role in providing 'gold standard' questions which therefore need to be fit for purpose for the widest possible range of respondents and uses.
47. Where data owners are engaged in question review and development, they should be mindful of the distinction between data users and respondents, and not conflate the needs of these two groups, both of which are important.
48. It is often appropriate for data owners to consult with special interest or community groups, but this should be done in a balanced way, mindful of both conflicts between groups and the possibility that groups claiming to represent a particular constituency may not reflect the full range of opinion, or indeed the majority opinion, within that constituency. Community and campaigning groups should not be assumed to have expertise in question design. Data owners should consider carefully which issues these groups are qualified to advise on, and how much weight to give to their input. This also applies to research including focus group work where the participants have been recruited via an organisation with a particular viewpoint.
49. Questions intended for general use should be tested on the wider relevant population, not just on minority groups, including in the case of questions which are primarily intended to identify minority groups.

50. Organisations should consider carefully whether it is appropriate to include internal staff groups in consultations on data collection. This is unlikely to be appropriate when the data collection is external rather than internal and is not without risk in the case of internal data collection. The views on data collection of internal staff networks should not be given undue weight.
51. When considering new questions or substantial changes to questions, the ONS should seek a wide range of views and expertise. This should include engagement with the community of quantitative data analysts from across the relevant academic disciplines.
52. Public bodies should strive for transparency, openness and accountability regarding the development of changes in data collection policy and practice. The leadership and composition of groups working on such questions should be named in the public domain. Organisations should maintain a clear audit trail of who has been consulted on their data collection practices, including organisations and individuals. Anonymity should only be granted to individuals under exceptional circumstances. Transparency, openness and accountability are particularly important in the case of national statistical bodies which are seen as developing 'gold standard' data.
53. The ONS must publish detailed research reports on all of its question testing and development research. This is publicly funded work and failure to share it can only be detrimental, preventing wider scrutiny of and learning from ONS research. Publishing only basic summaries of research is not sufficient.
54. The ONS should review its file management system and ensure that documentation which has any potential bearing on its data collection practices is kept in good order and not destroyed without appropriate senior level approval.

## Organisational Culture

55. Government departments and bodies should strive to promote a culture of critical thinking and robust and civil disagreement. Some stakeholders expressed the view that it was difficult to have open and comfortable discussions on data collection on sex and gender. Organisations, including government departments, should strive to tackle any barriers to such discussions taking place, and actively promote a collegial and professional approach.  
  
Civil servants have a duty to maintain political impartiality. Objectivity is one of the Nolan Principles of Public Life, 'Holders of public office must act and take decisions impartially, fairly and on merit, using the best evidence and without discrimination or bias'. The UK Statistics Authority Code of Practice principle of Honesty and Integrity states 'People in organisations that release statistics should be truthful, impartial and independent, and meet consistent standards of behaviour that reflect the wider public good'. Government departments and bodies, including the ONS, should review their internal cultures and practices with the goal of upholding these principles.
56. The UK Statistics Authority should consider undertaking a review of activism and impartiality within the civil service, in relation to the production of official statistics.
57. Ministers should consider the vulnerability of government and public bodies to internal activism that seeks to influence outward-facing policy, including through staff networks, and whether stronger safeguards are needed.

## Communicating the purposes of research

58. Respondents may understandably question why they are being asked for certain information. It is vital that everyone participating in research or providing data for administrative purposes is treated with respect and is informed about the reasons for data collection and reassured about the way their data will be processed and used. Some respondents may be reluctant to provide data on sex while others are reluctant to provide data on gender identity. In both cases, the purposes of the data collection, including potential benefits to the individual and society, should be explained.

59. We cannot assume that there is universal public understanding of the diverse purposes and benefits of data collection. UKSA's [existing aim](#) of advocating for improved statistical literacy should include seeking opportunities to spread knowledge of the wide benefits of accurate data collection, both in the area of sex and gender identity and beyond.

# **Part Two**

## **Introduction and conceptual framework**

# Chapter 1: Introduction

## 1.1 Background to the review

The loss of robust, standardised data on sex in the UK has raised concern among a range of stakeholders, including academics and policymakers. At the same time, there is evidence of wider barriers – at an institutional and societal level – to research and scholarly activity regarding sex and gender, and of barriers to discussion of these issues.

Against this backdrop, the Department for Science, Innovation and Technology (DSIT) commissioned this independent Review of data, statistics and research on sex and gender.

The review will present findings in two final reports. The current report concerns data and statistics. A second report will examine barriers to research.

The review team have conducted over thirty interviews with stakeholders, in government departments, data collection organisations, and interest groups, in order to understand their perspectives and needs. We have also reviewed and documented changing practice and guidance affecting the data infrastructure.

We have taken submissions from the public in a call for evidence on ‘examples of flawed data collection on sex and/or gender identity’. These submissions provide a wealth of examples, including the failure to collect data on sex, from a wide range of organisations and contexts, including service provision, equalities monitoring, research, and customer experience questionnaires. We list these examples in two appendices. Appendix three lists the substantive submissions to the review. A subset of submissions were guided by a template provided by a third party, and these are treated separately in appendix four.

In some cases, the perception of legal risk has influenced organisations’ decisions to drop data collection on sex, including by asking hybrid questions which seek to combine sex and ‘gender’. There has often been a lack of transparency regarding the legal advice that organisations have relied upon, and uncertainties regarding the actual legal position. We commissioned specialist legal advice to ensure that our recommendations are compliant with relevant legal frameworks including General Data Protection Regulation (GDPR) legislation, Article 8 or the European

Convention on Human Rights (ECHR) and the 2010 Equality Act (EA2010), encompassing the Public Sector Equality Duty (PSED). We present this advice in appendix one.

This introductory chapter explains key concepts and outlines the background to the issues discussed in the remainder of the report. In this chapter, we draw heavily (and sometimes verbatim) on our previous work in this field (Sullivan, 2020; Sullivan, 2021; Sullivan, 2023; Sullivan, Murray and Mackenzie, 2023).

## 1.2 Why do we collect data?

The UK Statistics Authority ‘Code of Practice for Statistics’ states that ‘Statistics are a foundation of our society, supporting the decisions we make at home and at work, as individuals and collectively. They are part of the lifeblood of democratic debate’<sup>12</sup>.

Statistics are used to inform decisions, for example about resource allocation. But statistics also provide a window on the world, allowing us to test assumptions and develop a deeper understanding of the society we live in. Without accurate and trusted statistics, we move closer to a post-truth world of ‘alternative facts’.

The UK has a long tradition of systematic social investigation, originating in the desire for information regarding population trends following the industrial revolution, and spurred on in part by the aim of understanding the effects of the great plague in London (Marsh, 1982). This produced the empirical social research tradition of ‘political arithmetic’ which seeks to provide reliable data to inform public policy and debate (Heath, 2000; Petty, 1691).

A decennial census has been held in Britain since 1801. National census data is a vital part of our data infrastructure. It provides a snapshot of the entire population. It furnishes the benchmark against which we judge whether other data sources, such as surveys, are representative. Without a picture of the whole population, we would have no benchmark for the representativeness of surveys. By the same token, Census data is vital for equalities monitoring. Without the census, there would be nothing to compare organisational data to in order to judge whether certain groups are over or underrepresented.

<sup>12</sup> Office for Statistics Regulation/UK Statistics Authority (2022), *Code of Practice for Statistics*, <https://code.statisticsauthority.gov.uk/wp-content/uploads/2022/05/Code-of-Practice-for-Statistics-REVISED.pdf>

The UK is rich in survey data. Surveys collecting data on the general population are a first step in describing and analysing social, economic and health problems and inequalities, with the aim of understanding and ameliorating these issues (Abrams, 1951). Surveys may be cross-sectional (taking a snapshot at a point in time) or longitudinal (following respondents repeatedly over time). In the case of birth cohort studies, individuals are followed up from birth through the life course (Pearson, 2016). Biomedical surveys combine survey data with biomedical measurement. Surveys may be multi-purpose or have a specific focus, such as social attitudes, crime, health, or any number of other topics.<sup>13</sup> Data collection during the Covid pandemic provided an example of the potentially life-saving value of accurate data used to inform policy.

Data collection also supports service provision. It is vital that data held on individuals is accurate; in some contexts – the NHS, for example – inaccurate data held on an individual could have fatal consequences. We refer to data collected for operational purposes, such as delivering a service, as ‘administrative data’. But administrative data can also be used for research, meaning that the accuracy of such data is doubly important. It has been proposed that the England and Wales Census will be replaced by administrative data supplemented by surveys.<sup>14</sup> In this case, the accuracy of administrative data will become more important still.

There are things that statistics cannot do. Statistics are not a means of personal self-expression, they can neither validate nor invalidate individual identities, and they cannot see into people’s souls. In fact, statistics are wonderfully indifferent to individuals. Each person is unique, but statistics do not aim to capture this uniqueness, in fact it is important that they should not identify individuals. Statistics are about aggregate patterns and trends. We rely on individuals to selflessly contribute their information for the public good. Statistics are a collective endeavour, shaped by all of our participation.

### 1.3 The importance of data on sex

Differences between the sexes are an important factor for analysis in most, if not all, of the areas that social and health scientists address. We outline a few examples below.

*Demography:* Sex, alongside age, is a fundamental demographic variable, vital for projections regarding

fertility and life expectancy (Grundy and Murphy, 2015). In some parts of the world, sex-selective abortion leads to substantially more male than female births, due to a preference for sons (Chao et al., 2019).

*Physical health:* Sex has systematic effects on physical health (Koblinsky, Campbell and Harlow, 2018). Some conditions only affect males or females. Only females experience pregnancy, menstrual periods, and menopause. Only males suffer testicular cancer, and only females experience gynaecological cancers. Other conditions are more prevalent in one sex or the other, for example men are more likely to have heart attacks, women are more likely to suffer osteoporosis. Health behaviours also vary according to sex, with men typically engaging in more ‘risky behaviours’ such as smoking and excessive alcohol consumption. Mortality rates due to Covid-19 are higher in males (Pradhan and Olsson, 2020).

*Mental health:* Women report higher rates of depression and anxiety than men, though men are more likely to commit suicide (Ploubidis et al., 2017).

*Crime:* Men commit more crime than women, a pattern that holds over time and internationally (Smith, 2014). Violent and sexual crime is particularly rare among females (Phoenix, 2023).

*Education:* Historically, women and girls were excluded from advanced education. In much of the world, such discrimination is still prevalent (Benjamin, 2023). In recent decades, women in advanced industrialised societies have surpassed male attainment on indicators such as the likelihood of gaining a university degree. However, substantial variation in field of study persists, for example males are more likely to study science, technology, engineering and maths, while females are over-represented in languages and humanities subjects (Cassidy, Gattan and Crawford, 2018).

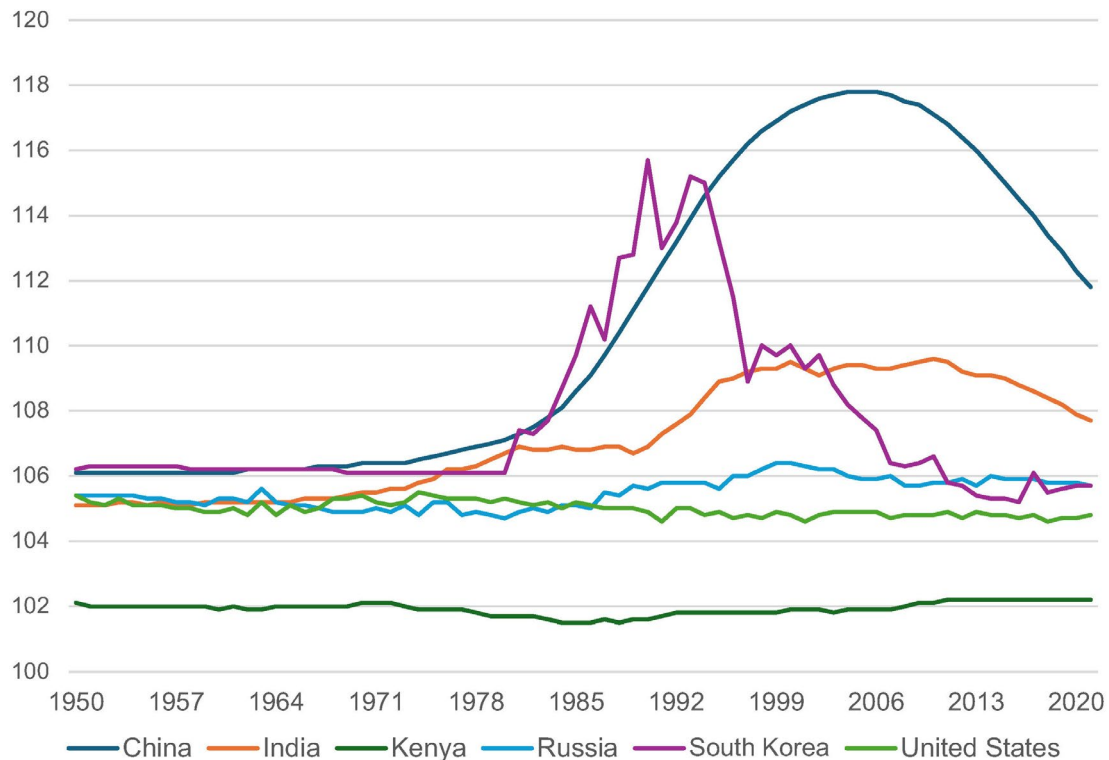
*Employment:* Women have traditionally been excluded from many occupations, and still face barriers in the workplace, some of which are due to maternity and being the primary carers for children and other family members. Social scientists have analysed the ‘gender pay gap’, meaning the gap in pay between the sexes, and documented sex differences in entry and progression in different fields of employment (Bryson et al., 2020).

*Religion:* Women are more likely than men to be affiliated to a religion and to express religious belief (Voas, McAndrew and Storm, 2013).

<sup>13</sup> See for example the range of survey data available at the [UK Data Service](https://www.ons.gov.uk/surveys/census2021andourtherstudiesandsurveys) and those listed by the ONS (2022), *Census 2021 and our other studies and surveys*. <https://web.archive.org/web/20240625142710/https://www.ons.gov.uk/surveys/census2021andourtherstudiesandsurveys>

<sup>14</sup> Office for National Statistics (2023), *The future of population and migration statistics in England and Wales: A consultation on ONS proposals* [https://consultations.ons.gov.uk/ons/future-of-population-and-migration-statistics/supporting\\_documents/Future%20of%20Population%20and%20Migration%20Statistics%20Consultation%20Document.pdf](https://consultations.ons.gov.uk/ons/future-of-population-and-migration-statistics/supporting_documents/Future%20of%20Population%20and%20Migration%20Statistics%20Consultation%20Document.pdf)

Figure 2. Sex ratio at birth, six countries, 1950 to 2021



Data source: United Nations, World Population Prospects<sup>15</sup>

**Social and Political Attitudes:** Women were traditionally more likely to vote for right-wing parties than men, but this pattern has reversed over time (Shorrocks, 2018).

In research in all of these areas, sex is not examined in isolation, but in conjunction with other important characteristics such as socio-economic position, ethnic group and age. The ability to understand the intersections between these variables is important.

The biological cannot be neatly parcelled off from the social, since human beings are both biological and social animals. The term *biosocial* describes the interaction between biological and social factors, an important focus in multidisciplinary research across the health and social sciences.

## 1.4 Sex, gender and gender identity

Discourse on sex and gender is often confused by the conflation of three distinct categories: sex, gender, and gender identity. Clarity on the use of these categories and terms is essential both for meaningful dialogue on these issues and for clear question design.

- **Sex:** In humans, sex is a binary biological category. Individuals are classified by reproductive function as male or female. Sex

is determined at conception and is immutable (Hilton and Wright, 2023; Kashimada and Koopman, 2010; Sobel, Zhu and Imperato-McGinley, 2004). Sex may also be referred to as 'biological sex', 'natal sex', or 'sex at birth' for the avoidance of doubt or misinterpretation.

- **Gender:** The term 'gender' refers to the stereotypes and social roles that are associated with each sex (Scott, 1986). Gender is a social category, rather than an individual one, and refers to how society sees girls and boys and women and men, based on their sex. Gender refers to the hierarchical power structure between men and women (Oakley, 1998).
- **Gender identity:** The term 'gender identity' refers to some people's sense that they identify as a member of the male or female sex or as neither (or something else), particularly when this identity clashes with their biological sex. It refers to how individuals understand themselves.

As the linguist Deborah Cameron<sup>16</sup> points out, some people have been using the term gender as a fancy term for sex for over 500 years. In the context of UK data collection, however, as the analysis in chapter seven shows, the

<sup>15</sup> See: Our World in Data (online), *Sex ratio at birth, 1950 to 2021*. <https://ourworldindata.org/grapher/sex-ratio-at-birth?tab=chart>

<sup>16</sup> Cameron, D. (2016), *A brief History of Gender*. <https://debuk.wordpress.com/2016/12/15/a-brief-history-of-gender/>



supplanting of sex by gender appears to be a relatively recent development that has largely taken place within the last three decades, reflecting the fact that sex was previously the default term in common usage.

For many sociologists, ‘gender’ is a social structure which affects people according to their sex. On this definition, individuals do not have a gender as such, but we need to know their sex in order to understand how gendered roles and power structures may affect their lives.

Figure 2. Sex ratio at birth, six countries, 1950 to 2021 illustrates this point. This shows the sex ratio at birth in six countries between 1950 and 2021. This is measured as the number of newborn boys for every 100 newborn girls, with higher values indicating a much higher number of newborn boys than girls. The stark patterning reflects that the availability of in utero observation of sex combined with a preference for male offspring has led to selective abortion of females in some nations, notably China, India and previously South Korea. In other words, biological sex can affect life chances even before birth.

Finally, gender identity refers to individual psychology rather than a social structure. In this sense ‘gender’ is treated as an individual characteristic.

People often use the terms sex and gender as synonyms. In some cases, this may be due to squeamishness about the word ‘sex’. Social scientists on the other hand have used the term ‘gender’ to highlight the point that differences in social and economic outcomes between the sexes are often due to power structures and stereotypes rather than *simply* biology. This use of sex and gender as interchangeable has become unhelpful because of changes in the use and understanding of the term ‘gender’.

## 1.5 Loss of data on sex

Despite its importance as an explanatory variable, many UK organisations, including public bodies, have ceased collecting data on sex, often replacing it with data on self-declared gender identity, or with a hybrid variable combining gender identity and sex. This has also occurred in survey research. Part three of this report shows the chronology and extent of this trend.

We provide some illustrative examples below.

While we focus here on the UK, the loss of data on sex is an international phenomenon. For example, Statistics Canada<sup>17</sup> and Statistics New Zealand<sup>18</sup> advise that asking about ‘gender’ rather than sex should be the default approach.

As discussed in chapter five, the ONS sought to redefine sex to encompass gender identity for the purposes of the 2021 England and Wales Census and were prevented via a legal challenge (Sullivan, 2021). In Scotland, guidance for the 2022 Census allowed people to answer the sex question according to their gender identity. Scotland’s previous Chief Statistician has stated that collecting data on biological sex is justifiable only ‘in a small number of instances...on an individual basis for a very specific purpose’.<sup>19</sup>

*National Health Service (NHS):* Over the past twenty years, there has been a gradual shift away from recording and analysing sex in NHS datasets. As documented in chapter eight, patient datasets have replaced data fields denoting biological sex with fields denoting self-declared gender identity. In 2002 the NHS introduced a ‘Person Sex’ data field, with two sub-fields: ‘Gender at Registration’ (sex registered at birth) and ‘Gender Current’ (self-identified). Around 2016, the NHS replaced these subfields with ‘Person Phenotypic Sex’ (observed sex) and ‘Person Stated Gender’ respectively. However, the former is only used in three NHS national datasets (relating to maternity services and neonatal outcomes) and is missing entirely from the NHS patient demographic database.<sup>20</sup>

The NHS’s failure to record biological sex on patient records has led to trans patients not being called in for screening for conditions which may affect them due to their sex (Richards, 2018). This has potentially fatal consequences for trans people. Administrative data based on patient records is also a vital resource for health research. Throughout the UK, individuals can change their NHS ‘gender’ marker on request.<sup>21</sup> In Scotland, NHS National Services Scotland confirmed,<sup>22</sup> ‘No evidence is required; the patient simply needs to advise either their GP practice or Practitioner Services that they wish to change their gender’.

17 Statistics Canada (2021), *Sex at birth of person*.

<https://web.archive.org/web/20240826122028/https://www23.statcan.gc.ca/imdb/p3Var.pl?Function=DEC&id=24101>

18 Statistics New Zealand (2021), *Data standard for gender, sex, and variations of sex characteristics*.

<https://web.archive.org/web/20240514195133/https://www.stats.govt.nz/assets/Methods/Data-standards-for-sex-gender-and-variations-on-sex-characteristics/downloads/Data-standard-for-gender-sex-and-variations-of-sex-characteristics.pdf>

19 Scottish Government (2021), *Data collection and publication guidance: Sex, Gender Identity, Trans Status* (page 11). <https://tinyurl.com/4yrvxvdh5>.

20 Fair Play For Women (2021), *How does the NHS record information about sex and gender identity?* (16 June 2021). <https://fairplayforwomen.com/how-does-the-nhs-record-data-about-sex/>

21 Richards, A. (2018), *Trans men not offered NHS routine screening for cancers*. Evening Standard, 15 January 2018. <https://www.standard.co.uk/news/health/trans-men-not-offered-nhs-routine-screening-for-cancers-a3740586.html>

22 NHS National Services Scotland (2014), *Requirements for Processing a Change of Gender and Title*. Reference: 2014-000084. NHS National Services Scotland, 25 June 2014. <https://www.ngicns.scot.nhs.uk/wp-content/uploads/2021/04/2014-06-25-Requirements-for-Processing-a-Change-of-Gender-and-Title-NSS-FOI.pdf>

**Crime:** Crime statistics rely on reporting by the police. As chapter nine observes, many police forces record crimes by male suspects as though they were committed by women at the request of the perpetrator or based on how a person ‘presents’. The biennial report ‘Statistics on Women and the Criminal Justice System’, which compiles statistics from a range of data sources including the police, courts and prisons, is aimed at understanding ‘trends in the CJS [Criminal Justice System] in England and Wales, and how these vary between the sexes and over time’. However, the report explains that ‘given the range of recording practices throughout the CJS, it is likely that most recording includes a mixture of physiological and personal identity’.<sup>23</sup> These variously include sex as ‘self-identified’, ‘self-reported’, ‘officer identified’, and a mix of the above (see chapter nine Table 9).

In 2021 Police Scotland confirmed that in cases of rape or attempted rape ‘if the male who identifies as a woman were to attempt to or penetrate the vagina, anus or mouth of a victim with their penis, Police Scotland would record this as an attempted rape or rape and the male who self-identifies as a woman would be expected to be recorded as a female on relevant police systems’<sup>24</sup> (see page 222).

**Gender Pay Gap:** Since 2017, UK public authorities and private sector employers with headcounts of 250 or more have been required by law to report annually on their ‘gender pay gap’ – the difference between the average earnings of men and women. However, as discussed in chapter eleven, UK government guidance states that employers ‘should be sensitive to how an employee identifies in terms of their gender’ and that ‘where the employee does not self-identify as either gender, an employer may omit the individual from the gender pay gap calculation’.<sup>25</sup> This means that gender identity is recorded rather than sex, and employees who identify as non-binary are excluded from the data, making it impossible to assess whether non-binary males may have different labour market experiences from non-binary females.

## 1.6 The sex binary

Attempts to argue that sex is not binary have led to the propagation of myths about people with Differences of Sex Development (DSD), sometimes known as ‘intersex’ conditions. These myths include the idea that people with DSD are a third sex, or do not have a sex, and the myth that DSD are ‘as common as red hair’<sup>26</sup>.

Disinformation about DSD has been widely cultivated, and sometimes uncritically accepted, including in the field of data collection. People with DSD, their families, and those who provide them with medical and social support, have had little voice, and there has been a tendency for representatives of other groups, with distinct interests, to speak for and over them.

It is clearly a fallacy to suggest that the existence of a small minority of potentially anomalous cases could ever invalidate the existence or usefulness of a categorical variable. Nevertheless, given the wide dissemination of disinformation regarding DSD, we provide some clarification on this issue in this section.

DSD is an umbrella term referring to a varied range of conditions leading to atypical sex development (Arboleda, Sandberg and Vilain, 2014; Hilton and Wright, 2023; Man et al., 2023; Sax, 2002). Atypical sex development does not imply that individuals do not have a sex, though, in some DSD conditions, the determination of sex may require medical investigation. It is important to understand the diversity of this group of conditions. As the charity dsdfamilies have pointed out, (though they do not claim to speak for all people with a DSD), the umbrella terms DSD and intersex have little relevance for the lives of many individuals living with these conditions. Instead, people tend to think in terms of their own specific conditions. In written evidence to the Scottish Parliament, dsdfamilies explained, ‘Individual people and their families will talk about having Congenital Adrenal Hypoplasia, Androgen Insensitivity Syndrome, or Peno-scrotal Hypospadias or will describe what some of the characteristics are for their particular condition (e.g. ‘I was born without a womb’).’<sup>27</sup> In contrast, those who identify with the term intersex are less likely to have a DSD.<sup>28</sup>

23 Ministry of Justice (2022), *A Technical Guide to Statistics on Women and the Criminal Justice System, 2021* (Table G.01). [https://assets.publishing.service.gov.uk/media/637e-40c4e90e07233d28b873/A\\_Technical\\_Guide\\_to\\_Statistics\\_on\\_Women\\_and\\_the\\_CJS\\_2021.pdf](https://assets.publishing.service.gov.uk/media/637e-40c4e90e07233d28b873/A_Technical_Guide_to_Statistics_on_Women_and_the_CJS_2021.pdf)

24 Hunter Blackburn, L., Mackenzie, L. and Murray, K. (2021), *Petitioner submission of 7 June 2021*. Scottish Parliament Citizen Participation and Public Petitions Committee. [https://www.parliament.scot/chamber-and-committees/committees/current-and-previous-committees/session-6-citizen-participation-and-public-petitions-committee/correspondence/2021-pe1876\\_a-petitioner-submission-of-7-june-2021](https://www.parliament.scot/chamber-and-committees/committees/current-and-previous-committees/session-6-citizen-participation-and-public-petitions-committee/correspondence/2021-pe1876_a-petitioner-submission-of-7-june-2021)

25 Government Equalities Office (2024), *Preparing your data* (‘Recording employees’ gender’). <https://www.gov.uk/government/publications/gender-pay-gap-reporting-guidance-for-employers/preparing-your-data#:~:text=It%20is%20important%20for%20you.question%20them%20about%20their%20gender>

26 This claim is debunked in the BBC statistics education programme *More or Less*. See: BBC (2019), *Intersex Numbers. Fact-Checking Facebook, Jack Bogle* (18 January 2019). <https://www.bbc.co.uk/sounds/play/m000222z>

27 National Records of Scotland (2021), *Culture, Tourism, Europe and External Affairs Committee: Census (Amendment) (Scotland) Bill. Submission From dsdfamilies*. [https://webarchive.nrsotland.gov.uk/3/archive2021.parliament.scot/S5\\_European/Inquiries/CensusBill\\_DSDFamilies\\_CTEEAS518CB33.pdf](https://webarchive.nrsotland.gov.uk/3/archive2021.parliament.scot/S5_European/Inquiries/CensusBill_DSDFamilies_CTEEAS518CB33.pdf)

28 Differently Normal (2021), *The Invention of Intersex* (25 October 2021). [https://differently-normal.com/2021/10/25/the-invention-of-intersex/?preview\\_id=292&preview\\_nonce=0d6cea1ac5&preview=true](https://differently-normal.com/2021/10/25/the-invention-of-intersex/?preview_id=292&preview_nonce=0d6cea1ac5&preview=true)

People with DSD do not represent a community, a gender identity, or a sexuality. The placement of people with DSD under the 'LGBTQI+' umbrella (where 'I' stands for 'Intersex') is an unhelpful error which has had implications for data collection.

For example, the Policy Memorandum accompanying the Census (Amendment) (Scotland) Bill in 2018 stated that 'The umbrella term 'trans' can include trans women, trans men, non-binary gender people, people who cross-dress and intersex people.' National Records of Scotland (NRS) acknowledged that this was an error once it was pointed out by dsdfamilies,<sup>29</sup> but this error illustrates the widespread confusion and ignorance regarding these extremely rare conditions.

Similarly, the ONS guidance for the 2019 Census rehearsal stated 'If you would like to record that you have variations of sex characteristics, sometimes also known as intersex, you can use this write-in box. If you would like to, you can also write in your gender (for example: 'intersex, non-binary').' This guidance was dropped following an ethical review conducted by the National Statistician's Data Ethics Advisory Committee.<sup>30</sup>

The review has seen many examples of 'intersex' used as an additional sex category in data collection. These include equalities monitoring forms, visitor survey forms, the flagship NHS Patient Survey Programme and national data standards for police forces in England and Wales.

To explain why this has occurred, we need to acknowledge that DSD conditions have been instrumentalised within postmodern theory and gender studies in an attempt to problematise the concept of binary sex, using the term 'intersex' to imply that these individuals are 'between the sexes'. The postmodernist fascination with and fetishisation of people with DSD dates back to Foucault (Foucault, 1980). Fausto-Sterling states, 'It is not so far-fetched to think that some [intersex] can become the most desirable of all possible mates, able to pleasure their partners in a variety of ways.' (Fausto-Sterling, 2000b). These tropes, suggesting that people with DSD do not have a sex, or that they constitute a third sex, and sexualising their conditions, are disrespectful to people with DSD and likely to be particularly harmful to children and young people coming to terms with their conditions.<sup>31</sup>

Fausto-Sterling (Fausto-Sterling, 2000a) claimed that 1.7 per cent of the population has an intersex condition. Going further, Judith Butler has claimed that 'a good ten percent' of people have chromosomal variations outside of the XX/XY norm (Butler, 1990). In reality, conditions in which chromosomal sex is inconsistent with phenotypic sex, or in which the phenotype is not readily classifiable as either male or female account for only 0.018 per cent of births (Sax, 2002).

The fact that DSD is a contested umbrella category means that it is unclear who may opt in to or out of the category if presented as an option in data collection. Fausto-Sterling's notion that DSD encompasses all variations from some notional platonic ideal of male or female has been used to expand the category, and could imply that everyone can identify as intersex. For example, some would include the common condition polycystic ovarian syndrome (PCOS) as a DSD, despite the lack of any possible ambiguity in whether a person with PCOS is female. An Australian survey reported PCOS as the most commonly reported intersex condition (Jones et al., 2016). An additional complication is that some respondents without a DSD diagnosis may see intersex as an identity and thus 'identity as' intersex. This includes some transgender people who adopt intersex as an identity (Cadet and Feldman, 2012). In a European Union for Fundamental Rights survey, only a third of respondents self-identifying as intersex reported that they had a medical diagnosis, and almost half claimed a trans or gender diverse identity (Eu-Lgbiti, 2020). Yet there is no evidence of overlap as far as diagnosis is concerned – DSD are just as rare in children referred to Gender Identity Development Services as in the general population (Butler et al., 2018)

As a basic ethical principle, general data collection exercises should not request information on rare conditions, because this would be intrusive and may potentially identify individuals. Nor can it be justified, since there will not be enough cases for any useful analysis. We acknowledge that no group has uniform views. Some people with DSD may want to be included under the LGBTQ+ umbrella and it is possible that some people with DSD would express a preference to 'be seen' in data collection. However, data owners must not treat such wishes (from any group) as a reason to override the principle that only useful data should be collected. Moreover, the appropriation of DSD

29 National Records of Scotland (2021), *Culture, Tourism, Europe and External Affairs Committee: Census (Amendment) (Scotland) Bill, Submission From dsdfamilies*. [https://web.archive.org/uk/3/archive/2021\\_p/parliament.scot/S5\\_European/Inquiries/CensusBill\\_DSDFamilies\\_CTEEAS518CB33.pdf](https://web.archive.org/uk/3/archive/2021_p/parliament.scot/S5_European/Inquiries/CensusBill_DSDFamilies_CTEEAS518CB33.pdf)

30 Office for National Statistics (2021), *Census 2021: Final guidance for the question 'What is your sex?'* <https://web.archive.org/web/20240627135557/https://www.ons.gov.uk/census/census-transformation-programme/question-development/gender-identity/census2021-final-guidance-for-the-question-what-is-your-sex>

31 Differently Normal (2021), *The Invention of Intersex* (25 October 2021). [https://differently-normal.com/2021/10/25/the-invention-of-intersex/?preview\\_id=292&preview\\_nonce=0d6cea1ac5&preview=true](https://differently-normal.com/2021/10/25/the-invention-of-intersex/?preview_id=292&preview_nonce=0d6cea1ac5&preview=true)

conditions and the tendency to ask for information on 'intersex' either as a third/other sex category or as a gender-identity category, is deemed insensitive by many individuals and families affected by DSD. For many people living with a DSD, this is a deeply private matter.

## 1.7 Sex and the law

The legal appendix discusses the meaning of sex in law. We summarise some key points and implications for data collection in this section.

The common-law understanding of sex simply recognises sex at birth (which can also be referred to as biological sex or natal sex). This characteristic is recognised as binary and immutable.

The 2004 Gender Recognition Act (GRA) has complicated the meaning of sex as recognised in law. A person with a Gender Recognition Certificate (GRC) is treated for some legal purposes as though their sex has changed. A GRC allows its holder to change the sex recorded on their birth certificate. The issuing of a GRC will not, however, alter a person's legally recognised sex in all circumstances. GRA 2004 sets out various exceptions.

GRA 2004 uses the terms sex and gender interchangeably. It is reasonably clear that in GRA 2004 'gender' is being used as a synonym for 'sex'. Nevertheless, it is the person's gender identity (not their sex) which is granted legal recognition by a GRC.

The term 'legal sex' is often used to denote 1) sex as modified by a GRC for GRC holders, combined with 2) natal sex for the remainder of the population. Given the complexity of the treatment of sex in law, the term 'legal sex' must be treated as a simplification and short-hand reference. What is recognised in law is a person's sex (if they do not have a GRC) or the gender they identify as (if they do have a GRC). This might be more precisely referred to 'legally certified sex/gender' or, as we use here, 'sex subject to a GRC'.

Some stakeholders have told us that they wish to collect data on the protected characteristic of sex in the 2010 Equality Act (EA2010) in order to comply with the Public Sector Equality Duty (PSED). However, the question of whether the protected characteristic refers to sex or sex as modified by a GRC is the subject of ongoing litigation at the time of writing.

It is desirable that one standard sex question should be used by default. We recommend that the target of the default sex question should be sex at birth. This ensures that the sex variable has the same target and meaning across all respondents. We recognise that, in practice, in the UK at present the population

group where sex and 'legal sex subject to a GRC' variables differ (i.e. respondents with a GRC) is small. However, whereas the meaning of sex is constant across time and across jurisdictions, the construct of legal sex has been subject to change, may be subject to further change in the future, and varies across national jurisdictions. Using sex itself as the target for data collection future-proofs data collection against legislative change, ensuring consistency.

## 1.8 The importance of clear language and concepts

The importance of clarity is a recurring theme in this report. Conceptual clarity and clarity of communication go hand in hand, just as conceptual confusion is inevitably accompanied by vague and muddled language.

Clarity is paramount in data collection, as respondents need to understand what they are being asked. Clarity is also essential in the reporting of statistics. We have seen materials which illustrate the way in which language which is sometimes described as 'inclusive', is in fact misleading. For example, posters produced for internal use by the ONS titled 'Menopause ambassadors are here to support you' state that '75% of people will transition through menopause whilst in employment. 15-20% of people leave their job because they find menopause too difficult to cope with in their current working environment'.

The concept of inclusivity is much abused. In reality, unclear communication is far from inclusive. When barriers to comprehension are raised, it is those with lower literacy skills and those whose first language is not English who are most affected. These disadvantaged groups are also relatively unlikely to participate in research, meaning that their voices are excluded. In terms of public education campaigns, including public health education, these are the groups who may be most in need of accurate information. De-sexed language can be seen as dehumanising as well as confusing (Gribble et al., 2022; Knight and Nelson-Piercy, 2023).

## 1.9 Sex and gender identity: A way forward

Both people's material circumstances and their identities are important to their lives. Sex and gender identity are distinct characteristics and therefore should not be treated as substitutes. This should not be seen as a zero-sum game between characteristics. We can and should collect data on both. Stakeholders across the board, including representatives of LGBT+ organisations, have told us that they understand the need for data collection on sex

Without data on sex and gender identity we are unable to test hypotheses about the extent to which each of these characteristics matter in different contexts, and the ways in which they intersect with each other and with other characteristics. For example, if trans and non-binary people face greater challenges in areas such as employment and mental health, does this vary according to sex? Analysis only according to gender identity or only according to sex cannot answer these questions. Hybrid questions which combine sex and gender identity make it impossible to test hypotheses regarding their relative importance or regarding their intersection in particular contexts.

A lack of evidence cannot serve the interests of any group, whether in medicine or social policy. In fact, a lack of systematic and accurate data collection and analysis is likely to disproportionately hurt the most vulnerable. The Cass report (Cass, 2024) points to a dearth of scientific evidence on treatment pathways for young people presenting with gender dysphoria. Cass notes that, from 2018-19, an increasing number of referrals to the Gender Identity Development Service (GIDS) were not recorded by sex, thus removing the possibility to understand sex differences in the pathways and outcomes for these patients (Cass 2024, Figure 11).

As increasing numbers of people, particularly among younger age groups, are identifying as trans, non-binary or otherwise gender diverse, there is a clear interest in capturing data on this group.

As with any other characteristic, data owners need to be clear on the purposes of their data collection on gender identity in order to understand what question they should ask, and whether it is proportionate to ask for this information in a particular context.

In the UK, both sex and gender reassignment are protected characteristics under the 2010 Equality Act. Many stakeholders in government departments

have told us that their primary interest in collecting data on gender identity is in monitoring the protected characteristic of gender reassignment (under the 2010 Equality Act). However, for research purposes, researchers may wish to understand a broader group of people with trans or gender diverse identities. In this report, we will review the available approaches to asking these questions and make some recommendations to guide data collection.

We understand that some, though not all, trans, non-binary and gender diverse people may be uncomfortable with disclosing their sex, and of course they cannot be made to do so. Discomfort with disclosing particular information is normal and varies widely between individuals. While one person may find a question on sexuality intrusive, another may find a question on how much their salary is more sensitive. What is unusual in the case of sex is that the possibility that a small number of respondents may find a question sensitive has led to the question not being asked, despite being acknowledged as analytically extremely important. In some ways, sex and gender identity have been set up in competition with one another, such that it seems to be believed that one cannot be respectful of identity without erasing sex. However, if we acknowledge that gender identity and sex are distinct concepts, this gives us a way forward which allows us to collect the data we need for all characteristics. Acknowledging sex does not erase gender identity or vice versa.

# Chapter 2: Principles of question design

This chapter explains some basic and well-established general principles of question design which those involved in data collection at any level should be aware of. These general principles inform the recommendations of the review.

It has long been established that seemingly minor differences in question wording or response categories can have a substantial impact on the responses that people give (Kalton, Collins and Brook, 1978).

Some questions are undemanding to answer, while others make higher demands. For example, ‘...respondents do not need to use much in the way of judgment to answer questions about their age, date of birth, or sex’ (Tourangeau, Rips and Rasinski, 2000) p.16.

Despite the wide range of types of survey question, widely agreed principles apply across the board. These have been distilled as follows by Krosnick and Presser (2010).

1. Use simple, familiar words (avoid technical terms, jargon, and slang).
2. Use simple syntax.
3. Avoid words with ambiguous meanings, i.e., aim for wording that all respondents will interpret in the same way.
4. Strive for wording that is specific and concrete (as opposed to general and abstract).
5. Make response options exhaustive and mutually exclusive.
6. Avoid leading or loaded questions that push respondents toward an answer.
7. Ask about one thing at a time (avoid double-barrelled questions).
8. Avoid questions with single or double negations.

We build and elaborate on these principles below.

## 2.1 Clarity on the target of the question

We refer to the information that a question is designed to elicit as the target of the question. The first step in question design is to be clear on what the target of the question is. External validity refers to the extent to which a question successfully captures the target information (Carmines and Zeller, 1979). Without knowing the target of the question, it is impossible to meaningfully consider whether a question is valid.

The target is not directly observed, and the job of the survey item is to provide as close and accurate an approximation as is possible. The target must be distinguished from the question itself, i.e. the question cannot constitute the target of the question.

In terms of the sex question, if we say that 1) the *target* of the question is biological sex, then 2) potential *indicators* or proxies for this target might include what is recorded on a birth certificate or other documents, while 3) the *operationalisation* of the target refers to the survey instrument (question and guidance) used, or other method such as observation. Errors may be introduced if the indicators do not always reflect the target, and due to the fallibility of the operationalisation.

Identifying the target of the question is the foundation for all the other steps to good question design.

## 2.2 Clear question wording

Clarity is paramount in question design, and the importance of plain language cannot be over-emphasised (Payne, 1951). Question wording must be clear and comprehensible to the whole population that will be answering the question. It should always be borne in mind that this population will typically include many respondents whose vocabulary and command of English (or whichever language is being used) is basic. An OECD survey has estimated that 16% of adults in England have very poor literacy skills, at a level where, for example, they may not be able to read a label on a medicine bottle (Wheater et al., 2013). Respondent populations are likely to differ widely in terms of factors such as age and cultural background. Question wording must aim for universal comprehensibility. This means using plain language, avoiding jargon and any terminology which may be unfamiliar to particular groups, whether old or young, black or white, native or foreign born, from any region of the country, of any particular creed or none, and highly educated or not. Language is only truly inclusive when it is as widely understood as possible.

## 2.3 Exhaustive response options

Multiple choice response options need to cover all possibilities so that all respondents can provide an accurate response. For some questions, this implies that respondents need to be able to indicate that the question is not applicable to them. The response options should not force a choice between a set of options none of which may apply to some respondents.

## 2.4 Mutually exclusive response options

Some questions allow respondents to select multiple options ('tick all that apply'). Others force a choice of one option. In the case of questions which allow only one choice, the options must be mutually exclusive. For example, the question 'what is your religion' should not include both Christian and Protestant as options, since Protestants are also Christians. Similarly, providing response categories which may be seen as synonymous with each other, such as both 'gay' and 'queer' is unhelpful. Unclear and porous categories are sometimes described as 'inclusive', but meaningful categories must exclude those who do not share the relevant characteristic.

## 2.5 Response category order effects

It is important to be mindful that the order of response categories in a multiple-choice question can have large effects on the responses received. People are more likely to choose a response category which comes earlier in the list of possible responses if the question is presented visually, whereas the opposite is the case with telephone interviews. These effects are known as primacy and recency effects respectively. Such effects are likely to be amplified when respondents either do not fully understand or are somewhat indifferent to the question and/or the response categories or are making

a satisficing rather than optimising response.

A striking example of the response category order effect phenomenon is provided by the 'national identity' question in the England and Wales censuses of 2011 and 2021. In 2011, the question was as follows:

*National Identity question,  
2011 England and Wales Census*

**How would you describe your national identity?**

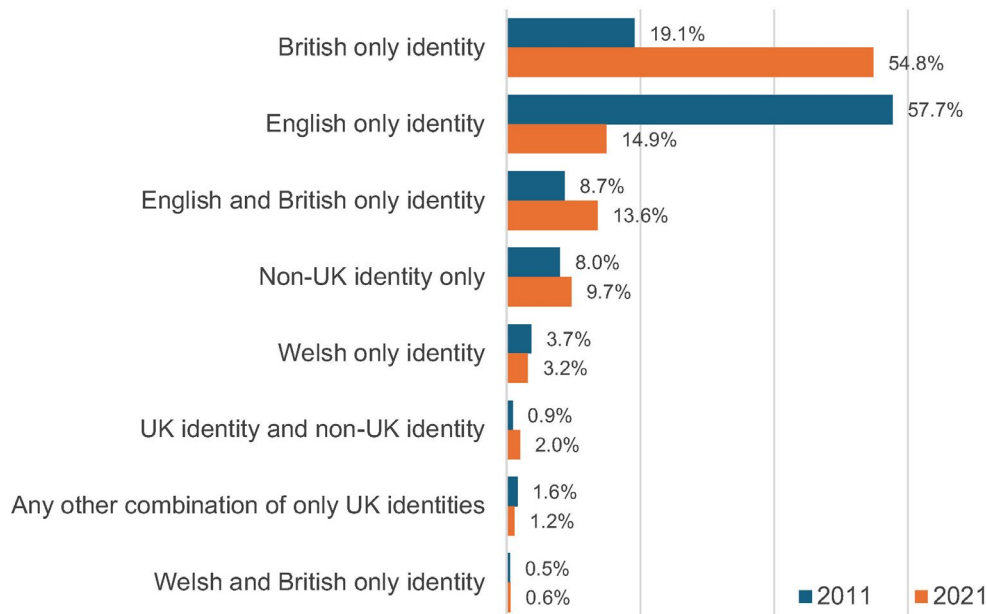
Tick all that apply

- English
- Welsh
- Scottish
- Northern Irish
- British
- Other, write in (Write in national identity)

Note: on the Welsh questionnaire, the response option 'Welsh' came before 'English'.

In 2021, the question wording was exactly the same, but with 'British' as the first response category. Respondents were able to 'tick all that apply', which, in principle, provided for overlapping categories. However, as the figure below shows, the change in response order led to an increase in those saying their 'national identity' was British, without selecting additional categories, from 19% in 2011, to 55% in 2021.

*Figure 3. The impact of response order:  
national identity in the 2011 and 2021 England and Wales censuses (% of usual residents)*



Source: Office for National Statistics.<sup>32</sup>

32 Office for National Statistics (2022), *National identity, England and Wales: Census 2021*  
<https://www.ons.gov.uk/peoplepopulationandcommunity/culturalidentity/ethnicity/bulletins/nationalidentityenglandandwales/census2021>

The size of this difference highlights how sensitive response can be to the way a question is presented.

A common solution to this problem where practicable is randomising the order in which options are shown to respondents.

## 2.6 Avoid offence where possible

Question wording should not antagonise respondents unnecessarily, both because respondents are entitled to courtesy, and because questions which annoy respondents may lead to reduced response rates. In some cases, language which is tailored to the preferences of a particular group of respondents may annoy another set of respondents. Surveys should strive for neutral phrasing as far as possible. Clarity and accuracy should always be treated as paramount and should not be de-prioritised in the face of the perceived desire of a subset of respondents to express themselves in a particular way.

## 2.7 Avoid framing the question in a leading way

The appearance of an implicit assumption within a question, even when this assumption is not intentional or overt, can have a powerful influence on responses. For example, the question ‘What is your religion?’ may appear to suggest that it is assumed that respondents will have a religion, even if one of the response categories is ‘no religion’. An alternative way of posing this question uses a filter question, ‘Do you have a religion’ Yes/No, followed by ‘What is your religion’ for those who respond in the affirmative to the first question.

The questions on religion in the 1970 British Cohort Study (BCS70) (Sullivan et al., 2023) in 1996 and 2000 illustrate this point (Sullivan, Voas and Brown, 2012; Voas, 2015). At age 26 (in 1996), BCS70 members were asked ‘Do you see yourself as belonging to any particular religion?’, with the responses ‘Yes’ or ‘No, no religion’. Of these, 61% chose ‘No, no religion’. Four years later, at age 30, the same cohort were asked in a face-to-face survey: ‘Please look at this card and tell me, what is your religion if any?’. The first response on the card was ‘No religion’. 26% selected this option. Neither the 1996 question nor the 2000 question are obviously bad or biased, yet subtle differences in wording, combined with the use (or not) of a filter question produced dramatically different answers.

The more nebulous or indefinite respondents’ views are on a particular topic or question, the more likely it is

that apparently small differences in question wording, question structure, and response categories may have a large impact on the responses.

Related to the above, framing effects are question order effects, where previously asked questions lead to a propensity to answer subsequent questions in particular ways. This phenomenon was famously illustrated by an episode of the BBC comedy *Yes, Prime Minister*, where Sir Humphrey Appleby demonstrates the use of leading questions to skew an opinion survey to support or oppose National Service.<sup>33</sup>

## 2.8 Continuity over time

By default, time-series and longitudinal data collection should retain the same question wording over time to ensure comparability. Difficult issues arise when an existing question is seen as producing inaccurate data, or the meanings of words are perceived to have changed over time. Nevertheless, the decision to change question wordings, even in ways which appear minor, should not be taken lightly. Where changes are required, experimenting with more than one version in a survey as a pilot or transition can make it more possible to calibrate and adjust for the effect of switching.

## 2.9 Comparability across datasets and jurisdictions

If questions are asked differently in different data collection exercises, the results cannot be compared, as it will be impossible to say whether differences in results are due to genuine differences between the populations sampled or are simply due to differences in the questions asked. In the case of different legal jurisdictions, e.g. Scotland vs England and Wales, legally defined characteristics with the same name may be defined differently. Using underlying concepts which are not dependent on legislation is preferable where possible.

## 2.10 Administrative data, harmonisation and data linkage

Data owners typically seek to harmonise data collection where possible, as questions asked in the same way produce data which can be meaningfully compared. Data harmonisation is also important for data linkage. Data linkage is the activity of bringing together separate data sources by identifying and matching the same entity in each and then bringing those different sources of information together into a single dataset. Survey data may be linked to administrative data and different administrative datasets may also be linked together.

33 Yes, Prime Minister (1986), *BBC, Series 1, Episode 2, The Ministerial Broadcast*. <https://www.youtube.com/watch?v=G0ZZJXw4MTA>



Administrative data is data which is collected in the course of providing a service. Public bodies such as schools, the NHS, HMRC, and the criminal justice system collect administrative data which is collated by government. According to Administrative Data Research UK,<sup>34</sup> data linkage enables ‘vital research that has the potential to lead to better informed policy decisions and more effective public services, in areas from improving education and healthcare to tackling crime’ Although administrative data is not produced as a research activity per se, it is often harnessed for research. Data accuracy matters for both service provision, research, and data linkage purposes.

## 2.11 Comparability with population data

Comparability with national census data is desirable in order to allow comparisons. One cannot assess whether a particular demographic is over or under-represented within an organisation or service without a comparison to population data. For this reason, census questions are often seen as a default for organisations. However, data owners may choose not to use census questions in the case where a census question is seen as not fit for purpose or does not meet the needs of a particular data collection exercise.

## 2.12 Protected characteristics and the Public Sector Equality Duty

The Public Sector Equality Duty (PSED)<sup>35</sup> obliges public authorities to have due regard to the following objectives: (a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Equality Act 2010; (b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it; (c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it. Public authorities are obliged to publish information to demonstrate their compliance with the public sector equality duty. Public authorities should therefore ensure that the data they collect to this end accurately reflects the protected characteristics they aim to capture. The protected characteristics are: age; disability; gender reassignment; marriage or civil partnership; pregnancy and maternity; race; religion or belief; sex; and sexual orientation.

## 2.13 GDPR compliance

Data owners must comply with General Data Protection Regulation (GDPR).<sup>36</sup> We do not aim to give a full account of this legislation in this chapter but note the central requirements that data should be used in a way that is adequate, relevant, and limited only to what is necessary, and that data should be accurate.

## 2.14 Reduce respondent burden

An additional reason to include only what is necessary is to reduce respondent burden. Longer questionnaires increase the demands on respondents, potentially reducing response rates. Organisations should be mindful that excessive data gathering can lead to survey fatigue, which may reduce response rates and data quality overall. This is particularly important in the context of declining response rates to surveys (Keeter, 2018).

## 2.15 Avoid identifiability

Questions which lead to very small cell sizes can lead to individual respondents being identifiable in the data even when responses are pseudonymised. For example, if an organisation asks for or encourages respondents to provide information on specific conditions as part of their equalities monitoring on disability, the data produced may allow individuals to be uniquely identified. Organisations should ask themselves what level of detail they really need for their analyses. It is possible that some respondents may prefer extremely detailed response categories as they may be perceived as allowing the respondent to express themselves more fully in comparison to broad categories. However, self-expression as such is not the purpose of data collection, and data-owners should not allow the views of some respondents to influence them into negligent data collection practices. Asking for a level of detail from respondents which will not be used in analysis cannot be justified.

## 2.16 Consider whether open-text responses are useful

Open-text responses include providing an ‘other’ response accompanied by an option for respondents to write in their preferred response. This can be particularly useful at the question development stage, as it allows the questionnaire designer to discover whether there are common responses that had not

<sup>34</sup> Administrative Data Research UK (online), *What is our mission?* <https://www.adruk.org/our-mission/our-mission/>

<sup>35</sup> See: Ministry of Justice (2012), *Public sector equality duty*. <https://www.gov.uk/government/publications/public-sector-equality-duty>

<sup>36</sup> UK government (online), *Data Protection*. <https://www.gov.uk/data-protection>

been included in the main categories, with a view to including these in the final question. There are also disadvantages to allowing open text 'other' responses in finalised questions. Processing open-text responses is demanding, may generate error, and has an opportunity-cost in terms of analysts' time. When grouping open-text responses, there may be many which have small cell sizes, risking identifiability and making it likely that the information cannot be used. Write-in fields also encourage mischievous responses. For example, in the 2001 England and Wales Census, 390,127 respondents (around 0.7%) gave their religion as Jedi – a higher number than the Sikh, Jewish or Buddhist populations.

## **2.17 Allowing non-response**

With rare exceptions, such as the required particulars in a census, respondents will be able to not respond to any particular question. Particularly if a question is sensitive, question design may highlight this by providing an explicit 'prefer not to say' option. However, this approach also poses risks to data quality, and may increase error and non-response, as don't know/no opinion/prefer not to say may be attractive as satisficing responses.

## **2.18 Explain the purpose of the question**

Whether the data collection is for the purposes of research, administration, or equalities monitoring, the exercise should have a clear purpose, which should be explained to respondents. The purpose of some specific questions may also need to be explained. If particular questions are seen as 'nosy', intrusive or gratuitous by some respondents, this will be likely to depress response rates.

# Chapter 3: Asking About Gender Identity, Trans Status and Gender Reassignment

Censuses and surveys internationally are increasingly seeking to capture information about the trans and/or gender diverse population. Four main approaches have been used: 1) Asking ‘is the gender you identify with the same as your sex registered at birth’, as used in the England and Wales 2021 Census; 2) A direct question on trans status, used for example in Scotland’s 2022 Census; 3) A two-step question on both sex and gender identity, used in censuses in Canada and New Zealand; and 4) questions which combine sex and gender into one question, in some cases with an additional question asking whether the respondent’s gender identity matches their sex at birth.

In this section we outline these approaches, with a particular focus on questions used in national censuses.

## 3.1 UK Census Questions

### England and Wales Census 2021

The 2021 England and Wales Census included a question on gender identity for the first time. As a default, many organisations tend to adopt census questions in their own data collection, for two reasons. First because questions developed by the ONS are assumed to be robust and reliable and second because using Census questions allows comparisons with the population of England and Wales as a whole.

However, the ONS gender identity question has been shown to produce flawed results both in the 2021 England and Wales Census (Biggs, 2024b) and in the GP Patient Survey (Biggs, 2024a). This means that the data cannot be used with confidence to inform research, policy and service provision. The Office for Statistics Regulation (OSR) has stated that the statistics produced by this Census variable do not comply with important quality aspects of the Code of Practice for Statistics and has de-accredited these as official statistics<sup>37</sup>.

The census question is as follows.<sup>38</sup>

27 Is the gender you identify with the same as your sex registered at birth?

This question is voluntary

Yes

No, write in gender identity

[Text input field]

The question was insufficiently clear, meaning that it was not readily understood by the full diversity of respondents across characteristics such as educational level and English fluency. This led to false positives, meaning, in this case, that some respondents who did not identify with a gender identity that differed from their sex answered ‘no’, whereas the correct answer to reflect this was ‘yes’. Anomalous response patterns include the finding that three times as many Muslim respondents (1.5%) were recorded as identifying as transgender compared to the general population level (0.5%), and the finding that 2.2% of respondents who did not speak English well were recorded as transgender compared to 0.4% of those who did speak English well (Biggs, 2024b).

There will also have been some level of false negatives in the responses to this question (i.e. people who were transgender ticking ‘yes’). In addition, although the response rate was high (94%) it is unknown whether non-response to this question may have been associated with trans status. However, whereas this might (to an unknown extent) mitigate the potential inflation of the headline national 0.5% figure via false positives, it cannot mitigate the essential problem that the distribution of the trans population, both geographically and across other characteristics, is almost certainly misdescribed by the 2021 England and Wales Census.

It is well understood that, when measuring small minority populations, false positives pose a more serious problem than false negatives, because small minority populations are easily swamped by erroneous

<sup>37</sup> Office for Statistics Regulation (2024) Review of statistics on gender identity based on data collected as part of the 2021 England and Wales Census: Final report <https://osr.statistic-authority.gov.uk/publication/review-of-statistics-on-gender-identity-based-on-data-collected-as-part-of-the-2021-england-and-wales-census-final-report/#:~:text=As%20ONS%20has%20now%20recognised,not%20reflect%20their%20gender%20identity>.

<sup>38</sup> Office for National Statistics (2021), *Gender Identity question, England and Wales 2021 Census* (page 9). <https://www.ons.gov.uk/file?uri=/census/censustransformationprogramme/questiondevelopment/census2021paperquestionnaires/householdenglandpdf.pdf>

responses from the majority population. When the minority are swamped in this way, we lose the ability to use the data to say anything meaningful about the minority population. In other words, misreporting by the majority group has serious consequences for the quality of the data relating to the minority group (DeMaio, Bates and O’Connell, 2013; National Academies of Sciences and Medicine, 2022). An ONS report acknowledged this risk to data quality when attempting to capture small minorities:

‘Any question on gender identity would need to be understood by the whole population... as the population of interest is very small the quality implications may create errors bigger than the population we are trying to estimate.’<sup>39</sup>

To illustrate the problem posed by false positives when measuring small minority populations, assume that 0.5% of people are trans and 99.5% of people are not trans. If 1% of non-trans people answer as though they were trans, that will add 0.995% (i.e., nearly 1%) to the ‘trans’ category, meaning that non-trans respondents will outnumber trans respondents in the trans category by nearly 2:1. Conversely, if 1% of trans respondents provide a false negative response, this will amount to only 0.005%.

An additional problem with the ONS gender identity question is that it assumes that all respondents have a gender identity. ONS question testing acknowledged that some respondents objected to this assumption, and some found the comparison of two distinct concepts (sex and gender) in one question confusing.<sup>40</sup> For someone who does not have a gender identity, there is no correct answer to the question.

To better understand how these problems arose, it is useful to understand the history of the ONS question. This is outlined by (Biggs, 2024b), but we highlight some key points here and add some additional information.

A version of the ONS question was first proposed by Press for Change in 2007, as shown below.<sup>41</sup>

‘*Trans as Trans*’, *Trans Equality Monitoring*, Press for Change, 2007

Is your gender identity the same as the gender you were assigned at birth?  
 Yes  No

The Press for Change guidance is clear that gender identity is distinct from sex, and that trans identities should not be treated as additional categories in a sex question. However, there is little discussion of the wording of the proposed gender identity question beyond the statement that ‘Different trans people describe themselves with different labels and what one person adopts happily offends another. For this reason, we recommend the use of descriptive questions that do not rely on a particular terminological adherence’.

In 2008 the Press for Change question was adopted verbatim by the Equality Challenge Unit (ECU), the forerunner of Advance HE, which advises the higher education sector on Equality Diversity and Inclusion (EDI) matters.<sup>42</sup> In a partial acknowledgement of the provenance of the question, the ECU stated:

‘Our recommendations on gender identity came from our guidance on trans staff and students, which has been developed in consultation with representatives from the university sector and took into consideration guidance that was available from trans organisation Press for Change at the time.’<sup>43</sup>

The question was duly adopted by the Higher Education Statistics Agency (HESA) in 2011.<sup>44</sup> The ONS have referred to the Press for Change question as ‘the Equality Challenge Unit (ECU) suggested question’.<sup>45</sup>

We are not aware of any question testing carried out by the ECU before recommending the Press for Change question for use by the higher education sector (for further details on guidance published by ECU/Advance HE see chapter five, and for details on data collection by HESA see chapter ten).

39 Office for National Statistics (2016), ONS Census Transformation Programme the 2021 Census Assessment of Initial User Requirements on Content for England and Wales Gender Identity Topic Report (page 15). <https://www.ons.gov.uk/file?uri=/census/censustransformationprogramme/consultations/the2021censusinitialviewoncontentforenglandandwales/topicreport-03genderidentity.pdf>

40 Office for National Statistics (2018), *DCM: Gender identity phase 2C cognitive testing findings and question design recommendations*. <https://tinyurl.com/5h9i7x8w>

41 Press for Change (2007), *Trans Equality Monitoring*. <https://web.archive.org/web/20070207223434/http://www.pfc.org.uk/node/1408>

42 Equality Challenge Unit (2008), *Trans staff and students in higher education*. <https://web.archive.org/web/20080922164936/http://www.ecu.ac.uk/publications/guidancepublications/20080304-TransStaffandStudents.txt>  
 See also: Equality Challenge Unit (2010), *Trans staff and students in higher education. Revised*. <https://tinyurl.com/2vm2549b>

Equality Challenge Unit (2015), *Monitoring Questions*. <https://web.archive.org/web/20150921222005/https://www.ecu.ac.uk/guidance-resources/using-data-and-evidence/monitoring-questions/>

43 Equality Challenge Unit (2012), *Monitoring sex and gender - HESA student record*. <https://web.archive.org/web/20120329221021/http://www.ecu.ac.uk/news/monitoring-sex-and-gender-hesa-student-record>

44 Higher Education Statistics Authority (2011), *Legislation: the public sector equality duty* (May 2011). <https://web.archive.org/web/20110709052256/http://www.hesa.ac.uk/index.php/content/view/2118/>

45 Office for National Statistics (2018), *Equalities data audit, final report*. <https://www.ons.gov.uk/methodology/methodologicalpublications/generalmethodology/onsworkingpaperseries/equalitiesdataauditfinalreport#gender-reassignment>

The question was however tested by the National Centre for Social Research (NatCen) on behalf of the Equality and Human Rights Commission in 2011 (see discussion in Biggs 2024b). The question was rejected by both transgender and non-transgender participants in deliberative focus groups (see p.60-64).<sup>46</sup> Non-transgender views were summarised as ‘The question and key terms in it (such as ‘gender identity’, ‘gender’, ‘assigned at birth’ and ‘the same as’) were not well understood and were thought to make the question very confusing’. It was also noted that the question ‘had to be read several times and was therefore confusing and open to misunderstanding’. Among transgender

participants ‘It was widely agreed and accepted that non-trans people would not understand the question, especially if [their] first language was not English’. Some transgender participants further criticised the question on the grounds that it used “ridiculous trans lingo” associated with ‘queer academia’.

In 2016 a similar question was proposed in data collection guidance published by Stonewall,<sup>47</sup> as the second of two options. As shown below, the first option asked, ‘Do you identify as trans?’ with the response options: No/Yes/Prefer not to say.

Trans people may describe their gender identity in different ways and some may prefer not to use the word ‘trans’. It is important to ask this question in a way that is as inclusive as possible, but also provides the organisation with meaningful data. Including a clear definition of what is meant by ‘trans’ will ensure that employees are clear about how to answer the question.

### GENDER IDENTITY QUESTION - OPTION 1

This question may not capture employees who have transitioned but do not consider trans to be a part of their identity.

**DO YOU IDENTIFY AS TRANS?**  No  Yes  Prefer not to say

**TRANS** Trans is an umbrella term for people whose identity differs from what is typically associated with the sex they were assigned at birth. People under the trans umbrella may describe themselves using one or more of a wide variety of terms – including transgender.

The above question follows a question on gender, ‘What best describes your gender’ with response options female/ male/ prefer not to say/ prefer to self-describe. The data collection guidance states, ‘Firstly, if an organisation asks a question about gender, employees should be able to describe their gender in their own words. This signals an understanding that gender is a wider spectrum than female and male. It also allows an organisation to capture data on employees that do not identify as trans but also do not identify as female or male’.

Option two asked, ‘Is your gender identity the same as the sex you were assigned at birth?’ with response options: No/Yes/Prefer not to say.

Stonewall gave the following advice on choosing between the two options. This advice, and the guidance as a whole, is targeted at employers rather than data owners in government or beyond:

‘Remember that organisations should be clear why they need this data. For instance, if an organisation wants to offer targeted career development to trans employees, they should use the first option. If they would like to know how many of their employees have gone through a transitioning process in order to push internally for better support at the transitioning stage, the second option may be preferable.’

Stonewall appeared to acknowledge that option one was likely to more accurately reflect the population of people who identify as trans, compared to option two. However, they were concerned that it would not capture people who ‘have transitioned’ but do not consider themselves to be trans.

<sup>46</sup> Equality and Human Rights Commission (2011), *Monitoring equality: Developing a gender identity question*. [https://web.archive.org/web/20240620234756/https://www.equalityhuman-rights.com/sites/default/files/r75\\_final.pdf](https://web.archive.org/web/20240620234756/https://www.equalityhuman-rights.com/sites/default/files/r75_final.pdf)

<sup>47</sup> Stonewall (2016), *Do ask, do tell. Capturing data on sexual orientation and gender identity globally*. [https://www.stonewall.org.uk/sites/default/files/do\\_ask\\_do\\_tell\\_guide\\_2016.pdf](https://www.stonewall.org.uk/sites/default/files/do_ask_do_tell_guide_2016.pdf) This extract is from a global workplace resource intended for international business. Stonewall use a different resource for the UK, but the question is the same.

## ONS Question Testing

Following criticism of the gender identity question used in the 2021 Census, the ONS stated:

‘The voluntary question went through a [rigorous development and testing process](#) which involved trans and non-trans people and, through the Census Rehearsal, people who did not have English as their main language. The final question was evaluated as meeting the requirements of public acceptability, being understood by respondents and providing the data needed by users’.<sup>48</sup> (link in original)

The development and testing process is summarised in Table 1. ONS summary of testing for the sex and gender identity topic.<sup>49</sup>

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48 Office for National Statistics (2023), [Quality of Census 2021 gender identity data](https://web.archive.org/web/202407311112721/https://www.ons.gov.uk/peoplepopulationandcommunity/culturalidentity/genderidentity/articles/qualityofcensus2021genderidentitydata/2023-11-13). <https://web.archive.org/web/202407311112721/https://www.ons.gov.uk/peoplepopulationandcommunity/culturalidentity/genderidentity/articles/qualityofcensus2021genderidentitydata/2023-11-13>

49 Office for National Statistics (online), [Sex and gender identity question development for Census 2021](https://web.archive.org/web/20201005160601/https://www.ons.gov.uk/census/censustransformationprogramme/questiondevelopment/sexandgenderidentityquestiondevelopmentforcensus2021) (Table 3: Summary of testing for the sex and gender identity topic). <https://web.archive.org/web/20201005160601/https://www.ons.gov.uk/census/censustransformationprogramme/questiondevelopment/sexandgenderidentityquestiondevelopmentforcensus2021>

Table 1. ONS summary of testing for the sex and gender identity topic

ONS Reference	Date of testing	Type of testing and sample size
2017:1	January to March 2017	Quantitative: 9,969 responses received to a large-scale multi-modal survey replicating census context.
2017:2*	January to December 2017	Qualitative: User experience (UX).
2017:6	March and April 2017	Qualitative: Four focus groups with 29 cisgender participants; 18 cognitive interviews with transgender participants.
2017:10	June to August 2017	Quantitative: 31,665 responses to a large-scale multimodal individual survey replicating census context.
2017:15	August and September 2017	Qualitative: 18 cognitive interviews with cisgender and transgender participants.
2017:17	September 2017	Qualitative: Eight focus groups with 42 participants who could speak, read and write Welsh.
2017:18	October 2017	Qualitative: 20 cognitive interviews with participants who could speak, read and write Welsh.
2018:2*	January to December 2018	User testing: UX testing.
2018:3	February 2018	Qualitative: 230 informal interviews at four LGBT+ events.
2018:6	February to May 2018	Qualitative: 40 cognitive interviews with participants who were cisgender, transgender, non-binary and intersex.
2018:8	March 2018	Qualitative: Five informal interviews with Office for National Statistics (ONS) staff with a range of Welsh language skills.
2018:12	April 2018	Quantitative: 3,000 responses to a small-scale individual online omnibus survey.
2018:24	June to August 2018	Quantitative: 10,370 responses to a large-scale multimodal household survey.
2018:40	October 2018	Qualitative: 16 cognitive one-to-one interviews and four paired depth interviews with participants who could speak, read and write Welsh.
2019:1*	January to December 2019	User testing: UX testing.
2019:4	March 2019	Quantitative: 4,207 responses to a small-scale individual online omnibus survey.
2019:12	August 2019	Qualitative: 23 cognitive interviews.
2019:15	September to November 2019	Quantitative: Approximately 300,000 households took part in the 2019 Rehearsal.
2020:2*	January to December 2020	User testing: UX testing.

Source: Office for National Statistics (online) *Sex and gender identity question development for Census 2021*

(Table 3: Summary of testing for the sex and gender identity topic).

<https://web.archive.org/web/20240731113316/https://www.ons.gov.uk/census/censustransformationprogramme/questiondevelopment/sexandgenderidentityquestiondevelopmentforcensus2021>

\* added to denote documents stated by ONS to be unavailable.

In this section, we summarise the key pieces of research listed by the ONS, excluding those focussing on the Welsh language.

The 2019 Census Rehearsal is listed as part of the sex and gender topic question development and testing programme (2019:15) and as noted above, was cited as relevant research by the ONS in response to criticism of the gender identity question. However, the associated report does not include any analysis of the sex or gender identity questions.<sup>50</sup>

As most of the research reports shown in the table above were not publicly available, the Review requested access to these documents. The ONS initially told us that the reports would not be straightforward to find. We were then told that the information requested related to policy development and the ONS would need to consider the public interest in disclosure. Ultimately, the ONS supplied the majority, but not all, of the reports, stating that: ‘Unfortunately, following extensive searches, we have been unable to locate reports for the remaining five pieces of research. Four of these relate to user experience testing (2017:2, 2018:2, 2019:1, 2020:2), and a piece of qualitative research from August 2019 (2019:12). We believe that either no reports were produced, and findings were discussed in meetings, or that they have been deleted over the course of technological/organisational changes.’ Subsequently the ONS were able to locate 2019:12, which is also summarised online.<sup>51</sup>

Findings from the reports made available to us (or publicly accessible) are outlined below. Many of the research reports relate to small-scale qualitative samples which did not purposively include people whose first language was not English or people with poor basic skills in literacy. None of the qualitative research focused on comprehension of the questions for those groups who may have been less familiar with the language of gender identity. None of the quantitative question testing assessed the accuracy of responses for different versions of the gender identity question. An overview of the qualitative reports, followed by the quantitative reports is shown next.

## Qualitative research reports

### ONS reference 2017: 6

*Potential Sex and/or Gender Questions for the 2021 Census Qualitative Research Phase 1: Exploratory focus groups and in-depth interviews, ONS Data Collection Methodology Office*

This research was prompted by the ONS 2021 Census topic consultation, which identified a need for information on gender identity. The 48 participants included 16 males, 24 females and eight participants described as non-binary, trans or ‘intersex’.

The research explored three question designs with all participants:

1. The 2011 Census question: ‘What is your sex?’  
1. Male, 2. Female
2. A ‘hybrid’ question, still asking ‘What is your sex?’ but which added a third response category, ‘Other’ potentially allowing varied interpretation of sex/gender.
3. A two-question design: Question 1: What is your sex? 1. Male, 2. Female Question 2: Which of the following options best describes how you think of your gender identity? 1. Male, 2. Female, 3. In another way.

ONS concluded that none of the question designs, as presented, would meet the main data requirement of a reliable estimate of the trans population.

The report further concluded that:

‘The 2011 ‘Sex’ question was considered to be irrelevant, unacceptable and intrusive, particularly to trans participants, due to asking about sex rather than gender. The lack of response options for intersex and non-binary people could make it difficult to answer and cause feeling [sic] of having to make a forced choice, leading to potential item non-response or invalid response, non-response to the Census as a whole and could cause complaints to ONS.’

<sup>50</sup> Office for National Statistics (2022), *2019 Rehearsal*. <https://web.archive.org/save/https://www.ons.gov.uk/census/censustransformationprogramme/testingthecensus/2019collectionrehearsalevaluationreportforcensus2021englandandwales>

<sup>51</sup> Office for National Statistics (2019), *Guidance for questions on sex, gender identity and sexual orientation for the 2019 Census Rehearsal for the 2021 Census*. <https://web.archive.org/save/https://www.ons.gov.uk/census/censustransformationprogramme/questiondevelopment/genderidentity/guidanceforquestionsonsexgenderidentityandsexualorientationforthe2019censusrehearsalforthe2021census>



## ONS reference 2017: 15

*Potential Sex/Gender Question for the 2021 Census Qualitative Research Phase 2a: Cognitive interviews, ONS Data Collection Methodology Office*

This report relates to 18 cognitive interviews carried out by the ONS Data Collection Methodology (DCM) team. The report states, 'Following research from phase 1 testing, a decision was made to look to improve the sex question to also collect gender in order to better accommodate the transgender and non-binary population.'

The research aimed to design a new hybrid sex/gender question with the following specification:

'...design a question to update the 2011 Census sex question:

- that does not present a barrier on the Census for the trans population, by allowing those whose gender differs from their sex assigned at birth, or who identify in a way other than male or female, to respond
- that enables the cisgender majority, whose sex and gender are the same, to respond as male or female
- and thus enables the Census to continue to collect sex for the cisgender population (simultaneously collecting gender for them) *while collecting gender for trans people*.'

The report described ten participants as transgender and/or non-binary, eight as 'cisgender', four as male and four as female. Fourteen of the sample were white and four from other ethnicities.

'Cisgender' participants were not informed of the purpose of the research prior to consent:

'The topic of the research was disclosed to the transgender and non-binary participants during recruitment. The cisgender participants were informed that the research concerned testing of various identity questions that were being considered for the 2021 Census without the sex/gender question being highlighted. The difference in disclosure was i) to encourage participation from transgender and non-binary respondents while ii) not drawing attention to the sex/gender question to cisgender respondents, in order to test the questions uncontaminated by prior knowledge of the content and avoid potential bias of participants either in favour or against asking about gender.'

The recommendation made by DCM based on this research was to take forward the question 'What is your gender? [Female/ Male/ Any other gender identity, write in]' for further testing.

## ONS reference 2018: 3

*Gender identity informal testing*

The largest qualitative study (2018:3) consisted of informal interviews undertaken at LGBT history month events. These were: LGBT month (York), Brighton LGBT community Festival, Rainbow Newport (Newport) and Hampshire Pride (Winchester). This research is documented in a rough note which does not contain any information regarding the rationale behind the sampling approach. The note states that 208 interviews were carried out (not 230 as stated in the table above). The demographics of the sample are described as follows: '110 'females'; 72 'male'; 16 'any other gender'; 32 'trans'.

Participants were asked for their reactions to the following questions.

- 'What is your sex? [Male/Female]'
- 'What is your sex? [Male/Female/Other, (e.g. intersex)]'
- 'What is your gender? [Gender same as sex registered at birth/ gender different from sex registered at birth, please specify]'
- 'What is your gender? [Female/Male/Any other gender, write in]'
- 'Is your gender the same as the sex you were registered at birth? [Yes/No/Prefer not to say]'
- 'Is your gender the same as the sex you were registered at birth? [Yes/No, please specify gender identity/Prefer not to say]'
- 'Do you consider yourself to be trans or have a trans history? [Yes/No/Prefer not to say]'
- 'Do you consider yourself to be trans? [Yes, please specify gender/ No/Prefer not to say]'

No overview, analysis, or recommendations are provided. Of 22 respondents who commented on the question 'Is your gender the same as the sex you were registered at birth? [Yes/No, please specify gender identity/Prefer not to say]', five were unclear as to what the question was asking.

## ONS reference 2018:6

*DCM: Gender identity phase 2C cognitive testing findings and question design recommendations*

This reports on 40 cognitive interviews.<sup>52</sup> The sample is not described in the report. This report recommends the question set: 1) 'What is your sex?' [female/male] and 2) 'Is your gender the same as the sex you were registered at birth?' [yes/no, please specify your gender/prefer not to say].

The report recommended against the question 'Do you consider yourself trans, or have a trans history?', noting that some respondents viewed the term 'trans' as too informal for inclusion on a government survey. The report also highlighted comprehension issues with the terms 'trans' and in particular, 'trans history', and concerns in relation to those 'whose gender is different from their sex registered at birth', but did not see themselves as trans.

'the question was thought to exclude respondents whose gender is different from their sex registered at birth but do not feel they are transgender or did not identify with the term trans (eg non-binary or those in 'stealth mode').'

## ONS reference 2018: 6

*DCM: Gender identity phase 2B cognitive testing findings and question design recommendations*

The ONS told us that '2018:6' refers to two reports, 2B and 2C. According to report 2B:

'Phase 2B was carried out concurrently with phase 2C. Phase 2C tested a sex question ('What is your sex?' with female and male response categories) plus two of the same alternative designs as tested in 2B (with one difference: the 2C questions which asked respondents to compare gender with sex registered at birth had a write in field when the answer indicated they were different; the write ins were not in the 2B version).'

The sample is described as follows:

'The purposive sample included participants from the following subgroups: cisgender women and men, transgender women and men, non-binary people and with intersex characteristics (who will be referred to as 'intersex'). Additionally, some participants were sampled because they potentially had an interest in the

quality of data collected on the male and female population and might object to changing the question from asking sex to asking gender. These participants were recruited via various women's organisations or online forums. Within this report they are referred to as 'potential objectors'. They were all cisgender, in that their sex and/or gender 'conformed' with the sex they were registered at birth, but we distinguish them as a separate subgroup due to their potentially different relationship to the concept of gender.'

The report considers replacing the binary sex question with the question 'What is your gender?' with response options [female/male/any other gender, please specify]. The report deems this question broadly acceptable, though noting 'concerns among potential objectors about asking gender rather than sex'.

The report recommends the question 'Is your gender the same as the sex you were registered at birth?'. The question was deemed broadly successful, although this was '...somewhat despite the wording rather than because of it: there was a range of interpretations of the overall meaning of the question and of the terms used, and a deal of uncertainty among participants'.

## ONS reference 2019:12

*Sex, Gender Identity and Sexual Orientation Guidance - Cognitive Testing Findings 2019*

This research was carried out by the ONS Data Collection Methodology (DCM) team.

A sample of 23 participants were purposively recruited. The report states that the sample represented the characteristics below, but no information is given on how many respondents from each of these groups were included:

Transgender male and transgender female; Intersex; People with variations in sex characteristics; Non-binary; Genderqueer; Queer; Bisexual; Pansexual; Gay; Lesbian; Heterosexual; Cisgender male and cisgender female; Participants categorised as 'Potential Objectors'.

Cognitive testing was carried out on versions of the guidance for each of: the sex question; the gender identity question; and the sexuality question.

<sup>52</sup> Office for National Statistics (2018), *DCM: Gender identity phase 2C cognitive testing findings and question design recommendations*, <https://web.archive.org/web/20240801161443/https://www.ons.gov.uk/file?uri=/peoplepopulationandcommunity/culturalidentity/genderidentity/adhocs/1719census2021genderidentityresearchphase2b2018/dcmgenderidentityphase2ccognitivetestingfindingsquestionnairedesignrecommendations2018.pdf>

For sex, the question wording was as follows.

‘What is your sex?  
Select either ‘female’ or ‘male’.’

The three versions of the guidance were:

**Guidance A:** ‘If you are non-binary, transgender, or have variations of sex characteristics, also known as intersex, the answer you give can be different from what is on your birth certificate.’

If you’re not sure how to answer, use the sex registered on your official documents, such as passport or driving licence, or whichever sex you consider yourself to be.’

**Guidance B:** ‘If your gender is different from your sex registered at birth, the answer you provide doesn’t need to be the same as your birth certificate. Also, you don’t need a Gender Recognition certificate (GRC).’

If you consider intersex to be your identity, then you can record then you can record this in the later question on gender identity.’

**Guidance C** (2011 Census): ‘Transgender or transexual: select the answer which you identify yourself as. You can select either “male” or “female”, whichever you believe is correct, irrespective of the details recorded on your birth certificate. You do not need to have a Gender Recognition Certificate.’

Varied participant views were acknowledged, with some findings highlighted. For example, some participants liked the fact that the guidance made the sex categories ‘more open’ or inclusive.

‘Participants felt the inclusion of ‘passport or driving license’ within the examples of official documents was good, as it is relatively easy for those who are transgender to change and therefore reflects a person’s lived in gender better than a birth certificate. “The option for identifying one’s sex as in passport or driving license which is easier to change than birth certificate is a good way of guiding it because it allows it to be much more open for trans people”’.

‘Non-binary and transgender participants liked the inclusion of the phrase ‘you do not need to have a gender recognition certificate’ due to the challenge of getting a gender recognition certificate. “It says you do not need to know if they have a GRC it’s a very good thing that’s on there...a hard to obtain certificate”.’

Some participants with non-binary identities objected to the fact the sex question was binary.

The gender identity question tested was ‘Is your gender the same as the sex you were registered at birth?’ with the following guidance options.

#### **Guidance A**

‘If your gender is the same as the sex recorded on your birth certificate when you were born, tick “Yes”.’

If your gender is not the same as the sex recorded on your birth certificate when you were born (for example, you are transgender or non-binary), tick “No”.’

If you would like to record that you have variations of sex characteristics, also known as intersex, you can use this write-in box. If you would like to, you can also write-in your gender identity.’

If you answered no, please enter the term you use to describe your gender. This is also voluntary, so you can leave it blank if you prefer.’

#### **Guidance B**

It’s up to you to decide your gender. This question is voluntary, so you can leave it blank if you prefer.

Gender is about your identity.

If your gender is the same as the sex recorded on your birth certificate when you were born, tick “Yes”.’

If the answer is “No”, enter the term you prefer in identifying your current gender’.

Some respondents found the concept of ‘gender’ messy and unclear. However, overall, guidance A was found to be clearer than guidance B.

We turn now to the quantitative reports.

## Quantitative research reports

### ONS reference 2017: 1

*Public Acceptability Research: Questions on Gender Identity and Sexual Identity, Ipsos Mori*

By 'sexual identity' this report means sexual orientation. A sequential mixed-mode (online followed by paper) survey was carried out to determine the public acceptability of including 'sexual identity' and gender identity questions in the census. 9,969 responses were received, representing a response rate of 23%.

The draft questions provided for testing by the ONS were: 'Which of the following options best describes how you think of yourself? Heterosexual or straight/ Gay or lesbian/Bisexual/Other, write in [open text]', and 'Which of the following describes how you think of yourself? Male/Female/In another way, write in [open text]'. 70% of respondents considered it acceptable to ask the question on 'sexual identity' in the census, while 79% considered it acceptable to include the gender identity question.

### ONS reference 2017:10.

*Quantitative research on data quality and non-response for gender identity, Ipsos Mori*

This research used a mailout of 87,957 paper questionnaires, which elicited a 36% response rate (which would imply 31,665 respondents). This research explored the impact on item non-response of different approaches to asking about sex and gender identity.

The research (undertaken in England, Wales and Scotland) tested the following questions:

1. A binary sex only question (from the 2011 Census – 'male/female')
2. A non-binary sex question with 'other, write in' option (a hybrid question of sex and gender identity – 'male'/'female'/'other, write in')
3. A gender identity question set (the binary sex question followed by a gender identity question).'

The gender identity question asked, 'Which of the following describes how you think of your gender identity? Tick one option. Man/Woman/In another way, write in [open text field]'.

The analysis addresses the question of non-response, rather than the accuracy of the responses, and the gender identity question tested is not that used in the 2021 Census.

### ONS reference 2018: 12

*Omnibus Analysis: Gender Identity, Public Knowledge*

Three questions were tested each on a sample of around 1,000 online participants. These were 'Do you consider yourself to be trans, or have a trans history?'; 'Is your gender the same as the sex you were registered at birth?' and 'What is your gender?'. The report acknowledges that the analysis is based on small numbers and recommends taking all three designs forward to a larger test.

### ONS reference 2018: 24

*Evaluation of gender identity questions for the 2021 Census, BMG Research*

This research tested two approaches to asking about gender identity, 'Do you consider yourself to be trans?' and 'Is your gender the same as the sex you were registered at birth?'. A sample of 10,370 was split between three groups, the two treatment groups and a control group which was asked neither question.

No significant differences were found in instrument response rates for the three different questionnaires. However, there were differences in item (i.e., individual question) non-response. Respondents were more likely not to respond to the trans question than the gender identity question, and this differential was particularly marked for Asian or Asian British respondents. For white respondents, item non-response was 7.3% for the trans question and 2.4% for the gender identity question. For Asian and Asian British respondents, 11.6% did not respond to the trans question compared to 5% for the gender identity question.

The ONS have not referred to these results in explaining their choice of gender identity question, but it would be reasonable to have taken the response rates into account. However, no further investigation appears to have been carried out to explain the differences in response rates and the analysis does not consider the accuracy of responses. It is possible that lower response rates for the trans question could have been driven by higher levels of comprehension of the question. Non-response on the trans question in Scotland's 2022 Census was 6%, the same as the non-response in the England and Wales 2021 Census for the gender identity question. However, Scotland's Asian population is much lower than that in England and Wales.

## ONS reference 2019: 4

### Final Report, Maru/Usurv

This report makes only makes recommendations on question order.

## Scotland census 2022

The question adopted in Scotland's 2022 Census is expressed in much simpler language than the question in England and Wales. It asked, 'Do you consider yourself to be trans or have a trans history?'. The direction of the response categories (with 'yes' for trans and 'no' for not trans) is also more intuitive.

*Gender identity question, Scotland's Census 2022*<sup>53</sup>

- 4 Do you consider yourself to be trans, or have a trans history?**
- ◆ This question is **voluntary**
  - ◆ Answer only if you are aged 16 or over
  - ◆ Trans is a term used to describe people whose gender is not the same as the sex they were registered at birth
  - ◆ Tick **one** box only

The anomalous results for respondents with weak English language proficiency that were identified in England and Wales are not replicated in Scotland (Biggs, 2024b). This found that 0.44% of respondents in Scotland were identified as trans, compared to 0.54% in England and Wales. Levels of non-response to the question were similar (5.92% in Scotland and 6.00% in England and Wales).

In Scotland, 0.47% of respondents with poor English language fluency identified as trans, compared to 0.39% of the rest of the population. In England and Wales, as noted above, this gap was far larger, with 2.2% of those with poor English fluency identified as trans, compared with 0.4% of the rest of the population.

The Scottish Census identified 0.2% of respondents as non-binary, compared to only 0.06% in England and Wales. This is likely to be because non-binary was clearly flagged as a trans status in the guidance for the open-text field 'Yes, please describe your trans status (for example, non-binary, trans man, trans woman).'

## 'Trans history'

As noted above, the Scottish census question also referred to 'trans history'. The intention here appears to be to include people who have been through a period of trans identification but no longer identify as trans. This could include the following groups:

- People who have been through a medical transition and are content with their transition but who no longer identify as trans.
- People who have been through a medical transition which they have subsequently regretted, leading them to no longer identify as transgender, and potentially to seek to 'detransition'.
- People who have experienced a trans identification at some period in their lives, without any medical transition, but no longer identify as trans. For example, a young person who identifies as non-binary for a period of time but then reverts to identification with their sex.

We have seen no evidence regarding the size of the first group; therefore, we cannot comment on how rare or common it may be for someone who has been through a medical transition not to identify as trans.

It would not seem appropriate to include the second or third group within the trans category. The latter category in particular may be a growing group, given the fluidity of gender identities among younger generations.

The possibility that people can be trans without identifying as such raises difficult questions. It would seem to imply that there is an externally verifiable concept of being trans separate from an individual's identity. This runs counter to the majority of discourse surrounding trans issues. For the purposes of data collection, this highlights the need to distinguish conceptually between the protected characteristic of gender reassignment and identifying as transgender. People who have been through a transition process but who no longer identify as trans (group one) are likely to be covered under the protected characteristic. However, their subjective identity is determined by them.

The ONS also considered the question 'Do you consider yourself to be trans or have a trans history' for inclusion in the England and Wales Census. Uncertainty regarding the meaning of a 'trans history' was noted among both trans and other respondents.<sup>54</sup> In a

<sup>53</sup> National Records of Scotland (2022), *Household questionnaire, Scotland's 2022 Census* (page 7). <https://www.scotlandscensus.gov.uk/media/mecf4qa4/scotlands-census-2022-household-questionnaire.pdf>

<sup>54</sup> Office for National Statistics (2018), *DCM Gender Identity Phase 2B cognitive testing findings and question design recommendations*. <https://web.archive.org/web/20240801163813/https://www.ons.gov.uk/file?uri=/peoplepopulationandcommunity/culturalidentity/genderidentity/adhocs/1719census2021genderidentityresearchphase2b2018/dcmgenderidentity-phase2bcognitivetestingfindingsquestionairedesignrecommendations2018.pdf>

summary on the question development process, the ONS noted:

‘The question format ‘Do you consider yourself to be trans or have a trans history’ was also not well understood. The phrase ‘trans history’ was intended to mean people who have fully transitioned to a binary gender and might not still identify as trans. However, some respondents interpreted it as meaning that they had previously had a trans identity and had transitioned back to the sex registered at birth. In addition, non-binary individuals did not consistently include themselves, even when a definition was added... the word ‘consider’ was strongly disliked.’<sup>55</sup>

We acknowledge that the concept of a ‘trans history’ is unclear. It is not clear why the ONS did not respond to this objection by trialling a simpler direct question on trans status without this element. This simpler style of question has been used elsewhere. For example, the US Behavioural Risk Factor Surveillance System (BRFSS) survey (Herman, Flores and O’Neill, 2022) has asked the following question since 2014: ‘Do you consider yourself to be transgender?’ The current response options are:

- Yes, Transgender, male-to-female
- Yes, Transgender, female to male
- Yes, Transgender, gender nonconforming
- No; Don’t know/not sure.

The use of meaningful response options is likely to further reduce the risk of the question being misunderstood by the general population.

Minor points regarding wording include the question of whether to use ‘trans’ or ‘transgender’. ONS testing found that ‘*Cisgender respondents did not always understand the term “trans”*’ and further noted that some respondents found the abbreviation ‘trans’ too informal for a government survey and would prefer the term ‘transgender’.<sup>56</sup>

The other minor point on question phrasing is whether to use ‘do you consider yourself to be...?’ or an alternative such as ‘are you...?’ or ‘do you identify as...?’. We are not aware of any question testing that has been carried out on these alternatives.

## 3.2 Censuses outside the UK

A ‘third gender’ approach has been adopted by Nepal, India, Pakistan and Australia.

Nepal first introduced a third gender response category to the sex question in the 2011 Census. Working with UN Women, and in consultation with LGBTQ groups, Nepal changed the labelling of this category for the subsequent census.<sup>57</sup> In 2021, the third gender category was labelled ‘other’ and was designed to capture both sexual and gender minorities. In the 2021 Nepal census, 0.01 percent of the total population, responded ‘other’ to the sex question. It has been acknowledged that this question is unlikely to adequately capture the population of ‘gender minorities’ or sexual minorities (Government of Nepal Ministry of Women Children and Senior Citizens, 2024).

The Indian Census of 2011 introduced a third category (‘other’) for the sex question. The Pakistan Census similarly introduced a third category in its 2017 Census.

Australia’s 2021 Census also introduced a third category. The sex question was phrased as ‘Is this person:’ with response options Male/Female/Non-binary sex. 0.17% of the population selected the non-binary option. The Australian Bureau of Statistics have acknowledged that the non-binary response option did not provide meaningful data, stating that ‘Responses show the concept of non-binary sex was not consistently understood and was perceived in different ways by different people’.<sup>58</sup>

These questions are all examples of mixing sex and gender identity in one variable, in this case by adding a gender identity response category to a binary sex question. We will consider further examples of questions which have a mixed target combining sex and gender identity in the following section.

Both Canada and New Zealand have used a two-question approach. This asks respondents for both their sex and their current gender identity, in order to allow transgender status to be inferred from any discrepancy between the two responses.

A two-step approach was adopted in the 2021 Census in Canada. Consecutive questions ask first ‘What was this person’s **sex at birth**? Sex refers to sex assigned

55 Office for National Statistics (online), *Sex and gender identity question development for Census 2021*. <https://web.archive.org/web/20240610164009/https://www.ons.gov.uk/census/censustransformationprogramme/questiondevelopment/sexandgenderidentityquestiondevelopmentforcensus2021>

56 Office for National Statistics (2018), *DCM Gender Identity Phase 2B cognitive testing findings and question design recommendations* (page 13). <https://web.archive.org/save/https://www.ons.gov.uk/file?uri=/peoplepopulationandcommunity/culturalidentity/genderidentity/adhocs/1719census2021genderidentityresearchphase2b2018/dcmgenderidentityphase2ccognitive-testingfindingsquestionairedesignrecommendations2018.pdf>

57 Ross, J. 2022. *LGBTIQ+ people feel counted through first gender-sensitive question in Nepal Census*. UN Women. <https://data.unwomen.org/features/lgbtiq-people-counted-nepal-census>

58 Australian Bureau of Statistics (2022), *Analysis of non-binary sex responses*. <https://web.archive.org/web/20240612122111/https://www.abs.gov.au/articles/analysis-non-binary-sex-responses>

at birth.’ with response options Male/Female. The next question asks ‘What is this person’s **gender**? Refers to current gender which may be different from sex assigned at birth and may be different from what is indicated on legal documents.’ The response options are: Male/Female/Or please specify this person’s gender [open text field].

New Zealand’s 2023 Census adopted a different version of the two-step approach, asking first ‘What is your gender?’ (Male/Female/Another gender), with the explanatory text ‘Gender refers to a person’s social and personal identity as male, female or another gender (or genders) that may be non-binary. A person’s sex at birth may differ’. This is followed by the question ‘What was your sex at birth?’ (male/female) with the explanatory text ‘For example, what was recorded on your birth certificate?’. Under ‘Information about this question’ it is stated, ‘If neither ‘male’ nor ‘female’ was recorded on your birth certificate, please provide your gender in the question above and leave the sex at birth question blank’. A subsequent question asks, ‘Were you born with a variation of sex characteristics (otherwise known as an intersex variation)’ (Yes/No/Don’t know/Prefer not to say).

The two-step approach was originally proposed in order to overcome the fact that a single question on gender identity does not necessarily identify transgender individuals, even when ‘transgender’ is an available response option. For example, Tate et al (Tate, Ledbetter and Youssef, 2013) assess a one-question approach to gender identity using ‘What is your gender?’ with four response options (Female, Male, Transgender, and Other) and point out that some transgender respondents will select male or female on such a question if that reflects their current identity.

The advantage of a two-step approach over a one-step approach with response options which could be taken to refer to both sex and gender identity is clear. However, it is less clear what the advantage of this approach is assumed to be compared to asking a direct question on transgender and/or gender-diverse status as well as a question on sex. The two-step approach requires an inference to be drawn from the disparity (or lack of disparity) between two questions.

Error or non-response in the responses to either question will limit the effectiveness of this exercise.

### 3.3 Questions which combine sex and gender and/or gender identity

We have observed a trend in some data collection exercises for the binary sex question to be replaced by a hybrid question which combines the concepts of sex, gender and gender identity.

Such questions aim to solicit information on sex from the majority of respondents but on gender identity from some respondents. As such, the target of the question is mixed.

For example, the ONS Data Collection Methodology (DCM) group considered the question ‘What is your gender?’ with response options ‘Female’, ‘Male’, and ‘Any other gender please specify’, to replace the binary sex question in the 2021 England and Wales Census.

An ONS research report acknowledged that this question was answered in several different ways: ‘Overall understanding of this question varied between: assumption that the question was asking about biological sex; Interpretation to be asking how people identify.’ Despite acknowledging that this question meant different things to different respondents, the report stated that the question ‘what is your gender?’ ‘was answered in accordance with the intended meaning.’<sup>59</sup>

There are many variations of such hybrid sex/gender questions. We provide three examples below. The first is from the GP Patient Survey,<sup>60</sup> which is administered by the market research company Ipsos, and assesses patients’ experiences of primary healthcare services provided by GP practices in England (see further page 191). The second is from guidance on inclusive survey design published by Ipsos<sup>61</sup> (see further section 5.4.2). The third is from Public Health England guidelines.<sup>62</sup> More examples can be found in the thematic data review (see chapters eight onward).

59 Office for National Statistics (2018), *DCM Gender Identity Phase 2B cognitive testing findings and question design recommendations* (pages 8, 3). <https://www.ons.gov.uk/file?uri=/people/populationandcommunity/culturalidentity/genderidentity/adhocs/1719census2021genderidentityresearchphase2b2018/dcmgenderidentityphase2bcognitivetestingfindingsquestionnairedesignrecommendations2018.pdf>

60 Ipsos (2023), *The GP Patient Survey* (page 7). [https://gp-patient.co.uk/downloads/2023/qandletter/GPPS\\_2023\\_Questionnaire\\_PUBLIC.pdf](https://gp-patient.co.uk/downloads/2023/qandletter/GPPS_2023_Questionnaire_PUBLIC.pdf). See also 2024 [https://www.gp-patient.co.uk/downloads/2024/qandletter/GPPS\\_2024\\_Questionnaire\\_PUBLIC.pdf](https://www.gp-patient.co.uk/downloads/2024/qandletter/GPPS_2024_Questionnaire_PUBLIC.pdf)

61 Ipsos (2023), *Asking the UK their gender: Inclusive survey design* (page 2). [https://www.ipsos.com/sites/default/files/ct/publication/documents/2023-06/Ipsos\\_%20Asking%20the%20UK%20their%20gender\\_June%202023.pdf](https://www.ipsos.com/sites/default/files/ct/publication/documents/2023-06/Ipsos_%20Asking%20the%20UK%20their%20gender_June%202023.pdf)

62 See: Kirwan et al. (2020), *HIV prevalence and HIV clinical outcomes of transgender and gender-diverse people in England*. HIV Medicine. <https://onlinelibrary.wiley.com/doi/10.1111/hiv.12987>

*Sex/gender and gender identity question, GP Patient Survey 2023*

**Some questions about you**

The following questions will help us to see how experiences vary between different groups of the population. We will keep your answers completely confidential and they will not be linked to your medical records.

**Q51** Which of the following best describes you?

- Female
- Male
- Non-binary
- Prefer to self-describe
- 
- Prefer not to say

**Q52** Is your gender identity the same as the sex you were registered at birth?

- Yes
- No
- Prefer not to say

*Inclusive Survey Design, Recommended Gender question, Ipsos 2023*

Previous Question	New Question
Which of the following best describes how you think of yourself?	Which of the following best describes your gender?
Male	Man
Female	Woman
In another way	Non-binary
Prefer not to say	My gender is not listed
	Prefer not to say

*Gender question, Public Health England*



**Revised questions**

**A2** How do you identify your gender?

- Woman  
(including trans woman)
- Non-binary
- Man  
(including trans man)
- In another way
- Prefer not to say

**A3** Is this the same gender you were assigned at birth?

- Yes
- No
- Prefer not to say

Two-stage question developed in collaboration with CliniQ, the LGBT Foundation, and a partnership of other LGB&T organisations.



These examples share common flaws.

The questions as stated are ambiguous in order to allow some respondents to answer in terms of their sex and others to answer in terms of their gender identity.

The GP Patient Survey question, ‘Which of the following best describes you?’ does not indicate the target of the question. Instead, respondents must infer the target of the question from the response options. The response options male and female would typically be understood to refer to the two sexes, but non-binary refers to a gender identity. Thus, the target of the question is unclear. If the data is represented and stored as data on gender identity, this will be misleading for those respondents who thought they were providing data on their sex.

The recommended Ipsos question from their published guidance on inclusive survey design, ‘Which of the following best describes your gender’ is unhelpful because the term ‘gender’ can refer to sex, gender or gender identity. The response categories ‘man’ and ‘woman’ are likely to be interpreted by many respondents as a reference to sex, as the standard definitions of man and woman are, respectively, adult human male and adult human female. However, these terms may be seen as allowing a degree of ambiguity, as they are contested in current discourse on gender. The options ‘non-binary’ and ‘my gender is not listed’ refer to gender identities.

Lastly, the question ‘how do you identify your gender’ is similarly problematic, failing to identify the target of the question. Public Health England makes explicit that the category ‘woman’ includes ‘trans woman’ and ‘man’ includes ‘trans man’. This arguably provides greater clarity for respondents, coming closer to indicating explicitly that this is not a question on sex. The failure to collect data on sex is particularly notable in a question intended for use in research on sexual health.

While some trans, non-binary and gender non-conforming people may prefer not to provide data on sex, others may wish to do so, especially if the relevance of sex is clear. Hybrid sex/gender questions do not provide respondents with an option to clearly state their sex.

If a question is designed to solicit information on gender identity, it should allow the possibility for the respondent to indicate that they do not believe that they have a gender identity, or that this concept is not familiar or meaningful to them. ‘Prefer not to say’ does

not adequately cover these cases, as such a response implies that the respondent has a gender identity which they prefer not to reveal. Providing options for ‘not applicable’ and ‘don’t know’ would be an improvement in this regard.

It is well established that respondents use response options to help to determine the meaning of questions, rather than determining meaning from the question alone. Male/female and man/woman will be interpreted as sex categories by most respondents, therefore if a question is intended to solicit information on gender identity, these response categories may be misleading. These questions do not allow non-binary people to provide a sex, and do not allow the identification of trans identities other than non-binary. They do not allow disaggregation according to sex and gender identity as distinct variables.

Documentation for the GP Patient Survey states:

‘Up to and including 2020, GPPS has collected self-reported data covering the protected characteristic sex but has not collected data covering the protected characteristic of gender reassignment, nor considered gender identity. Collecting this data is necessary to inform work to address health inequalities for transgender and non-binary people, and to ensure that NHS England is meeting its duties under the Equality Act (2010) in relation to the protected characteristics of sex and gender reassignment. In consultation with NHS England and stakeholders the team therefore reviewed and amended the question covering sex and included an additional question to understand gender identity and gender reassignment to meet these objectives.’<sup>63</sup>

These organisations appear to have been poorly advised.

NHS England’s reasoning is unclear. Noting that both sex and gender reassignment are protected characteristics, and that, up until 2020 the GP Patient Survey did not collect data on gender reassignment, they appear to suggest that this provided a rationale for dropping the binary sex question. Yet capturing data on one protected characteristic does not imply that another protected characteristic must be omitted. A more logical response would have been to add a question on gender reassignment while retaining the existing sex question.

<sup>63</sup> Ipsos (2021), *GP Patient Survey 2021 Technical Annex* (page 9). [https://www.gp-patient.co.uk/Downloads/2021/GPPS\\_2021\\_Technical\\_Annex\\_PUBLIC.pdf](https://www.gp-patient.co.uk/Downloads/2021/GPPS_2021_Technical_Annex_PUBLIC.pdf)

It is lawful to collect data on sex. Furthermore, asking questions with an unclear or mixed sex/gender target exposes organisations to a number of legal risks, as explained in the legal appendix. In summary:

1. Recording data on sex as gender identity is likely to be a breach of UK GDPR and the DPA 2018, read together, and likely to breach article 8 ECHR.
2. Asking unclear questions on sex, gender or gender identity is likely to be in breach of data protection legislation.
3. Holding gender identity data about a person who does not have a gender identity is likely to be a breach of data protection legislation.
4. Given the ambiguities of the term ‘gender’ and given that neither ‘gender’ nor gender identity is a protected characteristic, the collection of data about gender will not assist in compliance with the PSED.

### 3.4 The protected characteristic of gender reassignment

The protected characteristic of gender reassignment is defined within the Equality Act 2010 (EA2010) as follows:

- (1) A person has the protected characteristic of gender reassignment if the person is proposing to undergo, is undergoing or has undergone a process (or part of a process) for the purpose of reassigning the person’s sex by changing physiological or other attributes of sex.
- (2) A reference to a transsexual person is a reference to a person who has the protected characteristic of gender reassignment.
- (3) In relation to the protected characteristic of gender reassignment—
  - (a) a reference to a person who has a particular protected characteristic is a reference to a transsexual person;
  - (b) a reference to persons who share a protected characteristic is a reference to transsexual persons.

Research by the Equality and Human Rights Commission (EHRC) stated that only around a half of respondents reporting trans identities also reported the protected characteristic of gender reassignment (Balarajan, Gray and Mitchell, 2011; Glen and Hurrell, 2012; Office for National Statistics, 2016).

The EHRC recommended that four sex/gender questions should be asked in the 2021 Census, including two on the protected characteristic of gender reassignment.<sup>64</sup> The recommended question on gender reassignment asked, ‘Have you gone through any part of a process (including thoughts or actions) to change from the sex you were described as at birth to the gender you identify with, or do you intend to?’ This could include changing your name, wearing different clothes, taking hormones or having any gender reassignment surgery’. A follow-up question asked for more detail from those who answered yes to this question. These are shown below:

*EHRC recommended questions on gender identity, 2016*

**1** At birth were you described as...

➤ Please tick one option

Male

Female

Intersex

I prefer not to say

---

**2** Which of the following describes how you think of yourself?

➤ Please tick one option

Male

Female

In another way

--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--

64 Office for National Statistics (2016), *Assessment of initial user requirements on content for England and Wales. Gender identity topic report* (page 24). <https://www.ons.gov.uk/file?uri=/census/censustransformationprogramme/consultations/the2021censusinitialviewoncontentforenglandandwales/topicreport03genderidentity.pdf>

**3** Have you gone through any part of a process (including thoughts or actions) to change from the sex you were described as at birth to the gender you identify with, or do you intend to?

↻ This could include changing your name, wearing different clothes, taking hormones or having any gender reassignment surgery

- Yes ➔ Please go to **32**
- No ➔ End

**4** Continuing to think about these examples, which of the following options best applies to you?

↻ Please tick one option

- I am thinking about going through this process
- I am currently going through this process
- I have already been through this process
- I have been through this process, then changed back
- None of the above

<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
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- I prefer not to say

The questions were trialled in an online survey of around 1,000 respondents. Of these, one percent indicated that they had the protected characteristic of gender reassignment. An EHRC report noted:

‘Questions 3 and 4 were designed to measure gender reassignment as defined by the Equality Act 2010... Our results show that both questions appeared successful, although the fact that many responses to question 4 were ‘prefer not to say’ or ‘none of the above’ may suggest that the response options need further consideration.’<sup>65</sup>

Despite the cumbersome language of the legislation, this suggests that respondents are willing to answer a question framed in terms of the protected characteristic of gender reassignment.

### 3.5 Public opinion research

When asking the public for their opinions on any topic, it is vital that any terms used are easily understood. This principle stands, even when terms are politically contested.

Polling commissioned by MurrayBlackburnMackenzie in 2023 and carried out by Survation shows that the terms ‘transgender woman’ and ‘trans woman’ are widely misunderstood by the public.<sup>66</sup> Respondents were asked:

‘When you hear someone described as a transgender woman, what do you think this means?’

- Someone registered as male/a boy at birth
- Someone registered as female/a girl at birth
- Don’t know’

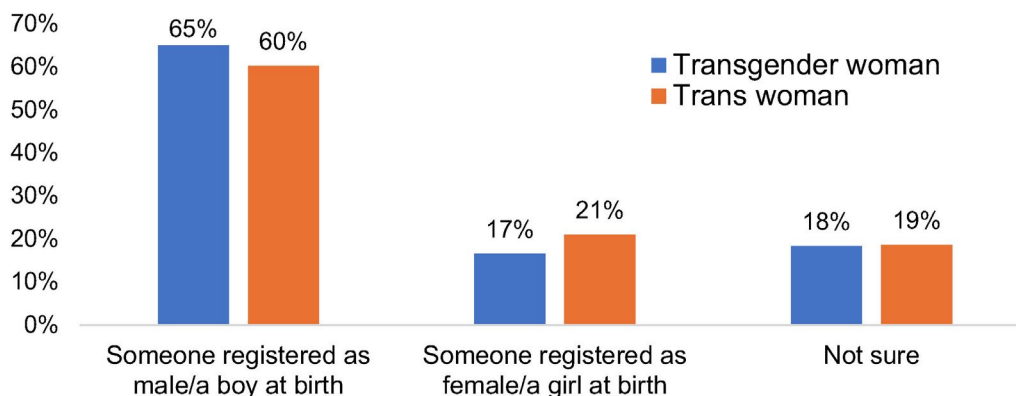
The same question was asked for the terms ‘trans woman’.

The results showed that these terms were correctly understood by only around two thirds of those asked. 17% of respondents believed a transgender woman to be someone born female, rising to 21% for the term trans woman.

<sup>65</sup> Equality and Human Rights Commission (2012), *Measuring Gender Identity* (page 10). [https://www.equalityhumanrights.com/sites/default/files/measuring\\_gender\\_identity.doc](https://www.equalityhumanrights.com/sites/default/files/measuring_gender_identity.doc)

<sup>66</sup> MurrayBlackburnMackenzie (2023), *Clarity matters: how placating lobbyists obscures public understanding of sex and gender*, 7 August 2023. <https://murrayblackburnmackenzie.org/2023/08/07/clarity-matters-how-placating-lobbyists-obscures-public-understanding-of-sex-and-gender/>

Figure 4. Public understanding of the terms ‘transgender woman’ and ‘trans woman’, Survation polling 2023

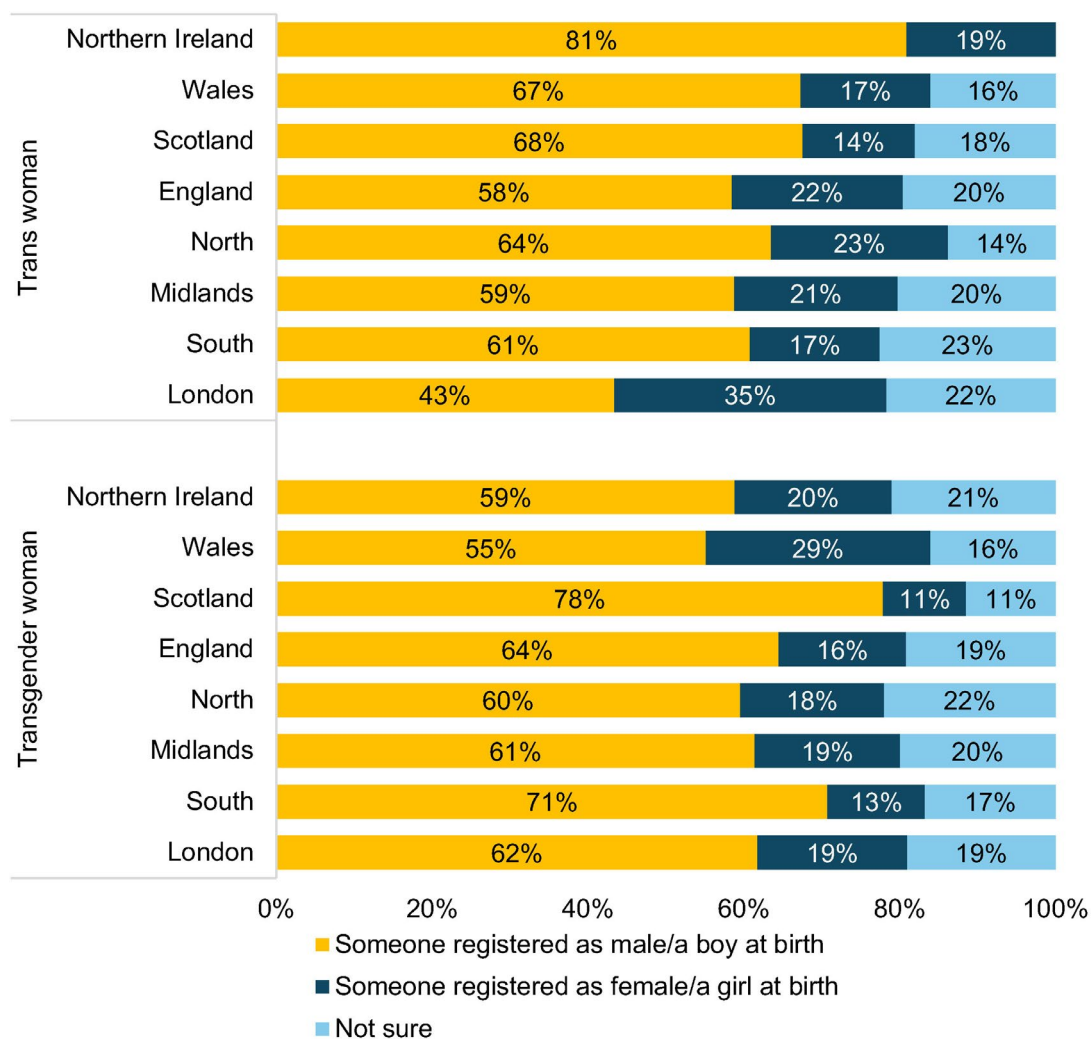


Source: Survation poll, 15-19th June and 23rd-26th June 2023. Total Sample Size: 1008 (survey 1) + 1026 (survey 2). Residents aged 18+ living in the UK.

The full results<sup>67</sup> show substantial variation in how well understood these terms are according to sex, age, educational level, and geography. Respondents with the lowest educational levels and respondents in London were the least likely to correctly understand

these terms. The London effect may be due to high levels of residents with English as an additional language. Surprisingly, those over 45 were more likely to understand both terms accurately than those in younger groups.

Figure 5. Public understanding of the terms ‘transgender woman’ and ‘trans woman’ by region, 2023



67 MurrayBlackburnMackenzie (2023), Survation full data, June 2023. <https://murrayblackburnmackenzie.org/wp-content/uploads/2023/07/Survation-full-data-June-2023-1.xlsx>

In opinion research, sex is often relevant. For example, take the question ‘Should transgender women be able to participate in female sports categories?’. This question seeks to assess public views on people born male who identify as women, not people born female who identify as men. The polling research above suggests that a far-from-negligible proportion of respondents will misunderstand the question, which is likely to have consequences for the views expressed by respondents. Further, the lack of understanding will not be uniform, which is also likely to affect the results. For example, if people in Scotland are more likely to report that they disagree with the statement compared to those in London, is this because of a genuine difference in views, or because Scots were more likely to understand the question? Similarly, apparent differences in opinion according to age, educational level and other demographic characteristics become hard to interpret, as they may be driven partly by differences in understanding of the question.

We are aware that, in at least one case, a university ethics committee has referred to clear language on

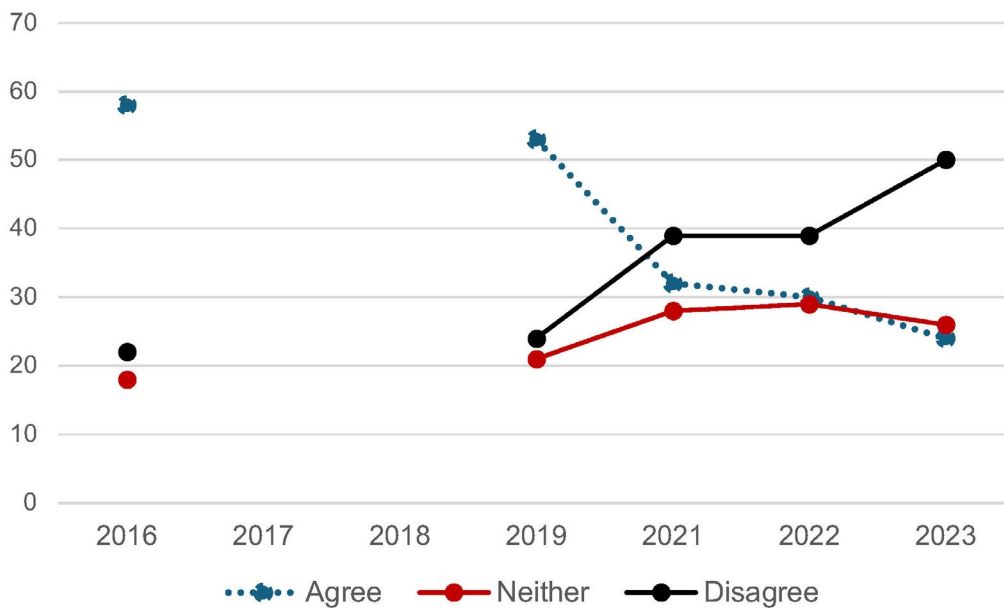
sex in the context of opinion research (i.e. using the terms male and female) as ‘misgendering’.<sup>68</sup> This fails to acknowledge the scientific and ethical importance of clear language.

Researchers should be mindful that even relatively familiar terms such as ‘trans’ and ‘transgender’ can be understood in different ways. In the Cass Review of gender identity services for children and young people, (Cass, 2024) Hilary Cass states:

‘During the lifetime of the Review, the term trans has moved from being a quite narrow definition to being applied as an umbrella term to a broader spectrum of gender diversity’.(p.187).

Since 2016, the British Social Attitudes Survey (BSA) has asked the question ‘How much do you agree or disagree that a person who is transgender should be able to have the sex recorded on their birth certificate changed if they want?’. In 2016, 58% either agreed or strongly agreed with this statement, falling to 24% in 2023<sup>69</sup> (Clery, 2023). These results are shown below (the question was not asked in 2017 and 2018).

Figure 6. How much do you agree or disagree that a person who is transgender should be able to have the sex recorded on their birth certificate changed if they want? (British Social Attitudes)



Data Source: British Social Attitudes Survey

68 See: Armstrong, J. (2023), *The misuse of ‘ethics’ in academic research*. The Critic, 1 April 2023. <https://thecritic.co.uk/edi-contra-science/>

69 Montagu, I. and Mapplethorpe, N. (2024), *British Social Attitudes 41: Five years of unprecedented challenges*. Natcen Social Research. <https://natcen.ac.uk/sites/default/files/2024-06/BSA%2041%20Five%20years%20of%20unprecedented%20challenges.pdf>

It is possible that part of the reason for such a shift may be changing interpretations of the term ‘transgender’. In 2016, respondents may have been more likely to interpret this term to suggest a transsexual person, i.e., someone who has undergone a medical transition. The guidance accompanying this question suggests that the protected characteristic of gender reassignment was the intended meaning of the word transgender:

‘People who are transgender have gone through all or part of a process (including thoughts or actions) to change the sex they were described as at birth to the gender they identify with, or intended to.

This might include by changing their name, wearing different clothes, taking hormones or having gender reassignment surgery’.

Notwithstanding this guidance, by 2023, awareness of the much wider ‘trans umbrella’, which does not imply medical transition, is likely to have grown, and respondents may have answered the question with reference to this wider group. This is not a criticism of the BSA question. The methodological problems posed by changes in the meanings of words over time have no easy solution, though they should be borne in mind when interpreting results.

### 3.5 Conclusions

Our starting point is that any question should have a clear target. Without a clearly defined target, it is impossible to design a valid question.

As organisations increasingly seek to collect data on gender identity, the problems identified with the ONS question have left a user need for a simple question which can be used in data collection with the general population. Organisations wishing to collect data on gender identity will need to be clear on the target of their question. We have identified three distinct possible targets for such a question: 1) The protected characteristic of gender reassignment; 2) Trans identification; 3) Identification as trans and/or gender diverse.

Many organisations have told us that their goal in asking a question on this topic is to monitor the protected characteristic of gender reassignment in order to comply with their duties under EA2010. Where this is the goal, then the question asked should directly relate to the protected characteristic. Trans status and gender reassignment status do not overlap sufficiently to treat trans status as a proxy for gender reassignment, because trans is a much broader category. EHRC have reported that only around a half

of respondents reporting trans identities also reported the protected characteristic of gender reassignment. Despite the cumbersome language of the legislation, EHRC testing suggests that respondents are willing to answer a question framed in these terms.

Data collection exercises seeking to identify the trans population have done so in a number of ways. We recommend asking the question directly rather than inferring the response from indirect questions. Questions that meet this specification would follow the following format: ‘Are you’ [or ‘Do you identify as’ or ‘Do you consider yourself to be’] ‘transgender’ [or ‘trans?’] with response options such as: Yes, Trans woman/Yes, Trans man/Yes, Non-binary/Yes, Other, please specify if you wish [open text]; No; Don’t know; Prefer not to say.

The use of informative response options has several advantages. First, respondents use response categories to provide further information about the meaning of a question, making data error less likely. Second, the responses to this question can be used to validate and correct potential error in responses to the sex question. Third, meaningful response categories are easier to process than open-text fields, making it more likely that the data will be processed and used. Fourth, open-text responses can encourage mischievous responses, leading to data error. Fifth, processing open-text responses leads to a risk of identifiability.

As noted earlier, not everyone with a gender-diverse identity calls themselves trans, for example, non-binary people may or may not identify as transgender. It is likely that, for some research purposes, a broader question will be desirable. A question on wider gender-diverse identities may be required, for example to identify non-binary respondents who may or may not identify as trans. If the target of the question is to identify those with gender-diverse identities including, but not limited to, those who do not identify as trans, we recommend asking a question which makes this clear. For example: ‘Are you [or ‘Do you identify as’ or ‘Do you consider yourself to be’] transgender [or trans], non-binary or gender diverse?’, with response options: Yes, Trans woman/Yes, Trans man/Yes, Non-binary/Yes, Other, please specify if you wish [open text]/No/Don’t know/Prefer not to say.

Data providers often default to ONS census questions. However, we recommend against using the ONS question ‘Is the gender you identify with the same as your sex registered at birth’ as this question has been shown to be flawed, leading to spurious results.

We recommend against asking questions which have a mixed sex/gender target.

Public opinion research should use language which is clear and comprehensible to the widest possible population. Where sex is a relevant factor in understanding a question, it should be referred to explicitly in plain language.

We recommend that further research is needed to assess what the general public takes as the meaning of key words which may be used in data collection in this area, including 'transgender man', 'trans man', 'transgender', 'trans', 'transsexual', and 'gender reassignment'.

Finally, we note that organisations considering collecting data on gender reassignment or trans status will need to consider both the fact that this is sensitive personal information and that it identifies a small group. Whether it is appropriate to collect this data will depend on a number of factors, including the size of the sample/ number of individuals included the prevalence of trans identities in the population of interest; and the proposed use of the data. Organisations should only collect data which they intend to process. The PSED does not imply a duty to collect data which is unlikely to be useful.

# Chapter 4: Consultation with stakeholders

We conducted 33 interviews with stakeholders. In addition, a small number of stakeholders provided us with information in writing. The stakeholders included government departments, regulatory bodies and other public sector organisations across a range of policy areas, including health and justice, fieldwork agencies, and groups campaigning for the rights of women and LGBT people. All interviews took place via video call. We asked participants a set of standardised questions about their data collection practices (where relevant), their views about collecting data on both sex and gender identity, and related issues. Key themes from the interviews are shown below.

## 4.1 Desired outcomes from the review

Most respondents stated that they hoped that the review will provide clear guidance on how and when to ask about sex and gender identity or trans status. Some respondents noted that problems with the ONS 2021 Census question on gender identity left a need for guidance on a replacement for this question.

## 4.2 The importance of data on sex

Almost all interviewees agreed on the importance of data on sex. Very few suggested that this was not important or that they were unsure of its importance. Many cited the need to gather robust, high-quality data on sex to measure differential outcomes between men and women to enable policymakers to put in place measures to address those disparities. Some interviewees cited legal responsibilities vis-à-vis the Public Sector Equality Duty (PSED) under the Equality Act 2010. A minority of interviewees were of the view that gathering data on sex only mattered when it came to the delivery of individualised healthcare or measuring health-related outcomes at the aggregate level.

A small number of interviewees were unable to articulate why data on sex might be important in their field. Some said that they were driven by whatever data users or clients demanded.

## 4.3 The importance of data on gender identity

Views about the need to collect data on gender identity were more mixed. Many felt it was important to collect data on individuals' gender identity, with some citing the ability to measure, for instance, health outcomes and crime victimhood. One interviewee stated that whilst there was no policymaking demand for data on gender identity, such data might be high value for those dealing with the data subjects.

Some respondents noted that, given the small numbers of people with trans identities, there is a need to be mindful of sample sizes, issues around identifiability, and when collecting data on this variable is or is not proportionate. One respondent noted that clear guidance on this would be useful.

## 4.4 Seeking expertise

Several interviewees stated that they did not believe that their organisation had the necessary in-house expertise on how to develop questions on sex and gender identity. For that reason, many had sought expertise from elsewhere. Sometimes this expertise was sought from external organisations claiming expertise in issues relating to sex and gender identity, sometimes from internal staff network groups, such as colleagues working in equality, diversity and inclusion (EDI) departments or LGBT support groups.

Some LGBT campaigners we spoke with did not feel they had the necessary expertise to advise other organisations on how best to collect data on sex.

## 4.5 Aligning practice with statutory and non-statutory requirements

Most interviewees from public sector organisations were aware of their legal obligations under the Equality Act 2010 and in particular the PSED. They were aware that data on gender reassignment was important for equalities monitoring purposes, even if only for them as employers.

Some organisations whose work is governed by statute believed the governing legislation placed restraints on data collection. For example, the 2015 regulations that set out the role of the doctors' regulatory body, the General Medical Council, refer to the 'gender' of registrants. Similarly, Real Time Information Regulations (2012), which require employers to report their



employees' information to HMRC, state that employee 'gender' must be reported. Members of the Market Research Society are bound by its Code of Conduct, which require members to adhere to various guidelines the Society publishes, including guidance on data collection on sex and gender (see further section 5.4.1).

## 4.6 Aligning practice with international laws and practice

More than one interviewee stated that their organisation had considered changing data collection practices to reflect changes in other jurisdictions. For example, to allow for a third response to a standard sex question (such as 'non-binary'). One interviewee noted that the UK no longer being part of Eurostat meant that there was greater flexibility to set definitions and questions for surveys.

## 4.7 Authoritative role of the Office for National Statistics

Many stakeholders cited definitions used by the Office for National Statistics (ONS), and in particular, questions deployed in the 2021 Census, as their touchstone for devising questions on sex and gender. Many expressed confidence that the ONS would have carried out extensive and rigorous testing of the questions.

However, some interviewees were aware of legal challenges including the Judicial Review of the England and Wales sex question guidance. They had absorbed the idea that data collection on sex is a contested area, although not all were aware that the legal challenge related to guidance accompanying the sex question rather than the question itself.

Some interviewees expressed concern that it had taken legal action to secure clarity on these issues, given the cost to the public purse. Chapter five (see section 5.3.1) provides more detail on how the ONS approach data collection on sex, and how this has changed over time.

## 4.8 Establishing decision-making

It was not always easy to establish who or even which part of an organisation to approach to discuss how their data collection practice on sex had changed over time. In the case of governmental bodies, it was particularly concerning that there was often no corporate record of why and how such decisions had been reached.

A similar finding was reported in an Office for Statistics Regulation review of the Scottish Household Survey. This stated:<sup>70</sup>

'While the Scottish Government undertook and published the outcomes of its 2017 review of survey questions, we found that it did not widely consult on the outcome of the consultation or on the resultant changes that were implemented.'

Unpicking the Scottish Government's decision making from 2017 – when there have been many changes to staffing, the policy, and public thinking on matters in relation to sex and gender identity – has been complicated.

We were told by a number of interviewees that the prompt for changing their data collection practice was complaints from respondents to a survey owned or commissioned by their organisation. In one instance a single complaint had triggered an overhaul of the organisation's approach to questions on sex and gender identity. More than one interviewee noted that objections to the way in which they collected data on sex and gender identity came from 'both sides', that is, those with 'gender-critical' views and those who believe that gender identity is more important than sex as a demographic variable.

## 4.9 Sensitivity around collecting data on sex

Many data collectors expressed the view that there are obstacles to asking people about their sex. Some believed it might constitute a breach of privacy law or principles, such as ECHR Article 8 rights, Section 22 of the Gender Recognition Act 2004, or GDPR.

Some also expressed a concern that compelling individuals to state their sex might lead to higher rates of non-response due to respondents viewing the question as unduly invasive. Other interviewees were concerned that objections may be raised to the practice of recording a respondent's sex based on observation during a face-to-face interview.

Further evidence of increased sensitivity around collecting data on sex is documented in chapter seven.

<sup>70</sup> Office for Statistics Regulation (2022), *Ed Humpherson to Alastair McAlpine: Office for Statistics Regulation's review of gender identity question and the Scottish Household Survey*. 1 July 2022. <https://osr.statisticsauthority.gov.uk/correspondence/ed-humpherson-to-alastair-mcalpine-office-for-statistics-regulations-review-of-gender-identity-question-and-the-scottish-household-survey/>

## 4.10 Explaining the need for data on sex

Given the perceived sensitivity about asking for data on sex, some interviewees felt that respondents needed more information (and reassurance) about the reasons for collecting data on sex, for example, to ensure appropriate healthcare at the individual level, or to enable the measurement of disparities between men and women in public policy at the aggregate level.

## 4.11 Defining sex, gender and gender identity

In many cases, interviewees surmised that whilst their organisations had previously collected data labelled 'gender', it was in fact always intended to mean data on 'sex'. This is supported by the analysis in chapter seven of this review, which traces a shift in terminology (from sex to gender) in the 1990s. There was also an acceptance that for many people – data collectors and the general public – 'sex' and 'gender' remain synonyms. Other interviewees accepted that the two terms referred to different concepts. Some conflated the concepts of 'gender' and 'gender identity'.

A number of interviewees were unclear about whether data on 'gender identity' or 'transgender status' mapped onto the protected characteristic of 'gender reassignment'.

## 4.12 Self-reported vs self-identified sex

A number of stakeholders justified changes to data collection on sex and gender by maintaining that this had 'always been self-identified'. That is to say, individuals make subjective judgements about their 'sex' in the same way that they do for other demographic variables such as ethnicity and disability. However, during the course of the interviews, it became clear that many had elided the concept of what it means to 'self-identify' with 'self-reporting'.

## 4.13 Data user needs vs respondent preference

Many interviewees cited the needs of 'data users' in defending their data collection practices relating to data on sex and gender. However, some confused this with what can be characterised as 'respondent preference'. This led us to conclude that some data collectors remained unclear about the concept of data users.

## 4.14 Uncertainty around collecting data on gender identity

Many interviewees were unsure of the best way to ask about someone's gender identity. Very few felt confident about any potential question. Many recognised that most possible forms of question on gender identity were in some way problematic and may lead to different responses. Some were unsure about how to gather data which would meet the requirements of the PSED, where the protected characteristic is 'gender reassignment' rather than 'gender identity' or 'transgender status'.

Some but not all interviewees were aware that the latest census question on gender identity had been asked differently in England and Wales compared with Scotland. A few were aware of the criticisms of the question in the England and Wales Census. Concerns were expressed that unwarranted public confidence could be placed in estimates of the trans population in England and Wales.

One LGBT campaign group had interpreted concerns about the robustness of the data gathered via that question as an objection to the inclusion of any question on the trans population.

### Sensitivity around collecting data on gender identity

Some interviewees were hesitant about asking mandatory questions relating to gender identity, on the basis that it is sensitive information that could be perceived as intrusive, and might be disclosive, given the small size of the population with transgender identities. Again, some cited privacy laws and principles (see above).

More than one LGBT campaigner told us that there was residual wariness amongst the gay, lesbian and bisexual community in disclosing sexual orientation because of past negative attitudes to the community, and nervousness about large organisations holding such data on individuals. They speculated that trans individuals may similarly be anxious about disclosing their identity.

## 4.15 Invoking 'intersex' conditions

Some respondents cited the existence of differences of sex development (DSD, sometimes referred to as 'intersex' conditions) as justification for moving away from a binary sex question. There appeared to be very little understanding of what DSD conditions are (see section 1.6 on the sex binary).

## 4.16 Issues around reliability

Some interviewees stated that they were unconcerned about sex data becoming corrupted because they perceived that, given the size of the population expressing a transgender identity, very few people would respond to a sex question with their gender identity. Their implicit focus was on headline population estimates, rather than sub-group level data, which is much more vulnerable to corruption (see for example, analysis of the GP Patient Survey on page 191).

## 4.17 Sex subject to GRC as a proxy for biological sex

A small number of interviewees felt that asking for someone's sex subject to GRC was a good enough proxy for biological sex, given the small numbers of people who had obtained a GRC since 2004. These respondents focussed on current absolute numbers rather than subgroup analyses or potential future numbers.

## 4.18 Survey fatigue considerations

Many of the interviewees we spoke with were concerned about 'survey fatigue' on behalf of the respondents whose views they needed to seek out and the wider public at large. However, it was clear from our interviews that different organisations had responded differently to that concern.

Running counter to the theme of survey fatigue, some organisations argued for the inclusion of new or amended questions on gender identity on the basis that some respondents might be more likely to complete a survey if there was a question there to enable them to state their identity. One interviewee asserted that younger people in particular might be more likely to respond to surveys which carried a question on identity, although they were unable to point to any evidence that this was the case. Others expressed more uncertainty about adding new questions to surveys, on the basis that adding additional questions might reduce response rates.

## 4.19 Lack of harmonisation

Some public sector interviewees expressed frustration at the lack of harmonisation across the sector on the way in which questions about sex and gender were asked. There was an appetite for greater coordination and harmonisation.

A few interviewees noted diverging data collection practices on sex and gender across the different

jurisdictions of the UK, meaning that it was harder to compare outputs.

There was concern that a lack of consistency may make departments more vulnerable to activism designed to change data practices, such as activists encouraging their followers to engage in campaigns directed at government departments.

## 4.20 Polarised political debate

Many of the interviewees noted the difficult debate that surrounds this issue. Most felt that it was detrimental to the ability of their own organisations to have free and frank discussions about how they approach the collection of data on sex and gender. Some went as far as to say that their workplace was a hostile environment in which to voice concerns.

One interviewee suggested that if governments and parliamentarians were to use plain language when referring to the different demographic variables of biological sex and self-declared gender identity, that might in and of itself be immensely powerful in enabling others to secure clarity on this.

## 4.21 Healthcare settings

We spoke to a number of interviewees working in healthcare. A number of different rationales for seeking and capturing data on gender identity emerged, including: (1) to ensure that patients or service users were addressed appropriately by those treating them; (2) to flag any potential clinical vulnerabilities which may be associated with their gender identity status (such as mental health issues); (3) to gather data to meet the requirements of the PSED and; (4) as an indicator of possible treatments the individual might have had as a patient.

## 4.22 Additional findings

- For some governmental organisations, individuals' sex markers are largely only used for identification purposes.
- Many interviewees were unaware that the sex marker on passports and driving licences can be changed without acquisition of a GRC.
- Interviewees from one organisation had noted some objections to the use of the terms 'girl' and 'boy', which related to recent debates about sex and gender, and emphasised that analysts should be able to use clear and ordinary language when reporting results.
- Some interviewees distinguished between their

role as employers and as service providers when it comes to collecting data on sex and gender.

- Operational independence in some areas of the public sector, such as policing, makes a consistent approach to data collection difficult.
- There was acknowledgement amongst some interviewees that changing IT systems was sometimes a barrier to changing data collection practices.
- In some cases, organisations had made changes to their data collection practices in order to align themselves with other comparable organisations in their field.

# **Part Three**

## **Review of data collection on sex**

# Chapter 5: Review of guidance on collecting data on sex

## 5.1 Introduction

This chapter reviews publications that provide advice on how to define and collect data on sex published within the last decade. This includes guidance published by public bodies and agencies, non-departmental public bodies, market research and survey companies, and several charities with an interest in data collection.

The range of publications reflects a lack of authoritative UK guidance and a loss of consensus as to how sex should be defined for the purposes of data collection. This lack of conceptual clarity around sex is documented in the final report of the UK Statistics Authority Inclusive Data Taskforce,<sup>71</sup> which found ‘multiple definitions, classifications and response options’.<sup>72</sup> It can also be seen in recent guidance on how to collect and report data on sex and gender identity by the Office for Statistics Regulation (OSR).<sup>73</sup> This states:

‘currently there is no single definition of sex or gender identity within the official statistics community. We also recognise that respondents and users may have differing interpretations of these terms’.<sup>74</sup>

In 2021 the Equality and Human Rights Commission (EHRC) stated its intention to develop guidance for public authorities but has not yet done so.<sup>75</sup> We understand this work remains in progress. In 2022 the Government Statistical Service (GSS) established a team, based in the ONS, to work on data harmonisation in the UK statistical system.<sup>76</sup> Initially the team aimed to publish sex harmonisation guidance by early 2023, although this is currently paused to focus on ethnicity standards.<sup>77</sup> At the

time of writing, the GSS webpage cites the sex question in the 2021 England and Wales Census but has not as yet set out final harmonised standards.<sup>78</sup> Separately, since 2004 the ONS has published harmonised principles for social survey data which recommend collecting data on binary sex, although the ONS has confirmed that these are not current.

As noted in the previous chapter, many stakeholders interviewed for this Review did not believe their organisation had relevant in-house expertise, and, absent established UK standards, had sought external advice. At the same time, it can be argued that a proliferation of guidance on sex and gender identity has exacerbated the confusion in this area, by recommending different and often complex definitions.

Many of the publications reviewed in this chapter reflect a particular political viewpoint; that gender identity is more important than biological sex and it is wrong in principle to ask people about their sex. This can be seen in guidance which advises that data on sex should not be collected, or only very rarely, or that to do so would be ineffective. It is also reflected in publications that variously recommend sex questions with multiple response options (thereby conflating sex and gender identity), treat DSD conditions as a discrete sex category, and/or infer that young children can understand the difficult concept of gender identity. It is often unclear, what, if any, statistical expertise underpins this type of guidance, which may be better understood as a form of political advocacy.

Some of the guidance and publications in this chapter can be directly linked to a loss of data on sex. The Market Research Society (MRS) Code of Practice requires that surveys administered by its members allow participants to ‘provide information in a way

71 The Inclusive Taskforce was established to support the UK Statistics Authority five-year strategy, which aimed to ‘ensure that everyone in the UK counts and is counted, and no one is left behind’. See: UK Statistics Authority (2020), *Statistics for the public good*. <https://uksa.statisticsauthority.gov.uk/statistics-for-the-public-good/#pid-inclusive>

72 See: UK Statistics Authority (2021), *Inclusive Data Taskforce recommendations report: Leaving no one behind – How can we be more inclusive in our data?* (page 14). <https://uksa.statisticsauthority.gov.uk/wp-content/uploads/2021/09/1618-Inclusive-Data-Taskforce-Recommendation-Report-web-v1-00.pdf>

73 The OSR guidance provides advice on decision-making but does not set out harmonised standards, which is outwith the Regulators remit.

74 Office for Statistics Regulation (2024), *Collecting and reporting data about sex and gender identity in official statistics: A guide for official statistics producers* (‘Important information’). <https://osr.statisticsauthority.gov.uk/publication/collecting-and-reporting-data-about-sex-and-gender-identity-in-official-statistics-a-guide-for-official-statistics-producers/#...:text=Producers%20should%20be%20clear%20about%20what%20they%20are%20collecting%20and,a%20substitute%20for%20each%20other.>

75 Equality and Human Rights Commission (2021), *EHRC Chief Executive to MurrayBlackburnMackenzie* (3 November 2021).

<https://murrayblackburnmackenzie.org/wp-content/uploads/2021/11/764MBM-4.pdf>

76 Government Statistical Service (online), *Harmonised standards and guidance*. <https://analysisfunction.civilservice.gov.uk/government-statistical-service-and-statistician-group/gss-support/gss-harmonisation-support/harmonised-standards-and-guidance/>

77 Government Statistical Service (2022), *Government Statistical Service (GSS) Harmonisation Team workplan*

<https://analysisfunction.civilservice.gov.uk/policy-store/gss-harmonisation-team-workplan/>

78 Government Statistical Service (2022), *Update on harmonisation work on the topics of sex, sexual orientation and gender identity* (December 2022). <https://analysisfunction.civilservice.gov.uk/news/update-on-harmonisation-work-on-the-topics-of-sex-sexual-orientation-and-gender-identity/>

79 There appears to be some confusion about the status of this work. For example, this Review was told that the Welsh Government considers that a GSS harmonised standard is already in place.

that reflects the view they want to express'.<sup>80</sup> The MRS Code (2023) requires participants to be able to express their views, in a way which they prefer and with the option to not respond. Variables such as sex and age are not ordinarily seen as views or opinions, but rather as demographic variables. Yet MRS appear to apply the logic of allowing participants to 'express views' to the question of sex. The MRS guidance goes on to state that, regarding gender "It is important to allow participants to self-describe and to opt-out of answering sensitive, personal questions." The guidance also states that "Practitioners must include the response options 'don't know' and 'prefer not to say' when gathering gender data from participants. Practitioners should include options to self-identify gender, e.g., the use of 'other, please specify' response options. These options support inclusivity." Particularly in the light of the lack of a common understanding of the term "gender" the requirement for participants to be able to self-describe is open to interpretation, and can be taken to imply that self-identified gender should supersede sex.

MRS guidance has been cited by government-sponsored surveys as a rationale for ceasing to collect data on sex. That MRS membership is a pre-requisite for many market research and survey organisations commissioned to undertake government surveys adds further weight to its authority in this area.

As detailed in chapter ten, the Higher Education Statistics Agency (HESA) replaced its long-standing sex question for staff and student records with a gender identity question in line with recommendations made by the charity Equality Challenge Unit (now Advance HE) (see page 136).

## Chapter structure

The chapter is structured in five parts. Section 5.2 reviews guidance published by public bodies and agencies. This includes guidance published by the Scottish and Welsh governments, UK Government Design Service, Financial Conduct Authority, and Arts Council England.

Section 5.3 looks at the approach to data collection on sex by three major Non-Departmental Public Bodies that have either a direct role in data collection on sex or provide authoritative direction on the definition of sex. These are the Office for National Statistics and

National Records of Scotland, which are responsible for the censuses in England and Wales, and Scotland respectively, and the Equality and Human Rights Commission, which is responsible for enforcement of the Equality Act 2010.

Section 5.4 looks at guidance published by the Market Research Society, which acts as the regulator and code-holder for the sector, and guidance published by Ipsos (formerly Ipsos MORI), a multinational market research organisation that is regularly commissioned to administer government surveys. This section also looks at the type of questions used by survey companies to recruit panel members.

Lastly, section 5.5 reviews guidance published and promoted by four UK charities that have published guidance or provided direction on data collection. These are Advance HE, Scottish Trans, Sex Matters, and Stonewall.

## 5.2 Public bodies and agencies

This section reviews data collection guidance and standards published by a range of public bodies, including the Scottish and Welsh governments. The analysis highlights a lack of clarity and consistency in relation to recommendations on terminology (for example, whether sex or gender should be used), and how these terms are defined or conceptualised. Whilst some publications are not directive (for example, guidance published by the Financial Conduct Authority), others provide a stronger steer. For example, the Scottish Government advises that data on biological sex should only be collected in very limited circumstances. The analysis also highlights lobbying activity within Scottish Government, and the promotion of gender identity principles more broadly.

### 5.2.1 Scottish Government guidance on sex and gender identity data collection for public bodies

In 2021 the Scottish Government published guidance for public bodies on collecting and publishing data on sex, gender identity, and trans status.<sup>81</sup> The guidance was drawn up by the Office of Scotland's Chief Statistician, supported by a Working Group drawn from a number of public bodies, including the EHRC's Scottish office (formerly referred to as EHRC Scotland).<sup>82</sup>

<sup>80</sup> Market Research Society (2023), *Code of Conduct* (page 16).

<sup>81</sup> Scottish Government (2021), *Data collection and publication guidance: Sex, Gender Identity, Trans Status*. <https://tinyurl.com/4yrvdh5>

<sup>82</sup> Scottish Government (2022), *Sex and Gender in Data Working Group*. <https://webarchive.nrscotland.gov.uk/20220306031528/http://www.gov.scot/groups/sex-and-gender-in-data-working-group/>

Early drafts of the guidance show that the Chief Statistician initially proposed a question on biological sex, asking ‘what was your sex recorded at birth’. This was, however, subject to strong internal criticism by EHRC via its Scottish Office. A published EHRC Scotland submission to the Working Group also raised concerns, principally on privacy grounds ([see further section 5.3.3](#)).<sup>83</sup>

Draft guidance published for consultation in late 2020 defined sex in terms of biological and legal ‘aspects’ and replaced the proposed biological question with a sex subject to GRC question.<sup>84</sup> A few weeks ahead of the final publication, this definition was changed again, to incorporate ‘self-defined’ sex, and the legal question dropped. The definition of sex presented in the final guidance is reproduced below.

#### *Aspects to a person’s sex, Scottish Government, 2021*<sup>85</sup>

**For the purposes of collecting data,** a person’s sex is generally defined as male or female. There are different aspects to a person’s sex:

**Biological:** as determined by a person’s anatomy, which is produced by a combination of their chromosomal, hormonal, genital and gonadal characteristics, and their interactions.

**Legal:** typically legal sex is their sex registered at birth. However, for a trans person with a full Gender Recognition Certificate, their legal sex is their acquired sex.

**Self-defined:** a person’s innate sense of whether they are female or male.

The final guidance recommended a sex question that provided for self-identified responses,<sup>86</sup> to align with Ministerial decision-making on Scotland’s 2022 Census.<sup>87</sup> The guidance also advised that asking a person to disclose their sex may be an unjustifiable breach of privacy and was only likely to be necessary ‘in a small number of instances’.

‘Where it is not necessary and proportionate, a question requiring the disclosure of a person’s biological sex may be an unjustifiable breach of

privacy: in some cases this would have the potential to reveal a trans history that otherwise a person may wish to keep private. In a **small number of instances**, it may be necessary and proportionate to require a person to answer a question on their biological 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. **The most likely scenarios where data on biological sex is required would be on a case-by-case basis in a medical context; in a criminal context where a serious sexual offence is being investigated.**’ (emphases added)<sup>88</sup>

Whilst not mandatory for public bodies, the Scottish Government guidance is influential. On publication the Chief Statistician wrote to Scottish public bodies requesting details of plans to adopt the guidance and any challenges.<sup>89</sup>

Organisations that planned to adopt and/or take account of the guidance at an early stage included the following:<sup>90</sup>

- Audit Scotland
- Caledonian MacBrayne
- Care Inspectorate
- Crown Estate Scotland
- HM Inspectorate of Prisons for Scotland
- Judicial Appointment Boards for Scotland
- Loch Lomond and the Trossachs National Park
- Mental Welfare Commission Scotland
- National Galleries of Scotland
- Registers of Scotland
- Risk Management Authority
- Scottish Courts and Tribunal Service
- Scottish Fire and Rescue Service
- Scottish Funding Council
- Scottish Human Rights Commission
- Scottish Legal Complaints Commission
- Scottish Prison Service
- Scottish Social Services Council

83 For more detail on how the guidance developed see: MurrayBlackburnMackenzie (2021), *Diminishing the value of public sector data: How the Chief Statistician’s guidance lost sight of biological sex*. <https://murrayblackburnmackenzie.org/2021/11/04/diminishing-the-value-of-public-sector-data-how-the-chief-statisticians-guidance-lost-sight-of-biological-sex/>

84 Scottish Government (2020), *Working group about a person’s sex and gender Data collection and publication – draft guidance* (pages 6, 15). <https://forwomen.scot/wp-content/uploads/2021/02/DRAFT-guidance-on-collecting-sex-and-gender-data-December-2020-for-Stakeholders.pdf>

85 Scottish Government (2021), *Data collection and publication guidance: Sex, Gender Identity, Trans Status* (page 7). <https://tinyurl.com/4yrvxvdh5>

86 As above (page 15).

87 National Records of Scotland (2021), *Sex question* (page 1). <https://www.scotlandscensus.gov.uk/media/nzljdqvn/sex-question-guidance-30-august.pdf>

88 Scottish Government (2021), *Data collection and publication guidance: Sex, Gender Identity, Trans Status* (page 11). <https://tinyurl.com/4yrvxvdh5>

89 Scottish Government (2021), *Guidance on collection of data on sex and gender: letter to public bodies* (22 September 2021). <https://www.gov.scot/publications/guidance-on-collection-of-data-on-sex-and-gender-letter-to-public-bodies/>

90 Scottish Government (2022), *Chief Statistician guidance to public bodies on sex and gender: FOI release* (2 March 2022). <https://www.gov.scot/publications/foi-202200275789/>



Some replies to the Chief Statistician showed an ongoing lack of clarity as to how sex is conceptualised. For example, Health Improvement Scotland explained that for that it intended to use a variation on the recommended sex question:

‘we may include additional answer options, e.g. ‘female’, ‘male’, ‘non-binary’ and ‘prefer not to say’. This ensures that people using non-binary terms to self-identify their sex (whether ‘intersex’ or ‘non-binary’) have a suitable answer option to select, including in a way that feels consistent with their trans status.’<sup>91</sup>

In a similar vein, NHS Golden Jubilee told the Chief Statistician, ‘we also know that sex can refer to biological sex (which is not binary but bimodal, given the increased visibility of intersex people), legal sex, and self-identified sex.’<sup>92</sup>

## Analysis

The Scottish Government guidance takes a narrow view on when data on biological sex may be collected. It reflects a view that sex is a deeply personal and sensitive characteristic, and relatedly, relies on a contested reading of the law on privacy. The government also appears to believe that sex is not a fixed characteristic. In a legal challenge to the sex question guidance in Scotland’s 2022 Census,<sup>93</sup> the counsel for the Scottish Government stated:

‘It may once have been thought that sex at birth is immutable. It is no longer so.’<sup>94</sup>

The default position against collecting data on biological sex is not supported by the legal opinion provided for this review, nor is it supported by a legal opinion on the EHRC (Scottish Office) submission to the Working Group, commissioned by Woman’s Place UK (discussed in more detail at section 5.3.3). This concluded that the EHRC submission (which is reflected in the final Scottish Government guidance) misrepresented the law and that data on biological sex could be collected, providing this was in accordance with the law, for a legitimate purpose, and proportionate.<sup>95</sup> The EHRC later rowed back from its initial submission to the Working Group and advised

the Chief Statistician that that data on biological sex could be collected, if appropriate and proportionate.<sup>96</sup> A similarly restrictive position on privacy was expressed by ONS staff in relation to the development of the sex question in the 2021 England and Wales Census,<sup>97</sup> but successfully challenged in the High Court.

In early 2024, the Office for Statistics Regulation (OSR) wrote to Scotland’s Chief Statistician to share its new Regulatory guidance on collecting and reporting data about sex and gender identity in official statistics. This stated:

‘As Chief Statistician for the Scottish Government you have the authority to publish definitions and to advise on when they should be used. To help producers use your guidance, we recommend that you provide more information or practical examples on when the collection of each of the definitions of sex set out may be useful or necessary. This should include clarifying the position, reflecting developments since your guidance was published, on when the privacy considerations relating to the collection of biological sex should be applied and when they will not be relevant.’<sup>98</sup>

As part of its response to the OSR, the Scottish Government reiterated an existing commitment to review the document, as part of its Non-Binary Equality Action Plan:

In Scottish Government’s Non-Binary Equality Action Plan, we have committed to a review of how well the Chief Statistician’s Sex and Gender in Data Guidance has been adopted and user engagement with stakeholders by the end of 2024. We will then plan to potentially update the guidance and conduct further stakeholder feedback in due course. We will provide updates on this work via the Scottish Government Statistics Blog.

We recognise that this is a changing space and can be confusing for those collecting data or producing statistics. The Chief Statistician can provide practical advice and support to those collecting data on sex and gender in Scotland, recognising the changing landscape in this space.<sup>99</sup>

91 Scottish Government (2022), *Chief Statistician guidance to public bodies on sex and gender: FOI release: Annex B*, 2 March 2022 (page 8). <https://tinyurl.com/4ffu49b6>

92 Scottish Government (2022), *Chief Statistician guidance to public bodies on sex and gender: FOI release: Annex C* (2 March 2022) (page 3). <https://tinyurl.com/bdzmc5xu>

93 See: *Fair Play For Women vs the Registrar General and the Scottish Ministers*, 24 February 2022. <https://fairplayforwomen.com/wp-content/uploads/2022/02/2022CSIH7-1.pdf>

94 Douglas Ross QC, Scottish Government counsel, 23 February 2022.

95 Woman’s Place UK (2020), *EHRC misrepresents the law on collecting sex data*. <https://womensplaceuk.org/2020/12/11/ehrc-misrepresents-the-law-on-collecting-sex-data/>

96 Equality and Human Rights Commission (2021), *EHRC Chief Executive to National Records of Scotland Chief Executive*, 24 November 2021. <https://fairplayforwomen.com/wp-content/uploads/2022/01/802Lowe.pdf>

97 Office for National Statistics (2020), *Roundtable correspondence: Part 2*, Freedom of Information release (page 35). <https://www.ons.gov.uk/file?uri=/aboutus/transparencyandgovernance/freedomofinformationfoi/informationpertainingtotheonsroundtableon24june2020/0640roundtablecorrespondencepart2redactedv.31.pdf>

98 Office for Statistics Regulation (2024), *Ed Humpherson to Alastair McAlpine: Regulatory guidance on collecting and reporting data about sex and gender identity in official statistics*, 29 February 2024. <https://osr.statisticsauthority.gov.uk/correspondence/ed-humpherson-to-alastair-mcalpine-regulatory-guidance-on-collecting-and-reporting-data-about-sex-and-gender-identity-in-official-statistics/>

99 Scottish Government (2024), *Sex, gender identity, trans status - data collection and publication: guidance*. Office for Statistics Regulation Guidance, 4 March 2024. <https://www.gov.scot/publications/data-collection-publication-guidance-sex-gender-identity-trans-status/pages/13--office-for-statistics-regulation-osr-guidance/>

## 5.2.2 Welsh Government harmonised standards and best practice

In 2013 the Welsh Government published Harmonised Standards on collecting data on protected characteristics. The Welsh Government has advised us that they are historic, although at the time of writing these are shown on the government website as the ‘latest release’.<sup>100</sup> The Welsh Government current position is shown in Appendix two.

The (historic) harmonised standards recommend asking a simple sex question, with male and female response options. They also note, however, that the Higher Education charity Equality Challenge Unit (the precursor of Advance HE) recommend an ‘other’ response option, for those with other gender identities (see further section 5.5.1) but provide no direction on using this.<sup>101</sup> These are shown below.

*‘Collecting equality data: Harmonised standards and best practice’  
Welsh Government, 2013*

It is recommended that data on sex is collected using the following question:

What is your sex?

- Male
- Female

An answer option of ‘other’ is recommended by the Equality Challenge Unit (ECU). The use of ‘other’ is deemed appropriate for people who associate with the terms/labels intersex, androgyne, intergender, ambigender, gender fluid, polygender and genderqueer.

In practice, this means that the guidance provides for both sex and gender identity, depending on which response options are used.

In February 2024, the Welsh Government awarded a contract for ‘exploratory research on current harmonised standards and guidance and data collection needs on the equality characteristics of sex, gender/gender identity and trans status in Wales’.<sup>102</sup>

The tender note stated that the ‘purpose of the research is to investigate whether current standardised questions and guidance on these topics meet the needs of public sector, voluntary sector and private sector organisations in Wales, and to provide evidence to support ongoing development work on associated harmonised standards and guidance.’<sup>103</sup> The Welsh Government has since told us that it is now planning to carry out this research in-house.

Appendix two shows a written response to the Review from the Welsh Government Chief Statistician on the approach taken by Welsh Government analysts to data collection on sex and gender. This cites a UK ‘harmonised standard for sex’, although as noted in the introduction to this chapter, work in this area is still underway, with definitions to be finalised.<sup>104</sup> The written response also notes that the exploratory research outlined above is still ongoing.

## 5.2.3 UK Government Design Service guidance

The UK Government Design Principles are published by the Central Digital and Data Office. These are primarily intended for government needs, but also shared for wider use. Broader principles for service design include accessibility, consistency, and accounting for user needs.<sup>105</sup>

More detailed guidance is provided on designing services,<sup>106</sup> including recommendations on asking for data on ‘Gender or Sex.’ This advises that the term ‘sex’ should only be ‘when you need biological data’, for example, when providing a medical service, and that ‘gender’ should be used in all other cases.<sup>107</sup> This clarifies that sex is a biological concept but provides no direction on what is meant by gender, or why this should be collected instead of sex, or in what circumstances.

<sup>100</sup> Welsh Government (online), *Collecting equality data - Harmonised standards and best practice*.

<https://web.archive.org/web/20240227015122/https://www.gov.wales/collecting-equality-data-harmonised-standards-and-best-practice-0>

<sup>101</sup> Welsh Government (2013), *Collecting equality data: Harmonised standards and best practice* (page 4).

<https://www.gov.wales/sites/default/files/statistics-and-research/2018-12/131016-collecting-equality-data-en.pdf>

<sup>102</sup> Welsh Government (2024), *Contract award notice: Data collection needs on the equality characteristics of sex, gender identity & trans status*. 27 February 2024. [https://www.sell2wales.gov.wales/Search/Show/Search\\_View.aspx?ID=FEB468651](https://www.sell2wales.gov.wales/Search/Show/Search_View.aspx?ID=FEB468651)

<sup>103</sup> Welsh Government (2023), *Data collection needs on the equality characteristics of sex, gender identity & trans status* (15 December 2023). [https://www.sell2wales.gov.wales/Search/Show/Search\\_View.aspx?ID=DEC460702](https://www.sell2wales.gov.wales/Search/Show/Search_View.aspx?ID=DEC460702)

<sup>104</sup> See: Government Analysis Function (2019), *Sex and gender harmonisation guidance*. 4 September 2019.

<https://analysisfunction.civilservice.gov.uk/policy-store/sex-and-gender/>

<sup>105</sup> UK government (2019), *Government Design Principles*.

<https://www.gov.uk/guidance/government-design-principles>

<sup>106</sup> UK government (2024), *Design your service using GOV.UK styles, components and patterns*.

<https://design-system.service.gov.uk/>

<sup>107</sup> UK government (online), *Gender or Sex*.

<https://design-system.service.gov.uk/patterns/gender-or-sex/>

## 5.2.4 Financial Conduct Authority

The Financial Conduct Authority (FCA) is the independent regulatory body for UK financial services firms and financial markets.<sup>108</sup>

In April 2022, the FCA published new rules on diversity and inclusion for public boards and executive management,<sup>109</sup> including a requirement for listed companies to publish annual data on the number of male and female board members. In an earlier consultation on the rules, the FCA proposed a reporting mechanism based on gender identity, including a non-binary category, however this was widely opposed.<sup>110</sup>

The final rules ‘allow companies the flexibility to determine how they collect and report data in this area’, provided they explain their approach and ensure consistency.<sup>111</sup> Companies may also add other response categories if they choose. This means that for companies that choose to collect data and report based on gender identity, it may be more difficult to identify patterns of sex-based discrimination.

Diversity data for FCA employees is recorded differently, based on sex subject to GRC, in line with the 2021 England and Wales Census.<sup>112</sup>

## 5.2.5 Arts Council England

Arts Council England (ACE) is a non-departmental public body of the Department for Culture, Media and Sport, and a registered charity.

For the purposes of collecting data on audiences, ACE recommend that ACE-funded organisations ask a sex question that includes a ‘none of the above’ response option, inferring that respondents may have a sex that is neither male nor female. A record of changes made to the sex question show that this option was introduced in April 2024 to replace an intersex response option.<sup>113</sup> The current recommendations, which conflate sex and gender identity, are shown below. Appendix three shows further examples of ACE data collection practices submitted to the Call for Evidence.

### *Audience Survey Questions 2024-2025, Arts Council England*

<p><b>SEX AND GENDER</b></p> <p>The following questions are about sex and gender. In order to fully understand our audiences we’re asking about an individual’s sex and their gender identity. Responses to these questions are optional. The survey respondent can skip them if they wish to do so.</p>	What is your sex?	Prefer not to say Female Male None of the above
	Is your gender the same as the sex you were assigned at birth?	Prefer not to say Yes No

## 5.3 Non-departmental government bodies

This section looks at how three major arms-length government bodies approach data collection on sex, and how this has changed over time. These are the Office for National Statistics (ONS) and National Records of Scotland (NRS), which are responsible for administering the census in England and Wales, and Scotland respectively, and the Equality and Human Rights Commission (EHRC), which is Britain’s human rights regulator, and responsible for enforcing the Equality Act 2010.

### 5.3.1 Office for National Statistics

The Office for National Statistics (ONS) is the executive office of the UK Statistics Authority, a non-ministerial department that reports to the UK Parliament. It is the UK’s largest independent producer of official statistics, responsible for the England and Wales Census, and collecting and publishing statistics relating to the economy, population and society.

Within the last two decades the ONS has changed its approach to data collection on sex, complicating its ordinary meaning via the promotion of gender self-

<sup>108</sup> Financial Conduct Authority (2024), *About the FCA*.

<https://www.fca.org.uk/about/what-we-do/the-fca>

<sup>109</sup> Financial Conduct Authority (2022), *Listing Rules and Disclosure Guidance and Transparency Rules (Diversity and Inclusion) Instrument 2022*.

[https://www.handbook.fca.org.uk/instrument/2022/ECA\\_2022\\_6.pdf](https://www.handbook.fca.org.uk/instrument/2022/ECA_2022_6.pdf)

<sup>110</sup> See: Sex Matters (2022), *Financial Conduct Authority says corporate boards can use sex not gender*.

<https://sex-matters.org/posts/the-workplace/fca-women-on-corporate-boards/>

<sup>111</sup> Financial Conduct Authority (2022), *Diversity and inclusion on company boards and executive management. Policy Statement* (page 20).

<https://www.fca.org.uk/publication/policy/ps22-3.pdf>

<sup>112</sup> Financial Conduct Authority (2023), *Our workforce representation*.

<https://www.fca.org.uk/about/how-we-operate/diversity-equity-inclusion/our-workforce-representation>

<sup>113</sup> Arts Council England (2024), *Illuminate – Mandatory Audience Survey Questions 2024-2025* (page 16).

<https://www.artscouncil.org.uk/media/21430/download?attachment>

identification principles. This shift can be seen in its handling of the 2011 and 2021 censuses. It is also evident in internal staff communications submitted to this review and in more recent published outputs. These developments are outlined below.

### ‘Harmonised Concepts and Questions for Social Data Sources’, 2004-2018

Since 2004 the ONS, in conjunction with the Government Statistical Service (GSS), has published harmonised concepts and questions for use in government social surveys.<sup>114</sup> The most recent version was dated 2018 and remains broadly unchanged from 2004.<sup>115</sup> The harmonised concepts and questions treat sex as an unproblematic characteristic that is often ‘observed or volunteered’, with two response codes (male, female). This understanding can also be seen in a 2007 ONS-led review of equality data needs, which described gender as a ‘straightforward area’, with only two possible answers.

‘4.19. Gender data are usually gathered by being volunteered or observed, rather than by explicit questions. Two answers are possible, either male or female, hence, outputs follow the same classification. This is therefore a straightforward area where a common approach has been agreed.’<sup>116</sup>

The ONS harmonised concepts and questions align with European Harmonised Standards, which make clear the importance of biological sex in survey and administrative data.

‘The importance of this variable derives from the need for adequate information on the situation of women and men in all policy areas. By studying the gender differences and inequalities it is possible to understand them, and on this basis, make plans, formulate and monitor policies in all spheres of society. Hence, the importance of the variable ‘sex’ which being cross classified with other characteristics of the population provides the basis for evaluating progress towards the complete elimination of still existing gender-based stereotypes’.<sup>117</sup>

The significance of sex is also codified in an agreed policy position that can be seen in the 2017 version of the harmonised concepts and questions, as shown below.

*Harmonised Concepts and Questions for Social Data Sources Primary Principles: Demographic Information, Household Composition and Relationship, ONS, 2017*

The GSS has an agreed policy on the publication of sex-disaggregated statistics: The GSS aims always to collect and make available, for example in publications, statistics disaggregated by sex, except where considerations of practicality or cost outweigh the identified need.<sup>118</sup>

### Self-identification and the census

An initial departure from the position outlined above can be seen in the 2011 England and Wales Census, following the introduction of online guidance to the sex question that provided for self-identified responses. Developed at the ‘request of the LGBT community’<sup>119</sup> this stated:

‘Select the answer which you identify yourself as. You can select either ‘male’ or ‘female’, whichever you believe is correct, irrespective of the details recorded on your birth certificate. You do not need to have a Gender Recognition Certificate.’

The 2011 Census guidance was not widely publicised at the time, nor easily accessed by respondents insofar as it was not linked to the questionnaire, and unlikely to have carried significant weight either externally or within the ONS.

Gender self-identification principles gained a much stronger foothold in the 2021 Census, albeit inconsistently at first. In 2016 the ONS published a Gender identity topic report that described sex as ‘biologically determined’, and ‘one of the most frequently used and important characteristics the census collects’.<sup>120</sup> Updates to the harmonised principles for social surveys in this period (see above) also continued to reiterate the importance of sex.

114 Office for National Statistics (2004), *Harmonised Concepts and Questions for Social Data Sources: Primary Standards* (page 11). <https://web.archive.org/web/20070108154516/http://www.statistics.gov.uk/about/data/harmonisation/downloads/P2.pdf>

115 The 2004 version referred to gender instead of sex, which coincided with increasing use of the terms as a synonym for sex from the 1990s onward and very likely referred to biology. For further details of this linguistic shift, see further chapter seven.

116 Office for National Statistics (2007), *Equality Data Review* (para. 4.19). [https://webarchive.nationalarchives.gov.uk/ukgwa/20160106185800mp\\_/http://www.ons.gov.uk/ons/guide-method/measuring-equality/equality/equality-data-review/review-of-equality-data--final-report.pdf](https://webarchive.nationalarchives.gov.uk/ukgwa/20160106185800mp_/http://www.ons.gov.uk/ons/guide-method/measuring-equality/equality/equality-data-review/review-of-equality-data--final-report.pdf)

117 Eurostat (2007), *Task Force on Core Social Variables* (page 23). <https://ec.europa.eu/eurostat/documents/3859598/5901513/KS-RA-07-006-EN.PDF/71481ffb-771a-489b-a749-1a055c0247d4>

118 Office for National Statistics (2017), *Harmonised Concepts and Questions for Social Data Sources: Primary Standards* (page 12). <https://web.archive.org/web/20220618054103/https://gss.civilservice.gov.uk/wp-content/uploads/2016/03/Demographic-Info-June-17-Pending-informing-SPSC-1.pdf>

119 Jones, J-C and Mackenzie, L. (2020), *The Political Erasure of Sex: Sex and the Census Executive Summary* (page 1). [https://thepoliticalerasureofsex.org/wp-content/uploads/2020/10/The-Political-Erasure-of-Sex\\_Executive-Summary.pdf](https://thepoliticalerasureofsex.org/wp-content/uploads/2020/10/The-Political-Erasure-of-Sex_Executive-Summary.pdf)

120 Office for National Statistics (2016), *The 2021 Census: Assessment of initial user requirements on content for England and Wales. Gender identity topic report* (page 15). <https://www.ons.gov.uk/file?uri=/census/censustransformationprogramme/consultations/the2021censusinitialviewoncontentforenglandandwales/topicreport03genderidentity.pdf>

A census topic report on gender identity published in 2017 reframed sex as a sensitive characteristic and cautiously recommended that a question about sex at birth should not be mandatory in the 2021 Census, as shown below.

‘We would tentatively recommend that an unchanged 2011 Census question should not be mandatory, for the benefit of, particularly, intersex and non-binary people who cannot choose male or female as a reflection of their current sex or gender. We would also recommend that a question specifically about sex at birth, or one that forces an answer indicating a trans identity, should not be mandatory given the needs of trans people living with disclosure concerns.’<sup>121</sup>

The proposal was, however, later withdrawn, following a critical response from academics and feminist groups. Campaign group Woman’s Place UK lodged a parliamentary petition<sup>122</sup> calling for the sex question to remain mandatory:

‘Data collection disaggregated by sex gives us vital information for policy making and distribution of resources. If implemented, the ONS recommendation will make widely acceptable that sex becomes a voluntary question. This will render useless equal opportunities monitoring designed to combat sex discrimination.’

The Times reported:

‘Women’s rights activists have begun a campaign urging the Office for National Statistics not to drop the “male or female” question from the next census, as senior academics warned that the move could have disastrous consequences for public policy... Equality groups say that the rights of transgender people should not take precedence over women’s right to exist. A new group, Woman’s Place UK, has started a petition demanding that the question be kept in the 2021 census...’

Sir Michael Marmot, a global authority on health inequality, and Jonathan Portes, professor of economics and public policy at King’s College London, have also warned of the dangers of leaving scientists and policymakers without an accurate

picture of the number of men and women living in the UK... Mr Portes, former chief economist at the Department for Work and Pensions, said the move would make it much more difficult to track and tackle issues such as the gender pay gap and inequality in childcare, social care, housing and health. “It’s difficult to think of a public policy area where that data is not relevant,” he said.

Stonewall, the gay rights charity, welcomed any move to make the data more inclusive, but urged common sense. “We want a census that represents everyone, not a census that represents no one,” a spokeswoman said.<sup>123</sup>

In 2019 the ONS published its proposed guidance to accompany the sex question in the forthcoming census. Conflating sex, gender identity, and rare congenital medical conditions, this advised, ‘If you are one or more of non-binary, transgender, have variations of sex characteristics, sometimes also known as intersex, the answer you give can be different from what is on your birth certificate.’<sup>124</sup>

Again, the proposed guidance attracted criticism from quantitative social scientists.<sup>125</sup> This variously highlighted the conflation of separate demographic characteristics, potential adverse effects on data reliability, particularly at a subgroup level, and the fundamental redefinition of male and female in the context of the oldest and most important population survey in England and Wales.

Thereafter the ONS revised its proposed guidance, to advise ‘If you are considering how to answer, use the sex recorded on one of your legal documents, such as a birth certificate, gender recognition certificate, or passport.’

At the request of the Methodological Assurance Review Panel (MARF), which reviews and provides advice and assurance on methods used to produce official statistics, the ONS prepared a report defending its proposed approach. This stated that ‘sex’, when used within the question ‘what is your sex?’, could be understood in diverse ways, and outlined five concepts of sex. These are reproduced in table 2.

121 Office for National Statistics (2017), *Qualitative research on gender identity: phase 1 summary report*. <https://www.ons.gov.uk/methodology/classificationsandstandards/measuringequality/genderidentity/qualitativeresearchongenderidentityphase1summaryreport>

122 UK Parliament (2018), *Keep the category of sex a mandatory question in the 2021 Census*. <https://petition.parliament.uk/archived/petitions/202435>

123 The Times (2017), *Feminists fight to keep gender question in census*, 14 October 2017. <https://www.thetimes.com/uk/society/article/feminists-fight-to-keep-gender-question-in-census-vqv3lr9gj>

124 Office for National Statistics (2019), *Guidance for questions on sex, gender identity and sexual orientation for the 2019 Census Rehearsal for the 2021 Census*. <https://www.ons.gov.uk/census/censustransformationprogramme/questiondevelopment/genderidentity/guidanceforquestionsonsexgenderidentityandsexualorientationforthe2019censurrehearsalforthe2021census>

125 See: Sullivan et al. (2019), *Letter from quantitative social scientists to the UK Census authorities*, 18 December 2019. [https://webarchive.nrsotland.gov.uk/3/archive2021.parliament.scot/S5\\_European/General%20Documents/CTEEA\\_2019.12.18\\_Sullivan.pdf](https://webarchive.nrsotland.gov.uk/3/archive2021.parliament.scot/S5_European/General%20Documents/CTEEA_2019.12.18_Sullivan.pdf)

Sunday Times (2019), *Census fears over gender identity*, 15 December 2019. <https://www.thetimes.com/uk/article/census-fears-over-gender-identity-rmx0gmzqxg>

Table 2. “Concepts of sex’, Methodological Assurance Review Panel 2021126

Concepts of ‘sex’	Potential respondent answers
Registered at birth	Female/Male <sup>1</sup>
Recorded on birth certificate	Female/Male
Recorded on legal/official documents <sup>2</sup>	Female/Male
Living/presenting	Female/Male/Other
Self-identified (often referred to as gender / gender identity)	Female/Male/Other

<sup>1</sup> A very small number of people with VSC/intersex conditions may be classified as ‘indeterminate’ in their first weeks of life.

These are reclassified as either male or female unless the infant died before this took place.

<sup>2</sup> This concept refers to UK issues legal/official documents. (Notes in original report).

The ONS selected the third of these options, meaning that sex recorded on official documents, such as a passport, could be used as a basis for responses, rather than either sex or ‘legal sex’ as recorded on a birth certificate or modified by a gender recognition certificate. In doing so, the ONS appeared to confuse the target of the question with the operationalisation of the question. The same individual may have a different sex recorded on different documents. The process for changing the sex on a passport has changed and may change in the future.<sup>127</sup> The sex on one’s passport can be changed without a GRC, and indeed, in February 2021, the UK Passport Office stated that it was unable to say how many records had been changed in this way<sup>128</sup>, though some figures have subsequently been released via Freedom of Information requests.<sup>129</sup>

The paper also retrospectively reinterpreted existing data on sex as inherently unstable, asserting for example, that the terms ‘male’ and ‘female’ have no clear definition. More examples are shown below (emphases added):<sup>130</sup>

- ‘Census estimates: **This is interpreted as self-identified sex both in 2011 and before**, although in 2001 guidance to that effect was only available on request, and prior to that no guidance was provided.
- International Passenger Survey: The interviewer typically records **what sex they believe the respondent to be**.

- GP Patient Register: Here applicants are invited to tick whether they are ‘Male’ or ‘Female’, **with no indication of the definition to be used (or even whether it is sex or gender which is being asked for)**.
- Annual Population Survey. There is no guidance, but we expect the interviewer typically records **what they believe the respondent to be...** ‘

In February 2021 feminist campaign group Fair Play for Women (FPFW) mounted a legal challenge against the ONS. FPFW contested that the inclusion of passports allowed the possibility for respondents to respond in terms of their gender identity rather than their sex subject to GRC, while the phrase ‘such as’ introduced further ambiguity. At a preliminary hearing in March 2021 (by which stage the census had begun), counsel for the ONS asserted that sex is not a simple matter, but an ‘umbrella term’. As well as biological sex and ‘legal sex’, the term ‘sex’, it was claimed, may also refer to a person’s ‘lived sex’ or ‘gender identity’, or to the sex marker on any document issued to them by the state, such as a passport.

<sup>126</sup> UK Statistics Authority (2021), *Methodology Assurance Review Panel (MARP) Methodology for decision making on the 2021 Census sex question concept and associated guidance* (pages 2, 6). <https://uksa.statisticsauthority.gov.uk/wp-content/uploads/2021/04/Methodology-for-decision-making-on-the-2021-Census-sex-question-concept-and-associated-guidance-1.pdf>

<sup>127</sup> The 2015 Women and Equalities Committee *Transgender Equality Report* noted:

‘Many organisations, including HM Passport Office, still require a declaration of name-change and a doctor’s letter confirming a change of gender which is meant to be permanent. Home Office Minister Karen Bradley told us that the Home Office was looking to: provide the customer with a greater choice on what evidence and from what source that they wish to confirm that the change of gender is likely to be permanent. This may include, for example, employers or government agencies. We plan to discuss further with representative agencies how best we can extend customer choice.’ (page 61). <https://publications.parliament.uk/pa/cm201516/cmselect/cmwomeq/390/390.pdf>

<sup>128</sup> HM Passport Office (2021), *Letter to Linda Walker*. Freedom of Information response, 15 February 2021. [https://www.whatdotheyknow.com/request/725692/response/1724866/attach/2/FOICR%2062507%20Linda%20Walker%20final%20response.pdf?cookie\\_passthrough=1](https://www.whatdotheyknow.com/request/725692/response/1724866/attach/2/FOICR%2062507%20Linda%20Walker%20final%20response.pdf?cookie_passthrough=1) (accessed 16 June 2021).

<sup>129</sup> For example, What Do They Know (online) Freedom of Information responses.

*Sex marker changes on passports in 2023*.

[https://www.whatdotheyknow.com/request/sex\\_marker\\_changes\\_on\\_passports\\_6#comment-117101](https://www.whatdotheyknow.com/request/sex_marker_changes_on_passports_6#comment-117101)

*Sex marker changes on passports in 2021*. [https://www.whatdotheyknow.com/request/sex\\_marker\\_changes\\_on\\_passports#incoming-2504298](https://www.whatdotheyknow.com/request/sex_marker_changes_on_passports#incoming-2504298)

*Sex marker changes on passports in 2019*.

[https://www.whatdotheyknow.com/request/sex\\_marker\\_changes\\_on\\_passports\\_2#incoming-2504284](https://www.whatdotheyknow.com/request/sex_marker_changes_on_passports_2#incoming-2504284)

<sup>130</sup> ONS Methodology Assurance Review Panel (MARP) (2021), *Methodology for decision making on the 2021 Census sex question concept and associated guidance* (page 8). <https://web.archive.org/web/20210215201105/https://uksa.statisticsauthority.gov.uk/wp-content/uploads/2021/02/EAP148-Methodology-for-decision-making-on-the-2021-Census-sex-question-concept-and-associated-guidance.pdf>

The judge dismissed this argument as unpersuasive and held that the Claimant had a ‘strongly arguable’ case that ‘sex’ within the meaning of the Census Act 1920 meant ‘legally recognised sex’, which is defined as biological sex or legal sex altered via the acquisition of a GRC, and ordered ONS to amend the guidance accordingly (Sullivan, 2021).<sup>131 132</sup>

Details of this change are provided in the ‘Quality and methodology information (QMI) for Census 2021’<sup>133</sup> but the sex question guidance is not referenced on the face of the Census Data Dictionary (which describes the ‘Definition of sex, categories, and changes since the 2011 Census for use with research and analysis using Census 2021 data’).<sup>134</sup> Nor is it made clear on the face of Census outputs on sex.<sup>135</sup>

The remainder of this section looks at how sex is viewed in other ONS outputs.

### ‘What is the difference between sex and gender’, 2019

In 2019 the ONS published an article on sex and gender in the context of UK government Sustainable Development Goals. The article contained several inaccuracies, including the claim that sex and gender are interchangeable in law, and that the UK government defined biological sex as ‘generally male or female’ and ‘something that is assigned at birth’.<sup>136</sup>

‘It is important to note that the law in the UK treats the terms sex and gender as interchangeable. This is shown by the Gender Recognition Act allowing someone who is changing their gender to change the sex marker on their birth certificate...

UK Government defines sex as referring to the biological aspects of an individual as determined by their anatomy... generally male or female [and]

something that is assigned at birth.’

Indicative of the ONS’ status and authority, following publication the definitions attributed to the UK government gained wider traction. Organisations citing the definitions included the British Council,<sup>137</sup> the Crown Prosecution Service,<sup>138</sup> Advance HE,<sup>139</sup> and the National Police Chief’s Council.<sup>140</sup>

The article also attracted questions and criticism. In response to a Freedom of Information request, the ONS stated that the article was ‘developed with input from the Government Equalities Office, to align with a cross-government position’ and that the definitions were ‘discussed with, and agreed by, the Government Equalities Office’.<sup>141</sup> Following complaints to the OSR, the ONS made several revisions to the article. This currently states the ‘government definitions, which were included in the 2019 article, are no longer current and do not reflect a current cross-government agreed position’.<sup>142</sup>

### ONS Service Manual

The ONS Service Manual sets out the house style and web standards for the ONS website.<sup>143</sup> This describes the distinction between sex, gender, and gender identity as ‘complex’. The manual advises ‘sex’ should be used in ONS releases, unless the data source specifically asks about gender or gender identity.<sup>144</sup> Sex, however, is also viewed as a catch-all concept, covering the same concepts cited in the ONS authored MARP paper, as shown below.

131 See: *R (Fair Play for Women Ltd) v UK Statistics Authority (2021) EWHC 940 (Admin)*. <https://fairplayforwomen.com/wp-content/uploads/2021/04/R-Fair-Play-for-Women-Ltd-v-UK-Statistics-Authority-09.03.21JUD-1.docx>

132 For a timeline of events, see: Fair Play for Women (2021), *Sex in the Census: Our legal challenge to stop the ONS redefining sex*, 1 May 2021.

<https://fairplayforwomen.com/sex-in-the-census-our-legal-challenge-to-stop-the-ONS-redefining-sex-2/>

133 Office for National Statistics (2023), Quality and methodology information (QMI) for Census 2021. 23 November 2023 (see: Changes to sex question guidance).

<https://www.ons.gov.uk/peoplepopulationandcommunity/populationandmigration/populationestimates/methodologies/qualityandmethodologyinformationqmiforcensus2021#quality-characteristics>

134 Office for National Statistics (2023), *Sex variable: Census 2021*.

<https://web.archive.org/web/20240626140254/https://www.ons.gov.uk/census/census2021dictionary/variablesbytopic/demographyvariables/census2021/sex>

135 For example, Office for National Statistics (2022), *Sex by single year of age*. 28 March 2023.

<https://www.ons.gov.uk/datasets/TS009/editions/2021/versions/2>

136 Office for National Statistics (2019), *What is the difference between sex and gender?* (page 3). <https://backup.ons.gov.uk/wp-content/uploads/sites/3/2019/02/What-is-the-difference-between-sex-and-gender-1.pdf>

137 British Council (2022), *Gender and Inclusion Guidance Note* (pages 2-3).

[https://web.archive.org/web/20240902115757/https://www.britishcouncil.in/sites/default/files/gender\\_and\\_social\\_inclusion\\_guide.pdf](https://web.archive.org/web/20240902115757/https://www.britishcouncil.in/sites/default/files/gender_and_social_inclusion_guide.pdf)

138 Crown Prosecution Service (2022), *Deception as to Gender: proposed revision to CPS legal guidance on Rape and Serious Sexual Offences (RASSO), Chapter 6 – Consent*. 26 September 2022.

<https://web.archive.org/web/20220926103101/https://www.cps.gov.uk/publication/deception-gender-proposed-revision-cps-legal-guidance-rape-and-serious-sexual-offences>

139 Advance HE (2024), *Guidance on the collection of diversity monitoring data*. April 2024.

<https://www.advance-he.ac.uk/knowledge-hub/guidance-collection-diversity-monitoring-data>

140 See chapter nine, page 116.

141 Office for National Statistics (2020), *Questions regarding the publication ‘What is the difference between sex and gender?’* <https://www.ons.gov.uk/aboutus/transparencyandgovernance/freedomofinformationfoi/questionsregardingthepublicationwhatisthedifferencebetweensexandgender>

142 Office for National Statistics (2023), *Sex and gender within the context of data collected for the Sustainable Development Goals (SDGs)*. <https://www.ons.gov.uk/economy/environmentalaccounts/articles/whatisthedifferencebetweensexandgender/2019-02-21>

143 Office for National Statistics (2023), *Style: ONS gets new home on ONS Service Manual*. 16 June 2023.

<https://digitalblog.ons.gov.uk/2023/06/16/style-ONS-gets-new-home-on-ONS-service-manual/>

144 This differs from UK Government Service Design guidance, which recommends gender as the default term.

### ONS Service Manual: Sex, gender and gender identity<sup>145</sup>

The distinction between sex, gender and gender identity is a complex area:

- sex is often used to relate to biological characteristics but (in terms of practical usage) may also refer to legal sex, lived sex or self-identified sex
- gender is often used interchangeably with sex, but may be seen as reflecting social, cultural and psychological constructs
- gender identity refers to personal perception of gender

ONS releases should use the term 'sex', unless they are referring to:

- data sources that specifically ask about gender or gender identity
- commonly used and recognised terms, such as 'the gender pay gap'

### ONS wider issues

The close relationship between the ONS and LGBT interest groups during the census question development process, and in contrast, the barriers to engagement faced by quantitative data experts and other advocates of data collection on sex, have been documented (Sullivan, 2021). The ONS appear to have missed an opportunity to provide avenues and opportunities to discuss issues about sex and gender in data collection with a range of stakeholders (Sullivan, 2021).

Following the provision of evidence suggesting that the gender identity question used in the 2021 England and Wales Census was flawed, the ONS made a statement that there was 'no evidence' that the design of the question had an adverse effect on the quality of the published statistics. Attempting to explain surprising patterns of response, the ONS suggested that this may be due to high numbers of transgender refugees.<sup>146</sup>

After the announcement of this review, senior staff at the ONS posted a 'Message in support of our trans colleagues' to all staff<sup>147</sup>. This message suggested that both the review and media coverage of academic scrutiny questioning the results of the gender identity question, could damage staff well-being. The message

directed affected staff to be aware of and use relevant mental health services.

A range of evidence submitted to this review raised questions about the internal culture of the ONS which appear relevant to the way decisions have been made on this topic by the organisation. It is beyond the capacity of this review to investigate this material. However, we have submitted it separately to the Office of Statistics Regulation, for its further consideration.

The OSR has stated that 'We noted in our interim report that the content and tone of the published communication from ONS has been somewhat closed and at times defensive. Some users have raised concerns that ONS has been captured by interest groups, leading to a lack of objectivity. We found no evidence of this form of bias through any of our work. We consider it regrettable that ONS's defensiveness has created an impression of bias to some external observers.'<sup>148</sup> We share OSR's regret at the defensiveness of the ONS, and further note that the perception of bias has been generated, not just among external observers, but also among some ONS staff, and that this perception is supported by evidence provided to this review.

### Analysis

Over the last two decades the ONS has radically changed how it views sex in the context of data collection. Earlier publications, including the GSS harmonised principles, present sex as an ordinary and uncomplicated core demographic characteristic that requires no further explanation. A shift from this position can be seen in the run-up to the 2021 Census, which saw the reframing of sex as a sensitive characteristic. This is evident in its handling of the sex question guidance, and wider promotion of self-identification principles within the organisation.

The ONS approach to data collection on sex in the context of the census and outcome of the Judicial Review brought by Fair Play for Women raises several concerns. It has been documented<sup>149</sup> that ONS Stakeholder engagement on the sex question prioritised particular interest groups over stakeholders with expertise in data collection. The decision-making process lacked transparency. Legal advice was

<sup>145</sup> ONS (online), *Sex, gender and gender identity*.

<https://service-manual.ons.gov.uk/content/language/sex-gender-and-gender-identity>

<sup>146</sup> Office for National Statistics (2023), Quality of Census 2021 gender identity data. <https://web.archive.org/web/20231108162544/https://www.ons.gov.uk/peoplepopulationandcommunity/culturalidentity/genderidentity/articles/qualityofcensus2021genderidentitydata/2023-11-13#related-links>

<sup>147</sup> Telegraph (2024) Government statistics body worried about triggering staff over transgender census questions <https://www.telegraph.co.uk/news/2024/01/27/ons-worried-triggering-staff-transgender-census/>

<sup>148</sup> Office for National Statistics (2023), Quality of Census 2021 gender identity data. <https://web.archive.org/web/20231108162544/https://www.ons.gov.uk/peoplepopulationandcommunity/culturalidentity/genderidentity/articles/qualityofcensus2021genderidentitydata/2023-11-13#related-links> p.4.

<sup>149</sup> Jones, J-C. and Mackenzie, L. (2020), *The Political Erasure of Sex*. [https://thepoliticalerasureofsex.org/wp-content/uploads/2020/10/The-Political-Erasure-of-Sex\\_Full-Report.pdf](https://thepoliticalerasureofsex.org/wp-content/uploads/2020/10/The-Political-Erasure-of-Sex_Full-Report.pdf)



invoked as a decisive factor,<sup>150</sup> yet there appears to be no public record of this advice.

### 5.3.2 National Records of Scotland

The National Records of Scotland (NRS) is a Non-Ministerial department of the Scottish Government.<sup>151</sup> NRS performs the registration and statistical functions of the Registrar General for Scotland and the archival functions of the Keeper of the Records of Scotland.

The NRS also has responsibility for administering the census in Scotland. As with the 2011 Census in England and Wales, the 2011 Census in Scotland carried guidance to accompany the longstanding sex question which advised respondents that they could answer the question in line with their self-declared gender identity. Organisations such as For Women Scotland initiated objections to this policy (Pedersen, 2023).

Both the NRS and the ONS proposed similar guidance, based on self-identification, ahead of the 2021 censuses, despite both censuses also introducing a new, separate voluntary question trans status or history (NRS) and gender identity (ONS) respectively.

As noted above, in England and Wales this guidance was challenged in court by Fair Play For Women (FPFW) and changed after the census had gone live, so that respondents were advised to answer the sex question with either their sex as registered at birth or as modified via acquisition of a GRC.

In Scotland, the decision to carry the guidance was justified by the NRS partly on the basis that they believed that it would increase participation without damaging data quality, and partly on the grounds that it was the approach already proposed during the passage of the Census (Amendment) (Scotland) Act 2019. (The 2019 Act was passed to enable the inclusion of two new, voluntary questions in the 2022 Census on sexual orientation and transgender identity.)

In a letter to the director of Office for Statistics Regulation in October 2021, the Chief Executive of NRS Paul Lowe stated that ‘this guidance is the same as that discussed with the Parliament when the census legislation was agreed’.<sup>152</sup>

At one point, NRS appeared to go further and claim, in error, that the guidance itself had received

parliamentary approval. In correspondence with two University of Edinburgh academics (Professors McVie and Paterson) in July 2020, Mr Lowe stated:<sup>153</sup>

‘As set out in Ms Hyslop’s letter to the CTEEA on the 26th February the agreement by the Scottish Parliament to the Census Order (12th March 2020) and Census Regulations (16th June 2020) confirms that the sex question and associated guidance has been agreed.’

The then convener of the Culture, Tourism, Europe and External Affairs committee wrote to Professors McVie and Paterson to clarify that the committee did not have the authority to approve the guidance, nor had it been provided with the final version of the complete set of guidance that would accompany the census. Mr Lowe later apologised for this ‘error in my original letter’.<sup>154</sup>

Following the postponement of Scotland’s census to 2022, PFW challenged the NRS guidance in court. Unlike the English High Court, in February 2022 the Inner House of the Court of Session upheld the guidance.

This means that data collected via the sex question in the 2022 Scottish Census cannot be said to represent respondents’ sex as registered at birth, and likely contains an unknown and unknowable number of responses in line with some individuals’ self-declared gender identity.

### 5.3.3 Equality and Human Rights Commission

The Equality Act 2006 established the Equality and Human Rights Commission (EHRC) and set out its statutory remit, including a duty to review and report on the progress of equality and human rights in Britain. It is also responsible for enforcing the Equality Act 2010. This section looks at how the Commission has defined sex in its periodic equality monitoring reports and inputs to the Scottish Government Sex and Gender in Data Working Group, and recent developments in relation to the definition of sex in the Equality Act 2010.

#### ‘How Fair is Britain’ reports

The enactment of the Equality Act 2010 consolidated existing equality legislation into a single Act and established sex as one of nine protected characteristics. In the same year, the EHRC published

150 See: Sullivan, A. (2021), *Sex and the Office for National Statistics: A Case Study in Policy Capture*, The Political Quarterly, Vol. 92 (4): 645.

<https://onlinelibrary.wiley.com/doi/epdf/10.1111/1467-923X.13029>

151 National Records of Scotland (online) *About Us*. <https://www.nrscotland.gov.uk/about-us>

152 Office for Statistics Regulation (2021), *Paul Lowe response to Ed Humpherson: Guidance for the sex question in Scotland’s Census*.

<https://osr.statisticsauthority.gov.uk/correspondence/paul-low-response-to-ed-humpherson-guidance-for-the-sex-question-in-scotland-s-census/>

153 Paterson, L. and McVie, S. (2020), *Letter to Joan McAlpine MSP, Convener, Culture, Tourism, Europe and External Affairs Committee*. 4 August 2020. [https://webarchive.nrscotland.gov.uk/3/archive2021.parliament.scot/S5\\_European/General%20Documents/20200804\\_ProfPaterson\\_ProfMcVieToConvener.pdf](https://webarchive.nrscotland.gov.uk/3/archive2021.parliament.scot/S5_European/General%20Documents/20200804_ProfPaterson_ProfMcVieToConvener.pdf)

154 Scottish Parliament (2020), *Culture, Tourism, Europe and External Affairs Committee Official Report*, 17 September 2020.

<https://webarchive.nrscotland.gov.uk/3/archive2021.parliament.scot/parliamentarybusiness/report.aspx?r=12830&mode=pdf>

its first statutory report, *How Fair is Britain*.<sup>155</sup> The report variously referred to the newly established protected characteristic of sex as ‘gender’. Switching between the terms, it stated, ‘Gender differences are shown through disaggregating by gender, i.e. male or female. The question may ask ‘What is your sex?’ or just ‘Are you?’ with the answers ‘male’ or ‘female.’<sup>156</sup>

The Technical Report<sup>157</sup> accompanying the 2015 report<sup>158</sup> stated ‘sex is measured as either observed or reported gender and based on a binary disaggregation into male and female’. Differentiating between gender and gender identity, it continued, ‘It does not reflect gender identity more broadly by allowing for alternative responses’. The report also noted that a direct question was not required if the question was observed by the interviewer or volunteer, citing the *Harmonised Concepts and Questions* published by the ONS (see section 5.3.1).

The 2018 report referred both to sex (as a protected characteristic) and to gender.<sup>159</sup> The underpinning Measurement Framework explained that the data was self-identified, as denoted by the term ‘gender’, to differentiate from biological sex.

‘Sex: refers to a man or a woman. In the survey data we use for our own statistical analysis, this characteristic is self-defined and allows transgender people to self-identify according to their gender and not their biological sex. Therefore, this characteristic is referred to as ‘Gender’ in our data tables’.<sup>160</sup>

This measurement framework remains in use and is cited in the most recent EHRC Equality and Human Rights Monitor report, published in 2023.<sup>161</sup>

## ‘Collecting information on gender identity’, 2011

In 2011 the EHRC published guidance on how to collect information on gender identity, drawing on research by NatGen.<sup>162</sup> The guidance also recommended a sex question, asking ‘At birth, were you described as’, with male, female, intersex, and prefer not to say response options.<sup>163</sup> This approach, which misclassifies DSDs as a separate sex class, remains influential. For example, the EHRC approach is cited as an exemplar in current Market Research Society guidance (see section ). ‘Intersex’ is also used as a response option in Data Standards for protected characteristics published by the National Police Chiefs Council (see page 116).

## Sex and Gender in Data Working Group, 2019

As noted earlier, in 2019 the Scottish Government established a Sex and Gender in Data Working Group<sup>164</sup> to provide guidance to public bodies on the collection, disaggregation, and use of data on sex and gender (see section ).

As Working Group members, and as already noted above, EHRC (via its Scottish Office) actively advocated for a self-defined definition of sex, described as ‘lived gender’. A written submission to the Working Group stated that requesting, gathering, and collating data on biological sex could be in breach of the law.

<sup>165</sup> Comments on a first draft of the guidance also show that the Commission robustly argued against a proposed ‘sex at birth’ question:

The Commission has serious concerns about the guidance in its current form. The promotion of gathering data relating to biological sex is not something that we can support and we would not be able to endorse it. The guidance also does not

155 Equality and Human Rights Commission (2010), *How fair is Britain? Equality, Human Rights and Good Relations in 2010. The First Triennial Review* [https://www.equalityhumanrights.com/sites/default/files/2021/how-fair-is-britain\\_1.pdf](https://www.equalityhumanrights.com/sites/default/files/2021/how-fair-is-britain_1.pdf)

Note: The EHRC revised the report in 2011. The extracts cited here are retained in the revised version. See EHRC (2011), *How fair is Britain? Equality, Human Rights and Good Relations in 2010. The First Triennial Review*. Revised edition. [https://www.equalityhumanrights.com/sites/default/files/2021/how-fair-is-britain\\_1.pdf](https://www.equalityhumanrights.com/sites/default/files/2021/how-fair-is-britain_1.pdf)

156 As above (page 696).

157 Equality and Human Rights Commission (2015), *Equality and Human Rights Commission Is Britain Fairer? Evidence Paper Series Technical paper* (page 28). [https://webarchive.nationalarchives.gov.uk/ukgwa/20170804154234/http://www.equalityhumanrights.com/sites/default/files/ibf\\_eps\\_sp\\_technical\\_paper\\_final.pdf](https://webarchive.nationalarchives.gov.uk/ukgwa/20170804154234/http://www.equalityhumanrights.com/sites/default/files/ibf_eps_sp_technical_paper_final.pdf)

158 Equality and Human Rights Commission (2015), *Is Britain Fairer? The state of equality and human rights 2015* (pages 16, 127). [https://www.equalityhumanrights.com/sites/default/files/2021/is-britain-fairer-2015\\_1.pdf](https://www.equalityhumanrights.com/sites/default/files/2021/is-britain-fairer-2015_1.pdf)

159 Equality and Human Rights Commission (2018), *Is Britain Fairer? The state of equality and human rights 2018*. <https://www.equalityhumanrights.com/sites/default/files/is-britain-fairer-accessible.pdf>

160 Equality and Human Rights Commission (2017), *Measurement Framework for Equality and Human Rights* (page 56). <https://www.equalityhumanrights.com/sites/default/files/measurement-framework-interactive.pdf>

161 Equality and Human Rights Commission (2023), *Equality and Human Rights Monitor. November 2023* (page 14).

<https://www.equalityhumanrights.com/sites/default/files/2023/Great%20Britain%20Equality%20and%20Human%20Rights%20Monitor-%20accessible%20PDF.pdf>

162 Balarajan, M., Gray, M. & Mitchell, M. (2011), *Monitoring equality: Developing a gender identity Question*.

[https://www.equalityhumanrights.com/sites/default/files/rr75\\_final.pdf](https://www.equalityhumanrights.com/sites/default/files/rr75_final.pdf)

163 Equality and Human Rights Commission (2011), *Collecting information on gender identity* (page 13).

<https://www.equalityhumanrights.com/sites/default/files/collecting-information-gender-identity.pdf>

164 Scottish Government (2019), Sex and Gender in Data Working Group. <https://webarchive.nrs.scotland.gov.uk/20220306031528/http://www.gov.scot/groups/sex-and-gender-in-data-working-group/>

165 Equality and Human Rights Commission (2019), *Sex and Gender Working Group – Meeting 23 September 2019. Equality and Human Rights Commission submission*. <https://www.gov.scot/binaries/content/documents/govscot/publications/minutes/2019/09/sex-and-gender-in-data-working-group-meeting-september-2019/documents/ehrc-submission-on-collecting-and-presenting-data-on-sex-and-gender/ehrc-submission-on-collecting-and-presenting-data-on-sex-and-gender/govscot%3Adocument/EHRC%2Bsubmission%2Bon%2Bcollecting%2Band%2Bpresenting%2Bdata%2Bon%2Bsex%2Band%2Bgender..pdf>

address the need to comply with human rights (or how asking about biological sex could contravene these), which feels like an omission...'<sup>166</sup>

In other comments on the draft, EHRC stated that collecting data on biological sex was unlikely to be human rights compliant, that the impact of not doing so on data reliability would be negligible, and the starting point for data collection should be 'always be lived gender'.<sup>167</sup>

Again, as noted above, in 2020 feminist campaign group Woman's Place UK commissioned a legal opinion on the EHRC Scottish office submission. This concluded that the submission misrepresented the law, and that data on biological sex could be collected, providing this was in accordance with the law, for a legitimate purpose, and proportionate.<sup>168 169</sup> The final Scottish Government guidance nonetheless reflected the EHRC position, cautioning against questions requiring the disclosure of a person's biological sex except 'on an individual basis for a very specific purpose', citing privacy concerns (see section ).<sup>170</sup>

In late 2021 the then EHRC CEO acknowledged that 'our previous advice to the Scottish Government could have been clearer on how equality and human rights are engaged' and that 'we are now developing guidance for public authorities on the factors they need to consider when collecting data on sex and trans status so that they are compliant with equality and human rights law'.<sup>171</sup> The EHRC CEO also wrote to the National Records of Scotland and Scotland's Chief Statistician,<sup>172</sup> advising that data on biological sex could be collected, if appropriate and proportionate.<sup>173</sup>

## Clarification of the meaning of 'sex' for the purposes of the Equality Act, 2023

In April 2023 the EHRC Chair wrote to the Minister for Women and Equalities, describing the definition of sex in the Equality Act 2010 as 'contested'.<sup>174</sup> The letter explained the Commission had thus far interpreted sex as 'legal sex' in its guidance and interventions (although this is not reflected in the earlier outputs outlined

above). The Chair advised that 'if 'sex' is defined as biological sex for the purposes of EqA, this would bring greater legal clarity' across a range of areas, including data collection for the purposes of equalities monitoring under the Public Sector Equality Duty.

'When data are broken down by legal not biological sex, the result may seriously distort or impoverish our understanding of social and medical phenomena. A biological definition of sex would require public bodies like universities to apply this category, without the complexity added by a legal definition of sex, to the analysis of data collected in fulfilling the Public Sector Equality Duty'.

## Analysis

The 'How Fair is Britain' reports show confusion around the terms 'sex' and 'gender' following the enactment of the Equality Act 2010. Whilst this is not unusual in this period (see chapter seven), as the regulator tasked with enforcing the Equality Act, - which only refers to 'sex' (man, woman, male, female) - the lack of accuracy is surprising. The inclusion of an 'intersex' response option in the sex question recommended in the 2011 gender identity guidance is likewise surprising. EHRC's submission to the Scottish Government data working group saw the Commission actively advocate for the collection of data on the basis of 'lived gender'.

As noted above, more recently the EHRC has clarified that it interprets sex in the Equality Act 2010 as sex subject to GRC, although this is not consistently supported by the material on its website. It is the understanding of the Review team that the Commission still intends to publish guidance on the collection of data on sex in due course.

<sup>166</sup> Equality and Human Rights Commission (2020), Email correspondence: EHRC to Scottish Government Chief Statistician (13 March 2020). Cited in: MurrayBlackburnMackenzie (2021) Diminishing the value of public sector data: How the Chief Statistician's guidance lost sight of biological sex

<https://murrayblackburnmackenzie.org/2021/11/04/diminishing-the-value-of-public-sector-data-how-the-chief-statisticians-guidance-lost-sight-of-biological-sex/>

<sup>167</sup> MurrayBlackburnMackenzie (2021), *Diminishing the value of public sector data: How the Chief Statistician's guidance lost sight of biological sex* (page 3). <https://murrayblackburnmackenzie.org/wp-content/uploads/2021/11/Diminishing-the-value-of-public-sector-data.-MBM-3-November-2021-.pdf>

<sup>168</sup> Woman's Place UK (2020), *EHRC misrepresents the law on collecting sex data*. <https://womansplaceuk.org/2020/12/11/ehrc-misrepresents-the-law-on-collecting-sex-data/>

<sup>169</sup> Scottish Legal News (2020), *EHRC sex data advice 'misrepresents the law'* (8 December 2020). <https://www.scottishlegal.com/articles/ehrc-sex-data-advice-misrepresents-the-law>

<sup>170</sup> Scottish Government (2021), *Data collection and publication guidance: Sex, Gender Identity, Trans Status* (page 11). <https://tinyurl.com/4yrvvdh5>

<sup>171</sup> Equality and Human Rights Commission (2021), *EHRC Chief Executive to MurrayBlackburnMackenzie*. 3 November 2021.

<https://murrayblackburnmackenzie.org/wp-content/uploads/2021/11/764MBM-4.pdf>

<sup>172</sup> Equality and Human Rights Commission (2021), *EHRC Chief Executive to National Records of Scotland Chief Executive*. 24 November 2021.

<https://fairplayforwomen.com/wp-content/uploads/2022/01/802Lowe.pdf>

<sup>173</sup> Equality and Human Rights Commission (2021), Note on the equality and human rights considerations with collection of data on sex and gender (September 2019; updated in November 2021 to reflect developments in the law in England and Wales), November 2021. <https://www.nrscotland.gov.uk/files/record-keeping/legislation/NRS-FOI-202200269381-Request-for-access-to-correspondence-with-the-Equality-and-Human-Rights-Commissioner-Website-Release-attachment-5.pdf>

<sup>174</sup> Equality and Human Rights Commission (2023), *Clarifying the definition of 'sex' in the Equality Act*. 4 April 2023. <https://www.equalityhumanrights.com/media-centre/news/clarifying-definition-sex-equality-act>

## 5.4 Market research and survey companies: guidance on collecting data on sex

Survey and marketing companies play an important role in data collection on sex. This includes undertaking fieldwork and/or developing survey instruments for major government sponsored surveys. Survey companies may also be commissioned by governments, agencies, or academics, to undertake research or polling using pre-recruited panellists, whose demographic details are recorded at the recruitment stage. The basis on which panellists are recruited (for example, whether those signing up are asked about their sex or gender identity) is therefore fundamental as to what published outputs represent.

This section reviews guidance on data collection published by the Market Research Society, which is the UK professional body for marketing and survey companies, and recent guidance produced by Ipsos. It also reviews how survey companies collect data on sex for the purposes of polling and marketing.

### 5.4.1 Market research society

The Market Research Society (MRS) describes itself as ‘the UK professional body for research, insight and analytics’.<sup>175</sup> Within the industry, the MRS takes on a regulatory role by promoting ‘the highest professional standards throughout the sector via the MRS Code of Conduct’ amongst its membership. Its regulations include a Code of Conduct, best practice guidelines, and disciplinary regulations and procedures. Membership of the MRS (and therefore adherence to its Code of Practice) is a pre-requisite for many key commercial tenders and government rosters.<sup>176</sup>

From 2016 onward, the MRS has published guidance notes on collecting data on sex and gender identity, mostly recently in 2024. As detailed below, the MRS guidance suggests questions which in practice conflate sex and gender by soliciting information on sex from the majority of respondents and on gender identity from other respondents. It also appears to have cemented its position over time, with reference to respondent vulnerability guidelines.

The influence of the MRS can be seen in the

Department for Culture, Media and Sport flagship ‘Taking Part’ survey, which replaced data collection on binary sex with the question ‘Which of the following describes how you think of yourself? Male/female/in another way’. Accompanying documentation explains that this change was made to comply with the MRS Code of Conduct:

‘Allowing respondents to provide information in a way that reflects the view they want to express is explicitly set out in the MRS Code of Conduct and this also applies to describing their gender. We must facilitate and recognise the fluidity of gender identity’.<sup>177</sup>

In 2018/19, the annual Community Life Survey, which is commissioned by the Department for Digital, Culture, Media and Sport, replaced the binary sex question with a multiple response question, to reflect MRS guidance. Similarly, Ipsos guidance on inclusive survey design refers to the Code of Conduct:

‘Since 2016, the UK Market Research Society (MRS) guidelines have stated that all research participants need to feel equally valued and satisfied that their personal preferences are being respected in terms of how they wish to describe and categorise themselves’, with reference to the MRS Code of Conduct.<sup>178</sup>

### ‘Guidance Note on Collecting Data on Sex and Gender’

The 2016 guidance broadly supported a self-identified approach to data collection, albeit with some caveats. Emphasising the idea of ‘respondent need’, the introduction stated, ‘all research participants need to feel equally valued and satisfied that their personal preferences are being respected in terms of how they wish to describe and categorise themselves’.<sup>179</sup>

In places, the 2016 guidance took a straightforward and/or cautious approach. Under ‘biological sex’, it noted, ‘in most cases the terms male and female will cover biological sex’, although it further stated, ‘there are a range of other variations in anatomy and chromosomal makeup which will require an additional classification such as intersex’.<sup>180</sup> The guidance acknowledged that departing from a binary sex question could result in ‘inaccuracy and bias’,

175 Market Research Society (online), *History*, <https://web.archive.org/web/20170606182520/https://www.mrs.org.uk/mrs/history>

176 Market Research Society (online), *About MRS* (‘What MRS does for the sector’), <https://www.mrs.org.uk/about>

177 Ipsos MORI (2019), *Taking Part: England’s survey of Culture, Leisure and Sport Interviewer Instructions* (pages 35–36), [https://doc.ukdataservice.ac.uk/doc/8631/mrdoc/pdf/8631\\_taking\\_part\\_interviewer\\_instructions.pdf](https://doc.ukdataservice.ac.uk/doc/8631/mrdoc/pdf/8631_taking_part_interviewer_instructions.pdf)

178 Ipsos (2023), *Asking the UK their gender: Inclusive survey design* (page 4), [https://www.ipsos.com/sites/default/files/ct/publication/documents/2023-06/Ipsos\\_%20Asking%20the%20UK%20their%20gender\\_June%202023.pdf](https://www.ipsos.com/sites/default/files/ct/publication/documents/2023-06/Ipsos_%20Asking%20the%20UK%20their%20gender_June%202023.pdf)

179 Market Research Society (2016), *Guidance Note on Collecting Data on Sex and Gender* (page 2), <https://web.archive.org/web/20210225075622/https://www.mrs.org.uk/pdf/Guidance%20on%20Collecting%20Data%20on%20Sex%20and%20Gender.pdf>

180 As above (page 2).

due to ‘deliberately misleading, wrong or frivolous responses’.<sup>181</sup> It also noted that it was standard industry practice for interviewers to observe and record person’s sex:

‘asking gender or sex questions when carrying out face-to-face or telephone interviewing requires greater skill and tact. Standard current practice in the sector is for interviewers to complete the gender question based on tone of voice and name. Although this may be appropriate in the majority of situations, in some instances it may be incorrect.’<sup>182</sup>

At the same time, the 2016 guidance advised researchers to:

‘Rethink the standard binary questions for both sex and gender - Demographic questions on sex and gender must cater for non-binary people... Members must ensure that participants will be able to proceed through any research without being required to indicate male or female options if they do not identify as such. This may be achieved by including female, male and other as a (free field) options; allowing participants to self-identify by asking an open-ended question or by adopting a two-step approach that covers assigned sex at

birth and then current gender identity.’<sup>183</sup>

The guidance sets out two example sex questions, neither of which capture data on sex. The first frames ‘intersex’ conditions as a third sex category, and the second conflates sex and gender identity by including female, male, and ‘other’ response options. The 2016 guidance also cautioned that departing from its approach risked breaching the MRS Code of Conduct:

‘Under the MRS Code of Conduct 2014 it is important to allow participants to express their views in the way that they prefer. Breaching this requirement can leave your activities open to investigation under the MRS disciplinary process.’<sup>184</sup>

Updated guidance published in 2020 took a similar approach.<sup>185</sup> A further update in 2022 removed the methodological note that had previously cautioned against asking questions with more than two response options,<sup>186</sup> and advised that practitioners ‘must consider the MRS Best Practice Guide on Research Participant Vulnerability when collecting sex and gender data as participants may feel vulnerable disclosing this information’.<sup>187</sup> Updated guidance published in 2024 sets out the following examples for practitioners.

*“Example of Sex Data Question and Response Options”,  
Market Research Society, 2024<sup>188</sup>*

Q.1 What is your sex?	Q.1 What is your sex? OR what is your gender
Female	Female
Male	Male
Intersex	Other gender identity (please specify)
Prefer Not to Say	Prefer Not to Say

## Analysis

Neither of the recommended questions and response options in the most recent MRS guidance capture data on sex, nor do they meet basic data collection standards which require questions to have a clear target. The approach taken by the MRS is of particular significance because of its influential role within the industry.

As noted above, the Department for Culture, Media and Sport flagship survey ‘Taking Part’ ceased to collect data on sex in favour of data on gender identity, citing compliance with MRS guidance as their rationale. Explanatory notes provided by Ipsos for interviewers also refer to the Code of Conduct, stating that their approach was adopted so as to capture data on those with non-binary identities and to be more

<sup>181</sup> As above (page 4).

<sup>182</sup> As above.

<sup>183</sup> As above (page 5).

<sup>184</sup> As above (page 13).

<sup>185</sup> Market Research Society (2020), *MRS Guidance Note on Collecting Data on Sex and Gender*. <https://web.archive.org/web/20210725040350/https://www.mrs.org.uk/pdf/Best%20Practice%20Sex%20&%20Gender%20Guidance%20Note%202020.pdf>

<sup>186</sup> Market Research Society (2022), *MRS Best Practice Guide on Collecting Data on Sex and Gender*.

<https://web.archive.org/web/20220527142048/https://www.mrs.org.uk/pdf/MRS%20Best%20Practice%20Guide%20Collecting%20Data%20on%20Sex%20and%20Gender.pdf>

<sup>187</sup> As above (page 5).

<sup>188</sup> Market Research Society (2024), *MRS Best Practice Guide on Collecting Data on Sex and Gender* (page 6). <https://www.mrs.org.uk/pdf/MRS%20Best%20Practice%20Guide%20Collecting%20Data%20on%20Sex%20and%20Gender.pdf>

'inclusive' (see further, page 166). The influence of MRS guidance is also evident in the Community Life Survey, commissioned by the Department for Digital, Culture, Media and Sport, which in 2018/19 replaced the binary sex question with a multiple response question to reflect MRS guidance.<sup>189</sup>

## 5.4.2 Ipsos

Ipsos is a multinational market research and public opinion company, founded in 1975. It conducts market research on advertising, marketing, media, public opinion, and social research, including survey work on behalf of governments. Major UK government surveys that Ipsos has run or helped to run include the National Survey of Sexual Attitudes and Lifestyles,<sup>190</sup> Scottish Household Study,<sup>191</sup> GP Patient Survey,<sup>192</sup> Active Lives Survey,<sup>193</sup> Food and You,<sup>194</sup> Taking Part,<sup>195</sup> and the National Travel Survey,<sup>196</sup> some of which are accredited official statistics. Based on total UK turnover in 2022 of £4.8bn, the most recent MRS League Tables for the UK market research industry notes that Ipsos UK had 7.7% share of the market and was ranked second behind Kantar (8.3%).<sup>197</sup>

In 2017, the Government Equalities Office (GEO) commissioned Ipsos to conduct what GEO described as the 'largest national survey of LGBT people in the world to date'.<sup>198</sup> Ipsos was also commissioned by the ONS in 2017 to assess the public acceptability of asking questions on sexual orientation and gender identity in the 2021 England and Wales census.<sup>199</sup>

### 'Asking the UK their gender: Inclusive survey design', 2023

In 2023 Ipsos published recommendations for survey design that broadly advised against collecting data on sex, stating that this 'is often not necessary or appropriate'.<sup>200</sup> Ipsos developed this guidance based on a qualitative and quantitative pilot study, consisting of twenty interviews with participants who identify as trans or non-binary, ten 'members of the general

public', and a short survey via the Ipsos Knowledge panel (N=12,511).

The guidance states that moving from a binary question to an 'inclusive gender question' would 'not result in significant changes to trends'. It recommends the following question for fieldwork conducted in the UK:

Which of the following best describes your gender?

- Man
- Woman
- Non-binary
- My gender is not listed
- Prefer not to say<sup>201</sup>

The guidance further recommends that the question is adapted for younger respondents, whilst retaining self-identification principles, even for the youngest age-groups.

'For secondary school aged children (11-16) the 'non-binary' and 'my gender is not listed' codes would be acceptable as understanding of different gender identities is prevalent among this age group. Evidence from our coding team, who review open ended answers to gender questions on large scale surveys of secondary school aged children, shows that 'non-binary' is the most frequently used term for those who do not identify as boy or girl but also other gender identities such as 'agender' or 'gender fluid' are common responses which would support the use of the new gender question among this group'.<sup>202</sup>

For children aged seven to 11, Ipsos state that an 'other' category may be more appropriate. For those below seven years, the guidance states that 'don't know' and 'prefer not to say' should also be considered, as this would ensure that 'participants are able to provide information in a way that reflects the view they want to express, including an option not to answer'.

189 Kantar Public (2019), *Community Life Survey Technical Report* (page 14). [https://doc.ukdataservice.ac.uk/doc/8584/mrdoc/pdf/8584\\_community\\_life\\_technical\\_report\\_2018-19.pdf](https://doc.ukdataservice.ac.uk/doc/8584/mrdoc/pdf/8584_community_life_technical_report_2018-19.pdf)

190 UK Data Service (online), *National Survey of Sexual Attitudes and Lifestyles COVID-19 Study, 2020-2021*.

<https://beta.ukdataservice.ac.uk/datacatalogue/studies/study?id=8865>

191 Scottish Government (online), *Scottish Household Survey*. <https://www.gov.scot/collections/scottish-household-survey/>

192 Ipsos (2023), *2023 GP Patient Survey Results Released*.

<https://www.ipsos.com/en-uk/2023-gp-patient-survey-results-released>

193 Ipsos (2020), *Active Lives Survey: Sport, recreational and fitness activities for adults (aged 16+) in England*.

<https://www.ipsos.com/en-uk/active-lives-survey-sport-recreational-and-fitness-activities-adults-aged-16-england>

194 Ipsos (2024), *FSA consumer survey, conducted by Ipsos, reveals most recent changes to our eating habits*.

<https://www.ipsos.com/en-uk/fsa-consumer-survey-conducted-ipsos-reveals-most-recent-changes-our-eating-habits-0>

195 Department for Digital, Culture, Media & Sport (2013), *Taking Part: information for survey participants*. Last updated 2018.

<https://www.gov.uk/guidance/taking-part-information-for-survey-participants>

196 Ipsos (2022), *National Household Travel Survey 2023*.

<https://www.ipsos.com/en-ie/national-household-travel-survey-2023#:~:text=A%20total%20of%204%2C000%20households,aged%204%20years%20and%20over>

197 Research Live (2024), *Research Live Industry Report 2024*.

Free access on application at:

<https://www.research-live.com/industry-report?MKTG=RLINDREPORT2024>

198 Government Equalities Office (2019), *National LGBT Survey: Summary report*.

<https://www.gov.uk/government/publications/national-lgbt-survey-summary-report/national-lgbt-survey-summary-report>

199 Office for National Statistics (2022), *Sex and gender identity*. <https://www.ons.gov.uk/census/planningforcensus2021/questiondevelopment/sexandgenderidentity>

200 Ipsos (2023), *Asking the UK their gender: Inclusive survey design* (page 2). [https://web.archive.org/web/20240802095706/https://www.ipsos.com/sites/default/files/ct/publication/documents/2023-06/ipsos\\_%20Asking%20the%20UK%20their%20gender\\_June%202023.pdf](https://web.archive.org/web/20240802095706/https://www.ipsos.com/sites/default/files/ct/publication/documents/2023-06/ipsos_%20Asking%20the%20UK%20their%20gender_June%202023.pdf)

201 As above (page 8).

202 As above (page 11).

## 'A question of gender: Gender classification in international research', 2024

In 2024 Ipsos published guidance on gender in international research, authored by the Ipsos Global Lead on Diversity, Equity and Inclusion. This defines sex as 'typically binary' and treats 'intersex' as a sex category.<sup>203</sup>

### Sex

Assigned to a person based on primary sex characteristics (genitalia) and reproductive functions. Sex is usually assigned and registered at birth and the categories are typically binary – male or female and, in some cases, may include intersex.

### Intersex

A term used to describe a person who may have the biological attributes of both sexes or whose biological attributes do not fit with societal assumptions about what constitutes male or female.

Under 'gender response options', the report states:

'In order to be inclusive of those who do not identify on the gender binary, it is recommended that an additional response option of 'Another gender' be added to the existing options of male and female. This option is inclusive and translatable, and it can also accommodate newly recognised genders as well as historic third genders deeply rooted into some cultures.'<sup>204</sup>

The report also advises against interviewer-coded approaches to data collection, to avoid making assumptions about a person's identity.

'Interviewers may have been trained to code gender based on observation, however it is important that respondents self-identify their gender, avoiding assumptions based on appearance or voice.'<sup>205</sup>

Depending on cultural context and sensitivities, for basic demographics, the report recommends one of the following questions:<sup>206</sup>

### Recommended question framework, Ipsos 2024

Basic non-binary question Can be used where non-binary is accepted	Basic binary question Can be used where non-binary is not accepted or safe
<b>Are you</b> Female Male Another gender Prefer not to answer	<b>Are you</b> Female Male Prefer not to answer

For the purposes of younger respondents, consistent with the recommendations for UK fieldwork, it is advised that self-identification principles are retained:

'when asking a responsible adult about a child's gender, options of 'unknown' or 'undecided' could be included as well as 'another gender', acknowledging those who prefer their child to decide their own gender'.<sup>207</sup>

For younger children, the guidance states that 'simpler alternatives such as 'other', 'neither a boy or a girl', 'something else' and/or 'not sure' or 'don't know' could be offered'.

## Analysis

Guidance by Ipsos in this area focuses exclusively on gender identity. The assertion that that moving from a binary sex question to an 'inclusive gender question' would 'not result in significant changes to trends' is not supported by research by Biggs, which identifies risks to the reliability of the transgender subsample in relation to the GP Patient Survey (see further page 191). For younger age-groups, its recommendations hinge on children being able to understand a complex concept (Ipsos define gender identity as 'a social construct relating to the characteristics of women, men, girls, and boys' and that 'people's gender identities exist on a spectrum and may not match the sex they were registered with at birth').

203 Cartwright, T. (2024), *A question of gender: Gender classification in international research* Ipsos (page 4). [https://www.ipsos.com/sites/default/files/ct/publication/documents/2024-01/IpsosViews\\_QuestionOfGender.pdf](https://www.ipsos.com/sites/default/files/ct/publication/documents/2024-01/IpsosViews_QuestionOfGender.pdf)  
 204 As above (page 6).  
 205 As above (page 12).  
 206 As above (page 8).  
 207 As above (page 10).

### 5.4.3 Research panels: recruitment

A number of survey and marketing companies undertake research and polling using pre-recruited panel members. Panel applicants typically provide their demographic and other relevant details when signing up for membership, for example, their age, sex, and location. When undertaking research, these details can be used to ensure that the panel sample is representative, or to target a particular audience.

The review of statistics in part three identified several surveys that collected data via survey and marketing companies, using pre-recruited panellists. These

typically stated that the data reflected either sex or gender with male and female categories but did not provide details of the source question at the panel recruitment stage, used to collect the information.

We therefore undertook a short review of how survey and marketing companies currently collect data on sex and/or gender identity when recruiting panellists. Table 3. Recruitment questions for survey panellists shows that of six companies reviewed, only two collect binary data on males and females, although both are labelled gender, whilst the remaining four collect data on gender identity.

Table 3. Recruitment questions for survey panellists

Polling company	Question used to recruit panellist	Response options
Forefront Market Research	Gender	Female, Male, Prefer to describe myself in another way
Ipsos Iris Panel	Which of the following best describes your gender?	Man, Woman, Non-binary, My gender is not listed, Prefer not to say
LucidTalk	Would you please tell us your gender?	Male, Female
OnePoll	Which gender do you identify with?	Male, Female, Non-binary or alternative identity
Opinium	Gender	Male, Female, Other
YouGov	Are you...?	Female, Male

## 5.5 Charities

This section looks at guidance on data collection published by four charities with a particular interest in data collection. With the exception of charity Sex Matters, all have previously or continue to advocate for data collection based on gender self-identification.

### 5.5.1 Advance HE/Equality Challenge Unit

The Equality Challenge Unit (ECU) was established in 2001, with a wide equality and diversity remit. Following the Bell Review of Higher Education Sector Agencies, in 2018 Advance HE was formed from the merger of the ECU, the Higher Education Academy, and Leadership

Foundation for Higher Education. Advance HE also administers the Athena Swan Charter, a scheme originally aimed at increasing the proportion of women in STEM disciplines, but later broadened to 'gender equality objectives' across all disciplines.<sup>208</sup>

Advance HE and its predecessor ECU have an established record of promoting gender self-identification principles, evidenced in publications dating back to 2004.<sup>209</sup> This record has been extensively documented in the context of the Athena Swan Charter<sup>210</sup>. In the context of data collection this has had a significant impact on higher education statistics. In 2011 the ECU recommended that,

208 Advance HE (online), *Athena Swan Charter*.

<https://advance-he.ac.uk/equality-charters/athena-swain-charter>

209 For example, a 2004 report on the Gender Recognition Act stated: "This official recognition means that the person is now legally entitled to have the same access to facilities, opportunities, and goods and services as any other person of their acquired gender. There is now no justification for excluding a person from certain groups (for example a Women's Networking Group) or use of appropriate toilets. As previously suggested, however, **higher education institutions should strive to reach this position at the point of social change, rather than waiting for legal recognition of change.**"

See: Equality Challenge Unit (2004), *Employing Transsexual people in higher education* (para. 72, emphasis added).

[https://murrayblackburnmackenzie.org/wp-content/uploads/2023/09/TRANS\\_1\\_11\\_05\\_final\\_update.pdf](https://murrayblackburnmackenzie.org/wp-content/uploads/2023/09/TRANS_1_11_05_final_update.pdf)

210 See Armstrong, J. and Sullivan, A., 2024. A critical analysis of Athena Swan as a policy-scoring scheme. *British Educational Research Journal* <https://doi.org/10.1002/berj.4071>, and Hunter Blackburn, L., Murray, K and Mackenzie, L 2024. Taking stock of Athena Swan: What value does it add and who decides? <https://murrayblackburnmackenzie.org/wp-content/uploads/2024/08/MBM-ATHENA-SWAN-REPORT-AUGUST-2024-FINAL.pdf>



for the purpose of staff and students, the Higher Education Statistics Agency (HESA) adopt a sex question with an ‘other’ category for ‘people who associate with the terms or labels intersex, androgyne, intergender, ambigender, gender fluid, polygender and genderqueer’.<sup>211</sup>

HESA adopted this definition for student records in 2012/13 and for staff records in 2017/18. Both measures remained in place until 2019/20 (see Table 11). As noted earlier, the same recommendation was also cited in guidance published by the Welsh Government in 2013.

In 2016 the ECU published guidance on ‘Gender’ which advised that HE institutions should not collect data on sex. This remained in place until 2021.<sup>212</sup> This is shown below.

‘[ECU] recommends asking a question about gender rather than asking a question about sex. This ensures equality efforts are mindful of the different ways gendered norms and marginalisations occur, and is inclusive of a diverse range of gender identities. The inclusion of identities ‘man’ and ‘woman’ will also support the small number of instances where binary data about sex is required.

**Recommended question: How would you describe your gender?**

Man

Non-binary

Woman

In another way (specify, if you wish):

Prefer not to say.’

Separate ECU guidance on supporting trans staff and students published in 2016 also discouraged institutions from collecting data on sex:

‘Asking questions about gender is more inclusive than asking questions about sex. Trans people can be outed if they are asked about their sex followed by a question about their gender identity or trans

history. Questions on gender should allow for options beyond the binary of man and woman...’<sup>213</sup>

In 2018, shortly after its formation, Advance HE commissioned a review of the Athena Swan Charter, under the direction of an appointed Steering Group. In 2020 the Group published its final report, recommending that the scope of the Charter be broadened ‘to reflect gender as a spectrum, rather than focusing on the binary definition of men and women’.<sup>214</sup> This was taken forward as part of the ‘Transformed Athena Swan Charter principles’, published in November 2020.

The loss of sex as a policy focus in the Transformed Charter met with a critical response, promoting a reconsideration of the Advance HE approach to data collection. In December 2021 Advance HE announced, ‘we are revising our data monitoring guidance to give more clarity when collecting data that relates to sex as a protected characteristic and the Equality Act 2010, and when collecting data for work to create a more inclusive culture.’<sup>215</sup> Around the same time, Advance HE took down its 2016 guidance on gender that advised universities to collect data on gender identity.<sup>216</sup>

Updated Advance HE guidance on data collection for equalities monitoring published in April 2022 acknowledged that ‘conflating gender identity and sex may cause confusion and could lead to challenges on the basis that the data being collected and the decisions being taken on the back of that data...’.<sup>217</sup> The guidance recommended ‘always including a question on sex in equality data monitoring’ to help institutions fulfil their public duty under the Equality Act 2010 and confirmed that ‘sex is the protected characteristic while ‘gender identity’ is not.’<sup>218</sup>

Guidance on equality monitoring published in 2024 advises that institutions ask, ‘What is your sex?’, with male, female and prefer not to say options. The definition of sex is, however, difficult to follow, referring variously to ‘general survey practice’, ‘respondent expectations’, and the EHRC Employment Statutory Code of Practice.

211 Higher Education Statistics Agency (2011), *Legislation: the public sector equality duty*. <https://web.archive.org/web/20110709052256/http://www.hesa.ac.uk/index.php/content/view/2118/>

212 Advance HE (online), *Gender* (available online from 2016 to 2021).

<https://web.archive.org/web/20210822195453/https://www.advance-he.ac.uk/guidance/equality-diversity-and-inclusion/using-data-and-evidence/monitoring-questions/gender>

213 Equality Challenge Unit (2016), *Trans staff & students in HE and colleges: improving experiences* (page 66). <https://web.archive.org/web/20191010210054/https://www.qub.ac.uk/directories/HumanResources/hr-filestore/Fileupload/866819.en.pdf>

214 Steering Group (2020), *The Future of Athena Swan. The report of the Athena SWAN Charter Review Independent Steering Group for Advance HE*. 31 March 2020 (pages 3, 9). [https://s3.eu-west-2.amazonaws.com/assets.creode.advancehe-document-manager/documents/advance-he/Future-of-Athena-SWAN\\_Report-1\\_1600340258.pdf](https://s3.eu-west-2.amazonaws.com/assets.creode.advancehe-document-manager/documents/advance-he/Future-of-Athena-SWAN_Report-1_1600340258.pdf)

215 Advance HE (2021), *Diversity monitoring data and the UK Athena Swan Charter*, 2 December 2021.

<https://www.advance-he.ac.uk/news-and-views/diversity-monitoring-data-and-uk-athena-swain-charter>.

216 See: Armstrong, J. and Sullivan, A. (2023), *A Critical Analysis of Athena Swan as a Policy-Scoring Scheme*. SSRN (page 5). [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=4546708](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4546708).

217 Advance HE (2024), *Guidance on the collection of diversity monitoring data* (updated edition) (page 18).

<https://www.advance-he.ac.uk/knowledge-hub/guidance-collection-diversity-monitoring-data>

Note: Advance HE amended the guidance in 2024 to remove a hyperlink that redirected readers to the ONS webpage ‘Sex and gender within the context of data collected for the Sustainable Development Goals (SDGs)’. For details of the removed article, see section 5.3.1).

218 As above.

‘Within this guidance, we understand ‘sex’ as the protected characteristic, defined as a man or a woman, where ‘man’ means a male of any age and ‘woman’ means a female of any age. The categories for this binary response option are in line with general survey practice and respondent expectations, as well as with recommendations contained in Appendix 2 of the EHRC Employment Statutory Code of Practice. The Code provides detailed guidance to organisations about what the Equality Act means and Courts and tribunals must take the Code into account in cases involving areas they cover.’<sup>219</sup>

### 5.5.2 Sex Matters

Sex Matters was established in 2021 as a non-profit organisation and as a registered charity in early 2024, to promote clarity about sex in law, policy and language.<sup>220</sup>

In 2023 Sex Matters published guidance on data collection about sex and transgender identity, for use in the public, private or voluntary sector. This states that data on sex is not sensitive and is routinely collected and recorded.

‘Sex means being male or female. It is an objective, biological characteristic about a person that is observed at birth. Everyone has a biological sex and it does not change. This is recognised in law in the UK. Whether someone is male or female is usually readily observable and is not considered to be sensitive information. It is among the pieces of ordinary data (along with name, age, date of birth, national insurance number and so on) that an employer can hold without permission. Collecting data on sex is often legally required or officially recommended.

For clarity, sex is sometimes referred to as ‘sex recorded at birth’. But it is worth noting that around the world over 166 million children, mainly in the least developed countries, do not have birth-registration documents. Some people who come to the UK, particularly as refugees, did not have their sex officially recorded at birth. Their sex is no less certain because of a lack of a birth certificate.

A tiny number of people are born with variations in sex development that may cause their sex to be incorrectly recorded at birth (misrecording

happens more often in developing countries). These individuals are still either female or male.’<sup>221</sup>

The guidance advises against using the term ‘gender’ in data collection because it has multiple meanings. In most circumstances (for example, equality monitoring) Sex Matters recommend a simple ‘what is your sex’ question<sup>222</sup>

For situations where biological sex is important (for example, in a medical context), Sex Matters recommend asking:

#### ‘What is your sex?’

Please provide your sex, sometimes called sex registered at birth.

Female  
Male’

In contexts where sex subject to GRC is required, the following question is recommended:

#### ‘What is your sex?’

Please provide the sex recorded on your birth certificate, or on a gender-recognition certificate issued by the UK government.

Female  
Male’

Sex Matters guidance sets out suggested examples for questions on sex, transgender identity, and gender reassignment.

### 5.5.3 Scottish Trans and Stonewall Scotland

Scottish Trans is a project of the Scottish Government-funded charity, the Equality Network, which ‘works to improve gender identity and gender reassignment equality, rights and inclusion in Scotland.’<sup>223</sup>

The charity has advocated strongly for data collection based on self-identification principles, including in the context of Scotland’s 2022 Census. It has described arguments for data collection based on sex, separate to gender identity, as ‘anti-trans’.<sup>224</sup>

In 2017 Scottish Trans co-produced guidance on diversity monitoring with Stonewall Scotland, which carries out Scotland-specific work as part of the Stonewall charity.

219 As above (page 19).

220 Sex Matters (online), *Our mission, vision and values*. <https://sex-matters.org/about-us/our-mission/>

221 Sex Matters (2023), *Data matters. How to collect personal data on sex and transgender identity* (page 4).

<https://sex-matters.org/posts/data-and-statistics/data-matters-actions/#:-:text=In%20almost%20every%20situation%2C%20if%20is%20collected%20and%20recorded%20routinely>.

222 As above (page 11)

223 Scottish Trans (online), *About*.

<https://www.scottishtrans.org/about/>

224 Scottish Trans (online), *Sign the petition to protect Scotland’s census*. <https://web.archive.org/web/20211231125657/https://mailchi.mp/equality-network/help-us-protect-scotland-s-census-1588169?e=b1efcdcb90>.

As shown below, the guidance states that, ‘UK law treats sex and gender as the same thing’. This appears misleading given that ‘gender’ is used in the Stonewall guidance to mean gender identity rather than a synonym for sex. It states that asking questions about biological sex will be ‘ineffective’ and may be ‘offensive’ and advises against using the term ‘sex’.<sup>225</sup>

**“Sex or Gender?** UK law treats sex and gender as the same thing and in general conversation people often use these terms interchangeably. However, when it comes to monitoring questions, it is better to use the term gender rather than the term sex. This will help make it clear to people that you are asking them to tell you about their self-perception of their gender rather than about their biological sex.

Asking questions specifically about biological sex at birth will be ineffective - most trans people find this question offensive and will provide their gender identity, making the data collected inaccurate. However, gender data can still be used to help plan services relating to biological sex, as most people will have a biological sex that corresponds with their gender.

The technical term for someone’s self perception of their gender is their gender identity - it’s the term we use most often in this guide. But it’s absolutely fine to use the term gender instead on forms, particularly for staff or service users, as this is more widely understood.’

The guidance recommends the following question on gender:

**Which one of the following best describes your gender?**

Male

Female

In another way

Prefer not to say

If you describe your gender with another term, please provide this here \_\_\_\_\_’

## 5.5.4 Stonewall

Stonewall is a UK-wide charity that advocates for LGBTQ+ people. The charity was founded in 1989 and since around 2015 has advocated strongly for self-identification principles in policy and law. Stonewall runs workplace schemes for organisational members including the Workplace Equality Index (WEI) and Diversity Champions Programme.<sup>226</sup>

In addition to the guidance co-produced with Scottish Trans (see previous section) Stonewall has published guidelines on monitoring equalities data for organisations participating in the WEI (these include government agencies, the devolved parliaments, health authorities and hospitals, universities, and private companies). The guidance sets out the following ‘best practice’ question on gender.<sup>227 228</sup>

**‘What best describes your gender?’**

Man

Non-binary

Woman

I use another term \_\_\_\_\_

Prefer not to say’

For the purposes of gathering data on employees, the Stonewall guidelines identify several ‘common challenges’. These include asking a sex question instead of gender and distinguishing between sex and trans status. Further examples are shown below:<sup>229</sup>

- There is no ‘non-binary’ option (would still award if an open text option is provided)
- ‘I use another term’ option available, but without open text box
- The question asks about sex rather than gender
- There is no ‘I use another term’ option (even if non-binary is listed)
- If the question makes a distinction between trans and cis people

Other Stonewall resources include ‘Understanding LGBT experiences: a guide for equalities monitoring in the UK’,<sup>230</sup> although this requires membership sign-in. Stonewall also publish a guide to capturing data on sexual orientation and gender identity globally.<sup>231</sup> This

225 Scottish Trans and Stonewall Scotland (2017), *Getting Equalities Monitoring Right* (page 10). [https://www.scottishtrans.org/wp-content/uploads/2017/06/getting\\_equalities\\_monitoring\\_right.pdf](https://www.scottishtrans.org/wp-content/uploads/2017/06/getting_equalities_monitoring_right.pdf)

226 Stonewall (online), *Diversity Champions*.

<https://www.stonewall.org.uk/diversity-champions-programme>

227 Stonewall (2022), *Monitoring Equalities Data to Support Your Work* (page 9). [https://www.stonewall.org.uk/sites/default/files/monitoring\\_equalities\\_data\\_slides.pdf](https://www.stonewall.org.uk/sites/default/files/monitoring_equalities_data_slides.pdf)

228 Stonewall also provides general training to public and private bodies which includes reference to its understanding of their legal duties and responsibilities. As noted above (at 5.2.1) the transcript of part of such a session, provided for the Scottish Government to its staff, was submitted to this Review.

229 As above (page 14).

230 Stonewall (2019), *Understanding LGBT experiences: a guide for equalities monitoring in the UK*. <https://www.stonewall.org.uk/resources/understanding-lgbt-experiences-guide-equalities-monitoring-uk>

231 Stonewall (2016), *Do Ask, Do Tell: Capturing data on sexual orientation and gender identity globally*. [https://www.stonewall.org.uk/sites/default/files/do\\_ask\\_do\\_tell\\_guide\\_2016.pdf](https://www.stonewall.org.uk/sites/default/files/do_ask_do_tell_guide_2016.pdf)

states, 'Monitoring exercises can also send powerful signals of alliance with your LGBT employees. It lets them know that you are thinking of them. It lets them know that they are not alone.' The guidance does not comment on sex but sets out examples of questions based on self-identified gender identity. It states:

'if an organisation asks a question about gender, employees should be able to describe their gender in their own words. This signals an understanding that gender is a wider spectrum than female and male. It also allows an organisation to capture data on employees that do not identify as trans but also do not identify as female or male.'<sup>232</sup>

The Stonewall guidance also provides examples of multinational organisations, for example, AIG and IBM, which have undertaken extensive work to introduce self-identification principles at a global level.

## Analysis

Guidance on data collection by Scottish Trans and Stonewall recommends that organisations do not collect data on sex. The reach of separate guidance published by Stonewall is likely to be amplified by the Stonewall Workplace Equality Index scheme. As noted above, other Stonewall equalities monitoring resources are only accessible to members. As a charitable organisation has provided guidance to many public bodies, including the Office for National Statistics,<sup>233</sup> this lack of transparency is concerning.

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<sup>232</sup> As above (page 21).

<sup>233</sup> Office for National Statistics (2021), *ONS' Stonewall membership. Freedom of Information response*, 29 January 2021. <https://www.ons.gov.uk/aboutus/transparencyandgovernance/freedomofinformationfoi/onsstonewallmembership>

# Chapter 6: Review of data collection on sex: main findings and background

This chapter presents high-level findings from the review of data collection in chapters seven to sixteen. The review covers a wide range of datasets, surveys, and recording policies. It includes administrative data collected by government agencies, major flagship surveys used to inform research and shape government policy, clinical trials, independent academic studies, polling data, and marketing exercises. Many of the datasets and outputs are accredited official statistics, that is, assessed by the Office for Statistics Regulation (OSR) to comply with the Code of Practice for Statistics (see below, this chapter). In addition to the high-level findings, this chapter provides information on how the data review is structured, the types of data covered, and the limitations of the review.

## 6.1 Main findings

- The meaning of sex is no longer stable in administrative or major survey data. This instability is evident across key policy areas, including health and justice.
- The term ‘sex’ has lost its ordinary meaning in data collection. For example, the term may refer to sex at birth, legal status for certain purposes, or to an inner sense of self.
- How sex is defined is often not made clear in published outputs. In some publications, definitions or explanations can be found in accompanying documentation or separate data tables.
- Some publications present binary data on sex but are underpinned by survey instruments that recorded additional response options, such as ‘other’ or non-binary.
- These findings suggest that some accredited statistics do not meet the standard set out by the Office for Statistics Regulation in its guidance on collecting and reporting data about sex and gender identity in official statistics. This states that data about sex and gender identity ‘should be explained and defined for the purpose of a particular set of statistics, and terms, including gender, should not be used interchangeably or as a substitute for each other’.<sup>234</sup>
- In some major surveys, data producers have replaced the long-standing binary sex question (either observed and coded by the interviewer or reported by the respondent), with a self-declared gender identity question with additional response options beyond the sex binary. In two government-sponsored surveys (Community Life Survey, Taking Part Survey), this decision was attributed to guidance published by the Market Research Society. The loss of data on sex in the context of data collection is a relatively recent phenomenon. For decades, data producers routinely asked people their sex, without any indication of awkwardness about the term.
- The loss of data on sex is rooted in the term ‘gender’. In the context of data collection, this became increasingly popular as a synonym for sex during the 1990s.
- This loss has been compounded by some data collectors moving to systems which collect data on sex as modified for certain legal purposes by a Gender Recognition Certificate (GRC), where relevant, due in part to concern about the privacy implications of the Gender Recognition Act 2004.
- The most significant changes have taken place within the last decade, in the form of three overlapping trends. First, the reframing of ‘gender’ as a synonym for ‘gender identity’, implicit in the expansion of response categories to questions on gender, from around 2015. Second, the replacement of questions about sex and/or gender with ones explicitly about gender identity. And third, the creation of a compromise concept of ‘sex’ that is both binary and yet also fully self-identified, conceived solely for ease of use in administrative systems, rather than as an accurate descriptor of any external phenomenon.

<sup>234</sup> Office for Statistics Regulation (2024). *Collecting and reporting data about sex and gender identity in official statistics: A guide for official statistics producers*. <https://osr.statisticsauthority.gov.uk/publication/collecting-and-reporting-data-about-sex-and-gender-identity-in-official-statistics-a-guide-for-official-statistics-producers/>

## The redefinition of sex

The review highlights a recent development, which is the fundamental redefinition of binary sex as a self-identified concept. As detailed in chapter five, this approach was taken in Scotland's 2022 Census, which asked a binary sex question but provided for responses based on self-identification. It is recommended in current Scottish Government guidance on data collection, which advises public bodies to follow the same approach as the 2022 Scotland Census. It can also be seen in surveys and administrative data, where it is advised that the sex question refers to self-identified sex, current sex, or sex recorded on documents.

Redefining the concept of sex in this way is problematic in several ways. Firstly, it makes the data unreliable, as far as the variable conflates two separate demographic characteristics to an unknowable extent. Second, it obscures what the data reflects. Binary 'sex' data that is actively collected on a self-defined basis is typically presented in published outputs without a clear explanation as to how the data was collected. This conveys the impression that the data reflects sex as ordinarily understood. For example, the England and Wales 2021 Census outputs<sup>235</sup> published by the ONS and Data Dictionary description of the sex variable provide no clear indication that the sex question variously provided for responses based on self-identified gender and sex subject to a GRC at different stages in the data collection process (as noted earlier, this information is published separately).

Lastly, redefining sex in this way destabilises existing data on sex. For decades academics, data producers and policy makers have asked simple sex questions, mostly without instruction or explicit definition, and with the understanding that the data reflected biological sex. The destabilisation of sex, specifically, as a term means that that taken-for-granted understanding can no longer be relied upon.

The argument that data on sex has *always* captured gender identity was also made by the ONS Head of 2021 Census Question and Questionnaire Design, as part

of the justification for asking a sex question based on self-identification in the 2021 Census.<sup>236</sup> The same paper argued that the terms 'male' and 'female' do not have a clear definition. A similar approach can be seen in an ongoing ONS Equalities Data Audit,<sup>237</sup> which assesses a range of official statistics for coverage of the protected characteristics. The most recent version (2024)<sup>238</sup> contains details of around 300 datasets, most of which are classed as recording data on the protected characteristic of sex; although many of these only capture data on gender identity.<sup>239</sup> This reframing was also evident in the legal challenge to the sex question guidance in Scotland's 2022 Census,<sup>240</sup> during which the counsel for the Scottish Government claimed, "*It may once have been thought that sex at birth is immutable. It is no longer so.*"<sup>241</sup>

This retrospective reinterpretation of sex has unhelpfully further exacerbated the confusion in this area, sowing unnecessary complexity into what was until recently, an easily understood and universal concept.

## 6.2 How the data review is structured

The data review is structured across ten chapters. To start, chapter seven provides an overview of how data collection on sex has changed over time. Taking a chronological approach, the analysis is based on a snapshot of over 500 studies and surveys conducted from the 1940s onwards, including independent academic studies, polling and marketing data, and cross-sectional surveys sponsored by government departments and agencies.

Thereafter, chapters eight to sixteen are organised thematically. Each chapter reviews a range of administrative datasets, surveys, and data collection practices, to illustrate current data collection practices, and in places, how these have changed. Within each chapter, the outputs (statistics, policies) are organised under subheadings that show how the sex or gender variable is currently conceptualised, based on the variable name and/or response options. The subheadings are broad brush and intended to demonstrate the wide variation in data collection practices.

<sup>235</sup> For example, ONS (2022), *Sex by single year of age*.

<https://www.ons.gov.uk/datasets/TS009/editions/2021/versions/2>  
ONS

<sup>236</sup> ONS Methodology Assurance Review Panel (MARF) (2021), *Methodology for decision making on the 2021 Census sex question concept and associated guidance* (page 8). <https://web.archive.org/web/20210215201105/https://uksa.statisticsauthority.gov.uk/wp-content/uploads/2021/02/EAP148-Methodology-for-decision-making-on-the-2021-Census-sex-question-concept-and-associated-guidance.pdf>

<sup>237</sup> Office for National Statistics (2018), *Equalities Data Audit, final report*. <https://www.ons.gov.uk/methodology/methodologicalpublications/generalmethodology/onsworkingpaperseries/equalitiesdataauditfinalreport#sex>

<sup>238</sup> Office for National Statistics (2024), *Equalities Data Audit dataset*. <https://www.ons.gov.uk/peoplepopulationandcommunity/wellbeing/datasets/inequalitiesdataaudit>

<sup>239</sup> See for example: GP Survey; Mental Health Services dataset; Adult Life and Times Survey; Young Life and Times Survey; Taking Part Survey; Adults' Media Literacy; Genitourinary Medicine Clinic Activity Data Set; Children's Social Work Statistics; Northern Ireland Life and Times Survey; People and Nature Survey; Improving Access to Psychological Therapies dataset; Experiences of Passenger Assist; Community Life Survey; Adult Social Care Survey; Survey of Employment Tribunal Applications; Metropolitan Police Service Stop and Search Data; Continuous Recording of Lettings and Sales in Social Housing statistics.

<sup>240</sup> Fair Play For Women vs the Registrar General for Scotland and the Scottish Ministers. 24 February 2022.

<https://fairplayforwomen.com/wp-content/uploads/2022/02/2022CSIH7-1.pdf>

<sup>241</sup> Douglas Ross QC, Scottish Government counsel, 23 February 2022.

Within the resources available, the decision was taken to look especially closely at health, criminal justice, and education, as three substantial areas of public service and spending where there are important and well-established patterns of differences by sex relevant to policymaking (chapters eight to ten). Employment, labour market and income data are other major areas where large sex differences matter in policymaking and are a further area of attention (chapters eleven and twelve). The remaining chapters show how the increasing confusion in data collection in this area has affected a wide range of government functions and areas of interest. The full list of chapters is shown below.

Chapter 8. Health and social care

Chapter 9. Criminal and civil justice

Chapter 10. Education and early years

Chapter 11. Employers and employees

Chapter 12. Labour market, income, and housing

Chapter 13. Social and political attitudes

Chapter 14. Sport, leisure and recreation

Chapter 15. Travel and Transport

Chapter 16. General Household Surveys

### 6.3 Types of data in the review and methods

The review of data collection examines how relevant questions are framed, for example, how variables are labelled and question wording, the range of response options, and any guidance for respondents and/or directions given to interviewers.

The chronological analysis in chapter seven draws on survey datasets lodged with the UK Data Service, which is the main data depository for social research. More detailed methodological information is provided in the chapter. Thereafter, the thematic analyses in chapters eight to sixteen principally draw on administrative and survey data, as described below.

#### Administrative data

Administrative data is collected for the purpose of undertaking a public function. For example, it is created when people interact with public services such as schools, the NHS, the courts, or the benefits system. For statistical purposes, administrative data can also provide a cost-effective alternative to dedicated data collection exercises, with greater coverage, compared

to sample surveys. As noted earlier, it has been proposed that the England and Wales Census will be replaced by administrative data supplemented by surveys,<sup>242</sup> making the accuracy of administrative data even more important.

The analysis in the thematic review largely focuses on how administrative data is currently collected by public bodies and agencies. We located relevant datasets using the Office for Statistics Regulation website, which holds a comprehensive list of accredited official statistics.<sup>243</sup> In addition, we reviewed official statistics published by government departments and agencies and used snowballing techniques<sup>244</sup> to locate relevant datasets. The analysis looks at definitions of sex and/or information as provided in User Guides, Technical Reports, or other accompanying documentation. Where we could not find any clear definitions or explanatory notes as to how sex is defined, this is classified as 'not defined'. In the limited time available, the purpose of this work was not to undertake a comprehensive survey of all relevant data sets, but to provide a broad enough sweep to show the variety of contexts in which this issue has emerged, the extent of chaos in the responses, and to provide some insight into the way this situation has evolved.

#### Large-scale survey data

The analysis in the thematic review largely focuses on major cross-sectional social surveys that recruit new respondents in each sweep or wave. These surveys are often sponsored by governments and contracted out to major market research companies such as Ipsos, YouGov, and Kantar. Many of the outputs from these surveys are accredited official statistics.

We initially identified relevant surveys using the UK Data Service databank. We also identified surveys on government or agency websites, under research and statistics headings. Drawing on archived survey questionnaires, user guides, and other technical documentation, the review looks at how sex is currently collected in major UK surveys, and if, when and how this has changed over time. As with the examination of official statistics, the material here is intended to be illustrative not comprehensive.

<sup>242</sup> Office for National Statistics (2023), *The future of population and migration statistics in England and Wales: A consultation on ONS proposals* [https://consultations.ons.gov.uk/ons/future-of-population-and-migration-statistics/supporting\\_documents/Future%20of%20Population%20and%20Migration%20Statistics%20Consultation%20Document.pdf](https://consultations.ons.gov.uk/ons/future-of-population-and-migration-statistics/supporting_documents/Future%20of%20Population%20and%20Migration%20Statistics%20Consultation%20Document.pdf)

<sup>243</sup> Office for Statics Regulation (online), *List of Accredited Official Statistics* [https://osr.statisticsauthority.gov.uk/wp-content/uploads/2023/10/Accredited\\_Official-Statistics\\_List\\_Oct23.xlsx](https://osr.statisticsauthority.gov.uk/wp-content/uploads/2023/10/Accredited_Official-Statistics_List_Oct23.xlsx)

<sup>244</sup> That is, using references and citations to identify other relevant datasets.

## Official statistics and accredited official statistics



As noted above, many of the datasets reviewed are official statistics, or accredited official statistics, and of particular importance for public policy and administration. Official statistics are produced by Crown bodies and other organisations, on behalf of the UK government or devolved administrations, and intended to provide a ‘factual basis for assessment and decisions on economic, social and environmental issues at all levels of society.’<sup>245</sup>

Accredited official statistics are a subset of official statistics that the Office for Statistics Regulation (OSR) has independently reviewed and confirmed comply with the Code of Practice for Statistics.<sup>246</sup> Accredited official statistics (previously known as National Statistics) are denoted by the badge shown right. Where relevant, we highlight accredited statistics throughout the chapter, using the same badge.

In February 2024 the OSR published new guidance on collecting and reporting data about sex and gender identity in official statistics, which is aligned with the Code of Practice.<sup>247</sup> This states that data about sex and gender identity ‘should be explained and defined for the purpose of a particular set of statistics, and terms, including gender, should not be used interchangeably or as a substitute for each other’.

## 6.4 Limitations

As already noted, the review is not fully exhaustive, due to the volume of published statistics, and time constraints. We do not include inactive surveys or datasets and include only a few longitudinal datasets that track the same respondents over time. The thematic review of survey data does not include subnational datasets, for example, data published by local authorities, with the exception of the main Metropolitan Police Service (MPS) and Mayor’s Office for Policing and Crime (MOPAC) crime and victimisation surveys. These surveys are included to illustrate how the observations and issues charted at a national level are also evident at a local level, with reference to the largest Home Office-funded police force.

<sup>245</sup> Office for Statistics Regulation (online), *Official Statistics Policies*. <https://osr.statisticsauthority.gov.uk/policies/official-statistics-policies/>

<sup>246</sup> Office for Statistics Regulation (online), *Accredited official statistics*. <https://osr.statisticsauthority.gov.uk/accredited-official-statistics/>

<sup>247</sup> Office for Statistics Regulation (2024), *Collecting and reporting data about sex and gender identity in official statistics: A guide for official statistics producers*. <https://osr.statisticsauthority.gov.uk/publication/collecting-and-reporting-data-about-sex-and-gender-identity-in-official-statistics-a-guide-for-official-statistics-producers/>



# Chapter 7: The loss of data on sex: 1946 to 2023

This chapter is based on a snapshot of over 500 UK-based surveys or studies, lodged with the UK Database Service (UKDS), which is the main repository for economic, population, and social research data in the UK. The aim is to show how approaches to collecting data on sex have changed over time. The surveys range from classic social surveys, such as the seminal 1950s Family and Kinship in East London surveys (Young and Wilmott), to market research and polling exercises. Many are independent academic studies, undertaken as part of funded research projects.

## 7.1 Data and methods

For each survey we reviewed the source questionnaire and/or relevant documentation (for example, data dictionaries, User Guides, or Technical Reports). We then summarised the sex (or gender) concept, based on the variable label, how the question is framed, any interviewer instructions or guidance, and the available response options. A copy of the surveys and studies covered is available on request.

We initially selected surveys using a range of search terms, including searches for the terms ‘sex’, ‘gender’, ‘male’, ‘female’, ‘man’, ‘woman’, ‘girl’, and ‘boy’ in the question and response fields (using the UKDS question bank function). Because this approach relies on accurate reporting of variables and/or questions to UKDS, we ran a further search on all ‘UK surveys’, to identify additional relevant surveys. The analysis in the section includes a mix of large-scale quantitative data, polling data, consumer survey data, and smaller studies, where researchers have collected data on the sex (or gender identity) of participants. The analysis does not include pre-20<sup>th</sup> Century data, datasets populated from existing surveys (for example, subsets of the census), studies or surveys where the documentation is not open access, nor studies with unambiguously male or female-only cohorts (e.g. maternity-based studies or studies that purposively only collect data on one sex). We do, however, include surveys such as the Glass Social Mobility in Britain survey, which tracked the experiences of males but also collected data on family members of both sexes.

The analysis is structured by eight time-periods, with between 50 and 74 surveys reviewed for each period. In the earlier periods, we applied a saturation principle, whereby we limited the extent of further checking of cases that were neither obviously relevant nor irrelevant, once those initially examined provided a clear body of results unlikely to be more than marginally affected by further cases. From 2000 onwards, where there is clear evidence of change, we reviewed a higher number of surveys to better capture this. This breakdown is shown below.

*Table 4. Number of surveys reviewed by time-period*

Time period	No. of surveys reviewed
1969 or earlier	58
1970 to 1979	60
1980 to 1989	50
1990 to 1999	55
2000 to 2009	74
2010 to 2014	70
2015 to 2019	72
2020 onward	72
Total	511

## 7.2 Losing data on sex: a chronology

Taking an overview, it is clear that the meaning of sex has become progressively destabilised in relation to data collection, especially within the last decade. The analysis identifies four distinctive phases, which are described in more detail below, and shown graphically in Figure 7.

### 1989 or earlier: Sex (as ordinarily understood)

From the 1940s through to the end of the 1980s, virtually all of the surveys reviewed collected data on binary sex, with male and female (or boy, girl) response options. Sex in this period is used in its ordinary sense and is not defined. There is no evidence of sensitivity around asking people for their sex. Respondents are routinely asked, ‘what is your sex’ or whether they are male or female, in a wide range of

data collection exercises, and not given a ‘prefer not to say’ option. These include surveys of a wide range of population groups, such as civil servants,<sup>248</sup> probation teachers,<sup>249</sup> MENSA members,<sup>250</sup> chaplains in Higher Education,<sup>251</sup> and Guardian newspaper readers.<sup>252</sup>

The use of observational methods appears common in this period. In many exercises, interviewers are asked to collect data on sex with no further instruction, beyond ‘code’ or ‘record.’ In some instances, the variable is not labelled, again reflecting ordinary, well-established understanding of the terms ‘male and female.’ Similarly, response options include ‘M’ and ‘F’ with no further explanation. In some earlier surveys, for example, for marketing or commercial purposes, the sex variable is combined with household status (for females, the response option is split into ‘housewife’ and ‘non-housewife’ categories). Of the surveys reviewed in this period (N=168), we found just two references to the term ‘gender’, both with binary response options (male, female).

### 1990 to 2014: Gender as a synonym for sex

From the 1990s onwards, the term ‘gender’ gained traction as a replacement for sex. The relatively recent timing of this development is striking. Within academic publications (for example, sociology), the term was in common use by the 1980s, in part reflecting theoretical developments that distinguished between gender (as a social construct) and sex. Although the term ‘gender’ is commonly seen as a long-standing ‘polite’ synonym for sex, it is difficult to say how widespread this was prior to the 1990s. Possible reasons for the late adoption of ‘gender’ within the specific context of data collection may include initial recognition of the need for plain language in data collection.

Between 1990 and 1999, the term ‘gender’ is used in only around a fifth of the surveys reviewed (nine out of 46 surveys, or just over 10%). However, as Figure 7 shows, this proportion increases from the 2000s onwards. Between 2000 and 2014 ‘gender’ accounted for around 40% (58 out of 144 surveys).

There is little indication that use of the term gender in this period was intended to reflect gender identity, as suggested by the continued use of binary male

and female response options. As before, interviewers were asked to ‘code’ or ‘record’ gender, without any indication that this referred to anything other than biological sex. This understanding can also be seen in a ONS-led review of equalities data, undertaken in 2007:

‘Gender data are usually gathered by being volunteered or observed, rather than by explicit questions. Two answers are possible, either male or female, hence, outputs follow the same classification. This is therefore a straightforward area where a common approach has been agreed.’<sup>253</sup>

The use of ‘gender’ as a polite synonym is also commented on in a 2003 chapter on questionnaire design by sociologist Professor Malcolm Williams:

‘Political correctness and a misunderstanding of the meaning of the term have led to the substitution of ‘gender’ for biological sex. My advice is stick with sex. A good test of ‘face sheet’ questions like these, is would your grandmother understand? Your grandmother knows about sex, but possibly not gender.’<sup>254</sup>

### 2015 onwards: Gender as a synonym for gender identity

From around 2015 onwards, the term ‘gender’ is increasingly used as a synonym for gender identity. Instead of offering binary response options (denoting sex), in this period, questions on gender include response options such as ‘other’, non-binary’, ‘I identify in another way’ or ‘prefer to self-describe’.

248 Office of Population Censuses and Surveys (1967), *Fulton Commission Investigation into the Civil Service* (page 18).

249 University of Bristol School of Education Research Unit (1968), *Probationary Teachers, 1968-1969* (page 1).

250 Mensa (1969), *British Mensa Survey of Membership* (page 2). <https://doc.ukdataservice.ac.uk/doc/99001/mrdoc/pdf/99001userguide.pdf>

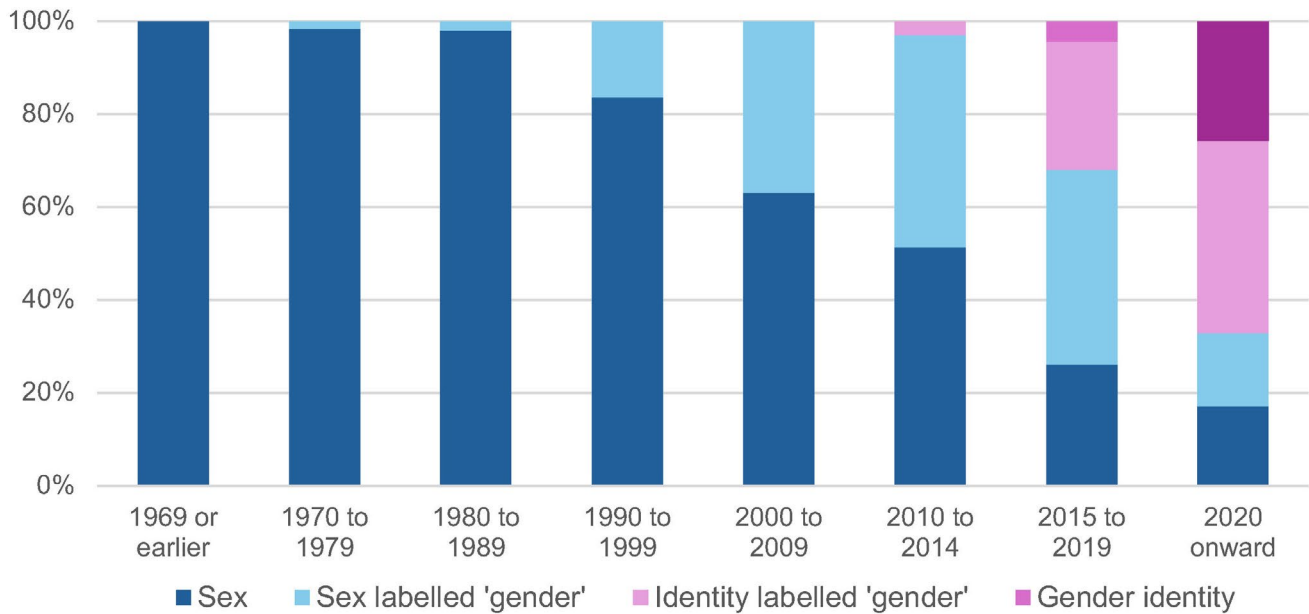
251 Yale University and United Methodist Church (1974), *Sociological Study of British Chaplains to Higher Education* (page 35).

252 Guardian Newspaper (1982), *People at Work: A Guardian Survey* (page 1).

253 Office for National Statistics (2007), *Equality Data Review* (para. 4.19). [https://webarchive.nationalarchives.gov.uk/ukgwa/20160106185800mp\\_/http://www.ons.gov.uk/ons/guide-method/measuring-equality/equality/equality-data-review/review-of-equality-data--final-report.pdf](https://webarchive.nationalarchives.gov.uk/ukgwa/20160106185800mp_/http://www.ons.gov.uk/ons/guide-method/measuring-equality/equality/equality-data-review/review-of-equality-data--final-report.pdf)

254 Williams, M. (2003), *Making Sense of Social Research: Questionnaire Design*. <https://methods.sagepub.com/book/making-sense-of-social-research>

Figure 7. Sex and gender questions in surveys held by the UK Data Service, 1946 to 2023



Number of sex and gender questions

Period	Sex	Sex labelled 'gender'	Identity labelled 'gender'	Gender identity	Total
1969 or earlier	58	0	0	0	58
1970 to 1979	59	1	0	0	60
1980 to 1989	49	1	0	0	50
1990 to 1999	46	9	0	0	55
2000 to 2009	46	27	0	0	73
2010 to 2014	35	31	2	0	68
2015 to 2019	18	29	19	3	69
2020 onward	12	11	29	18	70

Note: Excludes 8 outliers recorded from 2000 onward. These are 7 surveys that asked a 'gender' question with an open-text response; and one 2004 survey that asked a 'sex' question with multiple identity options.

### 2017 onwards: Gender identity

From 2017 onward, there is a shift towards collecting data based on gender identity. This can be seen in questions that ask, 'which of the following terms best describes you', 'what is your gender identity', or similar, with multiple response options. These variously include non-binary, 'other', 'prefer to self-describe', 'in another way', and 'third gender'. In many cases, the data is labelled 'gender', which can be read as indicative of a shift in meaning, from a synonym for sex, as detailed above, to a synonym for gender identity. From 2020 onwards, direct gender identity questions account for a quarter of the surveys reviewed, whilst around 40% of the surveys ask a question labelled 'gender'

with multiple responses, denoting gender identity. As shown in the following chapters, similar trends can be observed in many larger data collection exercises, including administrative data and major surveys.

### 'Prefer not to say' and increasing sensitivity around sex

Related to these trends, from around 2015 onward there is evidence of increasing sensitivity around asking people their sex, as indicated by an increase in 'prefer not to say' options.

Prior to 2015, we found only one example of a survey that actively offered a 'prefer not to say' option, which was asked in a 2013 survey sponsored by the UK

Research Councils.<sup>255</sup> By contrast, of the seventy surveys reviewed in the five-year period between 2015 and 2019, just over a quarter included a ‘prefer not to say’ option’ (27%). From 2020 onward, nearly half of the surveys reviewed included a ‘prefer not to say’ option (47%). This is shown in Figure 8. The rise of ‘prefer not to say’ response options in UK surveys.

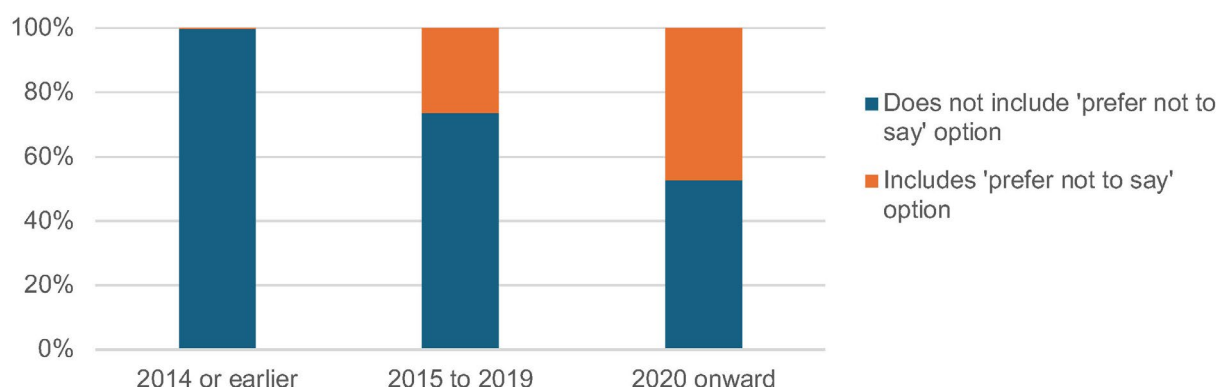
Sensitivity around asking for data on sex is similarly reflected in Scottish Government guidance for public bodies, which advises a ‘prefer not to say’ option in its recommended sex question for privacy reasons.

‘Asking individuals to disclose their sex may raise privacy issues. Public bodies should give consideration to whether an intrusion into someone’s private life has a legitimate purpose and is proportionate. This is particularly true when asking trans people to disclose their trans status. As such, making sure questions offer an option of ‘prefer not to say’ is very important.’<sup>256</sup>

Other examples of guidance that advise ‘prefer not to say’ or ‘prefer not to disclose’ options are shown in chapter five.

The scale of concern about privacy appears likely to explain why the only data source this research found within the crime and justice policy area that categorically, as a matter of policy, gathers data on what it refers to as both ‘gender at birth’ and ‘sex at birth’ is the Gender Recognition Panel, which collects and publishes data on applicants for a Gender Recognition Certificate (see page 217).

Figure 8. The rise of ‘prefer not to say’ response options in UK surveys



<sup>255</sup> See: CFE Research (2013), *Survey data user guide: The impact of doctoral careers* (page 44), [https://doc.ukdataservice.ac.uk/doc/8259/mrdoc/pdf/8259\\_user\\_guide.pdf](https://doc.ukdataservice.ac.uk/doc/8259/mrdoc/pdf/8259_user_guide.pdf)

<sup>256</sup> Scottish Government (2021), *Data collection and publication guidance: Sex, Gender Identity, Trans Status*, <https://tinyurl.com/4yrxvdh5>

## Chapter 8: Health and social care

Biological sex is a fundamental variable in health care and medical research. Sex-based physiological differences are a key determinant of health outcomes, affecting disease prevalence and manifestation, pharmacological action and interaction, and drug dosage and safety.<sup>257</sup> Healthcare research requires sex-specific data to ensure universal patient safety and benefit.

Good quality data on sex is dependent on accurate and transparent data collection practices. Relevant factors include the language used in screening forms and maintaining accurate administrative data. It is also important to be clear on the type of data used in publications, given the confusion that now exists around sex due to the obfuscation of its ordinary meaning.

Accurate data is also required to ensure that both sexes are equally represented in medical research where relevant. Despite some improvements, women, female animals, and female cells continue to be under-represented in medical research, including clinical trials. A 2019 study found that women represented only 36.8% of participants in UK clinical trials. This compares to almost equal inclusion rates in the United States (49.1%), where a requirement for sex-balanced research is codified in law.<sup>258</sup>

It is also important that data on sex is properly communicated, for example in publications and public health literature, and not conflated with ‘gender’ or ‘gender identity’. On International Women’s Day 2023, the Director of Research for the Medical Research Foundation (an independent UK funding body) stated that the 50% higher likelihood of heart attack misdiagnosis occurs on the basis of being female ‘in either sex or gender’.<sup>259</sup> The sources<sup>260 261</sup> cited for this claim however do not support the implied suggestion that ‘gender’ is an equivalent risk. Such misrepresentations pose a risk to both scientific and public understanding.

In some medical research contexts, it may also be relevant to collect separate data on gender identity. For example, the use of cross-sex hormones by those

with a transgender identity may affect how individuals respond to drugs.<sup>262</sup>

Researchers should have a clear hypothesis-driven reason for collecting data on gender identity. It is also important to be aware of multicollinearity, that is when two variables in the same analysis are highly correlated. As discussed in chapter three, in some cases, gender identity is captured using a question which conflates gender identity and sex, i.e. recording sex for most participants. Using both variables in the same analysis is methodologically unsound due to the very high correspondence between these variables. In practice, any conclusions made about data on gender identity using a sex/gender hybrid question are likely to reflect sex-based effects. This can be seen for example, in a paper that explored sex, gender, and ‘gender expression’ as cardiovascular disease risk factors using almost perfectly correlated sex and gender-identity variables.<sup>263</sup> Researchers who wish to differentiate the effects of sex and gender identity need to consider the variables used accordingly.

Despite the fundamental importance of sex to healthcare and medical research, the findings in this chapter show a lack of consistency and clarity in recording practices throughout the NHS and in research. Many different systems are used for recording patients’ data across the constituent parts of the NHS. Although these vary widely, gender identity is consistently prioritised over or replaces sex. Markers originally intended to represent sex are unreliable and can be altered on request by the patient. There are clear clinical risks associated with unreliable or absent sex markers on patient healthcare records, such as not being called up for appropriate sex-specific screening programmes, or the misinterpretation of laboratory results. At the aggregate level, the loss of a robust sex marker undermines the integrity of data used to improve national clinical practice.

The review of health and social care administrative and survey data shows the loss of robust data on sex.

257 Miguel-Aliaga, I. (2022), *Let’s talk about (biological) sex*. Nature reviews molecular cell biology. <https://doi.org/10.1038/s41580-022-00467-w>

258 Ayuso et al. (2019), *Evaluation of worldwide clinical trials by gender: An FDA perspective*. Contemporary Clinical Trials vol. 80: 16-21. <https://doi.org/10.1016/j.cct.2019.03.007>

259 Simmons, A. (2023), *Closing the sex and gender gap in medical research*. <https://archive.ph/ah4H9>

260 Regitz-Zagrosek, V. and Kararigas, G. (2017), *Mechanistic pathways of Sex Differences in Cardiovascular Disease*. Physiological Reviews, vol. 91(1). <https://doi.org/10.1152/physrev.00021.2015>

261 British Heart Foundation (online), *Misdiagnosis of heart attacks in women*. <https://www.bhf.org.uk/informationsupport/heart-matters-magazine/medical/women/misdiagnosis-of-heart-attacks-in-women>

262 Kalayjijn, A. et al. (2024), *Patterns of psychotropic medication prescribing and potential drug-hormone interactions among transgender and gender-diverse adults within 2 years of hormone therapy*. Journal of the American Pharmacists Association, vol 64 (5). <https://doi.org/10.1016/j.japh.2023.10.005>

263 Archived copy: Williams et al. (2024), *Sex, gender, and cardiovascular risk*. *Frontiers in Cardiovascular Medicine*. <https://web.archive.org/web/20240614154734/https://www.frontiersin.org/articles/10.3389/fcvm.2024.1374765/abstract>

Data producers and survey managers have variously elided the concepts of sex, gender and gender identity, including those with DSD as a third response category, and enabled those with a transgender identity to respond to sex questions with an answer other than their sex as registered at birth.

Of the fifty clinical trials reviewed in this chapter, the language and concepts used in the related publications were often unclear, with interchangeable references to 'sex' and 'gender'. The sex ratio of participants varied widely, and the methodology for recording data on sex (and gender identity) was almost universally unclear. Analyses often did not stratify or adjust for sex, meaning sex-specific differences were not identified in trials. Similar problems can be seen in other healthcare research projects.

Guidance on data collection for medical researchers is also unclear. In the absence of comprehensive governmental guidance aimed at healthcare researchers on data collection in this area, we reviewed guidelines developed by the Medical Research Council (MRC), the European Association of Science Editors (EASE), and guidelines for authors in three leading scientific journals. For the most part, these acknowledge the salience of biological sex. However, some elements remain unclear about key definitions and in some instances, those with DSD are assumed to be uncategorisable as either male or female. The Lancet's guidance states that sex has 'multiple definitions' and that sex and gender 'exist along a spectrum...[and] are not entirely discrete concepts'.

Healthcare is only as good as the research it is built upon, which relies on accurate data. Without accurate data, risks are created, and findings are limited.

## Chapter structure

The chapter is structured in five parts. Part 8.1 examines how data on sex is collected in NHS systems. The analysis shows that UK healthcare services use different patient data systems, with limited sharing between countries (mostly between England and Wales). In many administrative systems, data variables originally intended for use as sex markers are now used as gender identity markers. This has resulted in a loss of reliable data on sex, with implications for both staff and patient safety.

Part 8.2 reviews a range of health and social care administrative statistics, many of which reflect the loss of data on sex and broader uncertainty noted above. Part 8.3 looks at how data is collected on sex in major health surveys. These include the GP Patient Survey,

a range of surveys on secondary care, as part of the National Patient Survey Programme, and the Cancer Patient Experience Survey.

Part 8.4 examines data collection on sex and gender identity in UK clinical trials. The section reviews fifty of the most recent studies lodged on the *ClinicalTrials.gov* and *ISRCTN* databases for medical researchers. This shows unclear data collection practices, the inconsistent inclusion of both sexes as participants, and poor reporting of data collection.

Lastly, Part 8.5 reviews a range of guidelines on how to collect data on sex for the purposes of conducting medical research and publishing in scientific journals. This shows a lack of standardised guidance and a failure to make clear the critical importance of collecting data on sex.

## 8.1 How data on sex is collected in NHS systems

The National Health Service (NHS) is the publicly funded healthcare system in the UK. The healthcare services of each nation within the UK use different patient data systems. There is a limited amount of system sharing, which is mostly between England and Wales. This section reviews how data on sex (and gender identity) is recorded on key systems. The analysis mainly focuses on England and Wales, as limited public information was available for Scotland and Northern Ireland.

The analysis shows that many NHS systems have appropriated data fields and variables intended for use as sex markers as gender identity markers. As shown in part 8.2, this loss of data on sex can also be seen in statutory reporting and monitoring by healthcare services using administrative data.

### 8.1.1 Overview of NHS recording systems across the UK

The NHS comprises NHS England, NHS Wales and NHS Scotland. These have the same core operating models but are administered separately and have their own governance models and policies. Northern Ireland has its own health service, which runs on a very similar model but is technically not part of the same entity.

NHS England is by far the largest of these organisations. Many of the systems and policies of the other countries are adapted or directly imported from NHS England. In some cases, it is unclear how the health services differ between countries. Information is much more readily available for NHS England compared to other UK countries.

Patient healthcare records are not a singular ‘record’, or holistic collection of notes and data, as might be expected. This is for four key reasons:

- Many services use different electronic systems for the same function. For example, they may have different EPRs (Electronic Patient Record systems) for collating patient notes. This is often dictated by the NHS Trust (local governing body) or health board.
- Many specific healthcare tasks require specialist programmes to perform a task (e.g. MRI scans). This creates files that cannot always be uploaded to the EPRs.
- A large amount of information on a system is ‘locked’ to a local Trust (until manually shared) for security reasons.
- A large amount of data is paper based, for example, handwritten notes and historic records.

## NHS England

The NHS Spine is the central infrastructure for EPRs and many other electronic systems/records. It enables different systems and departments to work together, by acting as an invisible thread, linking files to individual patients across different platforms. The Spine also allows secure information-sharing when required but does not store copies of all service-specific records. Instead, it primarily acts as a coordination system, with the ability to share service-specific data between Trusts or Departments and holds a limited amount of centralised personal data.<sup>264</sup>

Central to the Spine functionality is the NHS Number, a unique ten-digit identifier used to track patients across the NHS. NHS numbers are originally assigned at the first point of use of NHS services (from birth for most people) and designed to be generally used as a lifelong identifier. NHS numbers do not indicate an individual’s sex or gender unlike Scotland’s CHI Number (see below).

The Spine has a number of sub-systems, which facilitate cross-NHS care, by centrally holding specific patient information. By accessing the central Spine, NHS services can retrieve data held on these sub-systems, to allow care to be delivered for this patient

anywhere in the country. This process ensures that information is associated with the correct patient, allows for easy record sharing, enables referrals between services, and provides access to crucial healthcare delivery information, such as information on allergies.

A key Spine sub-system is the Personal Demographics Service (PDS), ‘the national master database of all NHS patients in England, Wales and the Isle of Man. This holds basic patient details such as name, address, date of birth, contact details, registered GP, nominated pharmacy and NHS number’.<sup>265</sup> Data held here is coded in accordance with the NHS England Data Dictionary,<sup>266</sup> which describes which variables are collected, and how they should be populated.

The patient’s General Practitioner (GP) is the central point for coordinating their care across all other services. They are often the starting point for referrals and should be kept informed of all key care activities in other services (usually via letter, increasingly electronically). They are also the main point of contact for most patients and have a level of administrative responsibility for their central records (e.g. PDS).

## NHS Wales, NHS Scotland and Health and Social Care Northern Ireland

NHS Wales shares the use of NHS Numbers, the NHS Spine, and related systems.<sup>267</sup> There may be some country-specific variations in policy, access, and systems. However, there is limited information available about what, if any, differences exist.

NHS Scotland does not use NHS Numbers nor the NHS Spine. Scottish patients are identified using a ten-digit number known as the Community Health Index (CHI) Number.<sup>268</sup>

Northern Ireland is not part of the NHS and does not use the NHS Spine. There is limited information available on how their systems work. Patients in Northern Ireland are identified using a ten-digit Health and Care Number.<sup>269</sup>

The next section reviews how data on sex and gender is recorded in each country

264 NHS Digital (online), *About the Spine*. <https://digital.nhs.uk/services/spine>

265 NHS England (online), *Personal Demographics Service*. <https://www.england.nhs.uk/long-read/personal-demographic-service-pds/>

266 NHS England (online), *NHS England Data Model and Dictionary*. [https://www.datadictionary.nhs.uk/help/help\\_and\\_guidance.html](https://www.datadictionary.nhs.uk/help/help_and_guidance.html)

267 NHS Digital (online), *Personal Demographics Service*. <https://digital.nhs.uk/services/personal-demographics-service>

268 NHS Scotland (online), *Why do I have a CHI Number?* [https://www.nhsggc.org.uk/media/221882/chi\\_public\\_leaflet.pdf](https://www.nhsggc.org.uk/media/221882/chi_public_leaflet.pdf)

269 NHS Digital (online), *Health and Care Number*. [https://www.datadictionary.nhs.uk/attributes/health\\_and\\_care\\_number.html](https://www.datadictionary.nhs.uk/attributes/health_and_care_number.html)

## 8.1.2 NHS data recording practices across the UK

### NHS England and Wales

NHS Wales uses many of the systems set up by NHS England. There is very limited information available on how, if at all, these differ in Wales. The following observations are therefore presumed to also apply to NHS Wales, with additional references for Wales included where available. For details on sex and gender items in the NHS Wales Data Dictionary, see page 94).

#### Sex at birth

At birth, a baby is given an NHS number<sup>270</sup> and an individual record created on the Spine. The midwifery staff also record the baby's sex on a temporary local record. At this point, the data is recorded as 'Person Phenotypic Sex',<sup>271</sup> with the default code of Not Known (not yet recorded, usually only temporary until the data is added), and the data population options of: Male, Female, Indeterminate. (A very small number of people with DSD may be classified as 'indeterminate' at birth. These cases are reclassified as either male or female in their first weeks of life).

A baby's temporary maternity services record is used to allow the provision of care before they are registered with a GP. The Person Phenotypic Sex variable is used as sex is observed based on attributes (phenotype) and can be changed while in maternity services, for example, in the case of mistaken sex observation or administrative error.

Once the baby is registered with a GP, they obtain a fuller NHS record. Existing data is transferred across and used to populate main Spine sub-systems. From this point, a person's Spine demographic data is managed primarily by the GP, who is able to edit some data and make requests to central NHS services for other changes.

#### Main patient record

From this point onwards, the patient will no longer have a data point described as 'Person Phenotypic Sex'. Instead, a new variable 'Person Stated Gender' is used, described by the NHS Digital Dictionary as 'self-declared or inferred by observation for those unable to

declare their Person Stated Gender'.<sup>272</sup> This information is stored on the central Personal Demographics Service (PDS), within the Spine, and is coded as follows with the options: Male, Female, Indeterminate (unable to be classified as either male or female), or 'Not Known'. The last of these is usually temporary.

As the PDS is managed primarily by the GP, this is 'read only' data for most non-GP services. How this data is displayed on other service record systems varies, depending on the service's system user interface. The variable may be labelled as 'sex', 'gender', or something else. For example, the SystemOne (an EPR system) specification guide<sup>273</sup> shows that it uses a 'sex' display label for data which relates to Person Stated Gender. Such inconsistencies can create confusion about what the variable is intended to refer to.

Other EPRs collect additional data. For example, it has been reported that some NHS hospitals use systems which record the 'gender identity' of babies.<sup>274</sup> Some EPRs have a 'gender' variable with more response options than the PDS Person Stated Gender.<sup>275</sup> This does not replace PDS data and is held only locally (by any services using the same system within the Trust). However, Trusts increasingly prefer using the same EPR across services, to save costs. The non-sex additional data displayed for these EPRs matters because it is seen by clinicians, either in addition to, or in place of standard PDS data.

The PDS Person Stated Gender variable is used for identification purposes, for example, when patients access online NHS services. Combined with other information (such as date of birth), it is used to identify the individual. There are a number of internal and third-party service providers for online systems,<sup>276</sup> and specific patient-facing interfaces ask for this information in different ways. For example, it may ask for 'sex', but the data being accessed is actually the PDS Person Stated Gender variable. In other cases, it may ask for 'gender' and provide options including 'other'. However, when patients choose this option, it functions similarly to a 'skip' button. It may falsely give the impression that this response is being used meaningfully, but there is no equivalent PDS code for it to read.

270 NHS England (online), *NHS Numbers*.

<https://www.england.nhs.uk/long-read/the-nhs-number>

271 NHS Data Model (2023), *Maternity Services Data Set*

[https://archive.datadictionary.nhs.uk/DD/Release/June 2023/data\\_sets/clinical\\_data\\_sets/maternity\\_services\\_data\\_set.html](https://archive.datadictionary.nhs.uk/DD/Release/June%2023/data_sets/clinical_data_sets/maternity_services_data_set.html)

272 NHS England (2024), *NHS England Data Dictionary: Person Stated Gender*. [https://www.datadictionary.nhs.uk/attributes/person\\_stated\\_gender\\_code.html](https://www.datadictionary.nhs.uk/attributes/person_stated_gender_code.html)

273 SystemOne (2020), *Client Integration Interface Specification*.

<https://tpg-uk.com/wp-content/uploads/2021/06/SystemOne-Client-Integration-API-03.03.2020.pdf>

274 Sex Matters (2023), *An EPIC crisis unfolding in the NHS*.

<https://sex-matters.org/posts/healthcare/an-epic-crisis-is-unfolding-in-the-nhs/>

275 NHS Royal Devon University Healthcare (2024), *Gender options on patient forms*. *Freedom of information response*, 13 February 2024.

<https://www.royaldevon.nhs.uk/media/cfsfih1/foi-rdf2265-24-gender-options-on-patient-forms.pdf>

276 NHS England (online), *Online health and prescription services*.

<https://www.nhs.uk/nhs-services/gps/online-health-and-prescription-services/>



Person Stated Gender data is also used for individual healthcare, to ensure correct patient identification on systems, and for semi-automated processing of laboratory testing (which uses presumed sex data to interpret results). Clinical reliance on gender markers may have adverse consequences in some situations. For example, NHS services use sex-specific formulations to assess blood test results, when deciding if someone requires dialysis.<sup>277</sup>

PDS gender data is also used to identify individuals to contact for sex-specific national screening programmes.<sup>278</sup> This process is coordinated by central national screening services (e.g. the National Cervical Screening Administration Service),<sup>279</sup> and largely automated. This has led to patients with changed gender markers (see below) either being incorrectly called for sex-specific screening, or missing out on screenings they require.<sup>280 281</sup>

## Mental health services

In mental health services (including IAPT – Improving Access to Psychological Therapies) different codes are used. This data is held locally with the service, and not on the Spine via PDS. As shown below, the variables do not provide for data on sex

- **Gender identity** - with the options of: Male (including trans man), Female (including trans woman), Non-binary, Other (not listed), Not Known (not recorded), Not Stated (person asked but declined to provide a response).
- **Gender identity same at birth** – with the options of: Yes - the person's gender identity is the same as their gender assigned at birth, No - the person's gender identity is not the same as their gender assigned at birth, Not Known (not asked), Not Stated (person asked but declined to provide a response).

The NHS Digital website states that different codes are used within mental health services for the following reasons:<sup>282</sup>

- Align with the changes made to the 2021 Census.
- Support Advancing Equalities Mental Health Strategy and understand inequalities and risk factors surrounding different population groups

accessing mental health services.

- Close the gap in the evidence available on trans and non-binary patients' service access and care experience.
- Develop more inclusive and trauma-informed care services.
- Remove the mixing of gender and sex registered at birth that exists in data held within person stated gender.

Data from the two variables above is used in combination, based on the (flawed) assumption that sex can be 'reverse-engineered' (see discussion of this point in chapter three). NHS Digital acknowledge this is an unreliable method of obtaining sex data, particularly for non-binary people. However, they state that this was an intentional choice:

'However, it is not possible to identify gender at birth for patients whose gender identity is non-binary. That is because the gender at birth data item only records Y/N whether current gender is the same as at birth.

The consultation process through which the new gender data items developed established that non-binary individuals actively do not wish to be considered within the binary protected characteristic sex and may decide not to answer any questions that cover this area. It was through engagement that it was established that non-binary people were likely to reject a direct sex question and including one could mean that cohort disengaging and rejecting to answer any of the questions on gender.<sup>283</sup>

It is unclear whether patients are made aware that information on sex is derived from other variables. Note also that patients who have not answered a direct sex question have not consented to provide such data. For more information about the Mental Health Services Data Set (MHSDS) and definitions used, see page 96.

<sup>277</sup> NICE Guidance (online), *Chronic kidney disease: assessment and management*. <https://www.nice.org.uk/guidance/ng203/chapter/recommendations>

<sup>278</sup> NHS England (2023), *NHS population screening: information for trans and non-binary people*. <https://www.gov.uk/government/publications/nhs-population-screening-information-for-transgender-people/nhs-population-screening-information-for-trans-people>

<sup>279</sup> National Cervical Screening Administration Service (online), *NHS Cervical Screening Administration Service*. <https://www.csas.nhs.uk/>

<sup>280</sup> Public Health England (online), *Information for trans people: NHS Screening Programmes*. [https://web.archive.org/web/20240521210713/https://www.bhbss.nhs.uk/files/trans\\_people\\_v1.pdf](https://web.archive.org/web/20240521210713/https://www.bhbss.nhs.uk/files/trans_people_v1.pdf)

<sup>281</sup> Cervical Screening Wales (online), *Transgender information*. <https://phw.nhs.wales/services-and-teams/cervical-screening-wales/information-resources/transgender-information/>

<sup>282</sup> NHS Digital (2024), *Gender identity*. <https://web.archive.org/web/20240112232148/https://digital.nhs.uk/data-and-information/data-collections-and-data-sets/data-sets/mental-health-services-data-set/submit-data/data-quality-of-protected-characteristics-and-other-vulnerable-groups/gender-identity#gender-identity-and-why-it-is-important-to-ask-about>

<sup>283</sup> As above (see: How to collect and record gender identity data: Why is it not possible to record a specific gender at birth for non-binary patients?)

## Sexual health services

Sexual health services use separate but functionally identical variables to mental health services, with similar data reliability risks. As with mental health services, this data is held locally (within services, not on the Spine), and used for sexual health datasets. The same codes are used in the Genitourinary Medicine Clinic Activity (GUMCAD) dataset, and in specialist HIV outpatient services, as part of the 'HIV and AIDS Reporting System' dataset.<sup>284</sup> For further details on the GUMCAD dataset see page 95.

Information provided in relation to these variables affects the type of questions asked by clinicians, including HIV-risk related questions. For example, only the MSM (men who have sex with men) question set includes specific HIV risk-related questions. UK Health Security Agency guidance states:

'Transgender and non-binary patients should answer the set of questions that they feel most comfortable with. We would not expect a patient to be asked questions that could cause discomfort or offence. For example, a transgender woman with male sex partners can answer the questions about opposite sex partners or same sex MSM partners in accordance with their wishes.'<sup>285</sup>

A lack of accurate data on sex may impact on individual patient assessments, as well as related risk data reported in the GUMCAD dataset, which is the primary surveillance system for sexually transmitted infections (STIs) in England.

HIV statistics, which are recorded within the GUMCAD dataset, and associated publications, are also likely to be affected. The UK Health Security Agency publication 'HIV testing, PrEP, new HIV diagnoses and care outcomes for people accessing HIV services: 2023 report' states:

'Gender identity reporting began in 2015 and is as reported by the clinic. Data relating to men or boys includes trans men and boys and data relating to women includes trans women and girls...'<sup>286</sup>

This means that it is not possible to establish whether the recorded increase in new HIV-positive diagnoses in women from 2020 onwards also includes trans-identified males.

Identifying at-risk individuals eligible for PrEP (Pre-exposure prophylaxis; preventative medication to reduce the risk of getting HIV) also requires accurate information on sex. However, guidance in this area is confusing at best. GUMCAD guidance describes PrEP eligibility as including:

'HIV negative MSM and transgender women who have had condomless anal sex in the past 6 months and are likely to continue having condomless anal sex in the future.'<sup>287</sup>

External PrEP guidance states that MSM includes 'cis-gender or non-binary or gender-queer men who have sex with men', and additionally recommends that 'trans men' (biological females) are offered PrEP if they have sex with men.

## Changing gender markers on NHS England records

An individual can request to change their PDS Person Stated Gender (and name) via their GP. Changing the gender marker does not require a Gender Recognition Certificate, nor any other official documentation or process.<sup>288</sup>

When a change of gender marker is requested, NHS England allocate a new NHS Number and NHS record. A person wishing to change the marker back to their biological sex (for example, someone who has de-transitioned) is issued with a further new NHS number and record.

## Risks to patient safety

Allowing individuals to change PDS gender markers carries risks to patient safety and places an undue administrative burden on NHS services. In the case of children, it also poses a safeguarding risk.

There is no minimum age at which a child's gender marker and NHS number can be changed. Parents can change the gender marker and NHS number of their child via their GP. Paediatricians have raised this with the Review as a safeguarding concern. A paediatrician and safeguarding expert provided the following example:

'There was a paediatrician who brought a case to me for advice as they were having difficulty in

284 NHS England (2018), *HIV and AIDS Reporting System*. <https://web.archive.org/web/2024030111908/https://digital.nhs.uk/data-and-information/information-standards/information-standards-and-data-collections-including-extractions/publications-and-notifications/standards-and-collections/scci1570-hiv-and-aids-reporting-system-hars>

285 UK Health Security Agency (2021), *GUMCAD STI Surveillance System Data specification and technical guidance* (pages 31-32). [https://web.archive.org/web/20240517172836/https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/1032957/GUMCAD\\_clinical\\_guidelines\\_2021.pdf](https://web.archive.org/web/20240517172836/https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1032957/GUMCAD_clinical_guidelines_2021.pdf)

286 UK Health Security Agency (2023) *HIV testing, PrEP, new HIV diagnoses and care outcomes for people accessing HIV services: 2023 report*. <https://web.archive.org/web/20240916164122/https://www.gov.uk/government/statistics/hiv-annual-data-tables/hiv-testing-prep-new-hiv-diagnoses-and-care-outcomes-for-people-accessing-hiv-services-2023-report>

287 UK Health Security Agency (2021), *GUMCAD STI Surveillance System Data specification and technical guidance* (page 36). [https://web.archive.org/web/20240517172836/https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/1032957/GUMCAD\\_clinical\\_guidelines\\_2021.pdf](https://web.archive.org/web/20240517172836/https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1032957/GUMCAD_clinical_guidelines_2021.pdf)

288 NHS England (online), *Adoption and gender reassignment processes*. <https://web.archive.org/web/20240425070033/https://pcse.england.nhs.uk/help/patient-registrations/adoption-and-gender-reassignment-processes>

engaging Children’s Social Care with a child who was presenting at primary school with behavioural difficulties. The child had been brought up in the preferred gender of the mother which was different to their birth assigned gender. She had gone to the GP and requested a change of gender /NHS number when the baby was a few weeks old and the GP had complied. Children’s Social Care did not perceive this as a child protection issue.’

The changeability of PDS ‘gender’ records puts transgender individuals at a particular disadvantage and as such is potentially discriminatory. As noted above, it means individuals no longer receive appropriate sex-specific cancer screening referrals (which are reliant on PDS codes), and samples (e.g. blood tests) are incorrectly assessed or even rejected by laboratories. This also places an unrealistic expectation on GP services, in terms of individual case management.

There are also risks to the integrity of patient notes. NHS policy recommends GP practices print all prior content, retract the patient’s previous name/number, and upload a copy to the new record.<sup>289</sup> This is a slow and cumbersome process that creates a significant workload for administrative staff, and cannot be assumed to be effective.

Even if this process is followed, NHS services use a number of different patient record systems. Not all information is shared with GP practices, and few services have access to GP systems. For some services, patient data may still be lost following a change of NHS number/record. This requires services to seek patient consent to request previous information, which can be a challenging and sensitive process. The potential loss of clinical and safeguarding information poses risks for patient care and safety, as well as staff safety.

The loss of a robust sex marker on patient records represents a loss of vital healthcare data. In addition to the detriment to transgender patients, it undermines the integrity of data that is used to improve national clinical practice, for example in relation in drug safety, procedure risk, and lifetime outcomes.

## Unified Information Standard for Protected Characteristics (UISPC) scoping project

At the time of writing, a project commissioned by the Department of Health and Social Care is aiming to create a set of harmonised data variables for use across all NHS services, that better align with the protected characteristics under the Equality Act 2010. An NHS England report on equality objectives states:

‘...the UISPC should enable NHS organisations to improve care and employment approaches and to better respond to their legal duties around equalities by reference to protected characteristics under the Equality Act 2010. It is intended to enable DHSC and the wider NHS to identify viable options for improving the consistency, detail and quantity of equality data in major NHS information systems and to allow the development of a unified Information Standard or Standards for this data.’<sup>290</sup>

In response to a written parliamentary question about the planned timetable and plans for consultation, the Minister of State for Health and Secondary stated that the project was not at the recommendation stage but planned to report to NHS England in 2024.<sup>291</sup> The response did not address plans for public consultation.

Recommendations from the UISPC project are assumed to extend to NHS Wales, which uses the NHS Spine. It is unclear whether NHS Scotland will adopt the proposals.

## NHS Scotland

Compared to the rest of the UK, less is known about NHS Scotland data on sex and gender identity, although some affecting PDS may be relevant in Scotland.

Additional issues relate to the Scottish Community Health Index (CHI) Number, which is used to identify NHS Scotland patients. The CHI number has ten-digits. The ninth digit is intended to indicate a sex identifier (odd for men, even for women). The CHI number is used for sex-specific screening recalls.<sup>292</sup> However, this number no longer reliably corresponds to sex, as CHI numbers can be changed upon request, as detailed below.

289 NHS England (online), *Process for registering a patient gender reassignment*.

<https://web.archive.org/web/20231210170353/https://pcse.england.nhs.uk/sites/default/files/2023-08/process-for-registering-a-patient-gender-re-assignmentv10.pdf>

290 NHS England (2023), *NHS England Equality Objectives Programme – The review report: equality objectives and information review – as at 31 March 2023*.

<https://www.england.nhs.uk/long-read/the-review-report-equality-objectives-and-information-review-as-at-31-march-2023/>

291 UK Parliament (2024), *Medical Records: Equality - Question for Department of Health and Social Care*.

<https://questions-statements.parliament.uk/written-questions/detail/2024-01-30/11928/>

292 NHS Inform (online), *Screening information for the transgender community*.

<https://web.archive.org/web/20240716001312/https://www.nhsinform.scot/healthy-living/screening/screening-information-for-the-transgender-community/>

A 2019 FOI request response shows the development of a workaround solution to this issue.<sup>293</sup> It is not, however, clear how this process works in practice or if it is effective. It is only applicable to those who changed their CHI Number after 14 June 2015.<sup>294</sup>

‘NSS Practitioner Services, along with colleagues in National Screening Programmes and representatives from the Transgender Community agreed a solution to CHI which would create a transient marker when recording a patient as transgender. This meant CHI could electronically update the Screening Systems and not mark a patient’s record as being transgender. It was important in this change that patients were not ‘flagged’ as transgender on CHI as this could cause discrimination.’

### Changing gender markers on NHS Scotland records

As documented by Wheeler,<sup>295</sup> the process for changing the data recorded on NHS Scotland systems is almost identical to that in NHS England (and Wales), with similar risks to those outlined above.

NHS Scotland Greater Glasgow and Clyde documentation confirms that no evidence is required to change CHI Number to reflect a new gender identity.<sup>296</sup> A GP Information Leaflet similarly explains:

‘...you are allowed to change your name and gender in your UK medical records without having gone through the legal procedure of applying for a Gender Recognition Certificate.

...it is not necessary for you to transition physically, as long as you identify as the gender that you wish to change to.’

‘Changing your gender in the system would mean that your CHI number will be changed to reflect your gender.’

In response to a FOI request made in 2019, NHS National Services Scotland stated:<sup>297</sup>

‘...an entirely new medical record is created, with a CHI number which now reflects the opposite sex’

The response also indicated that links between old and new records might not be retained, dependent on patient wishes:

‘the old record and the new record are linked. However, a patient may refuse to link the new and old records.’

Separately, a 2019 NHS Scotland information leaflet for staff stated that no link would be retained:<sup>298</sup>

‘Note that there will be no link between the previous Health Record, or any information held on the IT system. The onus will be on the individual themselves to declare their previous identity as appropriate. Their previous health related information will be held under their former identity.’

NHS Scotland only began recording how many CHI numbers are changed in November 2023, but do not record the reason for requested changes.<sup>299</sup> Therefore, it is not known how many changes may be due to system errors (or other reasons), and how many may be requests for changes based on gender identity.

### Northern Ireland

There is very limited information available about systems and data in Northern Ireland. It appears that healthcare records include a ‘gender’ variable, with similar functions to the PDS Person Stated Gender. For example, to identify people to be called for sex-specific cancer screenings.<sup>300</sup> Like England and Wales and Scotland, it appears that gender markers can be changed, with attendant challenges for screening services,<sup>301</sup> although the process for doing so is not clear.

293 NHS National Services Scotland (2019), *Changing sex category under CHI. Freedom of Information Reference: 2019-000106.*

<https://murrayblackburnmackenzie.org/wp-content/uploads/2020/01/nhs-chi-foi.pdf>

294 NHS Inform (online), *Screening information for the transgender community.*

<https://web.archive.org/web/20240716001312/https://www.nhsinform.scot/healthy-living/screening/screening-information-for-the-transgender-community/>

295 Wheeler, E. (2020), *Recording sex on medical records: a case study of NHS Scotland.*

<https://murrayblackburnmackenzie.org/2020/01/12/recording-sex-on-medical-records-a-case-study-of-nhs-scotland/>

296 NHS Greater Glasgow and Clyde (online), *Changing your CHI: Guidance for Staff responding to queries from transgender service users.*

<https://web.archive.org/web/20240622043901/https://www.nhs.uk/media/255885/nhs-ggc-equalities-changing-your-chi.pdf>

297 NHS National Services Scotland (2019), *Changing sex category under CHI. Freedom of Information Reference: 2019-000106.*

<https://murrayblackburnmackenzie.org/wp-content/uploads/2020/01/nhs-chi-foi.pdf>

298 NHS Grampian (2019), *Guide for staff to help them meet the needs of trans patients attending for hospital care.*

<https://murrayblackburnmackenzie.org/wp-content/uploads/2022/11/6.1-NHS-Grampian-Trans-Booklet-April-2019.pdf>

299 The Telegraph (2024), *Scots NHS unsure how many trans patients have taken ‘risk’ by changing sex on records.*

<https://archive.is/W6RRR>

300 Public Health Agency Cancer Screening Team (online), *Breast Screening: Overview.*

<https://web.archive.org/web/20240223012045/https://cancerscreening.hscni.net/breast-screening/overview/#transgender>

301 As above.

## 8.2 Health and social care administrative data and policies

This section provides examples of how data on sex is collected across a range of health and social care administrative systems. The section also provides further details on some of the key datasets noted in the preceding section (Mental Health Services Data Set and GUMCAD). The datasets are grouped according to the way that sex and/or gender is broadly captured or recorded. Taken together, the analysis shows a lack of coherency and harmonisation across key health datasets, including some designated as accredited official statistics.

### Sex, self-identified (male, female)

#### Guardianship Under the Mental Health Act, NHS England



These accredited NHS England statistics contain information on the use of Guardianship orders under Sections 7 and 37 of the Mental Health Act 1983.<sup>302</sup> Information is collected from local authorities, which usually assume the role of guardian. The data is used to assess the impact of mental health policy and inform decision-making.<sup>303</sup>

Guidance for local authorities on completing the data returns state that data must be collected on **sex (male, female)**, which is self-defined:

‘Within Guardianship sex is defined as the sex the individual considers themselves to be. This is either male or female, and in the case of transgender, it should be recorded as the preference of the individual concerned.’<sup>304</sup>

### Sex, with intersex category (male, female, intersex)

#### National Drug and Alcohol Treatment Waiting Times, Scotland



These accredited official statistics are based on the Drug and Alcohol Information System (DAISy) dataset,<sup>305</sup> which holds demographic and treatment data about people who engage with drug and alcohol treatment services.

The statistics present data on **sex (male, female)**, however the report notes that ‘Percentages are based on totals that also include ‘unknown’ and ‘intersex’ categories which explains why the sum of the categories does not equal 100.0%’.<sup>306</sup> A separate Public Health Scotland report on DAISy data indicates that some people are recorded as indeterminate sex.<sup>307</sup>

### Sex (male, female) and self-identified gender (male, female)

#### NHS Wales Data Dictionary

The Data Dictionary sets out definitions, collection and interpretation of nationally agreed data standards adopted by the NHS in Wales. These are used for different national datasets for service monitoring (not patient records). Changes to the Dictionary are overseen by the Welsh Information Standards Board.<sup>308</sup>

Three items pertain to sex and gender identity, as shown in the table 5. The sex variable previously included an ‘indeterminate or anticipated sex change’ category, but it appears this was only in place between 1995 and 1997.

302 NHS England (2024) *Guardianship under the Mental Health Act 1983, England - 2018-19, 2019-20 & 2020-21*. <https://digital.nhs.uk/data-and-information/publications/statistical/guardianship-under-the-mental-health-act-1983/1983-2018-19-2019-20--2020-21#:~:text=As%20at%2031%20March%202021,data%20was%20published%20in%202018.&text=115%20cases%20were%20reported%20as,and%2065%20in%202020%2D21>.

303 NHS England (2024), *Guardianship 2021-24 guidance*. <https://digital.nhs.uk/data-and-information/data-collections-and-data-sets/data-collections/social-care-collection-materials-2024/guardianship-2021-24-guidance>

304 NHS England (2024), *SDDA702 Guardianship under the Mental Health Act 1983, 2021-24* (online) Guidance: Sex. <https://digital.nhs.uk/binaries/content/assets/website-assets/data-and-information/data-collections/social-care-collections-2024/guardianship-return-data-template-2021-24-v1.0.xlsx>

305 Public Health Scotland (online), *Drug and Alcohol Information System (DAISy)*. <https://publichealthscotland.scot/our-areas-of-work/health-harming-commodities/substance-use/data-and-intelligence/drug-and-alcohol-information-system-daisy/about-daisy/about-the-dataset/>

306 Public Health Scotland (2024), *National Drug and Alcohol Treatment Waiting Times*. <https://publichealthscotland.scot/media/26199/report-q3-2023-24-drug-alcohol-waiting-times.pdf>

307 Public Health Scotland (2023), *Drug and Alcohol Information System* (page 14). [https://www.drugsandalcohol.ie/39050/1/Scotland\\_2023-06-27-daisy-treatment-report.pdf](https://www.drugsandalcohol.ie/39050/1/Scotland_2023-06-27-daisy-treatment-report.pdf)

308 NHS Wales (2024), *NHS Wales Data Dictionary*. <https://www.dataadictionary.wales.nhs.uk/>

Table 5. Sex and gender in the NHS Wales Data Dictionary

Item	Data categories	Description
Sex of baby <sup>309</sup>	Male, Female, Not known	This is the sex of a baby who is born or who is registered with the Local Health Board.
Sex <sup>310</sup>	Male, Female, Not specified	This is the sex of person, employee or patient.
Gender <sup>311</sup>	Male, Female, Not specified	The gender of a client (as stated by the client). Gender identity is a person's sense of identification with either the male or female sex, as manifested in appearance, behaviour, and other aspects of a person's life.

## Gender identity (male, female, indeterminate)

### Sexual and Reproductive Health Services (Contraception), England

These accredited official statistics primarily covers contraceptive activity at Sexual and Reproductive Health (SRH) services in England, including family planning services, community contraception clinics, and young people's service.<sup>312</sup>



Anonymised patient data is recorded in the Sexual and Reproductive Health Activity Dataset (SRHAD).<sup>313</sup> Guidance for service providers states that the **gender** field is self-defined (**male, female**), with an **'indeterminate'** option for those who are unable to be classified.

*'Gender should be specified by the patient. 'Indeterminate (unable to be classified as either male or female)' should be recorded where gender cannot be classified as either male or female. If the gender is not known code X can be used'*<sup>314</sup>

### Community Services Dataset, NHS England

The Community Services Dataset (CSDS) holds patient level data about publicly funded Community Services. It is populated by data submitted by community services providers to NHS Digital on a monthly basis.<sup>315</sup>

A record of data items states that data is collected on the **'gender of a person'**, which is **self-declared** or **'inferred by observation** for those unable to declare their gender'.

The data categories are **male, female, and indeterminate** ('unable to be classified as either male or female').<sup>316</sup>

## Gender identity (multiple categories)

### Genitourinary Medicine Clinic Activity Data Set (GUMCAD)

As noted earlier, the Genitourinary Medicine Clinic Activity Data Set (GUMCAD) is the primary surveillance system for sexually transmitted infections (STIs) in England.

Specialist and non-specialist sexual health service providers are required to provide a range of data to the Department of Health.<sup>317</sup> GUMCAD data Standards define data on gender as follows.<sup>318</sup>

#### Gender variables in the Genitourinary Medicine Clinic Activity Data Set

**Gender identity:** Male (including trans man), Female (including trans woman), Non-binary, Other, Not Stated, Not Known

**Gender at birth:** Yes – gender identity is the same as gender as assigned at birth, No – gender identity is not the same as gender assigned at birth, Not stated, Not known

Under 'rationale' for the data items, Public Health England documentation states that data on 'Gender at birth' is collected to monitor the sexual health of transgender men and women, as reproduced in the table below.<sup>319</sup>

309 NHS Wales (2024), *NHS Wales Data Dictionary: Sex of baby*. <https://www.datadictionary.wales.nhs.uk/index.html#!WordDocuments/sexofbaby.htm>

310 NHS Wales (2024), *NHS Wales Data Dictionary: Sex*. <https://www.datadictionary.wales.nhs.uk/index.html#!WordDocuments/sex.htm>

311 NHS Wales (2024), *NHS Wales Data Dictionary: Gender*. <https://www.datadictionary.wales.nhs.uk/#!WordDocuments/gender.htm>

312 NHS England (online), *Sexual and Reproductive Health Services (Contraception)*. <https://digital.nhs.uk/data-and-information/publications/statistical/sexual-and-reproductive-health-services>

313 NHS England (online), *SCCI1518: Sexual and Reproductive Health Activity Dataset*. <https://digital.nhs.uk/data-and-information/information-standards/information-standards-and-data-collections-including-extractions/publications-and-notifications/standards-and-collections/sci1518-sexual-and-reproductive-health-activity-dataset>

314 Office for Improvement and Disparities/NHS Digital (2018), *SRHAD Guidance* (page 11).

<https://digital.nhs.uk/binaries/content/assets/website-assets/data-and-information/data-collections/shrad/shrad-general-guidance-april22.pdf>

315 NHS England (online), *DAPB1069: Community Services Data Set*.

<https://digital.nhs.uk/data-and-information/information-standards/information-standards-and-data-collections-including-extractions/publications-and-notifications/standards-and-collections/dapb1069-community-services-data-set>

316 NHS England (online), *Community Services Dataset (Master Data Items List, lines 25-28)*. <https://digital.nhs.uk/binaries/content/assets/website-assets/isce/dcb1609/106982technicaloutputs/technicaloutputs/technicaloutputs.xlsx>

317 NHS England (online), *DCB0139: GUMCAD STI Surveillance System*.

<https://digital.nhs.uk/data-and-information/information-standards/information-standards-and-data-collections-including-extractions/publications-and-notifications/standards-and-collections/dcb0139-gumcad-sti-surveillance-system>

318 UK Health Security Agency (2021), *GUMCAD STI Surveillance System Clinical guidelines* (page 60).

[https://web.archive.org/web/20240517172836/https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/1032957/GUMCAD\\_clinical\\_guidelines\\_2021.pdf](https://web.archive.org/web/20240517172836/https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1032957/GUMCAD_clinical_guidelines_2021.pdf)

319 Public Health England (2018), *GUMCAD STI Surveillance System (DCB0139) Change Specification* (page 9).

<https://digital.nhs.uk/binaries/content/assets/website-assets/isce/dcb0139/0139212017changespec.pdf>

Table 6. Rationale for new data items in the GUMCAD STI Surveillance System

Field description	Rationale and Justification
Patient gender identity	Patient gender is relevant to all aspects of sexual health service provision. Most aspects of service provision, patient management practices and health outcomes are gender specific (eg cervical cytology screening). The majority of clinical audits, assessments of service provision and of public health burden would, therefore, require data to be gender specific
Patient gender at birth	This is a required data field to identify and monitor the sexual health of transgender men and women, a group which has disproportionately higher risks of poor sexual health.

Technical Guidance published in 2021 states that ‘a patient’s gender at birth may change over time’. The guidance for both variables is shown below.<sup>320</sup>

### Gender Identity

#### What is the patient’s gender identity?

Gender identity should be specified by the patient at registration with reference to the patient’s current gender identity... Gender identity can be changed at any time to reflect changes in gender identity after patient registration.

The data default for new patient registrations should be ‘not known’; users should be able to manually update the data default as required. Users should be alerted where gender identity is recorded as ‘not known’ to encourage accurate data entry and improve data quality.

Gender-identity options have been updated to accommodate transgender and non-binary gender identities. For example, a trans-man’s gender identity would be coded as ‘Male – including trans man’

### Gender at Birth

#### Is the patient’s gender identity the same as their gender assigned at birth (Yes or No)?

Gender at birth should be specified by the patient at registration... The response to ‘Gender at birth’ can be changed at any time to reflect changes in gender identity after patient registration. The data default for new patient registrations should be ‘yes – gender identity is the same as gender assigned at birth’: users should be able to manually update the data default as required. For example, the gender at birth of a transgender man would be coded as ‘No – gender identity is not the same as gender assigned at birth’.

Users should be alerted where Gender at Birth is recorded as ‘not known’ to encourage accurate data entry and improve data quality.

A patient’s gender at birth may change over time – the most recent information should be reported for all records within the current quarterly data extract: a change in gender at birth will also require a change in gender identity (see above).

As noted earlier (see ‘Sexual health services’), how patients respond to these questions can affect the direction of clinical questioning, including HIV risk-related questions. It may also impact on information populating the following data fields, which pertain to opposite sex partners and MSM, held within the same dataset:<sup>321</sup>

<sup>320</sup> UK Health Security Agency (2021), *GUMCAD STI Surveillance System. Data specification and technical guidance*. November 2021 (pages 15-16). [https://web.archive.org/web/20240517172836/https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/1032957/GUMCAD\\_clinical\\_guidelines\\_2021.pdf](https://web.archive.org/web/20240517172836/https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1032957/GUMCAD_clinical_guidelines_2021.pdf)

<sup>321</sup> UK Health Security Agency (2021), *GUMCAD STI Surveillance System Data specification and technical guidance* (pages 53-54). [https://web.archive.org/web/20240517172836/https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/1032957/GUMCAD\\_clinical\\_guidelines\\_2021.pdf](https://web.archive.org/web/20240517172836/https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1032957/GUMCAD_clinical_guidelines_2021.pdf)

- **‘Opposite sex partner’ question codes**
  - Number of sex partners in last 3 months code (opposite sex partners).
  - New sex partners in last 3 months indicator (opposite sex partners).
  - Condomless sex indicator (penetrative sex opposite sex partners for the last time person had sex).
- **‘Same sex partners’ question codes**
  - Number of sex partners in last 3 months code (male same sex partners).
  - Condomless sex indicator (penetrative sex male same sex partners in the last 3 months).
  - Condomless sex indicator (receptive sex male same sex partners in the last 3 months).
  - HIV positive partners in last 3 months indicator (penetrative sex male same sex partners).

## Mental Health Act Statistics Annual Figures, NHS England



This NHS England publication contains accredited official statistics about use of the Mental Health Act (‘the Act’) in England, including information about people who are formally detained in hospital and Community Treatment Orders.<sup>322</sup>

The statistics are largely populated from the Mental Health Services Data Set (MHSDS). This is an administrative data source that contains record-level data about the care of those in contact with NHS-funded mental health, learning disabilities or autism spectrum disorder services, which is submitted by service providers on a monthly basis. The MHSDS also sets out data items and definitions to be extracted from local information systems<sup>323</sup> (see also [Mental Health Services’ in section 8.1](#)).

Mental Health Act Statistics 2021/22 present data labelled ‘all genders’ (**male, female, non-binary, other (not listed), indeterminate**). The table below is reproduced from the 2021/22 statistics and shows that these are populated from separate data fields.

*Table 7. Detentions under the Mental Health Act 1983, by age group & gender, 2021-22*

Gender	Number of detentions	Base Population <sup>3</sup>	Crude rate per 100,000 population
All genders (where recorded)	51,030	56,550,138	90.2
Male	26,244	27,982,818	93.8
Female	24,693	28,567,320	86.4
Non-Binary - based on Gender identity field	33	-	-
Other (not listed) - based on Gender identity field	41	-	-
Indeterminate - based on Person stated gender field	19	-	-

Source: NHS England<sup>324</sup>

As noted earlier, the MHSDS does not collect data on sex, despite its relevance to mental health outcomes. NHS England state that sex can instead be inferred from the ‘Gender identity same at birth’ indicator, although this is not a reliable measure, not least because a person can decline to answer.<sup>325</sup>

The MHSDS gender items are reproduced below.<sup>326</sup>

These codes differ from those specified in GUMCAD STI Surveillance System detailed above (despite being almost identical), and the two services cannot read each other’s codes.

<sup>322</sup> NHS England (2022), *Mental Health Act Statistics, Annual Figures, 2021-22*. <https://digital.nhs.uk/data-and-information/publications/statistical/mental-health-act-statistics-annual-figures/2021-22-annual-figures#highlights>

<sup>323</sup> NHS England (online), *DAPB0011: Mental Health Services Data Set*. <https://digital.nhs.uk/data-and-information/information-standards/information-standards-and-data-collections-including-extractions/publications-and-notifications/standards-and-collections/dapb0011-mental-health-services-data-set>.

<sup>324</sup> NHS England (2022), *Mental Health Act Statistics, Annual Figures, 2021-22 Data Tables* (Table 1b). [https://files.digital.nhs.uk/33/8847B2/ment\\_heal\\_act\\_stat\\_eng\\_main\\_2021\\_22.xlsx](https://files.digital.nhs.uk/33/8847B2/ment_heal_act_stat_eng_main_2021_22.xlsx)

<sup>325</sup> NHS England (online), *Guidance on collecting and submitting data for the data items on gender within the Mental Health Services Data Set (MHSDS)*. <https://digital.nhs.uk/data-and-information/data-collections-and-data-sets/data-sets/mental-health-services-data-set/guidance-on-collecting-and-submitting-data-for-data-items-on-gender#collecting-data-on-the-three-data-items-to-be-collected>

<sup>326</sup> NHS England (2023), *User guidance Mental Health Services Data Set (MHSDS) v6.0* (pages 24-25). [https://digital.nhs.uk/binaries/content/assets/website-assets/data-and--information/datasets/mhds/tools-and-guidance/mhds/v6.0\\_userguidance\\_v6.0\\_3\\_may2024.pdf](https://digital.nhs.uk/binaries/content/assets/website-assets/data-and--information/datasets/mhds/tools-and-guidance/mhds/v6.0_userguidance_v6.0_3_may2024.pdf)



## *Gender indicators in the Mental Health Services Data Set*

### Gender identity code

This data item should capture how patients tell providers they would like their gender to be recorded and referred to by the service. It should be asked of the individual and is distinguishable from the Person Stated Gender Code, as it has more inclusive gender options. This is to ensure that trans and non-binary people are being acknowledged and included by services.

When filling in these questions face to face with the individual, it is recommended the person asking initially provides the options directly to the person completing the questions.

An example is where a person describes themselves as gender fluid. If there is not a gender fluid option to choose some people may be happy to be recorded as 'non-binary' whereas others would prefer to be recorded under 'other (not listed)'.

If it is not possible to directly ask the individual, then select 'other (not listed)', to indicate that the list of options does not include the appropriate term for that individual.

This data item should be completed using information provided by the patient as part of registrations and/or care contacts. It should not be completed by linkage to the NHS spine or assumed/inferred by the service.

This means it may not match the gender recorded by other NHS services. The gender identity selected by a patient within a service should never be overwritten by information provided directly from other services or via the NHS Spine.

This new gender identity data item is now the priority for providers to collect, largely replacing the previous item used...

#### Response options

Male (including trans man)  
 Female (including trans woman)  
 Non-binary  
 Other (Not Known (not recorded))  
 Not Stated (person asked but declined to provide a response)  
 (Not listed)

This data item should be completed using information provided by the patient as part of registrations and/or care contacts. It should not be completed by linkage to the NHS spine or assumed/inferred by the service. This question should be asked of the individual by both their GP and by mental health services.

#### Response options

Yes - the person's gender identity is the same as their gender assigned at birth  
 No - the person's gender identity is not the same as their gender assigned at birth  
 Not Known (not asked)  
 Not Stated (person asked but declined to provide a response)

### Person stated gender code

This is the existing code used in PDS (Personal Demographics Service) which records somebody's stated gender. (This does not have to be their birth gender or their legal gender). This will record the person's gender at their GP (e.g. male or female) and will also match the PDS data which is provided by the GP.

Note: Person Stated Gender Code and Gender Identity Code are different and have been included to prevent a breakdown with PDS...

National Code X 'Not Known (Person Stated Gender Code not recorded)' means that the sex of a Person has not been recorded.

National Code 9 'Indeterminate' means indeterminate, i.e. unable to be classified as either male or female.

#### Response options

Male  
 Female  
 Indeterminate (unable to be classified as either male or female)  
 Not Known (PERSON STATED GENDER CODE not recorded)

### Gender identity same as birth indicator

### Talking Therapies programme, NHS England

The Talking Therapies programme (previously Improving Access to Psychological Therapy) is designed to help people with common mental health problems. Data is collected by service providers and submitted to NHS Digital.<sup>327</sup> is aligned with the **Mental Health Services Data Set**, as detailed above.<sup>328</sup>

### NHS England Short and Long Term (SALT) data

These statistics are designed to track service user journeys through the social care system, recording key events, and developments prior to these. Data collection began in 2014/15.

Data is collected from local authorities and used for a range of policy and decision-making purposes. Data is collected on self-defined **gender, (male, female, other)**. Guidance for local authorities published in 2024 states:

‘Within SALT gender is defined as the gender the individual considers themselves to be. A voluntary data item, ‘Other’, has been added this year for clients who do not identify as male or female’.<sup>329</sup>

## 8.3 Health and social care survey data

This section reviews data collection on sex across a range of major surveys on health and social care. As before, the outputs are grouped according to how the sex or gender variable is recorded or collected.

### Sex, no definition (male, female)

#### Health and Care Experience Survey, Scotland



The Scottish Health and Care Experience Survey began in 2009/10. It collects data about people’s experiences of accessing and using GP and Out of Hours services, NHS treatment outcomes, and experiences of social care services. It is part of a suite of surveys that make up the Scottish Care Experience Survey Programme and has accredited official statistics status.<sup>330</sup>

The survey has gone through several changes to the sex question. The 2010 questionnaire asked, ‘are you male or female’.<sup>331</sup> The 2017 survey saw the introduction of a new gender question, asking ‘what best describes your gender’, in order to ‘allow respondents to describe their gender identity’. The Technical report further explained that the analysis of response rates was based on linked CHI records, whilst all other analyses of gender used the new identity question.<sup>332</sup>

The most recent report did not ask for sex or gender, in order to reduce respondent burden. Instead, the 2023 survey drew on data based on the gender record in respondent’s CHI record, at the time of extraction.<sup>333</sup>

As noted in the previous section, section, gender markers on CHI records can be changed to reflect patient wishes (see under section 8.1.2, ‘Changing gender markers on NHS Scotland records’).

#### Home Care Experience Survey, Northern Ireland

The Northern Ireland Department of Health undertook Home Care Experience Surveys in 2009 and 2019, aimed at improving the quality of health and social care.

<sup>327</sup> NHS England (online), *NHS Talking Therapies data set reports*.

<https://digital.nhs.uk/data-and-information/data-collections-and-data-sets/data-sets/improving-access-to-psychological-therapies-data-set/improving-access-to-psychological-therapies-data-set-reports>

<sup>328</sup> NHS England (2022), *Improving Access to Psychological Therapies (IAPT) Data Set v2.1 User Guidance* (page 8).

[https://digital.nhs.uk/binaries/content/assets/website-assets/data-and-information/datasets/iapt/iapt-v2.1-docs/iapt-v.2.1\\_user\\_guidance\\_v1.5\\_18012022.pdf](https://digital.nhs.uk/binaries/content/assets/website-assets/data-and-information/datasets/iapt/iapt-v2.1-docs/iapt-v.2.1_user_guidance_v1.5_18012022.pdf)

<sup>329</sup> NHS England (2024), *Short and Long Term (SALT) Data Return 2023-24 guidance: Guidance to be applied to all tables* (Gender).

<https://digital.nhs.uk/data-and-information/data-collections-and-data-sets/data-collections/social-care-collection-materials-2024/salt-data-return-2023-2024-guidance/guidance-to-be-applied-to-all-tables#gender>

<sup>330</sup> Scottish Government (online), *Health and Care Experience Survey*. <https://www.gov.scot/collections/health-and-care-experience-survey/>

<sup>331</sup> Scottish Government (2010), *Better Together GP Patient Experience Survey* (page 7). <https://www.gov.scot/binaries/content/documents/govscot/publications/statistics/2020/11/health-and-care-experience-survey-2009-10/documents/questionnaire/questionnaire/govscot%3Adocument/questionnaire.pdf>

<sup>332</sup> Scottish Government (2018), *Health and Care Experience Survey 2017 Technical Report* (pages 10, 27).

<https://www.gov.scot/binaries/content/documents/govscot/publications/statistics/2018/04/health-care-experience-survey-2017-18-technical-report/documents/health-care-experience-survey-2017-18-technical-report/health-care-experience-survey-2017-18-technical-report/govscot%3Adocument/00534501.pdf>

<sup>333</sup> Scottish Government (2024), *Health and Care Experience Survey 2023/24 Technical Report* (page 21).

<https://www.gov.scot/binaries/content/documents/govscot/publications/statistics/2024/05/health-care-experience-survey-2023-24-technical-report/documents/health-care-experience-survey-2023-24-technical-report/health-care-experience-survey-2023-24-technical-report/govscot%3Adocument/health-care-experience-survey-2023-24-technical-report.pdf>

In both years, the survey asked, ‘**are you male or female**’, which is described as the respondent ‘sex profile’.<sup>334</sup>

### National Diet and Nutrition Survey, UK

This annual survey began in 2008 and is sponsored by Office for Health Improvement and Disparities. The survey collects information on the diet, nutrient intake, and nutritional status of the UK population. It is currently administered by NatGen.<sup>335</sup> The 2020 questionnaire asked, ‘**What is your sex (male, female)**’.<sup>336</sup> We could not find a copy of the questionnaire for more recent sweeps.

### Scottish Health Survey

The Scottish Health Survey began in 1995 and collects a range of information on the health of the Scottish population in private households. The data is used to inform policy decisions about health services and to plan for services. The survey is also a constituent part of the Scottish Surveys Core Questions (see chapter sixteen, page 174) and has accredited official statistics status.



The 2022 survey asked, ‘**What is the sex of [respondent] (male, female, prefer not to say)**’. This is broadly consistent with earlier years, with the exception of the ‘prefer not to say’ response, which was not offered in previous years.<sup>337</sup>

### Smoking, Drinking and Drug Use Survey, England

This NHS England survey collects information on smoking, alcohol and drug use among school pupils aged 11 to 15, which is used to inform policy and health initiatives.<sup>338</sup> The statistics are official accredited statistics. The survey is administered by Ipsos, usually on a biennial basis. The 2021 survey asked a simple sex question, ‘**are you a boy or a girl**’.<sup>339</sup> The 2023 survey asked ‘Which of the following



best describes your gender’, with response categories: Boy/ Girl/ Non-binary/ My gender is not listed/ Prefer not to say

### Sex at birth (male, female)

#### National Survey of Sexual Attitudes and Lifestyles

The National Survey of Sexual Attitudes and Lifestyles began in 1990 and is undertaken on a decennial basis. The survey is a key data source for sexual and reproductive health (SRH) policy. The most recent survey was designed to understand the impact of COVID-19 on sexual and reproductive health.

Both the 1990 and 2010 questionnaires instructed the interviewer to ‘record whether respondent is male or female’<sup>340</sup> In 2020, the survey asked a question about sex ‘described at birth’.

‘Not all people feel that the sex they were described as at birth matches how they feel about themselves today.

So, to check, **at birth, were you described as...**

1. **Male**
2. **Female**
3. Prefer not to say.<sup>341</sup>

### Sex, interviewer-coded (male, female)

#### Health Survey for England

The Health Survey for England monitors national health and care trends. It is used to estimate the proportion of people in England who have health conditions, and the prevalence of different risk factors.<sup>342</sup> The surveys have been carried out since 1994 by the Joint Health Surveys Unit of NatGen Social Research and the Research Department of Epidemiology and Public Health at UCL.<sup>343</sup> The survey has accredited official statistics status. Data from the HSE (and other sources) is also used to populate Statistics on Obesity, Physical Activity and Diet.<sup>344</sup>



334 NI Department of Health (2009), Survey of Home Care Service Users Northern Ireland 2009 (page 12).

<https://www.health-ni.gov.uk/sites/default/files/publications/health/survey-home-care-service-users-2009.PDF>

NI Department of Health (2019), Home care experience survey questionnaire (page 9). <https://www.health-ni.gov.uk/sites/default/files/publications/health/survey-home-care-care-service-users-questionnaire-2018.pdf>

335 Office for Health Improvement and Disparities (2023), National Diet and Nutrition Survey. <https://www.gov.uk/government/collections/national-diet-and-nutrition-survey#current-ndns-results>

336 Public Health England (2021), National Diet and Nutrition Survey: Web Questionnaire (page 4). [https://assets.publishing.service.gov.uk/media/6149e9a9e90e0704352cbc7f/Follow\\_up\\_study\\_2020\\_Appendix\\_C\\_Web\\_questionnaire.pdf](https://assets.publishing.service.gov.uk/media/6149e9a9e90e0704352cbc7f/Follow_up_study_2020_Appendix_C_Web_questionnaire.pdf)

337 For example: Scottish Government (2022), Scottish Health Survey 2021 Questionnaire documentation (page 13). <https://www.gov.scot/binaries/content/documents/govscot/publications/statistics/2022/11/scottish-health-survey-2021-volume-2-technical-report/documents/questionnaire-documentation/questionnaire-documentation/govscot%3Adocument/questionnaire-documentation.pdf>

338 NHS Digital (2022), Smoking, Drinking and Drug Use among Young People in England, 2021. <https://www.gov.uk/government/statistics/smoking-drinking-and-drug-use-among-young-people-in-england-2021>

339 Ipsos MORI (2022), Smoking, Drinking and Drug Use Survey 2021 (page 2). [https://files.digital.nhs.uk/6E/CA8DEF/SDD\\_Questionnaire\\_Drugs.pdf](https://files.digital.nhs.uk/6E/CA8DEF/SDD_Questionnaire_Drugs.pdf)

340 Social and Community Planning Research (1990), National Survey of Sexual Attitudes and Lifestyles, 1990 (page 35). <https://doc.ukdataservice.ac.uk/doc/3434/mrdoc/pdf/user-guide3434.pdf>

Social and Community Planning Research (2010), National Survey of Sexual Attitudes and Lifestyles Questionnaire, 2010-2012 (page 4). [https://doc.ukdataservice.ac.uk/doc/7799/mrdoc/pdf/7799\\_natsal\\_3\\_questionnaire.pdf](https://doc.ukdataservice.ac.uk/doc/7799/mrdoc/pdf/7799_natsal_3_questionnaire.pdf)

341 Ipsos MORI (2020), National Survey of Sexual Attitudes and Lifestyles COVID-19 Study, 2020. Questionnaire - The impact of Covid-19 on sexual and reproductive health in Britain (page 7). [https://doc.ukdataservice.ac.uk/doc/8865/mrdoc/pdf/8865\\_natsal\\_covid\\_questionnaire\\_wave\\_1.pdf](https://doc.ukdataservice.ac.uk/doc/8865/mrdoc/pdf/8865_natsal_covid_questionnaire_wave_1.pdf)

342 NHS England (online), Health Survey for England. <https://digital.nhs.uk/data-and-information/publications/statistical/health-survey-for-england>

343 See: UK Data Service (online), Health Survey for England. <https://beta.ukdataservice.ac.uk/datacatalogue/series/series?id=2000021>

344 NHS England (2021), Statistics on Obesity, Physical Activity and Diet, England 2021. <https://digital.nhs.uk/data-and-information/publications/statistical/statistics-on-obesity-physical-activity-and-diet/england-2021/part-3-other-data-sources>

The survey collects data on sex, which is coded by the interviewer. This approach can be seen in 1991,<sup>345</sup> and more recently, in the 2022 sweep, which also instructed interviewers to **code respondent sex as male or female**.<sup>346</sup>

In 2021 NHS England published a feasibility study that looked at amending the sex question to provide for gender identity responses ('other' and 'prefer not to say').<sup>347</sup> It is unclear whether this will be adopted in the Health Survey for England. The approach was, however, taken forward in the 2021 Adult Oral health survey.<sup>348</sup>

### Health Survey Northern Ireland

This Department of Health survey began in 2010 and runs every year, covering a range of health topics.<sup>349</sup> It has consistently collected data on binary sex.<sup>350</sup>

The 2022/23 telephone questionnaire instructed interviewers to **enter sex of respondent (male, female)**.<sup>351</sup>

### Sex with intersex category (male, female, intersex)

#### NHS National Patient Survey Programme

The National Patient Survey (NPS) Programme began in 2002 and is one of the largest patient survey programmes in the world. It monitors patient experiences of health care and provides data to monitor compliance by providers. Separate surveys are undertaken as part of the programme, focusing on different topics. NPS datasets held with the UKDS include the following:<sup>352</sup>

- Accident and Emergency Department Survey
- Adult Inpatient Survey
- Emergency Department Patient Surveys
- Outpatient Surveys
- Ambulance Service Survey
- Children and Young People's Inpatient and Day Case Survey

- Children and Young People's Patient Experience Survey
- Community Mental Health Service User Survey
- Diabetes Survey
- Emergency Department Survey
- Mental Health Acute Inpatient Service Users Survey
- Mental Health Surveys
- Mental Health Trusts: Community Mental Health Service User Survey
- National Survey of Local Health Services
- Outpatient Survey
- Primary Care Trusts: Local Health Services Survey
- Primary Care Trusts: Patient Survey
- Urgent and Emergency Care Survey
- Young Patient Survey

Between 2003 and 2019, NPS surveys asked, 'are you male or female', with no other information or direction.

Since 2020, NPS surveys have asked, '**At birth were you assigned as... (male, female, intersex, prefer not to say)**'. The additional intersex category can be seen in the 2023 Community Mental Health Survey.<sup>353</sup> In 2023, the Adult Inpatient Survey added explanatory text defining the intersex response option as: 'a person born with a reproductive anatomy that doesn't seem to fit the typical definitions of female or male'.<sup>354</sup>

### Sex and intersex (male, female, intersex) and gender identity (multiple categories)

#### COVID Social Mobility and Opportunities Study

The COVID Social Mobility and Opportunities (COSMO) Study is a longitudinal cohort study, looking at the impact of the COVID-19 pandemic on short-term educational attainment, and long-term educational and career outcomes.<sup>355</sup> Wave 1 fieldwork was conducted by Kantar Public and NatGen.

The survey administers questionnaires to young people and their parents. The young person's questionnaire

345 Office of Population Censuses and Surveys (1991), *Health Survey for England Coding Instructions* (page 160).

346 NHS England (2023), *Health Survey for England 2021 Questionnaires, field documents and measurement protocols* (page 39).

347 NHS England (2021), *The Health Survey for England 2020/2021 Feasibility study* (see: Questionnaire design and development: Questionnaire content).

348 Office for Health Improvement and Disparities (2023), *Adult Oral Health Survey 2021: technical report* (See '2021 questionnaire content': 'Household questions' and 'Response: Profile of achieved sample').

349 NI Department of Health (online), *Health Survey Northern Ireland*. <https://www.health-ni.gov.uk/topics/doh-statistics-and-research/health-survey-northern-ireland>

350 NI Department of Health (online), *Health Survey Northern Ireland Questionnaires*. <https://www.health-ni.gov.uk/publications/health-survey-northern-ireland-questionnaires>

351 NI Department of Health (2022), *Health Survey Northern Ireland 2022/23 – Telephone Questionnaire* (page 2).

352 <https://www.health-ni.gov.uk/sites/default/files/publications/health/hnsi-questionnaire--22-23.pdf>

353 To locate NPS surveys, use the 'Studies' drop-down tab available on this UK Data Service [webpage](#). All relevant surveys are cross-referenced in this way.

354 NHS (2023), *Community mental health survey 2023: England results* (see question 38-8).

355 [https://www.cqc.org.uk/sites/default/files/2024-04/20240418\\_cmh23\\_National\\_all ods](https://www.cqc.org.uk/sites/default/files/2024-04/20240418_cmh23_National_all ods)

354 Care Quality Commission (2023), *NHS Adult Inpatient Survey* (page 7).

354 [https://nhssurveys.org/wp-content/surveys/02-adults-inpatients/02-survey-materials/2023/Core\\_Questionnaire.pdf](https://nhssurveys.org/wp-content/surveys/02-adults-inpatients/02-survey-materials/2023/Core_Questionnaire.pdf)

355 UK Data Service (online), *COVID Social Mobility and Opportunities Study*. <https://beta.ukdataservice.ac.uk/datacatalogue/series/series?id=2000124>

asks, ‘Which of these were you described as at birth?’ (male, female, intersex), followed by a gender identity question.<sup>356</sup>

The parental questionnaire asks, ‘which of these best describes your gender’ (male, female, in another way). Parents are also asked ‘Which of these best describes [child]’s gender’ with the same response options.<sup>357</sup>

## Gender (no definition)

### Professional Record Standards Body, Core Information Standard implementation guidance.

The Professional Record Standards Body (PRSB) was created by the Academy of Medical Royal Colleges as a not-for-profit company. It has 86 member organisations, including the Department of Health and Social Care, which also sits on the Advisory Board.<sup>358</sup> The PRSB produces and promotes advisory standards and guidance for both health and social care records. It has also been commissioned to advise the NHS on a range of patient data projects, including the development of social care information standards.<sup>359</sup> A Core Information Standard is due to be updated in 2024 (listed as scheduled for May 2024 release on their website),<sup>360</sup> but this is yet to be released at time of writing.

The implementation guidance for the current standard (2021) cautions against collecting both sex and gender data, principally for privacy reasons. It incorrectly states, ‘It is unlawful to disclose, without consent, a person’s gender reassignment with or without a gender reassignment certificate’.<sup>361</sup> To avoid accidental disclosure of gender reassignment status, the guidance states that ‘one option is to leave out the ‘Sex’ field’, but notes that ‘the implications and potential risks of that will need to be considered’. It also suggests recording ‘self-expressed gender in the administrative area of systems, and ... sex at birth in a separate clinical area, that can only be accessed by medical staff’.<sup>362</sup>

## Gender identity (multiple categories)

### Adult Oral Health Survey



The Adult Oral health survey is part of a series of nationally representative surveys of adult oral and dental health in England, dating to 1968 and 1978 in England and Wales. The 2021 survey was commissioned by Public Health England, now the Office for Health Improvement and Disparities, and led by NatGen.<sup>363</sup> The survey has accredited official statistics status.<sup>364</sup>

At the time of writing, we could not locate the 2021 questionnaire, although the Technical Report states that sex and other household questions were adapted from the Health Survey for England (HSE) 2020 push-to-web feasibility study. As noted earlier, this tested a question with **male**, **female** and **other** response options (see page 100). Consistent with this approach, the Technical Report stated that ‘a small number of participants who answered ‘other’ have been excluded from the analysis of **gender**’.<sup>365</sup>

### Adult Social Care Survey, England

This NHS England survey asks service users questions about their quality of life and the impact of care and support services. Data is submitted to NHS England by eligible local authorities with Adult Social Services Responsibilities.<sup>366</sup>

Prior to 2019/20 the survey captured data on males and females only. This was subsequently replaced by a question that provides for gender identity.<sup>367</sup> Questionnaire instructions for councils state that a **gender** question should only be asked if the data cannot be obtained from their own records or if the records are unreliable.<sup>368</sup> The questionnaire asks, ‘**Are you male or female**’ but offers **male**, **female** and **other** response options.<sup>369</sup>

356 Kantar Public (2022), *COSMO Young Person Questionnaire - Wave 1* (page 9). [https://doc.ukdataservice.ac.uk/doc/9000/mrdoc/pdf/9000\\_cosmo\\_young\\_person\\_questionnaire\\_w1.pdf](https://doc.ukdataservice.ac.uk/doc/9000/mrdoc/pdf/9000_cosmo_young_person_questionnaire_w1.pdf)

357 Kantar Public (2022), *COSMO Parent Questionnaire – Wave 1* (pages 9, 7). [https://doc.ukdataservice.ac.uk/doc/9000/mrdoc/pdf/9000\\_cosmo\\_parent\\_questionnaire\\_w1.pdf](https://doc.ukdataservice.ac.uk/doc/9000/mrdoc/pdf/9000_cosmo_parent_questionnaire_w1.pdf)

358 Professional Record Standards Body (online), *Our members*. <https://archive.is/1S0Yd>

359 NHS England (2020), *Professional Record Standards Body (PRSB) appointed to support the Social Care Digital Pathfinder projects*. <https://web.archive.org/web/20220519221454/https://digital.nhs.uk/services/social-care-programme/news/professional-record-standards-body-prsb-appointed>

360 Professional Record Standards Body (online), *Core Information Standard (CIS) update*. <https://archive.is/2PNrc>

361 Professional Record Standards Body (2021), *Core Information Standard implementation guidance*. <https://web.archive.org/web/20240806231631/https://theprsb.org/wp-content/uploads/2021/09/Core-Information-Standard-Implementation-Guidance-v2.0.docx?hsCtaTracking=17586496-edf8-4515-b768-57b11b615f30%7C76dd83f2-a5dd-4049-a76b-1f74cfb9ba31>

362 As above.

363 Office for Health Improvement and Disparities (2023), *Adult Oral Health Survey 2021: technical report*. <https://www.gov.uk/government/statistics/the-impact-of-covid-19-on-access-to-dental-care/adult-oral-health-survey-2021-technical-report>

364 Office for Health Improvement and Disparities (2024), *Adult oral health survey 2021: report summary*. <https://www.gov.uk/government/statistics/adult-oral-health-survey-2021/adult-oral-health-survey-2021-report-summary>

365 Office for Health Improvement and Disparities (2023), *Adult Oral Health Survey 2021: technical report* (See ‘2021 questionnaire content’: ‘Household questions’ and ‘Response: Profile of achieved sample’). <https://www.gov.uk/government/statistics/the-impact-of-covid-19-on-access-to-dental-care/adult-oral-health-survey-2021-technical-report>

366 NHS England (online), *Adult Social Care User Survey (ASCS) 2023-24 guidance and materials for councils*. <https://digital.nhs.uk/data-and-information/data-collections-and-data-sets/data-collections/social-care-user-surveys/adult-social-care-user-survey-asc-2023-24>

367 NHS England (online), *Adult Social Care Collections Data Dictionary V1.6* (Data items: line 33). <https://digital.nhs.uk/binaries/content/assets/website-assets/data-and-information/data-collections/social-care-collections-2022/data-dictionary.xlsx>

368 NHS England (2023), *ASCS 2023-2024 questionnaires* (Demographic Questions: standard; 1).

369 <https://digital.nhs.uk/binaries/content/assets/website-assets/data-and-information/data-collections/social-care-user-surveys/2023---2024-guidance/asc-2023-24-questionnaires.zip> As above (page 2).

## Cancer Patient Experience Survey

The NHS England Cancer Patient Experience Survey began in 2010 and is designed to monitor national progress on cancer care, and inform the work of cancer care providers, stakeholders and charity groups.<sup>370</sup> The Picker Institute has run the survey since 2019.

Prior to 2021, the survey asked, ‘are you male or female’.<sup>371</sup> In 2021, this changed to ask, ‘**which of the following best describes you? (female, male, non-binary, and prefer to self-describe [free text])**’.<sup>372</sup>

## Food and You/ Food and You 2

Food and You is a biennial survey of adults aged 16 years or over living in England, Wales, and Northern Ireland. It is the Food Standards Agency flagship survey. Food and You ran from 2010 to 2018. Following a change in methodology, Food and You 2 has run from 2020 onward, collecting data on public attitudes towards food, behaviours, and knowledge.<sup>373</sup>

The 2010 questionnaire asked a direct binary ‘gender’ question.<sup>374</sup> In 2018, this changed to a binary interviewer-coded question, labelled ‘sex’.<sup>375</sup>

In 2020, as part of the new Food and you 2 survey, a new ‘gender’ question asked, ‘**which of the following describes how you think of yourself? (male, female, in another way)**’. This is not reflected in the published demographic profile of respondents, which only shows data on male and female respondents.<sup>376</sup>

## GP Patient Survey

The GP Patient Survey is a large-scale survey run by Ipsos on behalf of NHS England, which collects data on how people feel about their GP practice and other local NHS services. The survey began in 2007.<sup>377</sup>

Between 2011 and 2020, the questionnaire asked, ‘are you male or female’.<sup>378</sup> In 2021 (and subsequent surveys in 2023 and 2024), this was replaced by two questions.<sup>379</sup> The survey asked, ‘**which of the following best describes you? (female, male, non-binary, prefer to self-describe [free text], prefer not to say)**’.<sup>380</sup> This is followed by a question asking, ‘Is your gender identity the same as the sex you were registered at birth?’, which has been shown to be unreliable (see chapter three).

An FAQ on the GP Patient Survey website states that voluntary self-reported information is collected on sex and refers to the definition of sex in the Equality Act 2010:

‘In the Equality Act sex is a reference to a man (male) or to a woman (female). The protected characteristic of sex is measured in the survey as part of the following question... The question wording is based on questions used in other settings and on a huge amount of research, stakeholder engagement and data analysis.’<sup>381</sup>

Separate guidance on data collection undertaken and independently published by Ipsos in 2023 cited the GP survey as evidence that moving from a sex question to a gender identity question would not affect trends over time (see further section ):

‘When moving from a question asking ‘Are you male or female?’ to a question asking people to select their gender from a list including non-binary and ‘Prefer to self-describe’ options, the proportion identifying as female and male stayed very similar (maximum 1 percentage point difference). This suggests that this change will not impact trends or the ability to compare to national statistics using alternative questions, while still allowing those participants who identify with other gender identities to select an option that best describes them.’<sup>382</sup>

370 NHS England (online), *Cancer Patient Experience Survey*.

<https://www.england.nhs.uk/statistics/statistical-work-areas/cancer-patient-experience-survey/>

371 See: NHS England (2015), *National Cancer Patient Experience Survey* (page 10).

<https://www.ncpes.co.uk/wp-content/uploads/2023/04/2015-Questionnaire.pdf>

NHS England (2020), *National Cancer Patient Experience Survey* (page 10).

[https://www.ncpes.co.uk/wp-content/uploads/2023/04/CPES20-Questionnaire\\_V1-8\\_MB-JK-NHSEI\\_FINAL\\_25.01.2021\\_protect.pdf](https://www.ncpes.co.uk/wp-content/uploads/2023/04/CPES20-Questionnaire_V1-8_MB-JK-NHSEI_FINAL_25.01.2021_protect.pdf)

372 NHS England (2021), *National Cancer Patient Experience Survey* (page 10). [https://www.ncpes.co.uk/wp-content/uploads/2023/07/CPES21-Questionnaire\\_JK-JAM-MB\\_130821\\_FINAL.pdf](https://www.ncpes.co.uk/wp-content/uploads/2023/07/CPES21-Questionnaire_JK-JAM-MB_130821_FINAL.pdf)

373 Food Standards Agency (online), *Food and You 2*.

<https://www.food.gov.uk/research/food-and-you-2>

374 TNS-BMRB (2011), *Exploring food attitudes and behaviours in the UK: Findings from the Food and You Survey 2010 Technical report* (page 38).

<https://doc.ukdataservice.ac.uk/doc/6739/mrdoc/pdf/6739userguide.pdf>

375 NatCen (2018), *Food and You Wave 5. Face to Face CAPI questionnaire* (page 2).

[https://doc.ukdataservice.ac.uk/doc/8574/mrdoc/pdf/8574\\_food\\_and\\_you\\_wave\\_5\\_mainstage\\_questionnaire.pdf](https://doc.ukdataservice.ac.uk/doc/8574/mrdoc/pdf/8574_food_and_you_wave_5_mainstage_questionnaire.pdf)

376 Ipsos MORI (2020), *Food and You 2: Wave 1 Technical Report* (pages 60, 32).

[https://doc.ukdataservice.ac.uk/doc/8814/mrdoc/pdf/8814\\_fy2\\_wave\\_1\\_technical\\_report.pdf](https://doc.ukdataservice.ac.uk/doc/8814/mrdoc/pdf/8814_fy2_wave_1_technical_report.pdf)

377 NHS (online), *GP Patient Survey: About the survey*.

<https://www.gp-patient.co.uk/about>

378 See Ipsos MORI (2007), *The GP Patient Survey* (page 2)

<https://ia904601.us.archive.org/34/items/june-2007-gp-patient-survey-questionnaire/June%202007%20GP%20Patient%20Survey%20questionnaire.pdf>

Ipsos MORI (2020), *The GP Patient Survey* (page 2).

[https://www.gp-patient.co.uk/downloads/2020/qandletter/GPPS\\_2020-Questionnaire\\_PUBLIC.pdf](https://www.gp-patient.co.uk/downloads/2020/qandletter/GPPS_2020-Questionnaire_PUBLIC.pdf)

379 Ipsos MORI (2021), *The GP Patient Survey* (page 7).

[https://gp-patient.co.uk/downloads/2021/qandletter/GPPS\\_2021-Questionnaire\\_PUBLIC.pdf](https://gp-patient.co.uk/downloads/2021/qandletter/GPPS_2021-Questionnaire_PUBLIC.pdf)

380 Ipsos MORI (2023), *The GP Patient Survey* (page 7).

[https://gp-patient.co.uk/downloads/2023/qandletter/GPPS\\_2023-Questionnaire\\_PUBLIC.pdf](https://gp-patient.co.uk/downloads/2023/qandletter/GPPS_2023-Questionnaire_PUBLIC.pdf)

381 Ipsos MORI (online), *Frequently asked questions (‘Sex’)*.

<https://web.archive.org/web/20240502190901/https://gp-patient.co.uk/FAQ>

382 Ipsos (2023), *Asking the UK their Gender: Inclusive Survey Design* (page 10).

[https://www.ipsos.com/sites/default/files/ct/publication/documents/2023-06/ipsos\\_%20Asking%20the%20UK%20their%20gender\\_June%202023.pdf](https://www.ipsos.com/sites/default/files/ct/publication/documents/2023-06/ipsos_%20Asking%20the%20UK%20their%20gender_June%202023.pdf)

Analysis by Biggs, however, highlights issues at a sub-sample level.<sup>383</sup> Firstly, because data on sex is not known for respondents who chose non-binary or prefer to self-describe, any analysis based on the trans-identified subsample in the GP Patient survey cannot include sex as a factor, despite its significance as a determinant of mental and physical health outcomes.

Second, Biggs observes that the proportion of trans identified respondents is likely to be over-estimated, which again means that studies using the trans-identified sub-sample are likely to be flawed.<sup>384</sup> Data from the 2021 GP Patient Survey shows that 0.9% of respondents either chose non-binary or ‘prefer to self-describe’ in the first question or stated that their gender was not the same as their biological sex in the second question.

### Mental Health of Children and Young People in England

The Mental Health of Children and Young People (MHCYP) survey began in 2017, with follow ups of the 2017 cohort in 2020, 2021, 2022, and 2023. Related cross-sectional surveys, also covering adult populations, date back to 1993.<sup>385</sup> The survey is currently administered by NatGen.

The 2017 parent questionnaire asked a binary sex question for all household members, coded by the interviewer.<sup>386</sup> The Wave 1 2020 sweep then asked parents, ‘are you...’ (male, female, other). The same question was also asked in the 2020 Young Person Questionnaire.<sup>387</sup> This approach can also be seen in the 2023 sweep, which asked both parents (of children aged 8 to 16 years old) and young people (17 to 25 years old), ‘**And are you**’ (male, female, other, prefer not to answer).<sup>388</sup>

### Schools Infection Survey

The Schools Infection Surveys took place in 150 schools across 15 local authorities in England in 2020 to 2021. It was expanded in 2021/2022, to include 180 schools, investigating the role of schools in the spread of COVID-19 and more.<sup>389</sup>

An overview of demographic questions asked in the survey indicate that respondents were asked, ‘**what is your/your child’s gender**’ (male, female, other, prefer not to say).<sup>390</sup>

### Survey of Adult Carers in England

This biennial NHS England Survey collects information from eligible councils with Adult Social Services Responsibilities. The survey covers carers aged 18 or over, who are caring for a person aged 18 or over in an unpaid role. The data is used to monitor the impact of the national carers strategy and populate measures in the Adult Social Care Outcomes Framework.<sup>391</sup>

Like the NHS England Adult Social Care Survey, the survey collects data on gender identity. The 2023/24 survey asked, ‘**are you male or female**’, but offered **male, female** and **other** response options.<sup>392</sup>

383 Biggs, M. (2024), *England’s GP Patient Survey Provides Unreliable Data on Transgender Adults*, Archives of Sexual Behavior. <https://link.springer.com/article/10.1007/s10508-024-02897-3>

384 Biggs cites the following examples of studies using the trans identified sample:

Saunders, C. L., et al. (2023), Demographic characteristics, long-term health conditions and healthcare experiences of 6333 trans and non-binary adults in England: Nationally representative evidence from the 2021 GP Patient Survey. *British Medical Journal Open*, 13(2).

<https://bmjopen.bmj.com/content/13/2/e068099>

Watkinson et al. (2024), Gender-related self-reported mental health inequalities in primary care in England: A cross-sectional analysis using the GP Patient Survey. *The Lancet Public Health*, 9(2).

[https://www.thelancet.com/journals/lanpub/article/PIIS2468-2667\(23\)00301-8/fulltext](https://www.thelancet.com/journals/lanpub/article/PIIS2468-2667(23)00301-8/fulltext)

385 For example, Office of Population Censuses and Surveys (online), *OPCS Surveys of Psychiatric Morbidity: Private Household Survey, 1993*.

<https://beta.ukdataservice.ac.uk/datacatalogue/studies/study?id=3560>

386 NHS Digital (2018), *Mental Health of Children and Young People in England, 2017 Appendix B: Questionnaire* (page 6).

[https://files.digital.nhs.uk/7A/0A58BB/MHCYP%202017%20Appendix%20B%20-%20Questionnaire\\_06072022\\_edited.pdf](https://files.digital.nhs.uk/7A/0A58BB/MHCYP%202017%20Appendix%20B%20-%20Questionnaire_06072022_edited.pdf)

387 NHS Digital (2020), *Mental Health of Children and Young People in England, 2020: Wave 1 follow up to the 2017 survey* (pages 6, 35).

[https://files.digital.nhs.uk/9D/AE69B6/mhcyp\\_2020\\_que\\_mat.pdf](https://files.digital.nhs.uk/9D/AE69B6/mhcyp_2020_que_mat.pdf)

388 NHS England (2023), *Mental Health of Children and Young People in England, 2023: Wave 4 follow up to the 2017 survey* (pages 8, 85). [https://files.digital.nhs.uk/E9/EF96EE/MHC-YP\\_2023\\_que\\_mat.pdf](https://files.digital.nhs.uk/E9/EF96EE/MHC-YP_2023_que_mat.pdf)

389 Office for National Statistics (online), *COVID-19 Schools Infection Survey*. <https://www.ons.gov.uk/surveys/informationforhouseholdsandindividuals/householdandindividualsurveys/covid19schoolsinfectedsurveys>

390 Government Statistical Service (2022), *Health and care statistics for England* (See ‘Gender’). <https://analysisfunction.civilservice.gov.uk/dashboard/tools/health-and-care-statistics/questionbank.html>

391 NHS England (2022), *Personal Social Services Survey of Adult Carers in England, 2021-22*. <https://digital.nhs.uk/data-and-information/publications/statistical/personal-social-services-survey-of-adult-carers/england-2021-22>

392 NHS England (2023), *SACE 2023/24 Questionnaire English* (See first document in zipped file, page 22).

[https://digital.nhs.uk/binaries/content/assets/website-assets/data-and-information/data-collections/social-care-user-surveys/2023---2024-guidance/sace\\_2022\\_23\\_materials.zip](https://digital.nhs.uk/binaries/content/assets/website-assets/data-and-information/data-collections/social-care-user-surveys/2023---2024-guidance/sace_2022_23_materials.zip)

## 8.4 UK Clinical Trials

Within the field of medical research, clinical trials are of critical importance. Unlike general healthcare research, clinical trials investigate the specific effects of interventions (for example, drugs or behavioural interventions) and form the core development of medical treatments.

The UK is a major producer of clinical research, although it has fallen behind in commercial activity in recent years.<sup>393</sup> The NHS, with organisations such as the National Institute for Health and Care Research (NIHR) also facilitate research and development. Annual NIHR statistics show that almost a million people participated in its healthcare research in 2022/23.<sup>394</sup>

This section reviews a range of UK clinical trial data, based on fifty of the most recent studies lodged with the two main UK data repositories (ClinicalTrials.gov and ISRCTN). The analysis identifies a range of obstacles encountered when undertaking the review. These include the lack of a central database for UK clinical trials and a lack of clarity in reporting.

In 2023 the Department for Science, Innovation and Technology (DSIT) and Department of Health and Social Care (DHSC) published a final report on Commercial clinical trials in the UK by Lord O'Shaughnessy.<sup>395</sup> The report recommended the establishment of a central database for UK clinical trials (clinicaltrials.gov.uk directory). We would suggest that any work to take this forward should consider the issues and obstacles highlighted in this section, to ensure that data on sex is properly recorded with a clear audit trail.

### 8.4.1 Obstacles to reviewing sex and gender data in clinical trials

#### Lack of a UK-wide clinical trial database

Clinical trial registration is important for a number of reasons: transparency, compliance, public trust, avoiding duplication, and conducting systematic reviews/meta-analyses of evidence. Trial registration is

also considered a 'condition of favourable opinion'<sup>396</sup> when seeking approval from ethics approval bodies such as the Health Research Authority (HRA).<sup>397</sup> The HRA defines a register as a public database of research, which can be found on the lists approved by the World Health Organisation (WHO)<sup>398</sup> or International Committee of Medical Journal Editors.<sup>399</sup>

As highlighted in the recent O'Shaughnessy review, unlike some other countries the UK does not currently have a central register for clinical trials.<sup>400</sup> UK-based trials are currently registered to an international database, which creates challenges for amalgamation of UK-specific clinical trials. Currently the HRA asks that UK-based clinical trials are registered with either *ClinicalTrials.gov* or *ISRCTN*. Since January 2022 the HRA has automatically registered submissions sent for approval with the ISRCTN.<sup>401</sup>

Both the *ClinicalTrials.gov* and *ISRCTN* databases (and NIHR Clinical Research Network Portfolio)<sup>402</sup> feed into the NIHR-run website *Be Part of Research* (BPoR). The BPoR database allows searches for details of clinical trials but does not provide links to completed research/publications (its main function is to provide information relating to participant recruitment).

#### Database search functions

Once a study is registered on a database, a record of key information is made public. This record is important because databases are used for systematic reviews and evidence-base collations. Website users can filter database searches by key information about the project itself (e.g. year) and participant demographics.

BPoR, ClinicalTrials.gov, and ISRCTN allow users to filter by key demographics. For the purposes of searching for data on sex/gender, the BPoR, which functions essentially as a meta-database, labels the filter 'gender', with male, female, and 'all genders' response options. The other two databases have a 'sex' filter, 'male', 'female' and 'all' options. These can also be searched from within the BPoR database. Whilst it is

393 Department of Health and Social Care (2023), *Commercial clinical trials in the UK: the Lord O'Shaughnessy review - final report*. <https://www.gov.uk/government/publications/commercial-clinical-trials-in-the-uk-the-lord-oshaughnessy-review/commercial-clinical-trials-in-the-uk-the-lord-oshaughnessy-review-final-report>

394 National Institute for Health and Care Research (2023), *Annual statistics*. <https://www.nihr.ac.uk/about-us/who-we-are/our-research-performance/annual-statistics.htm>

395 Department of Health and Social Care (2023), *Commercial clinical trials in the UK: the Lord O'Shaughnessy review - final report*. <https://www.gov.uk/government/publications/commercial-clinical-trials-in-the-uk-the-lord-oshaughnessy-review/commercial-clinical-trials-in-the-uk-the-lord-oshaughnessy-review-final-report>

396 NHS Health Research Authority (online), *Research registration and research project identifiers*. <https://www.hra.nhs.uk/planning-and-improving-research/research-planning/research-registration-research-project-identifiers/>

397 The Health Research Authority is an arm of the Department for Health and Social Care.

398 World Health Organisation (online), *Primary registries in the WHO registry network*.

<https://www.who.int/clinical-trials-registry-platform/network/primary-registries>

399 International Committee of Medical Journal Editors (online), *Clinical Trials Registration*. <https://www.icmje.org/about-icmje/faqs/clinical-trials-registration/>

400 For example: Republic of Lebanon Ministry of Health (online), *Lebanon Clinical Trials Registry*.

<https://lbctr.moph.gov.lb/LBCTR/LBCTR/Index>

401 Medicines & Healthcare products Regulatory Agency (2014), *Clinical trials for medicines: apply for authorisation in the UK*.

<https://www.gov.uk/guidance/clinical-trials-for-medicines-apply-for-authorisation-in-the-uk>

402 National Institute for Health and Care Research (online), *Clinical Research Portfolio*.

<https://www.nihr.ac.uk/researchers/i-need-help-to-deliver-my-research/crn-portfolio>



likely that both the sex and gender filters are intended to capture biological sex, this is not made explicit. The interchangeable use of sex and gender is also confusing and a potential source of data contamination.

## Search results and study records

The accuracy and usefulness of database search functions relies on researchers collecting and reporting accurate sex data. Relevant data fields (for example, sex and age) are completed by researchers, when registering trials. Search results are then based on these data fields.

The ISRCTN registration form asks researchers to record the ‘sex’ of participants, with the options of male, female, or both. It does not have an option to report gender identity.

We could not access the researcher registration form for *ClinicalTrials.gov*, although we located some registered studies with ‘gender identity’ logged in the list of core baseline demographics.<sup>403</sup> This was labelled as a ‘customised’ variable, using the label ‘sex/gender’. These studies were identified via a search for ‘sex’ (*ClinicalTrials.gov* does not have a gender identity filter or search function). This suggests that data on gender identity could be captured in any evidence review that specifies data on sex.

## Lack of published or clear information

Finally, a scoping exercise of clinical trials lodged with the BPoR, ClinicalTrials.gov showed that many clinical trial publications either do not report on data collection on sex or gender identity, or the nature of the data is unclear. This is explored further in the next section.

### 8.4.2 Review of recent UK clinical trials

This section presents a review of UK clinical trial data based on fifty of the most recent studies lodged with ClinicalTrials.gov and ISRCTN. Whilst clearly not exhaustive,<sup>404</sup> the analysis highlights several data collection challenges.

The data review is based on a search of the ClinicalTrials.gov and ISRCTN databases undertaken on 28 May 2024. We extracted twenty-five entries from each database, all of which had associated papers published in external scientific journals. Topics included COVID-19 (20 publications, mental health (nine publications) and nicotine addiction (four publications), with a range of clinical interventions including drugs,

vaccines, and behavioural interventions. For entries with multiple published papers, we assessed these individually. A summary of the inclusion criteria is shown below. A full record of the search results and analysis is available on request.

## Inclusion criteria

*ClinicalTrials.gov*: UK location, completed status, record with results. It was acknowledged that the location may refer to participant recruitment rather than trial base, but this was used as a best possible option. It is not possible to reorder search results on this website. Therefore, studies were taken from the default order. This search returned 4,710 database entries.

*ISRCTN*: UK sponsor country, with results article, completed status. This search returned 6,372 database entries, sorted by date (most recent).

## Data items extracted

Database ID; Sponsor organisation; Research focus (e.g. COVID-19); Intervention (e.g. type of medication).

*ClinicalTrials.gov only*: Was sex recorded in the database entry? If yes: % of baseline participants reported to be female; Was gender identity or transgender status recorded in the database entry?

## Items extracted from publications and supplementary documentation

- Was sex recorded in the publication? If yes, was the methodology and/or wording of how this data was collected included in the publication.
- Was sex included in trial outcome analyses? If yes, % of baseline participants reported to be female.
- Was the methodology and/or wording of how this data was collected included in the publication?
- Was gender identity or transgender status included in trial outcome analyses?
- Terminology used for sex/gender identity/transgender status throughout the publication

## Clinical trial review findings

A review of the underpinning database records showed that all fifty trials collected data on participant sex. None of the trials recorded on ClinicalTrials.gov reported data on gender identity. As noted above, this option is not available on the ISRCTN database.

Of the fifty publications, 44 included a variable that was highly likely to represent biological sex (but not

403 For example: National Library of Medicine (2024), *Otrivine: Quality of Life (QoL) Impact in a Real-World Setting*. Clinical Trial ID NCT05556148. <https://clinicaltrials.gov/study/NCT05556148>

404 As of 28 May 2024, the BPoR had 19,729 projects logged as completed. As such it was not feasible to contact individual researchers for details.

definitely), based on the available response categories. For example, many studies indicated that response options were 'male', 'female', 'prefer not to say' or 'unknown'. There was no evidence that these studies intended them as gender identity response options, but may be possible for some due to unclear labelling:

Of the 44 publications, six used the term 'biological sex'; these also used the term 'gender' to refer to the same variable. One publication used the terms 'sex assigned at birth' and 'sex'. Twelve publications only used the term 'sex'.

Twenty papers used a mix of 'sex' and 'gender'. Some used the terms interchangeably within the main text, some varied the terms between the text and tables/figures, and some varied the terms between the main publication and supplementary documents. The term 'gender' was used consistently in seven papers that very likely reflected sex (for example, reference was made to the biological implications for women). Finally, four publications did not label the variable, but again very likely referred to sex based on contextual information.

In most studies, the methodology for recording data on sex was unclear. The majority provided no specific information. Twelve publications described how the information was collected. For example, questionnaire/screening forms (eight studies); 'observed' or 'reported' by researchers (two studies); telephone interview (one study); medical records (one study). Only one however, made clear how sex was defined (this study provided the sex variable wording used in the questionnaire). Note also that medical records may not provide an accurate record of sex (see section ).

### Publications reporting sex data

Of the 44 papers, forty included participants of both sexes (the remaining four related to sex-specific conditions). Of these, the ratio of males and females in the study varied significantly. The percentage of females participants varied from 19.4% to 89.9% (mean 48.42 percent, SD 15.75).

Thirty-three studies used sex data in the trial outcome analysis. Twelve studies did not, which possibly related to sample size issues. A further three studies (see below) only collected data on gender identity. In two studies, it was not clear if sex was included in the analyses.

### Publications reporting gender identity

Three publications (based on separate trials) reported a gender identity variable, with multiple response options. This was not, however, reflected in the respective ISRCTN database entries, which indicated that the studies captured data on 'both' sexes. None recorded a separate sex variable. One paper stated this was to keep the survey short, and two did not provide an explanation.

One paper referred to 'gender', one to sex, and one used a mix of terms. Supplementary documentation for the latter paper shows that a journal reviewer had expressed concern about the meaning of the different terms.

Two publications stated that data on gender identity was collected via an online questionnaire but did not provide details of the wording. The third publication stated data on gender identity was 'provided' by participants. A breakdown of the gender identity variable in each of the papers is shown below.

- Paper 1: Male 30%; Female 65%, Non-binary 5% (n=1).<sup>405</sup>
- Paper 2: Male 38.47%, Female 60.87%; Other (non-binary, not disclosed, missing) 0.66% (n=8).<sup>406</sup>
- Paper 3: Female 61.44%; Male 38.56%. Other gender(s) option(s) are not reported. It is unclear if these are subsumed into the male and female categories or excluded from the analysis.<sup>407</sup>

Only one of the three papers (on e-cigarette usage) utilised gender identity in the analyses of trial outcomes. The remaining papers respectively examined tryptophan loading (a type of supplement) for ADHD and simulated surgical outcomes in virtual reality training for surgeons.

Papers relating to a separate trial reported the intention to collect data on gender identity status in the study protocol, but it was unclear if this was followed through. One paper from the trial states that the data was not collected due to 'legal restrictions imposed by some countries in which this study was conducted'.

### Publications with unclear sex or gender recording

In three publications, it was unclear as to whether the trial had collected data on sex or gender identity. One study labelled the variable as 'sex', but with 'male', 'female' and 'diverse' data fields, and did not explain what the latter term referred to.

405 Edwards, T. et al. (2023), *Collaborative Team Training in Virtual Reality is Superior to Individual Learning For Performing Complex Open Surgery*. *Annals of Surgery*, 278(6). <https://doi.org/10.1097%2FSLA.0000000000006079>

406 Kimber, C. et al. (2023), *E-cigarette support for smoking cessation: Identifying the effectiveness of intervention components in an on-line randomized optimization experiment*. *Addiction*, 118(11). <https://doi.org/10.1111/add.16294>

407 Dinum L, et al, (2023), *The effects of tryptophan loading on Attention Deficit Hyperactivity in adults: A remote double blind randomised controlled trial*. *PLOS ONE*. <https://doi.org/10.1371%2Fjournal.pone.0294911>

One study labelled the data fields as ‘boy’, ‘girl’, and ‘prefer not to say’, but did not provide information on the underpinning question wording and used different terms for the variable name. Other papers from the same trial indicated that it is likely to be a sex variable, but this could not be determined by the publication alone.

Lastly, one paper did not refer to sex or gender identity in the publication, nor report on any data, although the database entry indicated that both sexes participated.

### 8.4.3 Other healthcare research

Similar issues are evident in other clinical healthcare research beyond clinical trials. This is unsurprising, given the less stringent checks and requirements for other types of studies. Three examples are shown below, which highlight varying approaches to data collection.

#### UK government COVID-19 data collection

On 4 April 2020, during lockdown for the first wave of the COVID-19 Pandemic, the UK government launched The Coronavirus Status Checker App, to provide the NHS with data on the virus and its national spread. The App allowed members of the public to log symptoms and their progression.

The App collected demographic details from users. It was, however, launched without a question on sex, despite known sex differences in the progression and risk associated with COVID-19.<sup>408</sup> In discussion of this issue on GitHub<sup>409</sup> on 4 May 2020, a then NHS Digital Content Designer stated this was a conscious decision ‘for now’ as ‘the data is being captured elsewhere’.<sup>410</sup> The designer later stated, ‘Worth considering whether you can get your system to do the hard work so you don’t have to ask a question that might be a barrier for some users’.<sup>411</sup> As noted in section , data on sex in other NHS systems is not reliable.

The lack of a sex variable attracted criticism from author and campaigner Caroline Criado-Perez.<sup>412</sup> It is not clear from publicly available information if the variable was introduced in a later update.

Separately, an international Sex-Disaggregated COVID-19 data tracker was unable to track data on hospitalisations in England.<sup>413</sup>

### COVID-19 vaccine research recruitment

In 2020 the Department of Health launched an NHS portal for members of the public to sign up to be contacted about taking part in COVID-19 vaccine research. The personal details section included a question each for sex and gender identity, accompanied by an explanatory note.<sup>414</sup> Here, the sex question has a clearly explained target, as shown below.

#### What sex were you registered at birth?

Female

Male

#### Why we are asking this question

We’re asking this because we know coronavirus affects females and males differently. Knowing your sex can help make sure we get the right mix of females and males taking part in vaccine studies. This is so we can make sure any vaccine developed will work for everyone.

Similarly, the gender identity question provided information on why the data was being collected.

#### Is your gender the same as the sex you were registered at birth?

Yes

No – Your gender (optional) \_\_\_\_\_  
or Prefer not to say

#### Why we are asking this question

We’re asking this so we can make sure there is a mix of different people taking part in vaccine studies.

This is so we can make sure any vaccines developed work for everyone.

We also want to make sure everyone 18 and over in the UK feels able to take part in vaccine studies if they want to.

If we find that people whose gender is not the same as the sex they were registered at birth are not signing up to be contacted about vaccine studies, we can look at how to improve this.

408 Peckham, H. et al. (2020), *Male sex identified by global COVID-19 meta-analysis as a risk factor for death and ICU admission*. Nature Communications 11, Article 6317. <https://doi.org/10.1038/s41467-020-19741-6>

409 Github is a software developer platform for sharing and discussing projects. NHS Digital have an official profile where their senior developers discuss projects.

410 NHSUK Github NHS UK (2019), *Ask users for gender or sex*. <https://web.archive.org/web/20230101031922/https://github.com/nhsuk/nhsuk-service-manual-community-backlog/issues/185#issuecomment-623367577>

411 As above.

412 Downey, A. (2020), *Government criticised for not collecting sex disaggregated Covid-19 data*. 7 April 2020, Digital Health. <https://www.digitalhealth.net/2020/04/government-criticised-for-not-collecting-sex-disaggregated-covid-19-data/>

413 The Sex, Gender and Covid-19 Project (2022), *The COVID-19 Sex-Disaggregated Data Tracker*. <https://globalhealth5050.org/the-sex-gender-and-covid-19-project/the-data-tracker/>

414 Github NHS UK (2019), *Ask users for gender or sex*.

<https://web.archive.org/web/20230101031922/https://github.com/nhsuk/nhsuk-service-manual-community-backlog/issues/185#issuecomment-727649730>

## Our Future Health project

Our Future Health is described as ‘The UK’s largest ever health research programme’. The project is a ‘collaboration between the public, charity, and private sectors’, and supported by UK Research and Innovation (UKRI). Its stated aim is to ‘help researchers find ways to prevent, detect and treat diseases earlier’.<sup>415</sup>

Recruitment for the project began in 2022.<sup>416</sup>

Participants are required to provide a range of information including demographic details. As shown below, the sex question erroneously treats DSD (intersex) as a discrete sex category.

### What sex were you registered with at birth?

A question about gender identity will follow later in the questionnaire

Female

Male

Intersex

Prefer not to answer

### How to answer this question

We ask about your sex at birth because it can help researchers make new discoveries about how the sex you were born with affects health and risk of disease. It is also important when processing your biological sample in the lab.

If you need additional support, please contact our Support Team

## 8.5 Scientific research guidance

At time of writing there is no comprehensive UK government guidance for medical researchers on how to collect data on sex. In 2022 the UK Medical Research Council (MRC) published requirements for their funding applicants. In the same year, the European Association of Science Editors (EASE)<sup>417</sup> Gender Policy Committee published *Sex and Gender Equity in Research* (SAGER) guidelines. Following the endorsement of the SAGER guidelines by the Lancet, a pilot study of submissions to the Lancet sub-journal Rheumatology found that the inclusion of sex or gender data within abstracts rose from 0% to 82%.<sup>418</sup>

Both the MRC requirement and SAGER guidelines recommend that researchers collect data on biological sex, with differing emphases. As detailed below, MRC guidance focuses on biological sex, whilst SAGER advises that both characteristics are collected.

### Medical Research Council

The Medical Research Council (MRC) is part of the UKRI (UK Research and Innovation), a non-departmental public body. UKRI is sponsored by the Department for Science, Innovation and Technology (DSIT) and directs research and innovation funding from the Department.<sup>419</sup> Within the UKRI, the MRC is responsible for medical research and innovation, and controls UK government research funding for medical studies. In 2022/23 the MRC funded over £299million in UK research.<sup>420</sup> Whilst MRC directives are only directly applicable only to MRC-funded projects, these account for a significant proportion of UK research expenditure.

As detailed below, the MRC require funded project to include both sexes as the default. It does not however, define sex nor provide guidance on data collection or reporting. Sex as defined in a related MRC Diversity in Research policy as ‘usually’ male and female, with reference to intersex variation.<sup>421</sup>

<sup>415</sup> Our Future Health (online), *About us*.

<https://ourfuturehealth.org.uk/about-us/>

<sup>416</sup> BBC News (2022), *Health of nation study calls on millions to sign up*.

<https://www.bbc.co.uk/news/health-63331805>

<sup>417</sup> European Association of Science Editors (online), *Welcome to EASE*.

<https://ease.org.uk/about-us/>

<sup>418</sup> Van Epps, H. et al. (2022), *The Sex and Gender Equity in Research (SAGER) guidelines: Implementation and checklist development*. European Science Editing. <https://ese.arphahub.com/article/86910/>

<sup>419</sup> Medical Research Council (online), *About UK Research and Innovation*.

<https://www.ukri.org/who-we-are/about-uk-research-and-innovation/>

<sup>420</sup> Medical Research Council (online), *What MRC have funded*.

<https://www.ukri.org/what-we-do/what-we-have-funded/mrc/>

<sup>421</sup> UK Research and Innovation (online), *Embedding diversity in research design – MRC*.

<https://web.archive.org/web/20240520024533/https://www.ukri.org/who-we-are/mrc/our-policies-and-standards/embedding-diversity-in-research-design/>

## Sex in Experimental Design requirement

In early 2022 the MRC consulted on the use of sex in experimental design, covering animals, and human and animal tissues and cells.<sup>422 423</sup> The MRC published its requirement for funding applicants in late 2022, on the recommendation of an expert Working Group. This requires researchers to use both sexes as the default, although these do not need to be equally balanced. A failure to meet the requirement is likely to affect application approval although the MRC states it ‘may’ still fund single-sex studies, where ‘strong justification’ is provided.<sup>424</sup> The requirement is reiterated further in MRC Guidance for Applicants.<sup>425</sup>

Sex is referred to as binary but not defined in the MRC Requirement. The MRC do not provide methodological advice on data collection in relation to human studies, for example, in the context of survey or screening instruments. A detailed Working Group Meeting report, published ahead of the final guidelines, provides a definition of sex that refers to ‘intersex’, and set out the rationales for its recommendations, but this is not directive.<sup>426</sup>

## Embedding Diversity in Research Design policy

The Sex in Experimental Design requirement links to the MRC Embedding Diversity in Research Design policy.<sup>427</sup> This states that applicants ‘should’ consider participant characteristics in proposal designs, including sex and gender, but does not elaborate further. Here, the definition of sex refers to ‘intersex’ and states that sex categories are ‘usually binary’.

‘3.1 ‘Sex’ refers to the biological attributes of humans and animals that differentiate male, female and intersex (also referred to as Differences in Sex Development), including chromosomes, gene expression, hormone levels and function, and

reproductive organs. The categories of sex are usually male and female, but there is variation in the presentation of different biological components of sex. Sex is a protected characteristic under the Equality Act 2010.

3.2 ‘Gender’ is distinct from sex, and refers to the attribution of behaviours, expectations and roles to different sexes in humans, therefore varies over time and by social and cultural context. Gender is often regarded as binary (for instance, man or woman), however there is diversity in how individuals and groups experience and express gender (such as gender fluid, non-binary). Gender reassignment is a protected characteristic under the Equality Act 2010.’

## SAGER Guidelines

In 2016 the European Association of Science Editors (EASE)<sup>428</sup> Gender Policy Committee (GPC)<sup>429</sup> published Sex and Gender Equity in Research Guidelines, known as the ‘SAGER Guidelines’.<sup>430</sup> These are described as ‘primarily designed to guide authors in preparing their manuscripts but they are also useful for editors to integrate assessment of sex and gender in all manuscripts as an integral part of the editorial process’.<sup>431</sup>

The SAGER guidelines are influential, with endorsements from major academic journals, publishers, and the World Health Organisation.<sup>432</sup> The guidelines are described by EASE as ‘well established as part of an editor’s toolkit’. A dedicated Working Group was established ‘to focus on dissemination, implementation and monitoring of the SAGER guidelines and other activities related to mainstreaming gender in research content’. The Group has since ‘promoted the SAGER Guidelines and encouraged publishers and editors to endorse them’.<sup>433</sup>

422 Medical Research Council (2022), *Sex in experimental design*.

<https://archive.ph/WtVS7>

423 Medical Research Council (2022), *Inclusion of both sexes in research design - Call for input*.

<https://archive.ph/P1W48>

424 Examples given are: ‘the use of immortalised cell lines’; ‘where there are acutely scarce resources (for example, human tissue samples of rare diseases); research into the mechanisms of purely molecular interactions (for example, when investigating protein-protein interactions); and single-sex mechanisms or diseases (for example, ovarian cancer)’.

425 Medical Research Council (2023), *Guidance for Applicants*.

<https://www.ukri.org/wp-content/uploads/2023/07/MRC-290623-GuidanceForApplicants-version23-2.pdf>

426 Medical Research Council (2022), *Working Group on sex in experimental design. Meeting Report*. 6 September 2021.

<https://web.archive.org/web/20240415080758/https://www.ukri.org/wp-content/uploads/2022/03/MRC-090322-SexInExperimentalDesign-SummaryReport.pdf>

427 UK Research and Innovation (online), *Embedding diversity in research design – MRC*.

<https://web.archive.org/web/20240520024533/https://www.ukri.org/who-we-are/mrc/our-policies-and-standards/embedding-diversity-in-research-design/>

428 The European Association of Science Editors (EASE) is a UK-based not-for-profit organisation, which aims ‘to improve the global standard and quality of science editing’. It has a membership scheme for individuals ‘who share a passion of science and scholarly communication, editing and publishing’. Members may also join special interest groups and committees (the Gender Policy Committee is an example of this). EASE also has its own journal, ‘European Science Editing’.

See: European Association of Science Editors (online), *About us*.

<https://ease.org.uk/about-us/>

429 The GPC committee was formed in 2012 to ‘promote gender balance in scientific publishing work and inspire better and consistent provision of sex/gender-specific data published in scientific journals’. The Committee closed in 2023, with future relevant activities redirected to an Equity Diversity and Inclusion Committee.

430 European Association of Science Editors (2016), *The SAGER Guidelines*.

<https://archive.ph/uQeJ0>

431 European Association of Science Editors (2016), *The SAGER Guidelines* (A brief history of the SAGER Guidelines).

<https://archive.ph/uQeJ0>

432 European Association of Science Editors (online), *Endorse the SAGER Guidelines*.

<https://archive.ph/1IERP#selection-985.0-985.28>

433 European Association of Science Editors (2016), *The SAGER Guidelines* (A brief history of the SAGER Guidelines).

<https://archive.ph/uQeJ0>

The guidelines (which are relatively brief) are embedded within an introductory paper that is intended to be read in parallel and provides information on implementation.<sup>434</sup> This states the guidelines are intended to apply to ‘all research with humans, animals or any material originating from humans and animals (e.g. organs, cells, tissues), as well as other disciplines whose results will be applied to humans such as mechanics and engineering.’

Researchers are advised to use the terms ‘sex’ and ‘gender’ carefully, to avoid confusion: ‘the word sex refers to biological attributes in humans and animals, while gender refers to socially constructed roles, and behaviours of humans’. The appendices to the introductory paper provide more details, as shown below:<sup>435</sup>

**Gender.** Gender refers to the socially constructed roles, behaviours and identities of female, male and gender-diverse people. It influences how people perceive themselves and each other, how they behave and interact and the distribution of power and resources in society. Gender is usually incorrectly conceptualized as a binary factor (female/male). In reality, there is a spectrum of gender identities and expressions defining how individuals identify themselves and express their gender.

**Gender identity.** A person’s concept of self as being male and masculine or female and feminine, or ambivalent, based in part on physical characteristics, parental responses and psychological and social pressures. It is the internal experience of gender role. (Mesh [Medical subheadings] term, introduced in 1991, revised in 1975).

**Sex.** Sex refers to a set of biological attributes in humans and animals that are associated with physical and physiological features including chromosomes, gene expression, hormone function and reproductive/sexual anatomy. Sex is usually categorized as female or male, although there is variation in the biological attributes that constitute sex and how those attributes are expressed.

The definition of ‘sex’ is however, ambiguous, insofar as the reference to ‘usually’ implies categories other than male or female. This may refer to cases where an individual’s sex is yet to be identified, but this is not made clear. The definition of gender uses the terms

‘male’ and ‘female’, which are ordinarily understood as denoting sex. Separately, the paper defines ‘transgender persons’ and gender identity, using older definitions.<sup>436</sup>

In discussing the relative importance of sex and gender in research, the introductory paper acknowledges additional ways in which sex is important:

‘Sex and gender interactions influence health and well-being in a variety of ways. They both impact environmental and occupational risks, risk-taking behaviours, access to health care, health-seeking behaviour, health care utilization, and perceived experience with health care, and thus disease prevalence and treatment outcome. In addition, it is well-known that pharmacokinetics and pharmacodynamics of pharmaceutical agents differ between sexes, resulting in differential adverse event profiles and further impacting treatment outcomes.’<sup>437</sup>

The paper underlines the importance of collecting data on sex (and outlines the potential consequences of not doing so). It also states that authors should ‘underline in the methods section whether sex of participants was defined based on self-report or assigned following external or internal examination of body characteristics, or through genetic testing or other means’. If does not advise on methods in any detail, for example, suggested questionnaire wording. Researchers are also advised to collect data on gender:

‘In all cases, raw data should be published disaggregated by sex and gender for future pooling and meta-analysis.’

This is not explained, nor is guidance provided on how the data should be collected, beyond a broad-brush statement that decisions should be ‘reported and justified in the same way as other methodological choices.’ The following note on statistical power also indicates that the data may have limited value:

‘the guidelines do not make explicit recommendations regarding gender-diverse populations. We recognize that most studies will not be powered to detect differences in effects for gender-diverse populations such as transgender, especially in countries where such diversity is unknown. Yet authors need to

434 Heidari, S. et al. (2016), *Sex and Gender Equity in Research: rationale for the SAGER guidelines and recommended use*. <https://researchintegrityjournal.biomedcentral.com/articles/10.1186/s41073-016-0007-6>

435 The definitions are taken from: Coen, S. and Banister, E. (2012), *What a difference sex and gender make: a gender, sex and health research casebook*. CIHR Institute of Gender and Health. <https://dx.doi.org/10.14288/1.0132684>

436 For example, ‘Transgender persons, Transsexual persons, and Transgenders’ are described as ‘Persons having a sense of persistent identification with, and expression of, gender-coded behaviours not typically associated with one’s anatomical sex at birth and with or without a desire to undergo sex reassignment procedures’ (MeSH (Medical Subject Headings) term 2016. This broad definition captures any person with gender non-conforming behaviours.

437 Heidari, S. et al. (2016), *Sex and Gender Equity in Research: rationale for the SAGER guidelines and recommended use*. <https://researchintegrityjournal.biomedcentral.com/articles/10.1186/s41073-016-0007-6>

consider the relevance of their research for gender-diverse populations.’

Whilst the paper advises against conflating sex and gender, it refers to both, including in the context of issues that relate only to sex.<sup>438</sup> It states that ‘at a minimum’, journals should request that ‘all papers present data disaggregated by sex and gender and, where applicable, explain sex and gender differences or similarities adequately’ and provides suggested questions for peer-reviewers.

The detailed recommendations for reporting on sex and gender data are supplemented by a SAGER checklist for authors.<sup>439</sup> Authors are encouraged to include data on the ‘gender or sex’ of all participants in ‘both the abstract and the baseline demographics table and adding sex and gender-disaggregated data and analyses to the appendix, regardless of outcome or whether these data and analyses were pre-specified.’<sup>440</sup>

As before, the checklist refers to ‘sex/gender’ (e.g. ‘Where appropriate, data presented disaggregated by sex/gender, and sex/gender differences and similarities are described’). The only exception is for epidemiological studies, where it is stated that effects should be ‘examined for all genders and analysed critically from a gender perspective’. It is not clear why sex is not referenced here.

### 8.5.1 Medical and science journal guidelines

This section reviews guidance published by the three largest UK-based medical journals. These are the British Medical Journal (BMJ), The Lancet, and Nature/Springer.

#### British Medical Journal (BMJ)

The BMJ is the journal of the British Medical Association and has the third highest impact factor ranking among medical journals.<sup>441</sup> It does not appear to have explicit guidelines for reporting of sex or gender. However, its policies page<sup>442</sup> states that all articles submitted must meet the International

Committee of Medical Journal Editors (ICMJE) standards. The ICMJE Membership comprises of 16 major journals (including the BMJ) who collaborate on agreed standards.<sup>443</sup> Their guidelines<sup>444</sup> (last updated January 2024) state that authors are ‘encouraged’ to use the SAGER guidelines.

#### The Lancet

The Lancet is a UK-based medical journal (owned by the Dutch parent company, Elsevier), and is ranked as one of the highest impact factor journals in the world.<sup>445</sup> The Lancet provides extensive guidance on recording and reporting sex and gender.<sup>446</sup>

In addition to its own guidance, the Lancet recommends the SAGER Guidelines to support authors.<sup>447</sup> It also a Member journal of the International Committee of Medical Journal Editors (ICMJE), whose standards endorse SAGER. The SAGER definitions and principles are not, however, consistent with the Lancet’s own guidance. The latter states that sex has ‘multiple definitions’ and ‘there is no single, universally agreed-upon set of guidelines for defining sex and gender or reporting sex-based and gender-based analyses’. Under definitions, the Lancet states that sex and gender:

‘exist along a spectrum that includes additional sex categorisations and gender identities, such as people who are intersex/have differences of sex development (DSD), or identify as non-binary. In any given person, sex and gender might not align, and both can change. Sex and gender are not entirely discrete concepts and their definitions continue to evolve.’

The Lancet further advises that data collection on gender identity should be prioritised, with a secondary sex question ‘if relevant to the research question’. Authors are advised to describe the methods used to collect data (due to the ambiguity of terms) and to use the term ‘sex assigned at birth’ because it is ‘more accurate and inclusive’.

438 For example, a point about ‘gender-sensitive’ research is supported with reference to a book on sex-specific data.

439 European Association of Science Editors (2022), *SAGER Checklist*. <https://web.archive.org/web/20240521020340/https://ease.org.uk/wp-content/uploads/2023/01/EASE-SAGER-Checklist-2022.pdf>

440 European Association of Science Editors (2022), *The Sex and Gender Equity in Research (SAGER) guidelines: Implementation and checklist development*. <https://archive.ph/anRBC>

Note: These were developed based on a pilot across three sub-journals of the Lancet

441 The BMJ (online), *Publishing model*.

<https://www.bmj.com/about-bmj/publishing-model>

442 The BMJ (online), *Policies and checklists*.

<https://www.bmj.com/about-bmj/resources-authors/forms-policies-and-checklists>

443 International Committee of Medical Journal Editors (online), *Membership*.

<https://www.icmje.org/about-icmje/faqs/icmje-membership/>

444 International Committee of Medical Journal Editors (2024), *Recommendations*.

<https://web.archive.org/web/20240917204307/https://www.icmje.org/icmje-recommendations.pdf>

445 The Lancet (online), *About the Lancet* (Reach and impact).

<https://www.thelancet.com/lancet/about>

446 The Lancet (online), *Information for authors*.

<https://web.archive.org/web/20240602020632/https://www.thelancet.com/pb-assets/Lancet/authors/tl-info-for-authors-1717152770277.pdf>

447 The Lancet also refer to its parent company Elsevier’s overarching guidelines, although these were not available at the time of writing. <https://www.elsevier.com/about/policies-and-standards/author/doi?trial=true>

## Nature/Springer

Nature is one of the best-known academic journals, with a world-leading impact factor.<sup>448</sup> It has multiple sub-journals within the parent publication, spanning a range of disciplines. Guidance on sex and gender is published by Springer, its German-British parent company.<sup>449</sup>

Springer recommend that authors follow the SAGER Guidelines. It adds a definition of sex and gender published by the National Institutes of Health,<sup>450</sup> a subsidiary of the American Department of Health and Human Services. This defines sex as biological, and gender as 'socially constructed or enacted roles and behaviours'. Springer encourage careful use of terms to avoid confusion.

In research design, Springer recommend including sex and gender considerations 'where relevant'. They state, 'Authors should also describe in the background, whether sex and/or gender differences may be expected; report how sex and/or gender were accounted for in the design of the study; provide disaggregated data by sex and/or gender, where appropriate; and discuss respective results. If a sex and/or gender analysis was not conducted, the rationale should be given in the Discussion.'

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448 Nature (online), *Journal metrics*.

<https://www.nature.com/nature/journal-impact>

449 Springer (online), *Sex and Gender in Research (SAGER Guidelines)*.

<https://archive.ph/d7w7L>

450 National Institutes of Health (online), *What are Sex & Gender?*

<https://orwh.od.nih.gov/sex-gender>



## Chapter 9: Criminal and civil justice

This chapter reviews a range of statistics on criminal justice and civil justice. These include statistics on policing, offending histories, prisons and probation, coroner statistics, and Tribunal statistics. The chapter also looks at the national crime surveys, the major London-based crime surveys, and annual Police Scotland ‘Your Police’ survey.

It is well-established that sex is a major determinant of offending and victimisation. As Phoenix notes, ‘there are nearly 200 years of statistical and qualitative evidence attesting to the fact that there are differences between women and men in terms of lawbreaking and criminalisation, the administration of criminal justice, and the experience of punishment’.<sup>451</sup> This can, for example, be seen in patterns of arrest, and different types of recorded offending, including sexual and violent offending.

Despite the clear relevance of sex, the findings show that data collection practices are highly inconsistent across the justice system. Within criminal justice, recording practices vary between different criminal justice agencies, and within agency types, for example, between police forces. At later stages of the criminal justice system, for example within prison services, sex may be recorded differently. These inconsistencies are likely to be exacerbated by the number of criminal justice and civil justice databases and systems. A 2016 statement of the administrative sources underpinning Ministry of Justice Statistical policies and procedures detailed around forty different databases at a national level.<sup>452</sup> The Home Office similarly documents multiple sources and databases.<sup>453</sup> In evidence to this review, we heard about hundreds of different databases across police forces in England and Wales.

Data Standards for police forces in England and Wales are also inconsistent. For example, cross-cutting Home Office Standards (ADR 153) on demographic data advise police forces to record sex subject to a GRC. Other mandatory Home Office Standards on the use of police force state that officers should record perceived gender, as male, female, or ‘other.’ National

Police Chiefs Council (NPCC) Protected Characteristics Operational Standards include an ‘intersex’ response option. A separate NPCC POLE (Person, Object, Location, Event) standard for operational policing recommends collecting data on gender, with a range of identity-based response options.<sup>454</sup>

Many of the administrative statistics reviewed in this chapter present data on males and females (variously labelled either sex or gender) but are underpinned by different definitions and recording practices. These include biological sex, sex subject to GRC, self-reported sex, self-identified sex, sex as presented, and officer-perceived sex. Data on sex may also be based on a person’s title, or in the case of the coroner’s statistics, as described by the informant. Some publications present statistics disaggregated by the sex of the establishment. As such, there may be disparities between the published data (reflecting the number of individuals in the male and female estate) and the sex of those individuals, some of whom may be housed in the opposite sex estate.

Statistics that provide for responses based on gender self-identification include Multi-agency Public Protection Arrangements (MAPPA) statistics, which present data on gender fluid or non-binary convicted offenders under the ‘other category,’ including people convicted of terrorist offences. Statistics on Firearms and Shotgun certificates present data on gender, which is based on the applicants ‘sense of self’. Some Home Office policing publications include male, female and ‘other’ categories.

Some publications acknowledge that the statistics reflect different data collection practices, for example, a mix of sex as identified by officials and self-identified sex. These include the Ministry of Justice report ‘Women and the Criminal Justice System’ which provides a helpful overview of how sex is recorded in a number of key publications. Other publications include Police Powers and Procedures, Police Misconduct Statistics, Criminal Proceedings in Scotland, Scottish Government Justice Social Work statistics and Scottish Government Reconviction statistics.

451 Phoenix, J. (2024), ‘Sex, Gender, Identity and Criminology’, in Sullivan, A. and Todd, S. (eds). *Sex and Gender. A contemporary reader*. Routledge (page 259) [https://www.routledge.com/Sex-and-Gender-A-Contemporary-Reader/Sullivan-Todd/p/book/9781032261195?gad\\_source=1&qclid=CjwKCAjwk8e1BhALEiwAc8MHibE-kGQ7g9lr1N-994J1qNLMQge-DSNzJtflD2Dcjb8Vqg5WA4F9ThoCnTlQAvD\\_BwE](https://www.routledge.com/Sex-and-Gender-A-Contemporary-Reader/Sullivan-Todd/p/book/9781032261195?gad_source=1&qclid=CjwKCAjwk8e1BhALEiwAc8MHibE-kGQ7g9lr1N-994J1qNLMQge-DSNzJtflD2Dcjb8Vqg5WA4F9ThoCnTlQAvD_BwE)

452 Ministry of Justice (2016), *Statement of Administrative Sources*. <https://assets.publishing.service.gov.uk/media/5a80466240f0b623026928c1/statement-of-administrative-sources.pdf>

453 Home Office (2020), *Home Office use of administrative sources for statistical purposes*. <https://www.gov.uk/government/publications/home-office-use-of-administrative-sources-for-statistical-purposes/home-office-use-of-administrative-sources-for-statistical-purposes>

454 The Charity Sex Matters raised concerns about inconsistent recording standards in policing with the Review team, and a lack of robust operational data on sex. They cited ADR 153, the NPCC Protected Characteristics Operational Recording Data Standard, and POLE operational standards. The Sex Matters submission noted, ‘A data standard that allows for a suspect to claim they are the other sex, even when the observing police officer can see this is not the case, is open to abuse. Similarly, recording self-identified gender in place of sex can place vulnerable people at risk, and make it harder to locate missing persons’ (Sex Matters, 30 April 2024).

Looking at survey data, the national crime surveys (England and Wales, Northern Ireland, Scotland) collect data on binary sex, although in the flagship Crime Survey of England and Wales, this is based on a person's title or other details provided prior to interview, which provides greater scope for self-identification. Other large-scale surveys, including the London-based crime surveys sponsored by the Metropolitan Police and Mayor's Office for Policing and Crime (MOPAC) and Police Scotland 'Your Police' survey only collect data on gender identity.

As a primary determinant of offending and victimisation, the widespread loss of robust data on sex in the criminal justice system is surprising and difficult to support. The variation between police forces documented in the chapter means that comparative analysis between forces is less likely to be valid or reliable. This is particularly true in relation to patterns of female offending, and the most serious offence types, where females are significantly underrepresented. For police forces that provide for self-identification, the classification of a small number of males within the female category may result in artificial significant increase in female offending rates. Misclassification by sex may also carry operational risks, for example in relation to the accuracy of search fields. Guidance notes for officers on Police National Computer (PNC) note that it is 'quite possible' that an arrested person who has acquired a GRC and not informed that police 'could be released or otherwise dealt with before any link to their previous offending history is known (through confirmation by fingerprints).<sup>455</sup> This is also likely to be true of those who self-declare a different sex and name.

Next, part 9.1 reviews a range of administrative data sets and recording policies, which are broadly grouped into how the sex (or gender) variable is structured. Part 9.2 follows the same format, focusing on large-scale survey data. The review of survey data focuses on national level surveys, with the exception of the London-based crime and victimisation surveys. We include these surveys to show how the observations and issues charted at an otherwise national level are also evident at a local level, with reference to the largest Home Office-funded police force.

## 9.1 Criminal and civil justice administrative data

### Sex, no definition (male, female)

#### Deaths of offenders in the community, England and Wales

This Ministry of Justice publication presents official statistics on deaths of offenders on probation.<sup>456</sup>

Data tables covering 2010/11 to 2022/23 present data labelled sex (**male, female**), described as the **sex of the offender**.<sup>457</sup> It is unclear whether this provides for sex as declared by the informant, as is the case with Coroner's statistics (see page 116).

#### Homicide in Scotland

These accredited Scottish Government statistics on homicide present data on the **sex** of victims and the main accused, if known (**male, female**).<sup>458</sup>



A Scottish Government User Guide on recorded crime states that homicide statistics:

'are collected via a separate data collection from the police and are collected on an individual case basis. This means that characteristics of victims and accused, such as age and gender, as well as the circumstances of the homicide, are collected and then included in the bulletin'.<sup>459</sup>

It is not clear if this differs from standard Police Scotland recording policy, which is based on how a person presents or self-declares (see page 119117).

#### Knife and offensive weapon sentencing statistics, England and Wales

These Ministry of Justice statistics present trends in cautioning and sentencing of knife and offensive weapon offences.<sup>460</sup>

Data covering the period 2012 to 2023 is labelled '**gender**' but defined as the '**sex of the offender**' (**male, female**) in the accompanying pivot tables.<sup>461</sup>

455 Home Office (2020), *PNC User Manual version 20.01* (para. 33.10.3). [https://web.archive.org/web/20240731163555/https://www.whatdotheyknow.com/request/pnc\\_user\\_manual\\_latest\\_version/response/1688218/attach/4/61120%20Annex%20A%20PNC%20Manual%20v20.01%20Redacted%20v4.pdf?cookie\\_passthrough=1](https://web.archive.org/web/20240731163555/https://www.whatdotheyknow.com/request/pnc_user_manual_latest_version/response/1688218/attach/4/61120%20Annex%20A%20PNC%20Manual%20v20.01%20Redacted%20v4.pdf?cookie_passthrough=1).

456 Ministry of Justice (2023), *Death of offenders in the community*. <https://www.gov.uk/government/collections/death-of-offenders-in-the-community>

457 Ministry of Justice (2023), *Deaths of offenders supervised in the community statistics data tool* (Notes). <https://assets.publishing.service.gov.uk/media/65367bd026b9b1000faf1d73/deaths-of-offenders-in-the-community-2022-23-datatool.xlsx>

458 Scottish Government (2023), *Homicide in Scotland 2022-23*. <https://www.gov.scot/publications/homicide-scotland-2022-23/>

459 Scottish Government (2023), *User Guide to Recorded Crime Statistics in Scotland* (page 120). <https://www.gov.scot/binaries/content/documents/govscot/publications/statistics/2023/07/user-guide-recorded-crime-statistics-scotland-3/documents/user-guide-recorded-crime-statistics-scotland/user-guide-recorded-crime-statistics-scotland/govscot%3Adocument/user-guide-recorded-crime-statistics-scotland.pdf>

460 Ministry of Justice (2024), *Knife and Offensive Weapon Sentencing Statistics: July to September 2023*. [https://assets.publishing.service.gov.uk/media/65c-ca0a81d9395001294661b/Pivot\\_Table\\_Tool\\_-\\_Q3\\_2023\\_Knife\\_Possession\\_Sentencing\\_V2.xlsx](https://assets.publishing.service.gov.uk/media/65c-ca0a81d9395001294661b/Pivot_Table_Tool_-_Q3_2023_Knife_Possession_Sentencing_V2.xlsx)

461 Ministry of Justice (2023), *Pivot table analytical tool for previous knife and offensive weapon offences* (Metadata notes). [https://assets.publishing.service.gov.uk/media/65c-ca0a81d9395001294661b/Pivot\\_Table\\_Tool\\_-\\_Q3\\_2023\\_Knife\\_Possession\\_Sentencing\\_V2.xlsx](https://assets.publishing.service.gov.uk/media/65c-ca0a81d9395001294661b/Pivot_Table_Tool_-_Q3_2023_Knife_Possession_Sentencing_V2.xlsx)

## Recorded Crimes and Offences Involving Firearms, Scotland

These Scottish Government official statistics present data on the **sex** of victims and the main accused, if known (**male, female**).<sup>462</sup> Like homicide statistics (see above), incident data is collected in a separate data collection. It is likewise not clear if this differs from standard Police Scotland recording policy, which is based on how a person presents or self-declares (see p119 117).

## Youth Justice Annual statistics, England and Wales

Youth justice annual statistics published by the Ministry of Justice provide data on young people aged 10-17, including information on offences and outcomes.<sup>463</sup> The statistics are accredited official statistics.



The report presents data labelled **sex (male, female)**.<sup>464</sup> The User Guide (section 7.2) states this refers to ‘the **sex of the child** who receives a caution or sentence’,<sup>465</sup> although section 7.1 in the same guide refers to the gender of the child in custody.

## Youth Custody report, England and Wales

This monthly Youth Custody report presents statistics on the population in custody of children and young people within the secure estate. The tables are labelled **sex** and refer to **boys and girls**, and **males and females**.<sup>466</sup>

## Sex at birth (male, female)

### Tribunals statistics

Ministry of Justice Tribunals official statistics present information on the type and volume of tribunal cases received, disposed of or outstanding.<sup>467</sup> This includes information on Gender Recognition Certificate (GRC) applications, as granted by HMCTS Gender Recognition Panel.

Data pertaining to GRC applications refers to both **gender at birth** and **sex at birth (male, female)**.<sup>468 469</sup>

This is possibly the only data source within the crime and justice policy area that categorically, as a matter of policy, collects accurate data on biological sex. This usefully demonstrates that data on biological sex can be collected and published, despite its evident sensitivity to applicants in this particular context.

## Sex subject to GRC (male, female)

### Home Office Annual Data Requirement 153 (ADR), England and Wales

The Home Office Annual Data Requirement (ADR) sets out requests and requirements for data, made to police forces in England and Wales. The ADR is a statutory regulation under the Police Act 1996. The Home Secretary agrees data requirements each year, which are overseen by an internal Policing Data Collection Group, chaired by the Chief Statistician.<sup>470</sup> Operational areas covered by the ADR include recorded crime and outcomes, arrests, stop and search, and police workforce data.<sup>471</sup> Data requirements can be voluntary or mandatory.

In 2023/24, the Home Office issued a voluntary ADR on ‘cross-cutting demographic data’ (ADR 153), asking police forces to align data collection on sex with the 2021 England and Wales Census, that is, ‘**in line with information on the individual’s birth certificate or gender recognition certificate**’ (**male, female**).<sup>472</sup>

At the time of writing compliance is voluntary, in recognition of the time needed ‘to amend underlying force systems and processes’ (Ibid). It is unclear as to what extent police forces have adopted ADR 153.

### Safety in Custody statistics, England and Wales

This accredited Ministry of Justice bulletin provides quarterly updates on deaths, assaults and self-harm in prison custody.<sup>473</sup>



462 Scottish Government (2023), *Recorded Crimes and Offences Involving Firearms, Scotland, 2020-21 and 2021-22*.

<https://www.gov.scot/publications/recorded-crimes-offences-involving-firearms-scotland-2020-21-2021-22/documents/>

463 Youth Justice Board (2024), *Youth justice statistics*.

<https://www.gov.uk/government/collections/youth-justice-statistics>

464 Youth Justice Board (2024), *Youth Justice Statistics: 2022 to 2023* (section 3.2). <https://www.gov.uk/government/statistics/youth-justice-statistics-2022-to-2023/youth-justice-statistics-2022-to-2023-accessible-version>

465 Youth Justice Board (2024), *Guide to youth justice statistics* (Children’s Tables). <https://www.gov.uk/government/statistics/guide-to-youth-justice-statistics/guide-to-youth-justice-statistics#glossary>

466 HM Prison & Probation Service & Youth Custody Service (2024), *Youth custody data report. February 2024*. [https://assets.publishing.service.gov.uk/media/66155bb6eb8a1bd3bd05e2e3/Youth\\_Custody\\_Population\\_Report\\_-\\_Feb-24.ods](https://assets.publishing.service.gov.uk/media/66155bb6eb8a1bd3bd05e2e3/Youth_Custody_Population_Report_-_Feb-24.ods)

467 Ministry of Justice (2019), *Tribunal Statistics*. <https://www.gov.uk/government/collections/tribunals-statistics>

468 Ministry of Justice (2024), *Tribunal Statistics Quarterly: October to December 2023*. <https://www.gov.uk/government/statistics/tribunals-statistics-quarterly-october-to-december-2023/tribunals-statistics-quarterly-october-to-december-2023>

469 Ministry of Justice (2023), *Tribunals statistics quarterly: October to December 2023. Main Tables* (Table GRP\_4). [https://assets.publishing.service.gov.uk/media/65f19cf-c9812278a47f6133b/Main\\_Tables\\_Q3\\_2023\\_24.ods](https://assets.publishing.service.gov.uk/media/65f19cf-c9812278a47f6133b/Main_Tables_Q3_2023_24.ods)

470 Home Office (2020), *Home Office use of administrative sources for statistical purposes* (page 2). <https://assets.publishing.service.gov.uk/media/5f579191d3bf7f72361876e3/ho-state-ment-admin-sources-sep20.pdf>

471 Home Office (2019), *Annual data requirement from police forces in England and Wales*. <https://www.gov.uk/government/publications/annual-data-requirement-from-police-forces-in-england-and-wales>

472 Home Office (2023), *2023/24 Annual Data Requirement from Police Forces in England & Wales*. (page 46).

<https://www.npcc.police.uk/SysSiteAssets/media/downloads/publications/disclosure-logs/dei-coordination-committee/2023/274-2023-adr-notice-2023-24.pdf>

473 Ministry of Justice (2017), *Safety in custody statistics*. <https://www.gov.uk/government/collections/safety-in-custody-statistics>

The 2024 publication presents data on **sex (male, female)** and data disaggregated by **establishment (male estate, female estate)**.<sup>474</sup> The accompanying guide states that the main data sources are the HM Prison and Probation Service (HMPPS) Deaths in custody database and the HMPPS incident reporting system (for self-harm and assaults).<sup>475</sup> In January 2024 a written UK parliamentary answer confirmed that the HMPPS incident reporting system records **legal gender**.<sup>476</sup>

## Sex, reported by informant (male, female)

### Coroners Statistics, England and Wales

These accredited Ministry of Justice Coroners statistics provide information on the number of deaths reported to coroners, post-mortem examinations, and inquests.<sup>477</sup> The 2023 publication states that in most cases, the sex of the deceased recorded on the death certificate is based on information given by the person reporting the death.



**‘The sex of the deceased’** is based on the ‘registrable particulars’ which coroners have a duty to record. Death certificates only give two options, **‘male’ and ‘female’**, and **these will normally be completed by the registrar based on the information given to them by the informant**. Under normal circumstances there would not be an investigation to ascertain whether what the informant says corresponds to biological sex or DNA of the deceased.<sup>478</sup>

### Deaths registered weekly in Scotland

These National Records of Scotland statistics are based on certified deaths.<sup>479</sup> The Medical Certificate of Cause of death (issued by a medical practitioner) does not have a sex or gender field.<sup>480</sup> Sex is recorded on the death certificate. The NHS Education for Scotland advises that this may be based on the wishes of the informant:

‘even if a trans person does not have a GRC those registering a death can discuss with the Registrar the most appropriate gender to record on the extract of the death certificate supplied by the Registrar which includes a field for gender (‘sex’).’<sup>481</sup>

## Sex with intersex category (male, female, intersex)

### National Police Chiefs Council (NPCC) Protected Characteristics: Operational Recording Data Standard, England and Wales

Data standards on police force operational systems published by the National Police Chief Council in 2023 recommend that police forces ask, **‘what is your sex’ (male, female, intersex)**.<sup>482</sup> The inclusion of an intersex category misclassifies DSD as a sex class and is inconsistent with Home Office ADR 153 as outlined above.

The Standards state that sex is a protected characteristic of sex under Section 11 of the Equalities (sic) Act 2010; however, the Act makes no reference to an intersex category.

Under ‘What to record’ the Standards state, ‘this guidance uses the definition of sex used by the UK government’ and cite the definition of sex published in the now withdrawn 2019 ONS paper ‘What is the difference between sex and gender?’<sup>483</sup>

‘Sex: referring to the biological aspects of an individual as determined by their anatomy, which is produced by their chromosomes, hormones and their interactions, generally male or female and something that is assigned at birth.’<sup>484</sup>

As noted in section 5.3.1. this is not a current agreed UK government definition.<sup>485</sup>

474 Ministry of Justice (2024), Safety in Custody Statistics, England and Wales: Deaths in Prison Custody to December 2023 Assaults and Self-harm to September 2023. <https://assets.publishing.service.gov.uk/media/65b0ea6e1702b1000dcb116c/safety-in-custody-q3-2023.pdf>

475 Ministry of Justice (2023), *Guide to Safety in Custody Statistics* (page 12). [https://assets.publishing.service.gov.uk/media/65aa836a0ce931000df731ff/Guide\\_to\\_Safety\\_in\\_Custody\\_Statistics\\_September\\_2023.pdf](https://assets.publishing.service.gov.uk/media/65aa836a0ce931000df731ff/Guide_to_Safety_in_Custody_Statistics_September_2023.pdf)

476 UK Parliament (2022), *Prisoners: Transgender People. Question for Ministry of Justice* (24 January 2022). <https://questions-statements.parliament.uk/written-questions/detail/2022-01-19/107675/>

477 Ministry of Justice (2023), *Coroners statistics 2022: England and Wales*. <https://www.gov.uk/government/statistics/coroners-statistics-2022/coroners-statistics-2022-england-and-wales>

478 Ministry of Justice (2023), *Coroners statistics 2022: England and Wales* (Footnote 12). <https://www.gov.uk/government/statistics/coroners-statistics-2022/coroners-statistics-2022-england-and-wales#fn:12>

479 National Records of Scotland (2024), *Deaths registered weekly in Scotland*. <https://www.nrscotland.gov.uk/statistics-and-data/statistics/statistics-by-theme/vital-events/general-publications/weekly-deaths-registered-in-scotland>

480 National Records of Scotland (2014), *The Medical Certificate of the Cause of Death* (online). See: *Medical Certificate of Cause of Death (Form 11)*. <https://tinyurl.com/23hsd7sy>

481 NHS Education for Scotland (online), *Supporting LGBT+ people around bereavement: Legal considerations and confidentiality*. <https://tinyurl.com/25kus339>

482 National Police Chiefs Council (2023), *Protected Characteristics Operational Recording Data Standard* (page 12). <https://www.npcc.police.uk/SysSiteAssets/media/downloads/publications/disclosure-logs/del-coordination-committee/2023/244-2023-appendix-b-protected-characteristics-operational-recording-data-standard-version-1-31st-march-2023.pdf>

483 Office for National Statistics (2019), *What is the difference between sex and gender?* (page 3). [https://backup.ons.gov.uk/wp-content/uploads/sites/3/2019/02/What-is-the-difference-between-sex-and-gender\\_-1.pdf](https://backup.ons.gov.uk/wp-content/uploads/sites/3/2019/02/What-is-the-difference-between-sex-and-gender_-1.pdf)

484 As above.

485 Office for National Statistics (2023), *Sex and gender within the context of data collected for the Sustainable Development Goals (SDGs)* (see Introduction). <https://www.ons.gov.uk/economy/environmentalaccounts/articles/whatisthedifferencebetweensexandgender/2019-02-21>

## Sex/gender, as presented and/or self-declared (male, female)

### Criminal proceedings in Scotland

These accredited Scottish Government statistics present data on court activity and penalties issued by the police and Crown Office and Procurator Fiscal Service.<sup>486</sup>



The 2023 report presents data on **sex (male, female)** which is '**generally based on how a person presents, unless an alternative gender is disclosed.**'<sup>487</sup> In 2021, the Scottish Government introduced the following explanatory text:

'D.3 'Sex' can be considered to refer to whether someone is male or female based on their physiology, with 'gender' representing a social construct or sense of self that takes a wider range of forms. Throughout this report we refer to 'sex' rather than 'gender' because this better reflects recording practices in relation to this information. In reality it is likely that recording includes a mixture of physiological and personal identity.

D.4 Sex in this bulletin is generally identified by a police officer based on how a person presents and recorded when a person's details are entered into the CHS. In most cases this is based on the physiology of a person rather than self-identified gender. It is recorded for operational purposes, such as requirements for searching. A person's sex may only be changed on the CHS if person has produced a Gender Recognition Certificate, or there has been a data entry error. A small number of records are recorded as 'unknown' where for some reason a clear understanding of the sex of the individual is not known.<sup>488</sup>

### Police Scotland recording policy

As indicated in Scottish Government Criminal proceedings statistics (see above) Police Scotland recording policy is based on how a person 'presents' or self-declares with **male and female** categories. In a letter to the Scottish Parliament Criminal Justice Committee, Police Scotland stated:

'The sex/gender identification of individuals who come into contact with the police will be based on **how they present or how they self-declare**, which is consistent with the values of the organisation.

Police Scotland requires no evidence or certification as proof of biological sex or gender identity other than a person's self-declaration, unless it is pertinent to any investigation with which they are linked as a victim, witness or accused and it is evidentially critical that we legally require this proof, or there is reason for further enquiry based on risk. We would look for the most sensitive way to acquire this information.<sup>489</sup>

The letter explained that Police Scotland introduced the policy to prepare for gender recognition reform, which sought to put legal gender recognition on self-declared basis. The Scottish Parliament passed the Gender Recognition Reform (Scotland) Act in December 2022, although at the time of writing, this is blocked by a Section 35 order issued by the UK government. The letter also stated that guidance on data collection published by the Scottish Government on data collection 'does not provide answers to a number of challenges in how organisations should record to meet recording standards' (for details of the Scottish Government guidance, section 5.2.1).

In response to a Freedom of Response query, in 2021 Police Scotland confirmed that its policy extended to those accused of rape: 'If the male who self-identifies as a woman were to attempt to or to penetrate the vagina, anus or mouth of a victim with their penis, Police Scotland would record this as attempted rape or rape and the male who self-identifies as a woman would be expected to be recorded as a female on relevant police systems'.<sup>490</sup>

### Recorded Crime in Scotland statistics

These accredited Scottish Government statistics provide information on the number of crimes and offences recorded by the police in Scotland, commentary on recording, time-series data and official statistics on clear-up rates.<sup>491</sup>



486 Scottish Government (2023), *Criminal Proceedings in Scotland, 2021-22*. <https://www.gov.scot/binaries/content/documents/govscot/publications/statistics/2023/10/criminal-proceedings-scotland-2021-22/documents/criminal-proceedings-scotland-2021-22/criminal-proceedings-scotland-2021-22/govscot%3Adocument/criminal-proceedings-scotland-2021-22.pdf>

487 As above (page 42).

488 Scottish Government (2021), *Criminal Proceedings in Scotland, 2019-20* (page 103). <https://www.gov.scot/binaries/content/documents/govscot/publications/statistics/2021/05/criminal-proceedings-scotland-2019-20/documents/criminal-proceedings-scotland-2019-20/criminal-proceedings-scotland-2019-20/govscot%3Adocument/criminal-proceedings-scotland-2019-20.pdf>

489 Police Scotland (2022), *Letter from Police Scotland to the Convener, Criminal Justice Committee* (28 January 2022). <https://www.parliament.scot/chamber-and-committees/committees/current-and-previous-committees/session-6-criminal-justice-committee/correspondence/2022/criminal-justice-committee-evidence-sessions-on-violence-against-women-and-girls>

490 MurrayBlackburnMackenzie (2022), *Police Scotland policy on recording rape: how did it evolve and where does responsibility lie?* <https://murrayblackburnmackenzie.org/2022/01/08/police-scotland-policy-on-recording-rape-how-did-it-evolve-and-where-does-responsibility-lie/>

491 Scottish Government (online), *Recorded Crime in Scotland*. <https://www.gov.scot/collections/recorded-crime-in-scotland/>

The 2022/23 data tables include statistics on the **gender** of the alleged perpetrators and victims of attempted rape, and sexual assault (**male, female**).<sup>492</sup> As noted above, alleged perpetrators of rape may be recorded on a self-identified basis. Statistics are also shown on male and female domestic abuse victims, although these data are not labelled.

### Reconviction Rates in Scotland

This accredited Scottish Government publication presents data on the number of individuals released from a custodial sentence or given a non-custodial sentence and reconvicted within a year. The 2019/20 report presents data on labelled **sex (male, female)**. Similar to Criminal proceeding statistics (see above), the report explains this is based largely on **how a person presents** to the police:



A11 ‘Sex’ can be considered to refer to whether someone is male or female based on their physiology, with ‘gender’ representing a social construct or sense of self that takes a wider range of forms. Throughout this report we refer to ‘sex’ rather than ‘gender’ because this better reflects recording practices in relation to this information. In reality it is likely that recording includes a mixture of physiological and personal identity.

A12 Sex in this bulletin is generally identified by a police officer based on how a person presents and recorded when a person’s details are entered into the CHS. In most cases this is based on the physiology of a person rather than self-identified gender. It is recorded for operational purposes, such as requirements for searching. A person’s sex may only be changed on the CHS if person has produced a Gender Recognition Certificate, or there has been a data entry error. A small number of records are recorded as ‘unknown’ where for some reason a clear understanding of the sex of the individual is not known.<sup>493</sup>

## Sex, based on establishment (male, female)

### Weekly prison population statistics, England and Wales

Weekly Prison Population Statistics show the aggregate population held in the **male and female estate** in England and Wales.<sup>494</sup> A House of Commons Library report on UK Prison Population Statistics published in 2023 states that ‘prisoners are grouped into male and female, with no explanation as to the policy for recording the sex or gender of transgender prisoners.’<sup>495</sup>

Under revised Ministry of Justice policy on transgender prisoners published in February 2023, male GRC holders can be placed in the female estate in exceptionally limited circumstances.<sup>496</sup> Under the same policy, inmate sex in England and Wales is recorded on the prison IT system (Prison-NOMIS) as male or female, which ‘should match their legally recognised gender’. This suggests that data based on the sex of establishment should reflect sex subject to GRC.

## Sex, multiple sources/definitions (male, female)

### Criminal justice statistics quarterly, England and Wales



This accredited Ministry of Justice publication presents statistics on defendant level activity, including out of court disposals, court proceedings and convictions, remands, sentencing and offending histories.<sup>497</sup>

The accompanying overview tables for the quarter ending 2023 presented data labelled **sex (male, female)** (Table A3.1)<sup>498</sup> We could not locate equivalent data for the period ending March 2024.<sup>499</sup> A separate Ministry of Justice report on women in the criminal justice system, published in 2022, stated that data on sex in the Criminal Justice statistics bulletin is ‘**a mix of self-reported and officer identified,**’ reflecting police recording practices.<sup>500</sup>

492 Scottish Government (2023), *Recorded Crime in Scotland, 2022-23* (Table A5). <https://www.gov.scot/binaries/content/documents/govscot/publications/statistics/2023/06/recorded-crime-scotland-2022-23/documents/recorded-crime-2022-23-bulletin-tables/recorded-crime-2022-23-bulletin-tables/govscot%3Adocument/recorded-crime-2022-23-bulletin-tables.xlsx>

493 Scottish Government (2022), *Reconviction Rates in Scotland: 2019-20 Offender Cohort* (Annexes A11 and A12). <https://www.gov.scot/binaries/content/documents/govscot/publications/statistics/2023/06/reconviction-rates-scotland-2019-20-offender-cohort/documents/reconviction-rates-scotland-2019-20-offender-cohort/reconviction-rates-scotland-2019-20-offender-cohort/govscot%3Adocument/reconviction-rates-scotland-2019-20-offender-cohort.pdf>

494 Ministry of Justice (2024), *Prison population figures*. <https://www.gov.uk/government/publications/prison-population-figures-2024>

495 House of Commons Library (2023), *UK Prison Population Statistics* (page 10). <https://researchbriefings.files.parliament.uk/documents/SN04334/SN04334.pdf>

496 Ministry of Justice (2023), *The Care and Management of Individuals who are Transgender: Operational Guidance* (page 4). <https://assets.publishing.service.gov.uk/media/63fc-cd2ae90e0740d987d8ba/transgender-pf-operational-guidance.docx>

497 Ministry of Justice (2024), *Criminal justice statistics quarterly*. <https://www.gov.uk/government/collections/criminal-justice-statistics-quarterly>

498 Ministry of Justice (2024), *Criminal justice statistics quarterly: December 2023*. Table A3.1. <https://assets.publishing.service.gov.uk/media/6644d277f349b5a56adc88a/overview-tables-december-2023.ods>

499 Ministry of Justice (2024), *Criminal justice statistics quarterly: March 2024*. <https://assets.publishing.service.gov.uk/media/66bc6141fc8e12ac3edb0ef3/overview-tables-March-2024.ods>

500 Ministry of Justice (2022), *A Technical Guide to Statistics on Women and the Criminal Justice System, 2021* (Table G.01). [https://assets.publishing.service.gov.uk/media/637e-40c4e90e07233d28b873/A\\_Technical\\_Guide\\_to\\_Statistics\\_on\\_Women\\_and\\_the\\_CJS\\_2021.pdf](https://assets.publishing.service.gov.uk/media/637e-40c4e90e07233d28b873/A_Technical_Guide_to_Statistics_on_Women_and_the_CJS_2021.pdf)

This is consistent with analysis by the campaign group Keep Prisons Single Sex (KPSS) undertaken in 2023. Of the twenty-one police forces that responded to a Freedom of Information request made by KPSS on how the sex of rape suspects is recorded, only one (Hertfordshire Constabulary) recorded sex, irrespective of either a GRC or self-declared gender identity. They stated, 'As a woman cannot commit rape, the likelihood is that they would be recorded as male in line with section 20 of the Gender Recognition Act 2004.'<sup>501</sup>

When asked about different scenarios, twenty police forces stated that sex subject to GRC would be recorded, if a person had a GRC. Thirteen police forces stated that self-declared sex would be recorded if a person did not have a GRC. The different scenarios and responses for 21 forces Table 8. How UK police forces record rape suspects in Table 8. KPSS describe the response from North Wales Police as 'extremely unclear and, in respect of most questions, it was not possible to ascertain their data recording practices'.<sup>502</sup>

*Table 8. How UK police forces record rape suspects*

	Records acquired gender if suspect has a GRC	Records sex (natal) if suspect does not have a GRC	Records self-declared gender identity
Bedfordshire Police	Yes	Yes	No
Cambridgeshire Constabulary	Yes	Not clear	Yes, but could be recorded either way
Cheshire Constabulary	Yes	No	Yes
Cleveland Police	Yes	Yes	No
Derbyshire Constabulary	Yes	No	Yes
Gloucestershire Constabulary	Yes	No	Yes
Hampshire Constabulary	Yes	No	Yes
Hertfordshire Constabulary	No	Yes	No
Norfolk Constabulary	Yes	No	Yes
Northamptonshire Police	Yes	No	Yes
South Yorkshire Police	Yes	Yes	No
Staffordshire Police	Yes	Yes	No
Suffolk Constabulary	Yes	No	Yes
Warwickshire Police	Yes	Yes	Yes, in addition to sex
West Mercia Police:	Yes	Yes	Yes, in addition to sex
West Midlands Police	Yes	No	Yes
West Yorkshire Police	Yes	No	Yes
Wiltshire Police	Yes	Yes	No
Dyfed-Powys Police	Yes	Yes	No
Police Scotland	Yes	No	Yes
Police Service Northern Ireland	Yes	No	Yes

501 Keep Prisons Single Sex (2023), *How police forces in the United Kingdom record suspects' sex in crime & incident reporting: 2023 update*. [https://kpssinfo.org/wp-content/uploads/2023/11/Police\\_FOIAS\\_Report\\_2023\\_Update.pdf](https://kpssinfo.org/wp-content/uploads/2023/11/Police_FOIAS_Report_2023_Update.pdf)

502 As above (page 25).

## HMPPS Offender Equalities Annual Report, England and Wales

This annual bulletin presents HM Prison and Probation Service information data on the protected characteristics of offenders in prison and in the community.

The 2023 report presented only limited data on **sex (male, female)**, which is drawn from data published in Offender Management Statistics Quarterly.<sup>503</sup> As noted next, this reflects different sources and definitions.

### Offender Management Statistics, England and Wales

These accredited Ministry of Justice statistics provide data relating to offenders who are in prison or under Probation Service supervision, including prison population data, receptions, admissions, releases, and probation.<sup>504</sup>



The statistics present data on **sex (male, female)**<sup>505</sup> although these are drawn from diverse sources with varying recording approaches. A Ministry of Justice report published in 2022 summarises these as follows:<sup>506</sup>

- Pre-sentence reports: **self-reported sex**
- Prison population, Sentences served, Receptions, Releases: **sex of establishment**
- Probation: **sex recorded on birth certificate**

### Proven reoffending statistics quarterly, England and Wales

This Ministry of Justice publication presents data on adult and juvenile offenders released from custody, who then received a non-custodial conviction at court, or a caution.<sup>507</sup> The statistics have accredited status.



The publication covering April to June 2022 presents data labelled **sex (male, female)**.<sup>508</sup> The User Guide explains that data on prison discharges and court order commencements is matched to the Police National Computer (PNC) on various fields, including 'gender'.<sup>509</sup> As noted below, gender markers on the PNC may be changed with or without a GRC (see page 122).

Under the revised 2023 Ministry of Justice policy, prison discharges data is likely to reflect sex subject to GRC.

## Women and the Criminal Justice System report, England and Wales

This biennial Ministry of Justice report<sup>510</sup> is designed to meet Section 95 of the Criminal Justice Act 1991, which requires the Secretary of State to publish:



'such information as they consider expedient for the purpose... of facilitating the performance of those engaged in the administration of justice to avoid discriminating against any persons on the ground of race or sex or any other improper ground...'

The Technical Guide explains that parent publications used to populate the report reflect a range of recording practices:

'Sex can be considered to refer to whether someone is male or female based on their physiology, with 'gender' representing a social construct or sense of self that takes a wider range of forms. Throughout this report we refer to sex rather than gender, because the binary classification better reflects how individuals are generally reported or managed through the CJS. For example, prisons are either male or female institutions, with prisoners normally placed based on their legally recognised gender. However, given the range of recording practises throughout the CJS, it is likely that most recording includes a mixture of physiological and personal identity.'<sup>511</sup>

These are usefully summarised in an accompanying table, as reproduced below.

503 Ministry of Justice (2023), *HM Prison and Probation Service Offender Equalities Annual Report* (page 6).

[https://assets.publishing.service.gov.uk/media/65d720932197b201e57fa61e/HMPPS\\_Offender\\_Equalities\\_2022-23\\_Report.pdf](https://assets.publishing.service.gov.uk/media/65d720932197b201e57fa61e/HMPPS_Offender_Equalities_2022-23_Report.pdf)

504 Ministry of Justice and HM Prison and Probation Service (2024), *Offender management statistics quarterly*.

<https://www.gov.uk/government/collections/offender-management-statistics-quarterly>

505 Ministry of Justice and HM Prison and Probation Service (2024), *Offender management statistics quarterly: October to December 2023 and annual 2023*. <https://www.gov.uk/government/statistics/offender-management-statistics-quarterly-october-to-december-2023/offender-management-statistics-quarterly-october-to-december-2023-and-annual-2023>

506 Ministry of Justice (2022), *A Technical Guide to Statistics on Women and the Criminal Justice System, 2021* (Table G.01). [https://assets.publishing.service.gov.uk/media/637e-40c4e90e07233d28b873/A\\_Technical\\_Guide\\_to\\_Statistics\\_on\\_Women\\_and\\_the\\_CJS\\_2021.pdf](https://assets.publishing.service.gov.uk/media/637e-40c4e90e07233d28b873/A_Technical_Guide_to_Statistics_on_Women_and_the_CJS_2021.pdf)

507 Court orders include community sentences, community orders and suspended sentence orders supervised by the Probation Service.

508 Ministry of Justice (2024), *Proven reoffending statistics: April to June 2022*. <https://www.gov.uk/government/statistics/proven-reoffending-statistics-april-to-june-2022/proven-reoffending-statistics-april-to-june-2022>

509 Ministry of Justice (2024), *Guide to proven reoffending statistics* (pages 22-23). [https://assets.publishing.service.gov.uk/media/65b0f9d116076500118f7bb/PRSQ\\_guide\\_to\\_proven\\_re-offending\\_Jan24.pdf](https://assets.publishing.service.gov.uk/media/65b0f9d116076500118f7bb/PRSQ_guide_to_proven_re-offending_Jan24.pdf)

510 Ministry of Justice (2022), *Women and the Criminal Justice System 2021*. <https://www.gov.uk/government/statistics/women-and-the-criminal-justice-system-2021/women-and-the-criminal-justice-system-2021>

511 Ministry of Justice (2022), *A Technical Guide to Statistics on Women and the Criminal Justice System, 2021* (Table G.01). [https://assets.publishing.service.gov.uk/media/637e-40c4e90e07233d28b873/A\\_Technical\\_Guide\\_to\\_Statistics\\_on\\_Women\\_and\\_the\\_CJS\\_2021.pdf](https://assets.publishing.service.gov.uk/media/637e-40c4e90e07233d28b873/A_Technical_Guide_to_Statistics_on_Women_and_the_CJS_2021.pdf)



*Table 9. Overview of publications presented or associated with Statistics on Women and the Criminal Justice System 2021*

Theme	Topic	Parent publication	How sex is recorded
Victims	Risk of victimisation; Personal crime; Violent crime	<a href="#">Crime in England and Wales</a>	Self-identified
	Homicide	<a href="#">Homicide in England and Wales</a>	Officer identified
Police activity	Out of court disposals	<a href="#">Criminal Justice Statistics Quarterly</a>	Mix of self-reported and officer identified
	Stop searches; Arrests	<a href="#">Police Powers and Procedures</a>	
Defendants	Prosecutions, convictions, remand, sentencing	<a href="#">Criminal Justice Statistics Quarterly</a>	Mix of self-reported and officer identified
	Prosecuting authority; part of Crown Court committal representation; case management appeals	<a href="#">Criminal Court statistics Quarterly</a>	
	Criminal legal aid	<a href="#">Legal aid statistics quarterly</a>	Self-reported
	Pre-sentencing reports		Self-reported
Offender management	Prison population; sentences served	<a href="#">Offender Management Statistics quarterly</a>	Sex of establishment
	Receptions and releases		
	Probation		Birth certificate
	HMIP Prisons Inspectorate Survey Report	<a href="#">HMIP annual report</a>	Self-reported
	Self-harm in prison	<a href="#">Safety in Custody Statistics</a>	Sex of establishment
	Youth custody	<a href="#">Youth Custody data</a>	
	Parole board	Public Protection Unit Database	
Offender characteristics	Offending histories	<a href="#">First time entrants (FTE) into the Criminal Justice System</a>	Officer identified
	Proven reoffending	<a href="#">Proven Reoffending Statistics</a>	
	Comparing the educational backgrounds of young offenders in Key Stage 2	MoJ / DfE Data Share (Bespoke analysis)	
Offence analysis	Prosecutions, convictions and sentencing outcomes for specific offences	<a href="#">Criminal Justice Statistics Quarterly</a>	Mix of self-reported and officer identified
Practitioners	Police	<a href="#">Police workforce E&amp;W statistics</a>	Self-reported
	Crown Prosecution Service	<a href="#">Crown Prosecution Service Data – Equality and Diversity</a>	
	Ministry of Justice	<a href="#">MoJ workforce monitoring report</a>	
	HM Prison and Probation Service	<a href="#">HMPPS workforce quarterly statistics</a>	
	Judiciary	<a href="#">Judicial Diversity Statistics</a>	
	Magistracy		

## Gender, no definition (male, female)

### Police National Computer, England and Wales

The Police National Computer (PNC) stores and shares information on offending behaviour, including personal details and details of convictions, cautions, warnings, and arrests. The database is used to carry out real-time checks, for example on a person's criminal record, missing and wanted people, and vehicle registration checks.<sup>512</sup>

PNC data on suspect gender appears particularly unstable and subject to different recording practices. Analysis published by KPSS in 2022 states:

'The options available for recording the 'gender' of a suspect are: male; female; unknown. There is no guidance on how this should be recorded. However, as the PNC is not the initial recorder of data, the data will be returned in accordance with how it has been recorded on the source system, meaning that how forces originally recorded suspects' sex will be transferred over'.<sup>513</sup>

The Home Office PNC User Manual states that PNC records can also be changed via self-notification, with supporting documentary evidence (a Gender Recognition Certificate is not required).<sup>514</sup> The Manual (incorrectly) states:

'A person granted a GRC and birth certificate assumes all of the legal entitlements of a person of the same birth sex'.

For GRC holders, a person's original name will be recorded as an alias, which provides additional privacy. For non-GRC holders, a new name is recorded as an alias. PNC records can also be changed via police notification, where 'if as a result of police interaction a person, who already has a PNC record, is shown to have a different gender identity to that shown on their record.'

Changes to the gender field are flagged by a marker on the PNC record, indicating that the record can be identified internally. We do not know if this is disclosed when sharing data for statistical purposes. The User Manual also highlights operational risks that arise from a person acquiring a GRC without informing the police:

There is no legal obligation on any person in possession of a GRC and/or a new birth certificate to inform the police that they have changed their name or gender. It is, therefore, quite possible that an arrested person could be released or otherwise dealt with before any link to their previous offending history is known (through confirmation by fingerprints).<sup>515</sup>

### Offending Histories and First-time entrants (FTE) into the Criminal Justice System, England and Wales



This accredited Ministry of Justice publication provides an overview of trends in first time entrants into the Criminal Justice System and offender histories in England and Wales.<sup>516</sup>

The 2023 data tables present statistics on '**gender**' (**male, female**).<sup>517</sup> We could not find a definition in the accompanying guide.<sup>518</sup> A note in the tables states that information on gender is extracted from the Police National Computer (PNC).<sup>519</sup>

As detailed above, this suggests that the data reflects different police force practices and may include records with changed gender markers.

### Recorded crime statistics (Homicide), Northern Ireland



These accredited PSNI statistics include data on homicide by age and **gender (male, female)**.<sup>520</sup> We are unclear if the statistics reflect PSNI recording policy and practice, which provide for gender based on how a person presents or declares (see page 242).

512 HMICFRS (online), *Police National Computer (PNC)*.

<https://hmicfrs.justiceinspectorates.gov.uk/glossary/police-national-computer/>

513 Keep Prisons Single Sex [KPSS] (2022), *How police forces in England & Wales record suspects' sex in crime & incident reporting* (page 20).

<https://kpssinfo.org/wp-content/uploads/2022/05/KPSS-POLICE-RECORDING-SEX-2022.pdf>

514 Home Office (2020), *PNC User Manual version 20.01* (para. 33.10). [https://web.archive.org/web/20240731163555/https://www.whatdotheyknow.com/request/pnc\\_user\\_manual\\_lat-est\\_version/response/1688218/attach/4/61120%20Annex%20A%20PNC%20Manual%20v20.01%20Redacted%20v4.pdf?cookie\\_passthrough=1](https://web.archive.org/web/20240731163555/https://www.whatdotheyknow.com/request/pnc_user_manual_lat-est_version/response/1688218/attach/4/61120%20Annex%20A%20PNC%20Manual%20v20.01%20Redacted%20v4.pdf?cookie_passthrough=1)

515 As above (page 394).

516 Ministry of Justice (2024), *First time entrants (FTE) into the Criminal Justice System and Offender Histories: year ending December 2023*.

<https://www.gov.uk/government/statistics/first-time-entrants-fte-into-the-criminal-justice-system-and-offender-histories-year-ending-december-2023>

517 Ministry of Justice (2023), *Offending Histories and First-time entrants (FTE) into the Criminal Justice System*.

<https://www.gov.uk/government/statistics/first-time-entrants-fte-into-the-criminal-justice-system-and-offender-histories-year-ending-december-2022>

518 Ministry of Justice (2023), *A Guide to Offending Histories and First-Time Entrants (FTE) Statistics*. <https://assets.publishing.service.gov.uk/media/6463883ae1407000cb6dfffb/fte-off-hist-guide-december-2022.pdf>

519 Ministry of Justice (2023), *Offending History and First Time Entrants accessible tables - Q4 2022* (Table Q6\_3).

<https://assets.publishing.service.gov.uk/media/646388da0b72d3001334455f/Accessible-offending-history-tables-dec-2022 ods>

520 Police Service of Northern Ireland (2024), *Police Recorded Crime in Northern Ireland. Update to 30th June 2024* (page 15). <https://web.archive.org/web/20240801010012/https://www.psnipolice.uk/system/files/2024-07/152082099/Police%20Recorded%20Crime%20Bulletin%20Period%20Ending%2030%20June%202024.pdf>

## Gender, based on title (male, female)

### Family court statistics quarterly, England and Wales

These accredited Ministry of Justice statistics provide a quarterly overview of the volume of cases dealt with by family courts.<sup>521</sup> This includes statistics on powers of attorney applications, which are disaggregated by the **gender of the donor (male, female)**.<sup>522 523</sup>



Accompanying notes state that gender is based on a person's title, which thereby provides for gender self-identification. It also states that any cases which cannot be easily categorised are classed as 'other'. This category is not shown in the data tables, although it may be a reference to the 'unknown' category:

'Gender is inferred from the donor's title. Cases within the 'other' category relate to titles which cannot clearly be categorised as male or female (i.e. Dr, Professor etc), and where titles have additional characters/errors (i.e. Mrs., Mr' etc). Possible non-binary also appear in this category as it is unclear if these are non-binary titles or mistakes in spelling of a male/female title (i.e. Mx.).'<sup>524</sup>

## Gender, perceived by officials (male, female)

### Deaths during or following police contact, England and Wales

This Independent Office for Police Conduct (IOPC) publication presents data on the nature and circumstances of deaths during or following police contact. The statistics have accredited status.



Police forces in England and Wales are required by statute to provide the information to the IOPC.<sup>525</sup> The 2022/23 IOPC report presents data on '**type of death by gender**' (male, female).<sup>526</sup> A separate Ministry of Justice publication describes the data as **officer identified**.<sup>527</sup>

## Football-related arrests and banning orders, England and Wales

Data tables on football-related arrests and banning orders published by the Home Office in 2023 state that the gender variable captures the '**perceived gender** of the individual who has received the football banning order' (male, female). The data tables notes state that gender is 'perceived by the reporting officer in UK Football Policing Unit and should not be considered as reliable and accurate as self-reported data'.<sup>528</sup>

## Gender, perceived by officials and/or self-reported (male, female)

### Justice Social Work statistics, Scotland

These accredited Scottish Government statistics include data on criminal justice social work reports, community payback orders, diversion from prosecution, and bail.<sup>529 530</sup> The 2022/23 data tables are labelled **gender (male, female)**.<sup>531</sup> The main report explains that this reflects both self-identified gender, and as perceived by professionals:



'The data obtained from local authorities comes from recording systems which are used for case management and for internal monitoring. Information on personal characteristics such as gender and ethnicity are taken directly from these systems. While recording practices may vary across local authorities, it is likely that the recording of gender and ethnicity will include **a mixture of self-identified values and values as perceived by the justice professional** recording the information, for example a case worker.'<sup>532</sup>

521 Ministry of Justice (2017), *Family Court Statistics Quarterly*. <https://www.gov.uk/government/collections/family-court-statistics-quarterly>

522 The donor is the person making the power of attorney, that is, who appoints someone to act on their behalf.

523 Ministry of Justice (2023), *Family Court Statistics Quarterly, October to December 2023 Tables* (Table 23). [https://assets.publishing.service.gov.uk/media/66044571e8c44200112203bb/Family\\_Court\\_Statistics\\_\\_Oct-Dec\\_2023\\_.ods](https://assets.publishing.service.gov.uk/media/66044571e8c44200112203bb/Family_Court_Statistics__Oct-Dec_2023_.ods)

524 Ministry of Justice (2023), *Guide to Family Court Statistics* (section 14). <https://www.gov.uk/government/statistics/family-court-statistics-quarterly-july-to-september-2023/guide-to-family-court-statistics>

525 Independent Office for Police Conduct (online), *Annual deaths during or following police contact statistics*.

<https://www.policeconduct.gov.uk/our-work/research-and-statistics/annual-deaths-statistics>

526 Independent Office for Police Conduct (2023), *Deaths during or following police contact. Statistics for England and Wales 2022/23* (page 35). [https://www.policeconduct.gov.uk/sites/default/files/documents/Annual-deaths-statistics-report-England-and-Wales-2022-23\\_0.pdf](https://www.policeconduct.gov.uk/sites/default/files/documents/Annual-deaths-statistics-report-England-and-Wales-2022-23_0.pdf)

527 Ministry of Justice (2022), *A Technical Guide to Statistics on Women and the Criminal Justice System, 2021* (Table G.01). [https://assets.publishing.service.gov.uk/media/637e-40c4e90e07233d28b873/A\\_Technical\\_Guide\\_to\\_Statistics\\_on\\_Women\\_and\\_the\\_CJS\\_2021.pdf](https://assets.publishing.service.gov.uk/media/637e-40c4e90e07233d28b873/A_Technical_Guide_to_Statistics_on_Women_and_the_CJS_2021.pdf)

528 Home Office (2023), *Football banning order statistics, England and Wales* (see 'List of Fields' and 'Notes').

<https://assets.publishing.service.gov.uk/media/650b1e2cfbd7bc0013cb5261/football-banning-order-statistics-england-and-wales-detailed-datasets.xlsx>

529 Scottish Government (online), *Justice social work statistics*. <https://www.gov.scot/collections/criminal-justice-social-work/>

530 Scottish Government (2024), *Justice Social Work Statistics in Scotland: 2022-23*. <https://www.gov.scot/binaries/content/documents/govscot/publications/statistics/2024/01/justice-social-work-statistics-scotland-2022-23/documents/justice-social-work-statistics-scotland-2022-23/justice-social-work-statistics-scotland-2022-23/govscot%3Adocument/justice-social-work-statistics-scotland-2022-23.pdf>

531 Scottish Government (2024), *Justice Social Work Statistics In Scotland: 2022-23: Tables* (Tables 4, 6 and others).

<https://www.gov.scot/binaries/content/documents/govscot/publications/statistics/2024/01/justice-social-work-statistics-scotland-2022-23/documents/tables/govscot%3Adocument/tables.xlsx>

532 Scottish Government (2024), *Justice Social Work Statistics in Scotland: 2022-23* (page 27). <https://tinyurl.com/yjsyxr2p>

## Gender, self-identified (male, female)

### Firearm and Shotgun Certificates statistics, England and Wales



These accredited Home Office statistics on firearm and shotgun certificates presents information on certificates issued by police forces in England and Wales under the Firearms Act 1968.<sup>533</sup> The 2023 data tables refer to the **gender** of certificate holders (**male, female**).<sup>534</sup> The User Guide states the applicant ‘completes a form which includes a question on ‘gender’ which is **based on their sense of self**’.<sup>535</sup>

### Northern Ireland First Time Entrants to the Criminal Justice System

This Department of Justice bulletin presents information on first time entrants to the criminal justice system, and disposals related to first offences.<sup>536</sup>

The 2021/22 Bulletin presents data on **gender (male, female)**. The publication states that people who are recorded as **transgender** (and those whose **gender is not specified**) are included under ‘**Figures for Males**’.<sup>537</sup>

### Northern Ireland Prison Population statistics



These accredited annual statistics present data on the average daily prison population, receptions, and discharges.

The 2022/23 report presents data labelled ‘**gender (male, female)**’.<sup>538</sup> Accompanying data tables state ‘To avoid disclosure Transgender individuals have been included within the male or female population based on Establishment’.<sup>539</sup>

### Northern Ireland Youth Engagement Statistics

Northern Ireland Youth Engagement Statistics present data on cases relating to young people (aged between 10 and 17 years), coming into formal contact with the

criminal justice system.<sup>540</sup>

The 2022/23 report presents data on **gender (male, female)**. Similar to the Prison Population statistics noted above, the report states that ‘**figures for males include young people who identified as transgender** or whose gender is unknown, due to the small numbers involved’.<sup>541</sup>

### Scottish Prison Population statistics

This Scottish Government publication presents data on **gender (men, women)**. This terminology is unusual, insofar as most public bodies present data on males and females, irrespective of the underlying definition.<sup>542</sup>

The accompanying Technical Manual states that data on ‘prisoner gender’s determined by Scottish Prison Service (SPS) recording policy.<sup>543</sup> This is a reference SPS policy on transgender prisoners, which instructs prison officers to record a persons’ self-declared gender. The most recent SPS policy, published in 2023, states:

‘If there is no evidence that the person in custody is proposing to transition or has begun transitioning to start living in a different gender from that assigned at birth, then a staff member should enter the person in custody on the PR2 computer system as the gender that aligns with their birth sex.

Where there is any evidence that the person in custody has begun transitioning to live in a different gender from that assigned at birth then a staff member must enter the person in custody on the PR2 computer system as the **affirmed gender** they are living in and record them as having the protected characteristic of gender reassignment as outlined above.

Upon establishing an individual’s transgender status, reception staff should also update the individuals PR2 record to reflect their gender identity.’<sup>544</sup>

Under its revised 2023 policy, the SPS publishes data

533 Home Office (2023), *Statistics on firearm and shotgun certificates, England and Wales: April 2022 to March 2023*.

<https://tinyurl.com/3f6526kh>

534 Home Office (2023), *Statistics on firearm and shotgun certificates, England and Wales: April 2022 to March 2023. Data Tables* (Table 13).

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/1168141/statistics-firearm-shotgun-certificates-england-wales-2022-2023-tables.ods](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1168141/statistics-firearm-shotgun-certificates-england-wales-2022-2023-tables.ods)

535 Home Office (2023), *User guide to statistics on firearm and shotgun certificates, England and Wales*.

<https://www.gov.uk/government/publications/user-guide-to-firearm-and-shotgun-certificate-statistics/user-guide-to-statistics-on-firearm-and-shotgun-certificates-england-and-wales-accessible-version>

536 Department of Justice (2023), *First Time Entrants to the Criminal Justice System in Northern Ireland 2021/22*.

<https://www.justice-ni.gov.uk/news/first-time-entrants-criminal-justice-system-northern-ireland-202122-published-today#:~:text=Of%20all%20first%20time%20entrants,diversion%20for%20a%20first%20offence>

537 Department of Justice (2024), *First Time Entrants to the Criminal Justice System in Northern Ireland 2021/22 (revised)* (page 4)

<https://www.justice-ni.gov.uk/sites/default/files/publications/justice/First-Time-Entrants-to-Criminal-Justice-System-Northern-Ireland-202122-revised.pdf>

538 Department of Justice (2021), *The Northern Ireland Prison Population 2022/23* (page 9).

<https://www.justice-ni.gov.uk/sites/default/files/publications/justice/Northern-Ireland-Prison-Population-2022-23.pdf>

539 Department of Justice (2023), *The Northern Ireland Prison Population 2022/23 Data Tables* (see ‘Notes’).

<https://www.justice-ni.gov.uk/sites/default/files/publications/justice/The-Northern-Ireland-Prison-Population-22-23-data-tables.ods>

540 Department of Justice (2024), *Youth Engagement Statistics for Northern Ireland 2022-23*. <https://www.justice-ni.gov.uk/publications/youth-engagement-statistics-northern-ireland-2022-23>

541 Department of Justice (2024), *Youth Engagement Statistics for Northern Ireland 2022-23 (Revised)* (page 4).

[https://www.justice-ni.gov.uk/sites/default/files/publications/justice/Youth\\_Engagement\\_2022-23\\_revised.pdf](https://www.justice-ni.gov.uk/sites/default/files/publications/justice/Youth_Engagement_2022-23_revised.pdf)

542 Scottish Government (2023), *Scottish Prison Population Statistics 2022-23: Supplementary Tables* (Table B2).

<https://tinyurl.com/24a5d4dm>

543 See Scottish Government (2022), *Scottish prison population statistics technical manual* (‘Gender’).

<https://www.gov.scot/publications/scottish-prison-population-statistics/pages/analytical-factors-and-measurements/#Gender>

544 Scottish Prison Service (2023), *SPS Policy for the Management of Transgender People in Custody: Operational Guidance* (page 15).

<https://www.sps.gov.uk/sites/default/files/2024-02/Management%20of%20Transgender%20Prisoner%20Operational%20Guidance%202024.pdf>

on the number of transgender prisoners; but no longer specifies whether they are housed in the male or female estate, citing advice from the Scotland's Chief Statistician.<sup>545</sup>

## Gender identity (multiple categories)

### Multi-agency public protection arrangements (MAPPA) statistics, England and Wales

These accredited annual Multi-agency public protection arrangements (MAPPA) statistics present information on MAPPA eligible offenders, that is, those who have committed specified sexual and violent offences, or have been assessed as presenting a serious risk of harm to the public.<sup>546</sup>



The 2022/23 data tables present data on **gender (male, female, other)**. An explanatory note states that the 'other' category covers 'any other gender such as **gender fluid or non-binary** gender.'<sup>547</sup>

As of 31 March 2023, fifteen MAPPA offenders were classed as 'other'. Of these, three are dangerous offenders, deemed capable of causing serious harm (category three), and three are terrorist or terrorist risk offenders (category four). Table 10 shows these figures, disaggregated first by MAPPA category (one to four) and then by MAPPA level, which refers to the level of attention and resources required to put plans in place.

Table 10. MAPPA offenders by Gender on 31 March 2023

MAPPA category and management level	Males	Female	Other*
Category 1: Registered sex offenders	446	9	3
Category 2: Violent offenders	421	20	6
Category 3: Other dangerous offenders	489	34	3
Category 4: Terrorist/Terrorist risk offenders	82	5	3
Total	1438	68	15
Managed at Level 2: High or very high risk to others	1,250	55	11
Managed at Level 3: Highest risk of causing serious harm	188	13	4
Total	1,438	68	15

\*'Other' covers any other gender such as gender fluid or non-binary gender.'

### National Police Chiefs Council POLE data standards, England & Wales

NPCC POLE data standards are intended 'to support the consistent and accurate recording of police operational information and data'.<sup>548</sup> POLE refers to Person, Object, Location, Event. These standards differ from the Home Office ADR standards (see page 115) and NPCC Protected Characteristics standards (see page 126).

Sex is not included as a characteristic in the POLE standards. The person description **gender** has multiple response options (**male, female, trans male, trans female, non-binary, and intersex**). The Standards (incorrectly) state that this is based on 'Census 21 guidance'.<sup>549</sup>

### Police misconduct statistics, England and Wales

The Home Office introduced police misconduct statistics following the introduction of new legislation in February 2020 to strengthen the police discipline system.<sup>550</sup> The 2023 data tables presents data on **gender**, with **male, female, and other** categories in some tables.<sup>551</sup> The accompanying User Guide explains that the data reflects a mix of characteristics, and that the categories reflect how police forces record data on Centurian (an operational tool for recording and processing professional standards data).

545 The Times (2023), 'Scottish Prison Service to hide data on trans women' 8 December 2023. <https://www.thetimes.com/uk/politics/article/scottish-prison-service-to-hide-data-on-trans-women-lv8wzp5r>

546 Ministry of Justice (2023), *Multi-agency public protection arrangements (MAPPA) annual reports*. [https://assets.publishing.service.gov.uk/media/653966ade6c968000daa9b26/MAP-PA\\_Annual\\_Report\\_2023.pdf](https://assets.publishing.service.gov.uk/media/653966ade6c968000daa9b26/MAP-PA_Annual_Report_2023.pdf)

547 Ministry of Justice (2023), *Multi-agency public protection arrangements (MAPPA) annual reports 2022/2023 Tables* (Table 1b). [https://assets.publishing.service.gov.uk/media/6539672a80884d0013f71b4b/MAPPA\\_Annual\\_Report\\_2022-23.xlsx](https://assets.publishing.service.gov.uk/media/6539672a80884d0013f71b4b/MAPPA_Annual_Report_2022-23.xlsx)

548 National Police Chiefs' Council (2023), *Minimum POLE Data Standards Dictionary* (page 4). <https://www.npcc.police.uk/SysSiteAssets/media/downloads/publications/disclosure-logs/dei-coordination-committee/2023/274-2023-pole-data-standards-catalogue-v1.1-1-1.pdf>

549 As above (page 94).

550 Home Office (2024), *Police misconduct, England and Wales: year ending 31 March 2023*. <https://www.gov.uk/government/statistics/police-misconduct-england-and-wales-year-ending-31-march-2023/police-misconduct-england-and-wales-year-ending-31-march-2023>

551 Home Office (2024), *Police Misconduct, England and Wales: year ending 31 March 2023 - Data Tables* (Tables PC7, CM8, RC8). [https://assets.publishing.service.gov.uk/media/65b3e36ac5aac000da683f7/police-misconduct-england-and-wales-year-ending-31-march-2023-data\\_tables ods](https://assets.publishing.service.gov.uk/media/65b3e36ac5aac000da683f7/police-misconduct-england-and-wales-year-ending-31-march-2023-data_tables ods)

'Gender' usually represents a social construct or sense of self about how a person defines themselves. 'Sex' on the other hand is considered to refer to whether someone is male or female based on their physiology.

Currently, the field on 'gender' in the Centurion system includes the categories 'male', 'female', 'other' and 'not known'. Although these statistics report on 'gender', in reality the Centurion system is likely collecting a mix of data on gender and sex. For the purpose of these statistics, we are reporting the data in the format it is collected.<sup>552</sup>

### Police Powers and Procedures, England and Wales

These accredited Home Office statistics include information data on police stop searches, arrests, breath tests, and other powers under the Police and Criminal Evidence (PACE) Act.<sup>553</sup>



Data tables published in 2024 present data labelled **sex (male, female)** with additional '**other**' or '**other/unknown**' categories.<sup>554</sup> The stop and search tables show that of the forty-four police forces, just under half (twenty) reported data under the 'other' category.<sup>555</sup> In relation to stop and search data, the 2024 Police Powers and Procedures User Guide acknowledges that 'gender and or' sex may not be recorded consistently between police forces.

**'Limitation:** Gender and or sex of the person searched may not be recorded consistently across different forces.

**'Implication:** Though the data collection specifies that the sex of the person searched should be provided, it is likely that recording includes a mixture of physiological and personal identity.'<sup>556</sup>

### Police Service of Northern Ireland incident and custody recording

A 2023 Freedom of Information (FOI) response states that PSNI incident and custody recording practice provides for **gender identity**, with **male, female and transgender** categories.

As shown below, the response explains that gender may be recorded as a person '**seeks to present**', or in relation to telephone calls, **as perceived** by the call taker. The policy states that a person may be challenged if they are 'frustrating the system;' but also that 'PSNI are not qualified to challenge assumed gender identify'.

'In regards to PSNI's Call Management Centre (101/999 calls) there is no policy on gender recording. In almost every case the call taker does not ask the caller their gender, but makes an assumption from the caller's voice and name. Call takers record gender on the computer system from one of the four drop down options, these being;

Male, Female, Transgender, Unknown.

Anyone brought into police custody will be recorded as they seek to present themselves. On a custody record there are four options [as above]. If 'Transgender' is selected, an additional pop – up will appear to record the details of the persons' previous name and gender, and their current name and gender.

PSNI record what the detainee wishes (this is subject to some basic challenges if the person is trying to frustrate the process). PSNI will respect how any detainee declares their gender identity. If the gender of the detainee is relevant to the case, expert testimony may be sought. PSNI are not qualified to challenge assumed gender identify and have no power to request medical records or birth certificates.<sup>557</sup>

552 Home Office (2024), *User guide to police misconduct statistics* (see: 3.2 Counting conventions: Information on Gender).

<https://www.gov.uk/government/publications/user-guide-to-police-misconduct-statistics/user-guide-to-police-misconduct-statistics>

553 Home Office (2024), *Police powers and procedures England and Wales statistics*. <https://www.gov.uk/government/collections/police-powers-and-procedures-england-and-wales#-full-publication-update-history>

554 For example, stop and search statistics include an 'other' category. See: Home Office (2024), *Stop and search summary data tables* (Tables SS.27, SS.29) <https://tinyurl.com/4idsa8y8>

Separate statistics for detentions under the Mental Health Act use an 'Other/unknown' category. See: Home Office (2024), *Detentions under the Mental Health Act (1983)* (Table MHA.01). <https://assets.publishing.service.gov.uk/media/6622838749d7b8813ba7e5b0/detentions-under-the-mental-health-act-1983-police-powers-and-procedures-year-ending-31-march-2023-second-edition ods>

555 Home Office (2024), *Stop and search summary data tables* (Tables SS.27) <https://tinyurl.com/4idsa8y8>

556 Home Office (2024), *User guide to police powers and procedures* (section 2.3.2). <https://www.gov.uk/government/publications/police-powers-and-procedures-in-england-and-wales-201112-user-guide/user-guide-to-police-powers-and-procedures#glossary>

557 Police Service of Northern Ireland (2023), *Freedom of Information request F-2023-00856*. <https://www.psnipolice.uk/foi-disclosure-log/sexual-offences-female-perpetrator-male-victim>

## Police use of force statistics, England and Wales

This Home Office publication presents information on incidents where police officers have used force, based on data collected from Home Office funded police forces.<sup>558</sup>

The 2022/23 data tables report ‘perceived gender’ with **male, female, other** categories.<sup>559</sup>

This approach is reinforced in the 2023/24 Home Office Annual Data Requirement on Police Use of Force (ADR 148), which mandates data collection on the subject’s perceived gender (male, female, other).<sup>560</sup> It is also restated in National Police Chief’s Council (NPCC) Guidance, which states that officers should record the gender of the person based on ‘**what you perceive**’.<sup>561</sup> Note this approach appears inconsistent with ADR 153, which advises data collection based on sex subject to GRC (see page 115).

## PSNI Police and Criminal Evidence Order Statistics, Use of Stop and Search Powers by the Police in Northern Ireland’

PSNI Police and Criminal Evidence (PACE) Order Statistics present information on stop searches, road checks, arrests, detention.

The 2022/23 report shows data labelled **gender (male, female, unknown/other)**.<sup>562</sup> The same fields are shown in related data tables on the use of stop and search.<sup>563</sup>

## PSNI Use of force statistics

This six-monthly publication on the use of police force in Northern Ireland presents data labelled **gender**, with **male, female, and transgender/unknown** categories.<sup>564</sup> The 2022/23 report states that data is sometimes officer-perceived, which it views as less reliable than self-reported data (although note this is dependent on the intended data target).

‘In some cases, the person’s information e.g. age, gender, ethnicity are recorded as perceived by the reporting officer, therefore should not be considered as reliable as self-reported data.’<sup>565</sup>

## Definition unclear

### Civil Justice Statistics Quarterly, England and Wales

These accredited Ministry of Justice statistics presents data on civil cases and judicial reviews.<sup>566</sup>



Data tables on applications for new privacy injunctions, covering 2011 to 2023, present information on **male and female** claimants but the data are **not labelled**.<sup>567</sup>

Separately, we located a High Court and Court Of Appeal Privacy Injunctions Statistics Form, which is completed at each court sitting. This records whether the claimant/applicant/ appellant is **male, female** or an ‘**other gender**’.<sup>568</sup> We are not clear if this data is used to populate Civil Justice statistics.

### Drug Seizures and Offender Characteristics, Scotland

Scottish Government statistics on drug supply-related crimes are populated by data provided by Police Scotland’s Analysis and Performance Unit (APU).<sup>569</sup> The 2020/2021 and 2021/2022 report notes that **male offenders** commit most drug possession crimes. We could not find a further breakdown in the accompanying data tables.

558 Home Office (2023), *Police use of force statistics*, <https://www.gov.uk/government/collections/police-use-of-force-statistics>.

559 Home Office (2023), *Police use of force statistics, England and Wales April 2022 - March 2023* (Table 3).

<https://assets.publishing.service.gov.uk/media/65609ea60c7ec800d95bde0/police-use-of-force-apr2022-mar2023-tables.ods>

560 Home Office (2023) 2023/24 Annual Data Requirement from Police Forces in England & Wales. ADR 148 Police Use of Force AMENDED (page 38).

<https://www.npcc.police.uk/SysSiteAssets/media/downloads/publications/disclosure-logs/dei-coordination-committee/2023/274-2023-adr-notice-2023-24.pdf>

561 National Police Chiefs’ Council (2018), *Use of Force Monitoring Form: Guidance* (page 7). <https://www.npcc.police.uk/SysSiteAssets/media/downloads/publications/publications-log/2018/guidance-on-the-use-of-force-data--march-2018.pdf>

562 Police Service of Northern Ireland (2023), *Police and Criminal Evidence (PACE) Order Statistics. 1 April 2022 to 31 March 2023* (page 4).

[https://www.psnipolice.uk/sites/default/files/2023-05/PACE%20Statistics%20Report%202022\\_23\\_0.pdf](https://www.psnipolice.uk/sites/default/files/2023-05/PACE%20Statistics%20Report%202022_23_0.pdf)

563 Police Service of Northern Ireland (2024), *Use of Stop and Search Powers by the Police in Northern Ireland 2023-24* (Table 6).

[https://www.psnipolice.uk/sites/default/files/2024-02/PSNI%20Stop%20and%20Search%20Report%20Q3%2023\\_2024\\_-\\_Accompanying%20Spreadsheet.xlsx](https://www.psnipolice.uk/sites/default/files/2024-02/PSNI%20Stop%20and%20Search%20Report%20Q3%2023_2024_-_Accompanying%20Spreadsheet.xlsx)

564 Police Service of Northern Ireland (2023), *Use of Force by the Police in Northern Ireland* (page 14).

<https://www.psnipolice.uk/sites/default/files/2023-12/PSNI%20Use%20of%20Force%20Statistical%20Report%201%20October%20%202022%20-%2030%20September%202023.pdf>

565 As above.

566 Ministry of Justice (2016), *Civil justice statistics quarterly*. <https://www.gov.uk/government/collections/civil-justice-statistics-quarterly>

567 Ministry of Justice (2023), *Civil Justice Statistics October to December 2023 - Main Tables* (Table 3.1).

<https://assets.publishing.service.gov.uk/media/65e86d1062ff48001a87b25f/civil-justice-stats-main-tables-Oct-Dec-2023.ods>

568 HM Courts & Tribunals Service (2020), *High Court & Court Of Appeal Privacy Injunctions Statistics Form*.

<https://www.justice.gov.uk/courts/procedure-rules/civil/pdf/forms/privacy-injunctions-statistics-form.pdf>

569 Scottish Government (2023), *Drug Seizures and Offender Characteristics, 2020-2021 and 2021-2022* (page 13).

<https://www.gov.scot/publications/drug-seizures-offender-characteristics-2020-2021-2021-2022/documents/>

## 9.2 Crime and justice surveys

### Sex, no definition (male, female)

#### Scottish Crime and Justice Survey

The Scottish Crime and Justice Survey (SCJS) is a large-scale social survey that asks respondents about their experiences and perceptions of crime in Scotland. The survey began in 2008/9 and the statistics are accredited official statistics.



The first survey asked a simple sex question, 'are you male or female'.<sup>570</sup> The survey has retained a binary sex question. In 2019/20 the questionnaire instructed interviewers to auto code sex or ask, 'if necessary'.<sup>571</sup>

The most recent questionnaire at the time of writing (2021/22) instructed interviewers to **ask respondents 'what is your/their sex' (male, female, prefer not to say)** with no further guidance.<sup>572</sup> Separately, Scottish Government officials have stated in internal correspondence that the question is intended to capture biological sex (see Scottish Core Questions Survey).

#### Northern Ireland Safe Community Survey

The Northern Ireland Safe Community Survey (previously the Northern Ireland Crime Survey) similarly collects information on experiences and perceptions of crime. The survey began in 1994/5, initially on an ad-hoc basis. It has run on as a representative, continuous survey from 2005. Data from the survey is used to populate other publications, including statistics on perceptions of crime,<sup>573</sup> experience of crime,<sup>574</sup> and perceptions of policing and justice.<sup>575</sup>

The 2014/15 questionnaire asked the interviewer to

enter the sex of each person in the household without further guidance.<sup>576</sup> The same approach was also taken in 2018, stating, **please enter sex of [respondent] (male, female)**.<sup>577</sup>

In 2020/21, the survey moved to a telephone mode, due to the pandemic. At the time of writing, we could not locate a copy of the 2020/21 or subsequent telephone survey questionnaire. The 2022/23 survey results report refer to a 'Sex (gender)' category, but these data are not available at the time of writing.<sup>578</sup>

### Sex, based on title (male, female)

#### Crime Survey for England and Wales

The British Crime Survey began in 1981, initially also covering Scotland. Since 2008/9 Scotland has undertaken its own survey, parallel to the rebadged Crime Survey for England and Wales (CSEW). The CSEW is owned by ONS and currently administered by Verian.<sup>579</sup> CSEW data is used to help populate other publications (usually alongside other data sources). These include the ONS Crime in England and Wales Bulletin,<sup>580</sup> Sexual offences prevalence and victim characteristics data,<sup>581</sup> Domestic abuse in England and Wales statistics,<sup>582</sup> and Violence at Work statistics, published by the Health and Safety Executive, which are accredited official statistics.<sup>583</sup>

Early sweeps recorded respondent sex 'by observation for all'.<sup>584</sup> The CSEW continues to collect binary data on respondent sex: the 2021/22 questionnaire instructed the interviewer to **'code the sex of each adult in the household' (male, female)**, and **'if necessary' ask** if a household member is male or female.<sup>585</sup> For respondents who report experiences of victimisation, the survey also asks about the sex of perpetrators

570 Scottish Government (2009), *2008-09 Scottish Crime and Justice Survey Questionnaire* (page 139).

[https://doc.ukdataservice.ac.uk/doc/6362/mrdoc/pdf/6362\\_scjs0809\\_questionnaire.pdf](https://doc.ukdataservice.ac.uk/doc/6362/mrdoc/pdf/6362_scjs0809_questionnaire.pdf)

571 Scottish Government (2022), *SCJS 2019/2020 Questionnaire and user notes* (page 119). [https://www.gov.scot/binaries/content/documents/govscot/publications/statistics/2021/02/scottish-crime-and-justice-survey-2019-20-supplementary-documents/documents/scjs-2019-20---questionnaire/scjs-2019-20---questionnaire/govscot%3Adocument/SCJS%2B2019\\_20%2B-%2BQuestionnaire.pdf](https://www.gov.scot/binaries/content/documents/govscot/publications/statistics/2021/02/scottish-crime-and-justice-survey-2019-20-supplementary-documents/documents/scjs-2019-20---questionnaire/scjs-2019-20---questionnaire/govscot%3Adocument/SCJS%2B2019_20%2B-%2BQuestionnaire.pdf)

572 Scottish Government (2023), *Scottish Crime and Justice Survey 2021/22: Questionnaire* (page 129).

<https://www.gov.scot/binaries/content/documents/govscot/publications/statistics/2023/11/scottish-crime-justice-survey-2021-22-main-findings/documents/questionnaire/questionnaire/govscot%3Adocument/questionnaire.pdf>

573 NI Department of Justice (online), *Perceptions of Crime Publications*.

<https://www.justice-ni.gov.uk/perceptions-crime-publications>

574 NI Department of Justice (online), *Experience of Crime Publications*.

<https://www.justice-ni.gov.uk/experience-crime-publications>

575 NI Department of Justice (online), *Perceptions of Policing and Justice*.

<https://www.justice-ni.gov.uk/perceptions-policing-and-justice>

576 NI Department of Justice (2016), *Northern Ireland Crime Survey Questionnaire 2014/15* (page 5). <https://www.justice-ni.gov.uk/sites/default/files/publications/justice/nics2014-15-questionnaire.pdf>

577 NI Department of Justice (2018), *Northern Ireland Safe Community Survey – Year 1 – April 2018* (page 2).

<https://www.justice-ni.gov.uk/sites/default/files/publications/justice/northern-ireland-safe-community-survey-year-one-questionnaire-april-2018.pdf>

578 NI Department of Justice (2024), *Findings from the 2022/23 Northern Ireland Safe Community Telephone Survey* (pages 34, 37).

<https://www.justice-ni.gov.uk/sites/default/files/publications/justice/Findings%20from%20the%202022-23%20Northern%20Ireland%20Safe%20Community%20Telephone%20Survey.pdf>

579 Verian (2024), *Crime Survey for England & Wales*. <https://www.crimesurvey.co.uk/en/AboutTheSurvey.html>

580 For example: Office for National Statistics (2024), *Crime in England and Wales: year ending December 2023*. <https://www.ons.gov.uk/peoplepopulationandcommunity/crimeandjustice/bulletins/crimeinenglandandwales/yearendingdecember2023>

581 Office for National Statistics (2023), *Sexual offences prevalence and victim characteristics, England and Wales*. <https://www.ons.gov.uk/peoplepopulationandcommunity/crimeandjustice/datasets/sexualoffencesprevalenceandvictimcharacteristicsenglandandwales>

582 Office for National Statistics (2023), *Domestic abuse in England and Wales overview: November 2023*. <https://www.ons.gov.uk/peoplepopulationandcommunity/crimeandjustice/bulletins/domesticabuseinenglandandwalesoverview/november2023>

583 Health and Safety Executive (2020), *Violence at Work statistics, 2020*. <https://www.hse.gov.uk/statistics/assets/docs/work-related-violence-report.pdf>

584 Scottish Office, Criminological Research Unit, Home Office, Research and Planning Unit (1982), *British Crime Survey 1982 Technical Report* (page 46). <https://doc.ukdataservice.ac.uk/doc/1869/mrdoc/pdf/b1869uab.pdf>

585 Kantar Public/Office for National Statistics (2021), *2021-22 Crime Survey for England and Wales Questionnaire (from October 2021)* (page 17). [https://consultations.ons.gov.uk/external-affairs/crime-consultation/supporting\\_documents/202122\\_CSEW\\_Adult\\_Questionnaire.docx](https://consultations.ons.gov.uk/external-affairs/crime-consultation/supporting_documents/202122_CSEW_Adult_Questionnaire.docx)



(male, female). The coding method is not stated in the questionnaire, however a separate ONS User Guide on crime statistics states that this takes place ahead of the interview, based on information such as a **person's title** (Mr, Ms etc.) provided at the recruitment stage, or, if necessary, by asking the respondent at the interview.

'Sex is currently interviewer-coded using information on the respondent's sex before interview (for example, from respondent title: Mr, Mrs, or Ms) collected at recruitment stage. At interview, if there is any uncertainty then the respondent is asked to confirm'.<sup>586</sup>

In addition to the main survey, since 2019/20 the CSEW has asked a subset of respondents to report their self-identified sex and gender identity directly. Under the heading 'Gender identity', this provides for self-identification.

'What is your sex? Select either 'Female' or 'Male'. If you're not sure how to answer, for example you are intersex, you could use the sex registered on your official documents, such as passport or driving licence, or whichever answer you prefer'.<sup>587</sup>

This guidance appears to be modelled on that developed by the ONS for the 2021 England and Wales Census rehearsal (shown below), although as detailed in chapter three, this was later revised, following concerns raised by social scientists.<sup>588</sup>

'What is your sex? Select either 'Female' or 'Male'. If you are one or more of non-binary, transgender, have variations of sex characteristics, sometimes also known as intersex, the answer you give can be different from what is on your birth certificate. If you're not sure how to answer, use the sex registered on your official documents, such as passport or driving licence, or whichever answer best describes your sex.'

## Gender identity (multiple categories)

### MOPAC Public Attitudes Survey

The Public Attitudes Survey (PAS) began in 1983 as a Metropolitan Police Service (MPS) survey and is now jointly sponsored by the Mayor's Office for Policing And Crime (MOPAC).<sup>589</sup>

The 2015/16 survey asked respondents, 'Please look at the showcard and let me know how you would classify yourself', with male, female, transgender, and intersex options.<sup>590</sup>

The 2022/23 questionnaire changed to a nominal sex question (**what is your sex?**) but with response options based on gender identity (**male, female, other**), followed by a direct question on gender identity.<sup>591</sup>

### MPS User Satisfaction Survey

The Metropolitan Police Service (MPS) User Satisfaction Survey (USS), formerly known as the Crime Victim Survey, is used to measure levels of victims' satisfaction based on contact with police. It is conducted by telephone.

The 2011 the USS asked interviewers to code respondent gender as male or female.<sup>592</sup> In 2017/18, this was replaced by a gender identity question, asking respondents to look at a showcard, and classify themselves as either male, female, transgender, or intersex.<sup>593</sup> It is likely that this approach was less accessible for non-English speakers, which was highlighted as an issue in the MPS surveys as early as 2012.<sup>594</sup>

The 2021 survey asked, 'How would you describe your gender?', with a preamble referring to the Equalities Act (sic). Response options included non-binary, transgender, and 'other' (with an open text field) – with an instruction that this should not be presumed, nor the options read out.<sup>595</sup> Like the PAS, the 2022/23 survey asked '**what is your sex**' (**male, female, other**), followed by a gender identity question.<sup>596</sup>

586 Office for National Statistics (2023), *User guide to crime statistics for England and Wales: March 2023* (para. 7.3). <https://www.ons.gov.uk/peoplepopulationandcommunity/crimeandjustice/methodologies/userguidetocrimestatisticsforenglandandwales>

587 Kantar Public/Office for National Statistics (2021), *2021-22 Crime Survey for England and Wales Questionnaire (from October 2021)*. [https://consultations.ons.gov.uk/external-affairs/crime-consultation/supporting\\_documents/202122\\_CSEW\\_Adult\\_Questionnaire.docx](https://consultations.ons.gov.uk/external-affairs/crime-consultation/supporting_documents/202122_CSEW_Adult_Questionnaire.docx)

588 See: Sullivan, A. (2021), *Sex and the Office for National Statistics: A Case Study in Policy Capture*, *The Political Quarterly*, Vol. 92 (4). <https://onlinelibrary.wiley.com/doi/epdf/10.1111/1467-923X.13029>

589 UK Data Service (online), *Mayor's Office for Policing And Crime Public Attitude Survey, 2015-2022*. <https://beta.ukdataservice.ac.uk/datacatalogue/studies/study?id=7048>

590 Mayor's Office for Policing and Crime and the Metropolitan Police Service (online), *MOPAC Public Attitude Survey 2015-17: Data Dictionary* (page 474). [https://web.archive.org/web/20240809084030/https://doc.ukdataservice.ac.uk/doc/7048/mrdoc/pdf/7048\\_pas\\_sharing\\_external\\_data\\_dictionary\\_1517.pdf](https://web.archive.org/web/20240809084030/https://doc.ukdataservice.ac.uk/doc/7048/mrdoc/pdf/7048_pas_sharing_external_data_dictionary_1517.pdf)

591 Mayor's Office for Policing and Crime and the Metropolitan Police Service (2022), *Public Attitude Survey (PAS) 2022-23 – Q4 script* (page 39). <https://tinyurl.com/hh8ywf6>

592 Metropolitan Police Service (2011), *Metropolitan Police Service APACS Scrip*. (page 31). [https://web.archive.org/web/20240809085041/https://doc.ukdataservice.ac.uk/doc/7084/mrdoc/pdf/7084\\_uss\\_questionnaire\\_2011-12.pdf](https://web.archive.org/web/20240809085041/https://doc.ukdataservice.ac.uk/doc/7084/mrdoc/pdf/7084_uss_questionnaire_2011-12.pdf)

593 Opinion Research Services (2018), *MOPAC Public Attitude Survey 2017-18. Technical Report. Quarter 52* (page 56).

[https://web.archive.org/web/20240809085720/https://doc.ukdataservice.ac.uk/doc/7048/mrdoc/pdf/7048\\_pas\\_technical\\_report\\_q4\\_2017-18\\_final.pdf](https://web.archive.org/web/20240809085720/https://doc.ukdataservice.ac.uk/doc/7048/mrdoc/pdf/7048_pas_technical_report_q4_2017-18_final.pdf)

594 Metropolitan Police Service (2012), *Changes in USS methodology & context* (page 1). [https://doc.ukdataservice.ac.uk/doc/7084/mrdoc/pdf/7084\\_uss\\_changes.pdf](https://doc.ukdataservice.ac.uk/doc/7084/mrdoc/pdf/7084_uss_changes.pdf)

595 Mayor's Office for Policing and Crime (2021), *MOPAC User Satisfaction Survey* (page 15). [https://ia800208.us.archive.org/23/items/mopac-uss-2122-questionnaire-final-circulation/MO-PAC\\_USS\\_2122\\_Questionnaire\\_FINAL\\_circulation.pdf](https://ia800208.us.archive.org/23/items/mopac-uss-2122-questionnaire-final-circulation/MO-PAC_USS_2122_Questionnaire_FINAL_circulation.pdf)

596 Mayor's Office for Policing and Crime (2022), *MOPAC User Satisfaction Survey. Q1-4 2022-23* (page 16).

[https://ia800208.us.archive.org/20/items/mopac-uss-2223-questionnaire-final-circulation/MOPAC\\_USS\\_2223\\_Questionnaire\\_FINAL\\_circulation.pdf](https://ia800208.us.archive.org/20/items/mopac-uss-2223-questionnaire-final-circulation/MOPAC_USS_2223_Questionnaire_FINAL_circulation.pdf)

### MOPAC Telephone Digital Investigation Unit Survey

The MOPAC Telephone Digital Investigation Unit Survey (TDIU) began in 2020. The survey collects data from victims of high-volume crime about their experience of reporting crime, either online or by telephone, to the MPS Telephone and Digital Investigation Unit.

We could not locate the 2020 questionnaire, however given the trends outlined above, it is unlikely that this asked about binary sex. Consistent with the USS, in 2021/22 questionnaire asked, ‘which gender do you most identify with?’, with female, male, non-binary, transgender, other (please specify), and ‘prefer not to say’ response options.<sup>597</sup> The following year, again consistent with changes to the PAS and USS, the survey asked, ‘**what is your sex**’ (male, female, other).<sup>598</sup>

### Police Scotland ‘Your Police’ survey

The annual Police Scotland ‘Your Police’ survey asks people about a range of topics, including how safe they feel in their local area, their concerns about crime, confidence in local policing, and experiences of victimisation.<sup>599</sup> The survey only collects data on gender identity,<sup>600</sup> asking ‘**which best describes you**’, with **man, woman, non-binary/gender neutral, other [please specify]** response options. In response to a query about the lack of a sex question from a member of the public, Police Scotland stated:

‘As we don’t deliver services where the physical sex characteristics of a person would change how we deliver those services, e.g. health services, we do not need to know someone’s biological sex characteristics. What is important, is how they identify their gender.’<sup>601</sup>

597 Mayor’s Office for Policing and Crime (2021), *MOPAC TDIU Survey 2021/2022* (page 8). [https://ia600208.us.archive.org/24/items/mopac-tdiu-2122-questionnaire-final-circulation/MO-PAC\\_TDIU\\_2122\\_Questionnaire\\_FINAL\\_circulation.pdf](https://ia600208.us.archive.org/24/items/mopac-tdiu-2122-questionnaire-final-circulation/MO-PAC_TDIU_2122_Questionnaire_FINAL_circulation.pdf)

598 Mayor’s Office for Policing and Crime (2022), *MOPAC TDIU Survey 2023/2023* (page 8). <https://tinyurl.com/ya47u5bp>

599 Police Scotland (2024), *Your Police 2024-2025*. <https://consult.scotland.police.uk/strategy-insight-and-innovation/your-police-2024-2025/>

600 Police Scotland (2024), *Your Police 2024-2025 questionnaire*. [https://web.archive.org/web/20240520115246/https://consult.scotland.police.uk/strategy-insight-and-innovation/your-police-2024-2025/supporting\\_documents/Police\\_Scotland\\_Your\\_Police\\_survey\\_202425.docx](https://web.archive.org/web/20240520115246/https://consult.scotland.police.uk/strategy-insight-and-innovation/your-police-2024-2025/supporting_documents/Police_Scotland_Your_Police_survey_202425.docx)

601 See: MurrayBlackburnMackenzie (2021), *Whose views count? Losing sight of sex in the Police Scotland ‘Your Police’ survey*. <https://murrayblackburnmackenzie.org/2021/08/25/whose-views-count-losing-sight-of-sex-in-the-police-scotland-your-police-survey/>

# Chapter 10: Education and early years

This chapter reviews a range of administrative and survey data on education, early years, and looked after children. The review shows that definitions used by data producers in this area include sex subject to GRC, self-identified gender identity, and sex based on documents such as passports.

Data gathered in early years and education settings is critical for understanding how differences based on sex evolve over the life course, how early differences emerge, and what factors influence differentials in the life course. Administrative data sets are often combined with one another, or with data from other settings to build a longitudinal picture. For example, the UK government Longitudinal Earnings Outcomes (LEO) linked dataset brings together data for individuals from the National Pupil Database, Individualised Learner Records, the Higher Education Statistics Agency data and HMRC and the DWP, to provide detailed information on the relationship between graduate earnings, earlier educational experiences and other characteristics.<sup>602</sup> The results show very large differences, on average, between men and women, with the scale of difference varying within sub-groups of the graduate population. Inconsistency and lack of clarity in what data is being gathered for variables described as ‘sex’ or ‘gender’ in educational and early years administrative datasets poses challenges for data linkage and harmonisation. More broadly, losing stable and reliable data on sex reduces the ability to analyse effects by sex.

Early results from the England and Wales Census in 2021, and the Scottish Census in 2022, show that younger people are substantially more likely to report a transgender identity. The Scottish Census established that just over 1.5% of those aged between 16 and 24 declared this, with the highest total population figures in the four cities, which also have the highest density of post-school education providers. The highest total population figure was in Dundee (0.91%).<sup>603</sup> These age-effects mean that data in educational settings is more likely to produce different results, depending on whether sex or self-identified gender is collected, than is data for the population as a whole. It therefore cannot be assumed that any difference between the results for sex and for self-identified gender identity,

or loss of ability to track individuals or link records, will always be too small to have a significant effect on results in this domain.

The chapter traces in detail the loss of data on sex in staff and student records collected by the Higher Education Statistics Agency (HESA) and shows how this was influenced by the HE charity Advance HE (formerly the Equality Challenge Unit). Despite recent tightening of its guidance, HESA continues to collect staff and student records that conflate sex and gender identity. We also analyse the quantifiable impact of the decision by the University and College Admissions Service to cease asking a binary male/female question and move explicitly to a single self-identified gender identity variable in the 2024 application round, using figures released from the current application cycle. We show that this has an uneven effect on the data according to age, and that this is having, and will continue to have, visible effects on any new data UCAS now publishes for women and men separately, affecting any comparisons made with previous years, in particular.

The different experiences and choices of girls and boys at the point of leaving school and university application has historically been seen as a key determinant of later differences in life, not least in earnings. The data already available from UCAS illustrates how any real change in applicant behaviour or experience related to sex in this context will become much harder to research accurately. Significant sex-based effects could either be missed, because they are wrongly assumed to be due to changing practices in self-identification, or conversely wrongly inferred, as the data has become impossible to read reliably for sex-based effects. The combined loss of clarity in HESA and UCAS data threatens a reduction in the ability to understand how inequalities based on sex play out in the context of higher education, particularly where data is examined at a more detailed level, involving smaller sub-groups.

Due to the concentration of relevant cases, and well-established sex-based effects, post-school education is, further, a domain where having clear data both on sex and transgender status would allow good quality comparative analysis of the effects of each and their interaction.

<sup>602</sup> Department for Education (2016), *Graduate outcomes: longitudinal education outcomes (LEO) data*. <https://archive.is/G2lU9>

<sup>603</sup> Scottish Government (2024), *Scotland's Census 2022 - Sexual orientation and trans status or history*. <https://archive.is/EgqW#selection-517.0-517.71>

The review below shows a wide range of practices and a lack of clarity regarding data collection on sex throughout the education sector. As in previous chapters, the datasets are grouped according to the way that sex and/or gender is captured and recorded. For additional details on Welsh Government Children's social care statistics, see the Welsh Government Chief Statisticians response in appendix two.

## 10.1 Education and early years administrative data

### Sex, no definition (male, female)

#### Further Education Sector Activity in Northern Ireland

These NISRA statistics present information on enrolment and student activity in FE Colleges in Northern Ireland.<sup>604</sup> The accompanying data tables covering 2017/18 to 2021/22 note the 'term gender has now been replaced by the term **sex**'.<sup>605</sup> The tables present data on **male and female** students. We could not find information on how sex is recorded in FE college applications.

#### Individualised Learner Records, England

The Individualised Learner Record (ILR) is administrative data collected from education providers for adults aged 19 or over in further and vocational education. Information is submitted to the Education and Skills Funding Agency (EFSA) including data on attainment, funding, and learner characteristics. The ILR is the main data source used to produce Further Education publications and also used to fund FE providers.<sup>606</sup> This includes statistics on apprenticeships, which are based on ILR data returns from FE and apprenticeship providers and are accredited Official Statistics.<sup>607</sup>

The **sex** field in the 2024 ILR is required for all learners with **male and female** categories. An additional note states that whilst there is an interest in collecting data on gender identity, ethnicity, sexual orientation and

other characteristics, there is not an operational need and that adding items would create an administrative burden.<sup>608</sup>

#### Summary Statistics for Schools in Scotland



These accredited statistics bring together data from the annual pupil, teacher and early learning and childcare provision censuses, collected from all Local Authority and Grant-aided schools and school centres. Data collected separately and biennially on attendance, absence and exclusions is also included.<sup>609 610</sup> The current series is available from 2013.<sup>611</sup>

Until 2016, figures for pupils' characteristics presented data on 'gender' (male or female). They were shown as male or female with no descriptor between 2017 and 2021. Since 2022, they have been presented as '**sex**', **male or female**. The variable collected in the school census is now termed 'sex' and the guidance states, 'The data required here represents binary sex, so a value of M or F must be provided.'<sup>612</sup> No further guidance is published.

Data on attendance, absence and exclusions is also now shown by 'sex', male or female, but is still collected in the same two categories as 'gender'.<sup>613</sup> In 2019, data on attendance and absence was shown by 'sex', but data on exclusions was presented as separated by 'gender', while the supporting text for all three referred to data collected by sex.<sup>614</sup>

Results for teachers have been shown by 'sex' (female or male) since 2019. No guidance is published on how this is defined. Prior to that, the data was described as 'gender'. In 2014, an 'unknown' category was introduced, which was included until 2019, but only two such cases have ever been reported, in early learning provision, in 2014 only.

604 NISRA (2022), *Further Education Sector Activity in Northern Ireland: 2017/18 to 2021/22*. <https://www.economy-ni.gov.uk/publications/further-education-sector-activity-northern-ireland-201718-202122>

605 NISRA (2022), *Further education sector activity in Northern Ireland: 2017/18 to 2021/22: Data Tables* (See: Metadata: line 195-196).

<https://www.economy-ni.gov.uk/sites/default/files/publications/economy/further-education-sector-activity-in-northern-ireland-2017-18-to-2021-22-tables-accessibility-checked.xlsx>

606 See: Department for Education (2023), *Further education and skills statistics: methodology* (Data sources: Individualised Learner Record). <https://explore-education-statistics.service.gov.uk/methodology/further-education-and-skills-statistics-methodology#content-section-3-content-4>

607 Department for Education (2024), *Apprenticeships* ('About these statistics'). <https://explore-education-statistics.service.gov.uk/find-statistics/apprenticeships/2023-24>

608 Department for Education (2024), *ILR specification: 2024 to 2024 Sex: Field*. <https://guidance.submit-learner-data.service.gov.uk/24-25/ilr/entity/Learner/field/Sex>

609 Scottish Government (online), *School attendance and absence statistics*. <https://archive.is/WaOaa>

610 Scottish Government (online), *School exclusion statistics*. <https://archive.is/rxBmp>

611 Scottish Government (online), *School education statistics*. <https://archive.is/53QCc>

612 Scottish Government (online), *Scottish Exchange of Data: school-pupil census*. <https://archive.is/4IQ5>

613 Scottish Government (online), *Scottish Exchange of Data: attendance, absence and exclusions*. <https://archive.is/QxH9X>

614 Scottish Government (2019), *Summary statistics for schools in Scotland*. <https://www.gov.scot/binaries/content/documents/govscot/publications/statistics/2019/12/summary-statistics-schools-scotland-no-10-2019-edition/documents/summary-statistics-schools-scotland/summary-statistics-schools-scotland/govscot%3Adocument/summary-statistics-schools-scotland.pdf>

## Sex based on documents (male, female, other)

### Higher Education Statistics Agency 2003/4 to 2023/24

The Higher Education Statistics Agency (HESA) collects and disseminates data on Higher Education (HE).<sup>615</sup> HESA data is used for a range of purposes, including funding, performance indicators, and research. HE providers are required to submit records on staff and students to HESA, including data on sex.<sup>616</sup>

Between 2003/4 and 2023/24, HESA made multiple changes to the definition of sex for the purposes of staff and student records. Between 2003/4 and 2007/8 HESA required binary data for staff records, labelled 'gender', with no further explanation (bar the 'unknown' category). Student records followed a similar format up to 2006/7. In 2007/8 HESA introduced a biological definition of sex for student records, with an 'indeterminate' category for those with 'intersex' medical conditions. Staff records moved to a biological definition in the following year. Both sets retained the 'gender' label.

In 2012/13 HESA rebadged both sets of records as 'sex'. For staff, HESA introduced a 'legal sex' record, intended to align with HMRC data requirements. For students, HESA introduced a self-identified 'sex' record, with an additional 'other' category to capture gender identity:

'The use of 'other' is more appropriate for people who associate with the terms intersex, androgyne, intergender, ambigender, gender fluid, polygender and gender queer.'<sup>617</sup>

The change was made on the recommendation of the Equality Challenge Unit,<sup>618</sup> coupled with external lobbying. As one academic explained, an 'impressive lobbying campaign in which trans people and allies emailed and tweeted HESA to explain our concerns has now led to a change in policy'.<sup>619</sup> Whilst described as being intended 'to reflect the requirements of the Equality Act 2010 and the Public Sector Equality Duty',<sup>620</sup> the new student record did not align with the definition of sex in the Act.

HESA extended the self-identified format to staff records in 2017/18, thereby making the data unsuitable for HMRC returns. To address this, HESA recommended HE providers 'ask staff about sex in two separate surveys at two separate points in time to avoid any confusion,' thus increasing the administrative burden on institutions.<sup>621</sup> In 2020/21 HESA dropped the complex guidance accompanying the 'other' category for both staff and students, leaving this open to interpretation.

In 2021 HESA consulted on a sex question recommended by Advance HE, with female, male, and 'other' response categories.<sup>622</sup> The consultation identified several concerns with the proposed approach, including a lack of options for those who did not want to provide information, the conflation of sex and gender, and risk of data subjects feeling forced to out themselves.<sup>623</sup>

In 2022/23 HESA introduced a data standard for staff and student records, described as legal sex.<sup>624</sup> Accompanying guidance explained, however, that this referred to sex as recorded on 'legal documents', including passports, which can be amended without changing sex for any purpose in law.<sup>625</sup> The new standard also includes an 'other' category intended for those with a 'third sex' legally recognised by another country. The above changes for staff and students are shown in Table 11.

615 Higher Education Statistics Agency (online), *Statutory customers*.

<https://www.hesa.ac.uk/about/what-we-do/statutory-customers>

616 Higher Education Statistics Agency (online), *Introduction to data on HE staff*.

<https://www.hesa.ac.uk/data-and-analysis/staff/introduction#:~:text=HE%20providers%20currently%20submit%20an,in%20September%20to%20November%202023.>

Higher Education Statistics Agency (online), *Introduction to data on HE students*.

<https://www.hesa.ac.uk/data-and-analysis/students/introduction>

617 Higher Education Statistics Agency (online), *HESA Student Record 2012/13*.

<https://www.hesa.ac.uk/collection/c12051/a/sexid>

618 Higher Education Statistics Agency (2011), *Background – New legislation*. <https://web.archive.org/web/20120716212300/http://www.hesa.ac.uk/index.php/content/view/2118/>

619 Pearce, R. (2012), *Gender statistic guidelines revised by HESA*.

<https://web.archive.org/web/20200930085733/https://ruthpearce.net/2012/04/02/gender-statistic-guidelines-revised-by-hesa/>

620 Higher Education Statistics Agency (2012), *Changes to Gender in the Student Record*. Freedom of Information response.

[https://www.whatdotheyknow.com/request/changes\\_to\\_gender\\_in\\_the\\_student](https://www.whatdotheyknow.com/request/changes_to_gender_in_the_student)

621 Higher Education Statistics Agency (online), *Staff 2017/18*.

<https://www.hesa.ac.uk/collection/c17025/a/sexid>

622 Higher Education Statistics Agency (2021), *Personal Characteristics and Equality data consultation* (page 41).

[https://www.hesa.ac.uk/files/HESA\\_personal\\_characteristics\\_equality\\_data\\_consultation.pdf](https://www.hesa.ac.uk/files/HESA_personal_characteristics_equality_data_consultation.pdf)

623 Higher Education Statistics Agency (online), *Data protection considerations for fields*.

<https://www.hesa.ac.uk/innovation/records/reviews/data-protection-considerations-fields#sex-identifier-sexid>

624 Higher Education Statistics Agency (online), *Staff 2022/23*. <https://www.hesa.ac.uk/collection/c22025/a/sexid>

625 A person can apply to change the gender marker on a passport without acquiring a Gender Recognition Certificate.

Table 11. HESA Student and staff gender and sex records, 2003/4 to 2023/24626

Year	Student records	Staff records
2003/4	<p><b>Gender:</b> Male, Female</p> <p>This field identifies the gender of the student.</p>	<p><b>Gender:</b> Male, Female</p> <p>This field identifies the gender of the member of staff.</p>
2004/5		<p><b>Gender:</b> Male, Female, Unknown*</p> <p>This field identifies the gender of the member of staff.</p>
2005/6		
2006/7		
2007/8	<p><b>Gender:</b> Male, Female, Indeterminate</p> <p>This field identifies the gender of the student.  <b>The definition of gender is intended to be classification of (biological) sex...</b>            'Indeterminate' means unable to be classified as either male or female. It should not be used as a substitute or proxy for 'Not known'. The term 'indeterminate gender' is intended to identify those who are <b>'intersex'</b> and is not related in any way to trans-gender</p>	<p><b>Gender:</b> Unknown*, Male, Female, Indeterminate</p> <p>This field identifies the gender of the member of staff. The definition of gender is intended to be classification of (biological) sex.</p> <p>Atypical staff (staff who hold atypical contracts only) are the only staff for whom the unknown code can be used, in the very exceptional cases where gender has not been recorded within the institution and there is no longer any contact with the member of staff...</p>
2008/9		
2009/10		
2010/11		
2011/12		

HESA student and staff records 2/3.<sup>627</sup>

626 Higher Educations Statistics Authority:

Student 2003/4. [https://www.hesa.ac.uk/files/Student\\_2003-04\\_c03011.pdf#page=24](https://www.hesa.ac.uk/files/Student_2003-04_c03011.pdf#page=24)  
 Student 2004/5. [https://www.hesa.ac.uk/files/manuals/student\\_2004-05\\_c04012.pdf#page=24](https://www.hesa.ac.uk/files/manuals/student_2004-05_c04012.pdf#page=24)  
 Student 2005/6. [https://www.hesa.ac.uk/files/manuals/student\\_2005-06\\_c05012.pdf#page=24](https://www.hesa.ac.uk/files/manuals/student_2005-06_c05012.pdf#page=24)  
 Student 2006/7. [https://www.hesa.ac.uk/files/manuals/student\\_2006-07\\_c06011.pdf#page=24](https://www.hesa.ac.uk/files/manuals/student_2006-07_c06011.pdf#page=24)  
 Student 2007/8. <https://www.hesa.ac.uk/collection/c07051/a/gender>  
 Student 2008/9. <https://www.hesa.ac.uk/collection/c08051/a/gender>  
 Student 2009/10. <https://www.hesa.ac.uk/collection/c09051/pdf/c09051.pdf>  
 Student 2010/11. <https://www.hesa.ac.uk/collection/c10051/a/gender>  
 Student 2011/12. <https://www.hesa.ac.uk/collection/c11051/a/gender>  
 Staff 2003/4. [https://www.hesa.ac.uk/files/manuals/staff\\_2003-04\\_c03025.pdf#page=8](https://www.hesa.ac.uk/files/manuals/staff_2003-04_c03025.pdf#page=8)  
 Staff 2004/5. [https://www.hesa.ac.uk/files/manuals/staff\\_2004-05\\_c04025.pdf#page=8](https://www.hesa.ac.uk/files/manuals/staff_2004-05_c04025.pdf#page=8)  
 Staff 2005/6. [https://www.hesa.ac.uk/files/manuals/staff\\_2005-06\\_c05025.pdf#page=9](https://www.hesa.ac.uk/files/manuals/staff_2005-06_c05025.pdf#page=9)  
 Staff 2006/7. [https://www.hesa.ac.uk/files/manuals/staff\\_2006-07\\_c06025.pdf#page=12](https://www.hesa.ac.uk/files/manuals/staff_2006-07_c06025.pdf#page=12)  
 Staff 2007/8. [https://www.hesa.ac.uk/files/manuals/staff\\_2007-08\\_c07025.pdf#page=12](https://www.hesa.ac.uk/files/manuals/staff_2007-08_c07025.pdf#page=12)  
 Staff 2008/9. [https://www.hesa.ac.uk/files/manuals/staff\\_2008-09\\_c08025.pdf#page=12](https://www.hesa.ac.uk/files/manuals/staff_2008-09_c08025.pdf#page=12)  
 Staff 2009/10. [https://www.hesa.ac.uk/files/manuals/staff\\_2009-10\\_c09025.pdf#page=12](https://www.hesa.ac.uk/files/manuals/staff_2009-10_c09025.pdf#page=12)  
 Staff 2010/11. [https://www.hesa.ac.uk/files/manuals/staff\\_2010-11\\_c10025.pdf#page=12](https://www.hesa.ac.uk/files/manuals/staff_2010-11_c10025.pdf#page=12)  
 Staff 2011/12. [https://www.hesa.ac.uk/files/staff\\_2011-12\\_c11025.pdf#page=12](https://www.hesa.ac.uk/files/staff_2011-12_c11025.pdf#page=12)

627 Higher Educations Statistics Authority:

Student 2012/13. <https://www.hesa.ac.uk/collection/c12051/a/sexid>  
 Student 2013/14. <https://www.hesa.ac.uk/collection/c13051/a/sexid>  
 Student 2014/15. <https://www.hesa.ac.uk/collection/c14051/a/sexid>  
 Student 2015/16. <https://www.hesa.ac.uk/collection/c15051/a/sexid>  
 Student 2016/17. <https://www.hesa.ac.uk/collection/c16051/a/sexid>  
 Student 2017/18. <https://www.hesa.ac.uk/collection/c17051/a/sexid>  
 Student 2018/19. <https://www.hesa.ac.uk/collection/c18051/a/sexid>  
 Student 2019/20. <https://www.hesa.ac.uk/collection/c19051/a/sexid>  
 Staff 2012/13. <https://www.hesa.ac.uk/collection/c12025/a/sex>  
 Staff 2013/14. <https://www.hesa.ac.uk/collection/c13025/a/sex>  
 Staff 2014/15. <https://www.hesa.ac.uk/collection/c14025/a/sex>  
 Staff 2015/16. <https://www.hesa.ac.uk/collection/c15025/c/sex>  
 Staff 2016/17. <https://www.hesa.ac.uk/collection/c16025/a/sex>  
 Staff 2017/18. <https://www.hesa.ac.uk/collection/c17025/a/sexid>  
 Staff 2018/19. <https://www.hesa.ac.uk/collection/c18025/a/sexid>  
 Staff 2019/20. <https://www.hesa.ac.uk/collection/c19025/a/sexid>

Year	Student records	Staff records
2012/13		<p><b>Legal sex:</b> Male, Female</p> <p>This field records the <b>legal sex</b> of the member of staff.</p>
2013/14		
2014/15		
2015/16		
2016/17		
2017/18		
2018/19		
2019/20	<p><b>Sex identifier:</b> Male, Female, Other</p> <p>ECU recommends the use of the terms ‘other’ and ‘prefer not to say’ for people who associate with the terms <b>intersex, androgynous, intergender, ambigender, gender fluid, polygender and genderqueer</b>. HESA do not include a ‘prefer not to say’ option.</p>	<p><b>Legal sex:</b> Male, Female, Other</p> <p>While the ECU recommends the use of the terms ‘<b>other</b>’ and ‘<b>prefer not to say</b>’ for people who associate with the terms <b>intersex, androgynous, intergender, ambigender, gender fluid, polygender and genderqueer</b>, HESA do not include a ‘prefer not to say’ option.</p> <p>HE providers should therefore provide staff with the options of Male, Female and Other. This aligns with the Student Record.</p> <p>HESA are aware that providers, for the reporting requirements for the HMRC, can only state whether a person is ‘Male’ or ‘Female’. It is therefore no longer possible to ask staff one question about sex, as staff who select ‘Other’ cannot be reported to the HMRC.</p> <p>We would recommend that providers ask staff about sex in two separate surveys at two separate points in time to avoid any confusion.</p>
2020/21	<p><b>Sex identifier:</b> Male, Female, Other</p> <p>This field records the sex of the student.</p>	<p><b>Legal sex:</b> Male, Female, Other</p> <p>This field records the sex of the member of staff. HESA are aware that providers, for the reporting requirements for the HMRC, can only state whether a person is ‘Male’ or ‘Female’.</p> <p>It is therefore no longer possible to ask staff one question about sex, as staff who select ‘Other’ cannot be reported to the HMRC. <b>We would recommend that providers ask staff about sex in two separate surveys</b> at two separate points in time to avoid any confusion.</p>
2021/22		

HESA student and staff records 3/3.<sup>628</sup>

628 Higher Education Statistics Authority:  
 Student 2020/21. <https://www.hesa.ac.uk/collection/c20051/a/sexid>  
 Student 2021/22. [https://www.hesa.ac.uk/collection/22056/datadictionary?element=Student\\_SEXID](https://www.hesa.ac.uk/collection/22056/datadictionary?element=Student_SEXID)  
 Student 2022/23. [https://www.hesa.ac.uk/collection/23056/datadictionary?element=Student\\_SEXID](https://www.hesa.ac.uk/collection/23056/datadictionary?element=Student_SEXID)  
 Student 2023/24. <https://codingmanual.hesa.ac.uk/22056/Student/field/SEXID/>  
 Staff 2020/21. <https://www.hesa.ac.uk/collection/c20025/a/sexid>  
 Staff 2021/22. <https://www.hesa.ac.uk/collection/c20025/a/sexid>  
 Staff 2022/23. <https://www.hesa.ac.uk/collection/c22025/a/sexid>  
 Staff 2023/24. <https://www.hesa.ac.uk/collection/c23025/a/sexid>

Year	Student records	Staff records
2022/23		<p><b>Legal sex:</b> Male, Female</p>
2023/24	<p><b>Sex identifier:</b> Female, Male, Other, Information refused, Not available</p> <p>This question is vital for equality monitoring in Higher Education. The SEXID field records the sex of the data subject. Respondents considering how to answer should use the <b>sex recorded on one of their legal documents such as birth certificate, Gender Recognition Certificate, or passport.</b> If there is any conflict, the newest document should be referenced.</p> <p>Providers are not expected to verify the sex of every student although they must make reasonable efforts to ensure that in aggregate the data for the provider is accurate.</p> <p>It is recommended that the question regarding sex is asked alongside those relating to gender identity (see GENDERID) and transgender status (see TRANS).</p>	<p>Staff should be presented with this question every year. <b>This question is vital for equality monitoring</b> in Higher Education. The SEXID field records the <b>sex</b> of the data subject. Respondents considering how to answer should use the <b>sex recorded on one of their legal documents such as birth certificate, Gender Recognition Certificate or passport.</b> If there is any conflict, the newest document should be referenced.</p> <p>Providers are not expected to verify the sex of every staff member, although they must make reasonable efforts to ensure that in aggregate the data for the provider is accurate.</p> <p><b>‘Other’:</b> this code should only be used only for a <b>third sex that is legally recognised by another country</b> - this will recognise the scenarios where, for example, an international staff member has a legal sex other than male or female.... HESA will not be restricting use of this code to specific nationalities.</p> <p><b>‘Information refused’:</b> this code should be used where the data subject explicitly states that they do not want to provide the information. As data on sex is fundamental to use of the data it is expected that the ‘information refused’ option is not presented to the data subject by default.</p> <p><b>‘Not available’:</b> this code should be used in cases where it is not possible to supply the information (such as a cyber-attack). This option should not be presented to data subjects.</p> <p>This question should be asked alongside the Gender Identity or Transgender questions.</p>



## Sex subject to GRC (male, female)

Where this approach has been adopted for gathering data on any group whose member must by definition be under 18, it should be noted that it has no practical difference to sex as recorded at birth, as Gender Recognition Certificates are not available to people under 18.

### Children in Need statistics, England

The Children in Need census is an annual data collection by the Department for Education (DfE). Data items are collected from local authorities, including child characteristics, referrals to children's social care services, assessments, and child protection plans and reviews.<sup>629</sup> The census is a statutory requirement under Section 83 of the Children Act 1989.

Guidance published by the DfE for the 2023/24 census instructed local authorities to record 'gender', (male, female, indeterminate).<sup>630</sup> <sup>631</sup> This stated that the indeterminate category is intended for use 'when the child is unable to be classified as either male or female'.

The 2024/25 census will collect data on sex, '**as recorded on a birth certificate or on a gender recognition certificate**' (male, female).<sup>632</sup> This is in line with changes to the Common Basic Data Set specifications, detailed next.

### Common Basic Data Set (CBDS) database, Department for Education

The CBDS is a Department for Education (DfE) file containing definitions for common data items used by schools and local authorities in certain software systems, including school management information systems.

In 2023 the DfE introduced new mandatory data items capturing **sex subject to GRC (male, female, unknown)**, replacing items on gender. It also introduced a voluntary item on gender identity for local use in schools, defined as 'a person's inner concept of self as male, female, neither or a blend of both'. A DfE note explaining the change stated:<sup>633</sup>

The DfE has been aware for some time that its data conflates 'sex' and 'gender' in a way that is both ambiguous and confusing. There are growing numbers of reports of children and young people

identifying as a gender other than the one they were assigned at birth and institutions are asking for departmental guidance on recording this data. Questions have been raised in parliament and in the press about the department's data on gender and sex and the apparent ambiguities in this.

In light of these pressures the department has reviewed its data standards. Without new standards, there would be a risk that areas of the department could begin collecting data on these areas in an uncoordinated manner, leading to future problems in data compatibility.

The approach outlined in this business case combines guidance from the ONS and GEO and takes into account:

- the High Court judgements on the ONS Census guidance;
- The UK Statistics Authority's Inclusive Data Taskforce recommendation of September 2021 that 'Sex... should be routinely collected and reported in all administrative data and in-service process data'. It further recommends 'clearly distinguishing between concepts such as sex, gender and gender identity.'

### Pupil level annual school census (PLASC), Wales

The Welsh Government Pupil Level Annual School Census (PLASC) was established in 2003. Pupil and school level data is provided by all maintained sector primary, middle, secondary, nursery and special schools in January each year.<sup>634</sup>

Up to 2023, the PLASC collected data labelled gender (male, female) without further definition, although Technical guidance published in the same year stated this was under review:<sup>635</sup>

'There are ongoing considerations on recording and collecting an individual's sex, gender identity, national identity and ethnicity in a better way. This work has included discussions with the Office for National Statistics (ONS), the Government Equalities Office (GEO) and the Department for Education (DfE) to ensure there

629 Department for Education (online), *Children in need*.

630 Department for Education (2024), *Children in need census 2023 to 2024. Guide for local authorities – version 1.0*.

[https://assets.publishing.service.gov.uk/media/63580a54d3bf7f0bd6f517aa/Children\\_in\\_need\\_census\\_2023\\_to\\_2024\\_guide\\_v1.0.pdf](https://assets.publishing.service.gov.uk/media/63580a54d3bf7f0bd6f517aa/Children_in_need_census_2023_to_2024_guide_v1.0.pdf)

631 Department for Education (online), *CIN-Gender*.

[https://www.find-npd-data.education.gov.uk/data\\_elements/4d77da0d-8856-475b-b9b1-66c2bf01a052](https://www.find-npd-data.education.gov.uk/data_elements/4d77da0d-8856-475b-b9b1-66c2bf01a052)

632 Department for Education (2023), *Children in need census 2024 to 2025. Guide for local authorities – version 1.0*. (para.2.7).

[https://assets.publishing.service.gov.uk/media/65256511244f8e000d8e734e/Children\\_in\\_need\\_census\\_2024\\_to\\_2025\\_guide\\_V1.1.pdf](https://assets.publishing.service.gov.uk/media/65256511244f8e000d8e734e/Children_in_need_census_2024_to_2025_guide_V1.1.pdf)

633 Department for Education (2023), *Data Operations - request for change form for CBDS RFC 1233* (page 3).

<https://assets.publishing.service.gov.uk/media/642bf367fbc620000f17dbc7/CBDS RFC 1233 - Sex and Gender Identity.pdf>

634 StatsWales (online), *Pupil Level Annual School Census (PLASC)*.

<https://statswales.gov.wales/Catalogue/Education-and-Skills/Schools-and-Teachers/Schools-Census/Pupil-Level-Annual-School-Census>

635 Welsh Government (2023), *Pupil Level Annual School Census (PLASC) Census day: 16 January 2024. Technical completion notes*. (para. 3.1).

<https://www.gov.wales/sites/default/files/publications/2023-01/pupil-level-annual-school-census-plasc-technical-completion-notes.pdf>

is a considered and compatible harmonised standard being used by all organisations. This will likely result in changes to how these will be recorded in future collections’.

As of January 2024, the Welsh Government replaced the gender with a sex variable and provided an optional provision for schools to record gender identity for local use (this is not recorded centrally). The 2024 guidance for schools confirms that the sex variable captures **sex subject to GRC (male, female)**:<sup>636</sup>

‘identifies the sex of a person as recognised in law, being that which is recorded on a Birth Certificate or a Gender Recognition Certificate (for individuals over 18 and have lived in their acquired gender for more than two years), using M or F as the available options’.

For further details on the introduction of the sex variable in PLASC and other educational datasets, see appendix two (Welsh Government Chief Statistician’s Written Response).

## Sex, self-identified (male, female)

### Student Support for Higher Education England/ Northern Ireland/Wales

The Student Loans Company (SLC) issues student loans for students from all parts of the UK. It also provides other forms of national student support for students domiciled in England, Northern Ireland and Wales only, and publishes associated statistics for each of these parts of the UK.<sup>637</sup> The published figures do not provide any information on sex or gender, so SLC data recording is only relevant where it provides information on request.

Loan applications are handled through separate on-line student finance portals for England, Northern Ireland and Wales. All three systems collect data from applicants on ‘**sex**’ as either ‘**male**’ or ‘**female**’.<sup>638</sup> No definition is provided.<sup>639</sup> Applicants for student support from England are advised, ‘If you want to

change your gender (sic) on your account, we don’t need any documents or evidence.’<sup>640</sup> It is unclear how long this has been the case. There is no similar specific guidance or process for applicants from Wales and Northern Ireland, but applicants appear able to change their classification as male/female using a general ‘change of circumstance’ process

### Higher Education Student Support in Scotland

The Student Support Agency Scotland (SAAS) publishes annual statistics on student support issued to Scottish-domiciled students in HE, including student loan applications it receives and passes to the SLC.<sup>641</sup> These include some limited analysis by ‘male’ and ‘female’, but like the SLC, its data recording and reporting practices will mainly affect data provided on request.

Applicants must state their ‘**sex**’ as ‘**male**’ or ‘**female**’. As above, no definition is provided, but applicants can alter their male/female classification in their student support records. Again, it is unclear how long this has been the case. The process is referred to as a change of ‘gender’ and can be supported by any document showing status as male or female. The form notes:

‘We appreciate that these options may not accurately reflect your identity. However it is currently a requirement of our systems and other partner organisations to hold one of these options. Please select the option you feel most comfortable with. We continue to work towards allowing other options to become available to our students.’<sup>642</sup>

### Scottish Funding Council Further Education Statistics

The Scottish Funding Council’s (SFC) Further Education Statistics (FES) series collects data on students from further education colleges in Scotland, including data on personal characteristics. These statistics are the only source of information on students’ sex for Scottish colleges. They are also submitted to Skills Development Scotland’s ‘Opportunities for All’ database, which

636 Welsh Government (2024), *Pupil Level Annual School Census (PLASC) Census day: 16 January 2024. Technical completion notes.* (para. 2.2). <https://www.gov.wales/sites/default/files/publications/2024-02/technical-completion-notes-for-local-authorities-and-schools-2023-2024-v2.pdf>

637 Student Loans Company (online), *Student support for higher education (HE)*. <https://archive.is/k8FVD>

638 Student Finance England (online), *Student finance forms 2023-24*. <https://archive.is/ZP36I>

Student Finance Northern Ireland (online), *Full-time undergraduate forms for 2024 to 2025*. <https://archive.is/hhpC7>

Student Finance Wales (online), *Undergraduate application form 2024-25*. <https://archive.is/PGVRX>

639 See: Student Finance England (online), *Guidance for applicants*. <https://archive.is/zBNPz>

Student Finance Northern Ireland (online), *Full-time undergraduate forms for 2024 to 2025*. <https://archive.is/hhpC7>

Student Finance Wales (online), *Guidance for applicants*. <https://archive.is/GBHP4>

640 Student Finance England (online), *Updating your student finance details*. <https://archive.is/qQ4k8>

641 Student Awards Agency Scotland (online), *National Statistics Publications*. <https://archive.is/fzLxw>

642 Student Awards Agency Scotland (online), *Change of name, gender and title*. <https://archive.is/WNycZ>

combines data from schools, the SFC, the Student Awards Agency Scotland and the Department for Work and Pensions.<sup>643</sup>

The SFC sex variable has changed over time, to provide for responses based on gender identity from 2012/13 onward. In 2012/13, the SFC amended the response options to capture both sex and self-defined gender identity in the same question, with the addition of an 'other' option. This timing coincides with changes to the HESA sex variable, which likewise changed to provide for self-identification in 2012/13 (see page 133).

In 2017/18 and 2021/2022, the SFC revised the response options to make clear that the female and male categories included 'trans women' and 'trans men' respectively and added an 'in another way' category. In 2022/23, the SFC reverted to a binary sex question based on recently published Scottish Government guidance on data collection on sex and gender identity. As noted in chapter five, this defines sex as consisting of three 'aspects' (biological, legal, and self-defined). It is unclear if these definitions are intended to apply to SFC FE data. These changes over time are shown in Table 12.

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<sup>643</sup> Skills Development Scotland (online), 16+ *Data Hub - Skills Development Scotland*.  
<https://archive.is/nvgGk>

Table 12. Scottish Funding Council, Further Education Statistics on sex, 2010/11 to 2023/24

Year	Variable name and response options	Guidance notes
2010/11	<b>Gender:</b> Male, Female, Not recorded,	Because of the small numbers of the group, students who have not specified their gender as they are unable to be classified as either male or female have been excluded from the analysis. Students with no recorded information have also been excluded.
2011/12	Not specified (unable to be classified as either male or female)	Because of the small numbers of the group, students with a 'not recorded' or 'not specified' gender have been excluded from the analysis. Students with no recorded information have also been excluded but the numbers of these 'unknown' students are given. Please note that changes being applied to the FES2 data for 2013/14 onwards. Gender will be referred to as 'sex' in relevant future reports.
2012/13		As above, without note about forthcoming change.
2013/14-2015/16	<b>Sex:</b> Male, Female, Other	Due to the small numbers of the group, students with an 'other' gender have been excluded from the analysis.
2017/18-2021/22	<b>Sex:</b> Male (including Trans man) Female (including Trans woman) In another way, Prefer not to say	We are encouraging colleges that have submitted any students as 'Prefer not to say' in terms of Sex to take effective steps to improve the proportion of students with meaningful codes.
2022/23-2023/24	<b>Sex:</b> Male, Female, Prefer not to say; Not known (do not include in question but do code as Not known in FES)	We are following the latest recommended guidance for public bodies from the Chief Statistician on the collection and publication of equalities data on Sex, gender identity, trans status.

Source: Advance HE.<sup>644</sup>

644 Advance HE (2012), *Equality in colleges in Scotland: statistical report 2012*. <https://www.advance-he.ac.uk/knowledge-hub/equality-colleges-scotland-statistical-report-2012>  
 Advance HE (2013), *Equality in colleges in Scotland: statistical report 2013*. <https://www.advance-he.ac.uk/knowledge-hub/equality-colleges-scotland-statistical-report-2013>  
 Advance HE (2014), *Equality in colleges in Scotland: statistical report 2014*. <https://web.archive.org/web/20220120144656/http://www.ecu.ac.uk/wp-content/uploads/2014/09/Equality-in-FE-stats-2014.pdf>  
 Advance HE (2015), *Equality in colleges in Scotland: statistical report 2015*. <https://www.advance-he.ac.uk/knowledge-hub/equality-colleges-scotland-statistical-report-2015>  
 Advance HE (2016), *Equality in colleges in Scotland: statistical report 2016*. <https://www.advance-he.ac.uk/knowledge-hub/equality-colleges-scotland-statistical-report-2016>  
 Advance HE (2017), *Equality in colleges in Scotland: statistical report 2017*. <https://www.advance-he.ac.uk/knowledge-hub/equality-colleges-scotland-statistical-report-2017>  
 Advance HE (2018) *Equality in colleges in Scotland: statistical report 2018*. <https://www.advance-he.ac.uk/knowledge-hub/equality-colleges-scotland-statistical-report-2018>  
 Scottish Funding Council (2017), *SFC Guidance 2017-18*. <https://tinyurl.com/mvr575j4>  
 Scottish Funding Council (2018), *FES Guidance 2018-19*. <https://www.sfc.ac.uk/sfcgd022018/>  
 Scottish Funding Council (2019), *FES Guidance 2019/20*. <https://www.sfc.ac.uk/sfcgd012019/>  
 Scottish Funding Council (2020) *FES Guidance notes 2020-21*. <https://www.sfc.ac.uk/publications/sfcgd032020/>  
 Scottish Funding Council (2021), *FES Guidance notes 2021-22*. <https://www.sfc.ac.uk/sfcgd032021/>  
 Scottish Funding Council (2022), *FES Guidance notes 2022-23*. <https://www.sfc.ac.uk/SFCGD032022/>  
 Scottish Funding Council (2023), *FES 2 Guidance notes 2023-24*. <https://www.sfc.ac.uk/SFCGD032022/>

## Children's Social Work Statistics Scotland

These accredited Scottish Government statistics include data on children on the child protection register, children and young people looked after, in continuing care, eligible for aftercare, and in secure care accommodation.<sup>645</sup> The 2021/22 report presents data labelled **sex (male, female)**; however, the statistics on young people in secure care accommodation data tables note that '**Trans, intersex, and non-binary individuals** are grouped with males for the purposes of maintaining confidentiality.'<sup>646</sup>

### Gender, no definition (male, female)

#### Children looked after in England including adoptions

These accredited Department for Education statistics are based on information on looked after children collected by the Department for Education, collected annually from local authorities in England.<sup>647</sup>

Data is required for every child who is looked after by the local authority at any time during the year, and care leavers up to age 21.<sup>648</sup> Under the heading '**gender**', guidance for data collection in 2023/34 indicates that recording may be according to the wishes of the child.

Children looked after must be classified as being **male or female**. In exceptional circumstances, a local authority may be unsure as to which gender should be recorded for a particular child. Where this occurs, gender should be recorded according to the wishes of the child.<sup>649</sup>

The guidance also notes that from 2024 onwards, the gender variable will be replaced by a sex variable, although this is not specified at the time of writing.

DfE plans to change the collection to collect 'sex' from the 2024 to 2025 collection onwards. Up until this point, please continue to report either sex or gender as you have done in previous collections.<sup>650</sup>

## National Pupil Database

The National Pupil Database holds data on pupils who attend schools and colleges in England, including information on pupil characteristics, and examination results.<sup>651</sup> The database is populated by a range of datasets, linked by a unique identifier for each pupil, and made available for research purposes.<sup>652</sup>

The constituent datasets mostly collect data on **males and females**, labelled '**gender**', as shown below.<sup>653</sup>

The main outlier is the Children in Need dataset, which as noted above, also currently records indeterminate sex, although this category will be dropped in 2025 (see Common Basic Data Set specifications, page 136).

Alternative Provision Census (male, female)

- Children in Need dataset (male, female, not recorded or unborn, indeterminate)
- Children Looked After (male, female)
- Early Years Census (male, female, not known, not specified)
- Early Years Foundation Stage Profile (male, female)
- Schools Census Pupil level (male, female)
- Absence (male, female)
- Exclusions 2001-02 to 2004-05, Exclusions 2005-06 onwards (male, female)
- Independent Specialist Providers (male, female)
- Key Stage 1 to Key Stage 5 (male, female)
- National Client Caseload Information (male, female, not recorded, withheld)
- Phonics (male, female)
- Post-16 Learning Aims (PLAMS) (male, female)
- Pupil Referral Unit (PRU) Census (male, female)
- Year 7 Tests (male, female, unknown)

645 Scottish Government (2023), *Children's Social Work Statistics Scotland: 2021 to 2022*. <https://www.gov.scot/publications/childrens-social-work-statistics-scotland-2021-22/documents/>

646 Scottish Government (2023), *Children's Social Work Statistics Scotland: 2021 to 2022 Publication Tables* (Table 3.3).

<https://www.gov.scot/binaries/content/documents/govscot/publications/statistics/2023/04/childrens-social-work-statistics-scotland-2021-22/documents/childrens-social-work-statistics-2021-22-publication-tables/childrens-social-work-statistics-2021-22-publication-tables/govscot%3Adocument/Children%2527s%2BSocial%2BWork%2BStatistics%2B2021-22%2B-%2BPublication%2BTables%2B.xlsx>

647 Department for Education (2024), *Children looked after in England including adoptions*.

<https://explore-education-statistics.service.gov.uk/find-statistics/children-looked-after-in-england-including-adoptions>

648 Department for Education (2024), *Children looked after in England including adoptions: Methodology*.

<https://explore-education-statistics.service.gov.uk/methodology/children-looked-after-in-england-including-adoptions>

649 Department for Education (2024), *Children looked after by local authorities in England. Guide to the SSDA903 collection 1 April 2023 to 31 March 2024 – Version 1.3* (page 33). [https://assets.publishing.service.gov.uk/media/660d16d238f66c001184a95e/CLA\\_SSDA903\\_2023-24\\_Guide.pdf](https://assets.publishing.service.gov.uk/media/660d16d238f66c001184a95e/CLA_SSDA903_2023-24_Guide.pdf)

650 As above (page 34).

651 UK Data Service (online), *National Pupil Database*.

<https://beta.ukdataservice.ac.uk/datacatalogue/series/series?id=2000108>

652 Department for Education (online), *Find and explore data in the National Pupil Database*. <https://www.find-npd-data.education.gov.uk/>

653 Department for Education (online), *Gender: What gender is the pupil?*

<https://www.find-npd-data.education.gov.uk/concepts/8990c3b0-8dff-4553-bd78-2cc7d000e81d>

## Gender identity (multiple categories)

### Children looked by local authorities, Wales

These Welsh Government statistics are based on data provided by local authorities in the annual Children Looked After census. The statistics include information about children on care orders, adoptions from care and those leaving care.<sup>654</sup> Guidance for submitting census returns in 2022/23 show data is collected on **gender (male, female, non-binary)**. The same categories are used to record the gender of adopters.<sup>655</sup> <sup>656</sup> Written evidence submitted to the Review by the Welsh Government Chief Statistician (see appendix two) explains further:

‘The Children Looked After Census and Children Receiving Care and Support Census has seen several changes since it was refreshed in 2016-17 following the implementation of the Social Services and Well-being Act 2014. Initially, “gender” was collected with the response options “male” and “female” with no further guidance. In the following year, guidance was given to clarify that gender identity – not sex at birth – should be recorded. This was to ensure gender specifically was collected. More recently, an “other” gender response option (that could include non-binary) was included from the 2024-25 collection onwards. The change to collecting gender was made following engagement with local authorities through the Social Services Technical Information Network. The reasons were partially to reduce burden on local authorities as sex at birth was not reliably collected whereas gender was more consistently collected. There was also the option to link the datasets in SAIL to get sex at birth, which would reduce burden on local authorities to collect both if it was needed by users at a later point.’

### University and Colleges Admission (UCAS) Service

UCAS, a private company and charity overseen by HE providers, supplies a centralised higher education admissions system for the UK. It covers most undergraduate admissions, the main exception being college-level HE in Scotland, and some postgraduate entry. It publishes a wide variety of statistics which can be interrogated online.

UCAS data specifications state:

‘Prior to 2015 applicants were asked to state their sex as part of their application. This was changed in 2015 with applicants asked to declare their gender. In the 2024 cycle an extended classification for gender was introduced. For the purposes of enabling a timeseries, and consistent with HESA’s treatment of these values, the values used in these data refer to sex prior to 2015, and gender subsequently.’<sup>657</sup>

The expanded categories in 2024 are described by UCAS as intended to be ‘more inclusive by providing a non-binary option’. The **Gender identity** options are **man, woman, I use another term, and I prefer not to say**.<sup>658</sup> UCAS has separately asked applicants if they are transgender since 2016.<sup>659</sup>

The most recent data reported on applicants’ **gender** in the 2024 applications cycle shows that 0.9% of respondents were recorded as ‘I use another term’ and 0.7% as ‘I prefer not to say’.<sup>660</sup> This varied by age: 0.6% of applicants 35 or older used one or other of these responses, compared to 1.9% of those aged 20. This provides the minimum number of cases for which UCAS now unambiguously holds no information on sex, with a further unknown number of applicants who have provided a gender identity response different from their sex. The numbers in the latter group may in theory be at least partly identifiable by cross-reference with responses to the question on transgender status, but UCAS does not appear to provide any analysis on that basis.

The impact of this data loss can be immediately illustrated. UCAS calculates the HE application rate at age 18, including separate application rates for women and men. Although total applicants at age 18 have risen

654 Welsh Government (2024), *Children looked after by local authorities: April 2022 to March 2023*. <https://www.gov.wales/children-looked-after-local-authorities-april-2022-march-2023.html#139772>

655 Welsh Government (2024), *Children looked after by local authorities: April 2022* (pages 8, 30). <https://www.gov.wales/sites/default/files/pdf-versions/2024/2/2/1709026239/children-looked-after-local-authorities-april-2022-march-2023.pdf>

656 See StatsWales (online), *Children looked after at 31 March by local authority, gender and age*. <https://statswales.gov.wales/Catalogue/Health-and-Social-Care/Social-Services/Children-Services/Children-Looked-After/childrenlookedafterat31march-by-localauthority-gender-age>

657 Technical specifications available at: UCAS (online), *Undergraduate end of cycle data resources 2023*. <https://archive.is/SQhJu>

658 UCAS (online), *Gender options in the UCAS application: Undergraduate*. <https://archive.is/TzuQi>

659 HEPI (2024), *Trans and non-binary student experiences in UK higher education*.

[https://web.archive.org/web/20240919132030/https://www.hepi.ac.uk/wp-content/uploads/2024/05/Hepi-Report-174\\_Trans-and-non-binary-student-experiences-WEB-05\\_06\\_24.pdf](https://web.archive.org/web/20240919132030/https://www.hepi.ac.uk/wp-content/uploads/2024/05/Hepi-Report-174_Trans-and-non-binary-student-experiences-WEB-05_06_24.pdf)

660 From files available at: UCAS (online), *2024 cycle applicant figures – 30 June deadline (Undergraduate)*. Some additional calculations by authors. <https://archive.is/6RRdA>

by 0.6%, the total number recorded as women has fallen by 1.1%, and as men by 1.4%, explained by the 1.8% of relevant applicants now choosing neither category.

To calculate application rates, UCAS compares total applicant numbers with estimates for the relevant age group in the population, in total and separately for women and men. For the women/men rates, in 2024 UCAS has necessarily omitted the cases in that age group no longer classified either way. However, it has added these cases back in, in its calculation of the overall application rate, while continuing to treat the sum of the population figures for women and men as providing the total population, as in previous years.

This inconsistency means that while the total age 18 application rate has fallen by only 0.2 percentage points (ppt), from 42.1% to 41.9%, the published rates both for men and women show a much sharper drop. For men, from 36.3% to 35.4% (-0.9 ppt) and for women from 48.2% to 47.2% (-1.0 ppt).<sup>661</sup> The published age 18 application rates both for women and for men are therefore visibly depressed compared to last year. How far this is accounted for in each case by the move to collecting gender identity will however depend on the sex balance within the 1.8% of cases that are now not recorded as women or men: but that is unknowable.

Due to the 1.6% of cases now removed from classification as woman or man, further large falls in any year-on-year comparisons for women and men in the final End-of-Cycle figures for the 2024 application round are now predictable, but it will not be possible to tell how far these effects are only due to this change, within each group.

## 10.2 Education and early years survey data

### Sex (male, female)

#### Growing Up in Scotland

Growing Up in Scotland (GUS) is a major Scottish Government funded cohort study, now only continuing to study a group of around 5,000 young people born in Scotland between 2004 and 2005.<sup>662</sup> The work has been carried out to date by ScotGen Social Research.

Sweep 10 of the birth cohort still under investigation, conducted over 2019–2020, collected data on children at the age of fourteen. The report of this sweep notes:<sup>663</sup>

‘To maintain comparability with reporting from previous sweeps, we have looked at differences by sex. Sweep 10 included a gender identity question for the first time, and so analysis of this is also now possible. As sex was collected at Sweep 1 [as registered at birth], the data is complete for all Sweep 10 participants. The gender identity question was asked of the young person only at Sweep 10 on the self-completion (CASI/CAWI) questionnaire. This means the data is incomplete for families where only the parent/main carer responded or where the young person did not respond to the CASI/CAWI questionnaire.’

The researchers found that ‘49.8% said they considered themselves to be a man/boy, 49.4% said women/girl and 0.8% said ‘in another way’.’ Cross-tabulated results for sex and self-declared gender identity are not provided.

### Sex (male, female, man, woman)

#### Student Academic Experience Survey, Advance HE

The Student Academic Experience Survey has collected data on student life since 2005/06. The survey is run by Advance HE and the Higher Education Policy Institute (HEPI). The survey uses the polling company YouthSight (part of Savanta),<sup>664</sup> which has a Student Panel made up of over 45,000 undergraduate students in the UK.

In 2022 the survey introduced a **sex** question, with **man, woman, and prefer not to say** options. This aligns with wider developments within Advance HE to recognise sex as a protected characteristic (see section 5.5.1). The 2022 survey report explained:

<sup>661</sup> As above.

<sup>662</sup> Scottish Government (online), *Growing Up in Scotland. About GUS.* <https://archive.is/tUh0y>

<sup>663</sup> Scottish Government (2022), *Life at age 14: Initial Findings from the Growing Up in Scotland Study* (pages 11, 34). <https://www.gov.scot/publications/life-age-14-initial-findings-growing-up-scotland-study/>

<sup>664</sup> Savanta (online), *YouthSight: No other agency knows more about Gen Z.* <https://savanta.com/youthsight/>

In previous years, the Survey included a gender category, taken from the information gathered by YouthSight for their Panel, but not a category on sex. This gender classification included the categories of 'male', 'female', 'other' and 'prefer not to say' and was used by YouthSight in the weighting strategy comparing to HESA data as well as in some analysis in the report. This year, to reflect the status of sex as a protected characteristic, we have included a classification question.<sup>665</sup>

The same approach was used in the 2023 survey.<sup>666</sup>

### UK Engagement Survey (UKES), Advance HE

The UK Engagement Survey (UKES) collects national data on student engagement among undergraduates and is run by Advance HE. Similar to the Student Academic Experience Survey noted above, the approach to sex and gender has recently changed, to provide for data collection based on sex.

In 2020 the survey collected data on gender with women, men, non-binary, in another way, and prefer not to say categories.<sup>667</sup> The 2021 survey report presented data on gender (male, female) but did not indicate how this was collected.<sup>668</sup> The 2022 report, shows data labelled **sex (male, female, prefer not to say)**. We could not locate the source questions or any guidance.

### Gender (male, female)

#### Student Income and Expenditure Survey

This periodic survey gathers information on the income and expenditure of students in higher education. The SIES has been conducted by a variety of researchers on behalf of the relevant administrations in each part of the UK, with NatCen most consistently involved, at different times in the different nations. For England, the most recent surveys have taken place in 2007/8, 2014/15 and 2021/22; for Wales in 2007/8, 2011/12 and 2014/15; and for Scotland, 2004/5, 2007/8 and

2023/24 (not yet published).

The 2021/22 report for England, published by the Department for Education, presented the data, including the regression model results, by **gender**, categorised as **male or female**.<sup>669</sup> The questionnaire asked respondents up to three questions on sex and gender identity.<sup>670</sup>

Are you male or female? (Male, Female)

Is the gender you identify with the same as your sex registered at birth? (Yes, No)

(If no) Please give the term you use to describe your gender. This question is voluntary, so you can select prefer not to answer.

It is not clear how these responses were used to construct the 'gender' category used in the published results. The accompanying Technical Report refers to **sex** being discovered to be a predictive variable, and therefore used in logistic regression models run from the data.<sup>671</sup> These results are however discussed as relating to **gender**.

The 2014/15 joint survey for England and Wales asked a single question about sex (male or female responses only).<sup>672</sup> The results, published separately for each nation, in both cases are presented and discussed as relating to **gender**, male or female, including the results of the regression models,<sup>673 674</sup> although sex is described elsewhere in technical notes as the predictive variable for those.

The 2007/8 joint England and Wales survey asked, 'Are you male or female?'; the variable was termed 'sex', with a descriptor 'gender of student'.<sup>675</sup> Results published separately for each nation<sup>676 677</sup> were presented in terms of **gender** (with a single stray reference to 'sex' in the text of the English report). The 2007/8 report for Scotland by contrast refers throughout to **sex** (male or female), with 'gender' used

665 Neves, J. and Brown, A. (2022), *Student Academic Experience Survey 2022* (section 1.6). [https://web.archive.org/web/20221118154501/https://s3.eu-west-2.amazonaws.com/assets.creode.advancehe-document-manager/documents/advance-he/AdvHE\\_HEPI\\_SAES\\_2022\\_1654522609.pdf](https://web.archive.org/web/20221118154501/https://s3.eu-west-2.amazonaws.com/assets.creode.advancehe-document-manager/documents/advance-he/AdvHE_HEPI_SAES_2022_1654522609.pdf)

666 Neves, J. and Stephenson. (2023), *Student Academic Experience Survey* (page 11). <https://www.hepi.ac.uk/wp-content/uploads/2023/06/Student-Academic-Experience-Survey-2023.pdf>

667 Advance HE (2020), *2020 UK Engagement Survey* (page 35).

<https://www.advance-he.ac.uk/knowledge-hub/uk-engagement-survey-2020>

668 Advance HE (2021), *2021 UK Engagement Survey*.

[https://s3.eu-west-2.amazonaws.com/assets.creode.advancehe-document-manager/documents/advance-he/AdvHE\\_UKES\\_2021\\_1636545587.pdf](https://s3.eu-west-2.amazonaws.com/assets.creode.advancehe-document-manager/documents/advance-he/AdvHE_UKES_2021_1636545587.pdf)

669 Department for Education (2023), *Student income and expenditure survey: 2021 to 2022*. <https://archive.is/7037S>

670 Department for Education (2023), *Student income and expenditure survey: 2021 to 2022. Technical Report: Additional Appendices* (page 141).

[https://assets.publishing.service.gov.uk/media/65674d19312f40000de5d5d4/Student\\_income\\_and\\_expenditure\\_survey\\_2021\\_to\\_2022\\_technical\\_report\\_additional\\_appendices.pdf](https://assets.publishing.service.gov.uk/media/65674d19312f40000de5d5d4/Student_income_and_expenditure_survey_2021_to_2022_technical_report_additional_appendices.pdf)

671 Department for Education (2023), *Student income and expenditure survey: 2021 to 2022. Technical Report* (page 26).

[https://assets.publishing.service.gov.uk/media/65674d08312f400013e5d5d3/Student\\_income\\_and\\_expenditure\\_survey\\_2021\\_to\\_2022\\_technical\\_report.pdf](https://assets.publishing.service.gov.uk/media/65674d08312f400013e5d5d3/Student_income_and_expenditure_survey_2021_to_2022_technical_report.pdf)

672 Department for Education (2019), *Student income and expenditure survey: 2014 to 2015. Technical Report*.

[https://assets.publishing.service.gov.uk/media/5d8a0748e5274a157558dc06/SIES\\_2014-15\\_technical\\_report\\_FINAL5A.pdf](https://assets.publishing.service.gov.uk/media/5d8a0748e5274a157558dc06/SIES_2014-15_technical_report_FINAL5A.pdf)

673 Department for Education (2018), *Student income and expenditure survey: 2014 to 2015. English Report*.

<https://archive.is/wipwVbqg>

674 Welsh Government (2018), *Student income and expenditure survey: 2014 to 2015. Final Version Welsh-domiciled students*.

<https://archive.is/wipwY0Gh>

675 NatCen (2009), *Student income and expenditure survey: 2007 to 2008. Technical Report*.

<https://archive.is/wipw4lujhd>

676 Department for Innovation, Universities and Skills (2009), *Student income and expenditure survey: 2007/08. English-domiciled students*.

<https://archive.is/wipwGHLU8g>

677 NatCen and Institute for Employment Studies (2009), *Student income and expenditure survey: 2007/08. Welsh-domiciled students*.

<https://archive.is/wipw4GIN7>



three times as a synonym.<sup>678</sup> We could not find the Scottish survey questions, but the report's technical section refers to 'sex' as a variable.

## Gender (male, female) and gender identity (multiple categories)

### Childcare and Early Years survey, England and Wales

The Childcare and Early Years Provision survey began in 1998.<sup>679</sup> The survey is funded by the Department for Education (DfE). It collects information to help monitor the progress of policies and public attitudes in the area of childcare and early years education.

The survey is divided into two strands. A parent/carer strand collects data on parents' take-up, views and experiences of childcare, and a separate providers strand collects data on the characteristics and development of childcare and early years providers and the workforce. The approach to recording sex differs between the two strands, although information on recording in the most recent surveys was difficult to locate.

The 2004 parent/carer study asked interviewers to **code respondent sex (male, female)**<sup>680</sup> (we could not locate earlier schedules). The same approach can be seen in the 2019 survey.<sup>681</sup> The 2023 survey refers to the 'gender' of the responding parent and their child, but we could not find information on how this was asked or defined in the accompanying documentation. Accompanying methodological notes refer to the proportion of female respondents, and to boys and girls.<sup>682</sup>

The 2005 providers survey collected data on childminder sex (male, female, don't know), with no specific instruction to interviewers.<sup>683</sup> Similarly, the 2016 providers questionnaire instructed interviewers to 'code

gender of respondent from name and voice. Do not ask', with male, female, and don't know response options.<sup>684</sup>

In 2018, this was replaced with a gender identity question, asking 'how many of your [paid staff] **identify as**' (**male, female, other**). The survey also asked if the respondent was male, female or 'other'.<sup>685</sup> This approach can also be seen in a list of variables for the 2023 survey.<sup>686</sup>

## Gender identity (multiple categories)

### National Student Survey

The National Student Survey (NSS) collects data on students' opinions on the quality of their courses. The survey is managed by the Office for Students (OfS), on behalf of UK funding and regulatory bodies.<sup>687</sup> The 2023 survey was administered by Ipsos.

The 2023 survey was linked to self-reported data provided by HESA labelled **sex (male, female, other sex)**.<sup>688 689</sup> Following a consultation exercise in March 2023, the OfS stated that future sweeps would continue to use the same response categories, but this would be presented as '**female or other**' and **male** categories.<sup>690</sup>

### Working lives of teachers and leaders survey

This Department for Education survey began in 2022 and is intended to run annually for at least five years, up to 2026. The study looks at factors affecting the supply, recruitment and retention of teachers and leaders, to help shape policymaking.<sup>691</sup>

The Wave 1 survey collected data on respondent's '**gender**' (**male, female, other**).<sup>692</sup> At the time of writing, the main Wave 2 survey is awaiting publication.

678 Scottish Government (2009), *Higher and Further Education Students' Income, Expenditure and Debt in Scotland 2007-08*. <https://archive.is/wip/3YcM1>

679 UK Data Service (online), *Childcare and Early Years Provision*. <https://beta.ukdataservice.ac.uk/datacatalogue/series/series?id=2000122>

680 NatCen (2006), *Childcare and early years provision: a study of parents' use, views and experience* (page 5).

<https://doc.ukdataservice.ac.uk/doc/5552/mrdoc/pdf/5552userguide.pdf>

681 Ipsos MORI (2018), *Childcare and early years survey of parents 2019 questionnaire* (page 5). [https://doc.ukdataservice.ac.uk/doc/8603/mrdoc/pdf/8603\\_ceysp\\_2019\\_questionnaire\\_to\\_uk\\_data\\_service.pdf](https://doc.ukdataservice.ac.uk/doc/8603/mrdoc/pdf/8603_ceysp_2019_questionnaire_to_uk_data_service.pdf)

682 Department for Education (2023), *Childcare and early years survey of parents: Methodology* (Respondent characteristics).

<https://explore-education-statistics.service.gov.uk/methodology/childcare-and-early-years-survey-of-parents>

683 BMRB Social Research (2006), *Survey of Childcare and Early Years Providers – CHILDMINDERS* (page 7).

<https://doc.ukdataservice.ac.uk/doc/5553/mrdoc/pdf/5553userguide3.pdf>

684 Kantar Public (2016), *Childcare and Early Years Provision: Providers' Survey, 2016* (page 27). [https://doc.ukdataservice.ac.uk/doc/8166/mrdoc/pdf/8166\\_questionnaires.pdf](https://doc.ukdataservice.ac.uk/doc/8166/mrdoc/pdf/8166_questionnaires.pdf)

685 NatCen (2018), *Survey of Childcare and Early Years Providers 2018 Main survey* (pages 48, 54). [https://doc.ukdataservice.ac.uk/doc/8453/mrdoc/pdf/8453\\_sceyp\\_2018\\_mainstage\\_questionnaire.pdf](https://doc.ukdataservice.ac.uk/doc/8453/mrdoc/pdf/8453_sceyp_2018_mainstage_questionnaire.pdf)

686 IFF Research (2023), *Provider-Level Data List, 2023* (Line 1575). [https://doc.ukdataservice.ac.uk/doc/9250/mrdoc/excel/9250\\_11596-02\\_provider\\_level\\_data\\_list\\_of\\_variables\\_and\\_data\\_dictionary\\_v1-00.xlsx](https://doc.ukdataservice.ac.uk/doc/9250/mrdoc/excel/9250_11596-02_provider_level_data_list_of_variables_and_data_dictionary_v1-00.xlsx)

687 Office for Students (online), *National Student Survey*.

<https://www.officeforstudents.org.uk/advice-and-guidance/student-information-and-data/national-student-survey-nss/>

688 Office for Students (2023), *Coverage of student characteristics in the National Student Survey 2023 results*.

<https://www.officeforstudents.org.uk/media/8869/coverage-of-student-characteristics-in-the-national-student-survey-2023-results.pdf>

689 Office for Students (2023), *Student characteristics data: technical document. Students at English higher education providers between 2010-11 and 2021-22* (page 24). [https://www.office-forstudents.org.uk/media/5a7171fe-4870-42c4-a610-0a4ae512ff60/sc\\_technical\\_document.pdf](https://www.office-forstudents.org.uk/media/5a7171fe-4870-42c4-a610-0a4ae512ff60/sc_technical_document.pdf)

690 Office for Students (2023), *Consultation on the general approach to publication of the National Student Survey Analysis of responses and decisions* (page 59). <https://www.officeforstudents.org.uk/media/ba5a292e-08a0-464b-aa51-31c39bbe22d/general-approach-nss-pub-con-response.pdf>

691 IFF Research/Department for Education (online), *Working Lives of Teachers and Leaders*.

<https://www.workinglivesofteachers.com/>

692 IFF Research/Department for Education (2023), *Working lives of teachers and leaders – wave 1. Technical report*.

[https://assets.publishing.service.gov.uk/media/642b51b47de82b00123134fc/Working\\_lives\\_of\\_teachers\\_and\\_leaders\\_-\\_wave\\_1\\_-\\_technical\\_report.pdf](https://assets.publishing.service.gov.uk/media/642b51b47de82b00123134fc/Working_lives_of_teachers_and_leaders_-_wave_1_-_technical_report.pdf)

# Chapter 11: Employers and employees

This chapter looks at data on employers and employees collected by public bodies and other organisations, including workforce characteristics data, workplace survey data, and diversity data. These variously capture sex subject to GRC, a mix of sex and gender identity, and self-defined gender identity. Several datasets produced by public bodies erroneously describe gender as a protected characteristic, including Home Office workforce diversity statistics.

For private and voluntary sector organisations with over 250 employees, monitoring employee ‘gender’ is a statutory duty, to fulfil gender gap reporting requirements. Guidance on preparing data for submission published by the UK Government Equalities Office (GEO) states employers ‘should be sensitive to how an employee identifies in terms of their gender’, that ‘gender pay gap regulations do not define the terms ‘men’ and ‘women’ (although the terms are defined in the Equality Act, which is the parent act), and advises ‘where the employee does not self-identify as either gender, an employer may omit the individual from the gender pay gap calculation’

Diversity data collection and monitoring may also be undertaken as part of the Public Sector Equality Duty, under the Equality Act 2010. This places a legal duty on some public authorities to publish information about how people are affected by policies and practices. Equality and diversity monitoring is often undertaken at the recruitment stage, as part of the job application process. Evidence collated by Henness shows that many organisations ask for data on ‘gender’ rather than sex when recruiting staff. This includes recruitment application forms issued by seventeen UK government Ministerial departments,<sup>693</sup> and eighteen non-ministerial departments.<sup>694</sup> Of these, none referred to sex, and some included non-binary and ‘prefer to self-describe’ response options.

Statistics that only collect data on gender identity include several surveys administered by the Ministry of Defence (MoD). For example, a Royal Navy Sexual Harassment Survey does not collect data on sex,

despite its obvious relevance to the subject matter, and instead asks, ‘do you identify as’ male, female, or non-binary. MoD employees may also change the sex record on their personnel records, based on self-identification. The annual NHS Staff Survey, which is one of the largest workforce surveys in the world, ceased collecting data on sex in 2017, and in the 2023 sweep, asked, ‘what of the following best describes you’, with non-binary and prefer to self-describe options.

## 11.1 Employers and employees administrative data

### Sex, no definition (male, female)

#### Agricultural workforce in England

The Agricultural Workforce survey provides estimates of the agricultural workforce on commercial agricultural holdings in England.<sup>695</sup> The statistics are accredited official statistics. The survey asks principal farmers and holders for data on **sex (male, female)**. The 2023 report states that the sex category is:

‘based on the Office for National Statistics guidance for the collection and classification of sex and age group data in the UK. These harmonised standards allow consistency and comparability of statistical outputs across the country.’<sup>696</sup>

It is unclear what this refers to, given that work on harmonised standards in relation to sex remains ongoing.

#### Equality and Human Rights Commission Annual workforce diversity statistics

Equality and Human Rights Commission (EHRC) Annual workforce diversity statistics for 2021/22 present data on **sex**, which is ‘**recorded as male or female**’.<sup>697</sup>

#### NHS Scotland Workforce Statistics

These NHS Education for Scotland statistics present information on staff directly employed by NHS Scotland, vacant posts, and staff in training.<sup>698</sup> Data for all staff are sourced from the Scottish Workforce Information Standard System.<sup>699</sup> The database records data on **gender**, with **male and female** categories,

693 Henness, A. (2020), *Equality Monitoring. Ministerial Departments*. <https://www.sexnotgender.info/equality-monitoring/government/ministerial-departments/>

694 Henness, A. (2020), *Equality Monitoring. Non-Ministerial Departments*. <https://www.sexnotgender.info/equality-monitoring/government/non-ministerial-departments/>

695 Department for Environment, Food and Rural Affairs (2023), *Agricultural workforce in England* at 1 June 2023.

<https://www.gov.uk/government/statistics/agricultural-workforce-in-england-at-1-june/agricultural-workforce-in-england-at-1-june-2023#section-1--detailed-results>

696 As above (1.2 Sex and age group).

697 Equality and Human Rights Commission (2022), *Workforce diversity report 2021 to 2022* (page 18).

[https://www.equalityhumanrights.com/sites/default/files/workforce-diversity-report-2021-2022\\_final.docx](https://www.equalityhumanrights.com/sites/default/files/workforce-diversity-report-2021-2022_final.docx)

698 NHS Education for Scotland (2024), *NHS Scotland Workforce (phase one) 31 March 2024*. <https://turasdata.nes.nhs.scot/data-and-reports/official-workforce-statistics/all-official-statistics-publications/04-june-2024-workforce/>

699 NHS Education for Scotland (online), *Scottish workforce information standard system*. <https://turasdata.nes.nhs.scot/about-our-data-and-reports/data-sources-and-quality-assurance/scottish-workforce-information-standard-system/?pageid=5802>

however the data is labelled **sex** in the online tables.<sup>700</sup>

## Sex subject to GRC (male, female)

### Financial Conduct Authority diversity statistics

The Financial Conduct Authority collects information on employee **sex subject to GRC (male, female)**, to align with the 2021 England and Wales Census. The FCA also collect data on gender identity.<sup>701</sup> The 2023 bulletin explains that ‘we use both gender identity data and sex data to report on our employee demographic data and SLT gender targets using self-identity’. The outputs are labelled ‘Employees’ legal sex with gender identity overlay’; but because the number of employees who identify as non-binary or use another term is below 1%, these figures are not shown.<sup>702</sup>

### School workforce in England

These accredited official statistics are largely based on the annual School Workforce Census, which collects information from schools and local authorities on the school workforce in state-funded schools in England.<sup>703</sup>

The 2024 data specification for schools states that data on **sex subject to GRC** must be provided, in line with HMRC reporting.

‘Sex must be recorded for all staff record reported on at Staff Details level. ‘Sex’ is the sex recognised in law, as recorded on a birth certificate or gender recognition certificate. This will be the same value that is reported to the HMRC, as legal sex can affect pension ages or National Insurance contributions.’<sup>704</sup>

## Mix of sex, sex subject to GRC and gender (male, female)

### Police Workforce Statistics, England and Wales

These accredited Home Office Police Workforce Statistics provide data on police officer numbers and characteristics, which are sourced from police force personnel records.<sup>705</sup>

Information on officer protected characteristics is self-

reported by officers on police force HR systems. The same data also underpins Police Officer Uplift statistics,<sup>706</sup> which tracked a UK government commitment to increase the number of police officers by 2023.

The 2024 Police Workforce statistics report presents data labelled **sex (male, female)**,<sup>707</sup> although the accompanying open data tables include a very small number of not stated responses.<sup>708</sup>

The mix of sex and gender identity in the data tables most likely reflects the introduction of National Standards for Workforce Data in 2021, which set out harmonised principles for data collection on protected characteristics and other demographic information.<sup>709</sup> As explained in the 2024 User Guide to police workforce statistics, prior to this, police forces reported officer sex (male, female), in line with HMRC reporting. However, the Standards expanded this to include data on gender identity and reassignment:<sup>710</sup>

- Sex (male, female)
- Gender (woman, man, non-binary, prefer to self-describe, prefer not to say, unknown)
- Gender reassignment (yes, no, prefer not to say, unknown).

For some forces, the new Standards required changes to HR systems. The introduction of the more complex Standards also saw a large proportion of officers reported with an unknown sex or gender. For the purpose of populating the Workforce Statistics, analysts therefore took a hybrid approach, using gender data to populate missing sex data and vice-versa.

The 2024 Police Workforce open data tables describe the sex field as follows:

‘Information on the individual’s sex as either Male or Female. “Sex” is considered to refer to whether a person is male or female based on their physiology which is either based on the **sex recorded on their birth certificate** or **Gender Recognition Certificate**. Where sex is not known, the **gender** of the officer has been used instead’.<sup>711</sup>

700 Turas, NHS Scotland workforce data (online), *Intelligence on the health care workforce in Scotland*. <https://turasdata.nes.nhs.scot/>

701 Financial Conduct Authority (2023), *Our workforce representation*. <https://www.fca.org.uk/about/how-we-operate/diversity-equity-inclusion/our-workforce-representation>

702 As above.

703 Department for Education (2023), *School workforce in England*.

<https://explore-education-statistics.service.gov.uk/find-statistics/school-workforce-in-england>

704 Department for Education (2024), *School workforce census 2024. Business and technical specification* (page 30). [https://assets.publishing.service.gov.uk/media/662a3d0d690acb-1c0ba7e5de/2024\\_School\\_Workforce\\_Census\\_Specification.pdf](https://assets.publishing.service.gov.uk/media/662a3d0d690acb-1c0ba7e5de/2024_School_Workforce_Census_Specification.pdf)

705 Home Office (2024), *Police workforce England and Wales statistics*. <https://www.gov.uk/government/collections/police-workforce-england-and-wales>

706 Home Office (2023), *Police officer uplift, England and Wales, quarterly update to 31 March 2023*.

<https://www.gov.uk/government/statistics/police-officer-uplift-quarterly-update-to-march-2023/police-officer-uplift-england-and-wales-quarterly-update-to-31-march-2023>

707 Home Office (2024), *Police workforce, England and Wales: 31 March 2024*. <https://www.gov.uk/government/statistics/police-workforce-england-and-wales-31-march-2024>

708 Home Office (2024), *Police workforce, England and Wales, as at 31 March 2024; data tables* (Table H1).

<https://assets.publishing.service.gov.uk/media/64ba640bef5371000d7af05f/open-data-table-police-workforce-260723.ods>

709 Home Office (2024), *User guide to police workforce statistics (2.3 Protected characteristics)*. <https://www.gov.uk/government/publications/user-guide-to-police-workforce-statistics/user-guide-to-police-workforce-statistics>

710 As above (Annex B: Police workforce Data Standards).

711 Home Office (2024), *Police workforce, England and Wales; workforce open data table, as at 31 March 2007 to 2024* (See ‘Contents’).

<https://assets.publishing.service.gov.uk/media/64ba640bef5371000d7af05f/open-data-table-police-workforce-260723.ods>

## Sex, self-identified (male, female)

### HMPPS Annual staff equalities report

The HM Prison and Probation Service (HMPPS) Annual staff equalities report provides data on the protected characteristics of HMPPS staff.<sup>712</sup> The 2022/23 report incorrectly describes gender as a protected characteristic,<sup>713</sup> although the data tables refer to **sex (male, female)**.<sup>714</sup> The 2021 Technical Guide states, 'information on the protected characteristics of staff are recorded on the basis of voluntary self-declaration'.<sup>715</sup>

## Gender, no definition (male, female)

### National Workforce data, NHS England

NHS England workforce statistics published in 2023 capture information on the '**gender of the employee**',<sup>716</sup> with **male and female** categories.

### Northern Ireland Education workforce statistics

This annual Education workforce bulletin presents information on teacher numbers and characteristics in grant-aided schools in Northern Ireland.<sup>717</sup> The 2022/23 bulletin shows data on **male and female** staff, which is labelled **gender**.<sup>718</sup>

### Public Appointments Report for Northern Ireland

This Executive Office report presents data on public appointments, using information provided by nine Government Departments and the Food Standards Agency. The report for 2019/20 to 2021/22 includes information on applications, appointments and multiple appointments.<sup>719</sup> Data is published on **gender (male, female)**.

## Seafarer Statistics

These accredited official statistics are published by the Department for Transport and Maritime and Coastguard Agency. The statistics provide information on UK nationals working as seafarers, including demographic data.

The data is drawn from information held by the Maritime and Coastguard Agency (MCA) and from the Seafarer Employment Survey, which is run by the UK Chamber of Shipping. The 2022 report presents data on **gender (male, female)**.<sup>720</sup>

## Gender, self-identified (male, female)

### Gender Pay Gap, UK-wide

Since 2017, UK public authorities and private sector employers with headcounts of 250 or more have been required by law to report annually on their 'gender pay gap', which is the difference between the average earnings of men and women.<sup>721</sup> The statutory requirement is set out under Equality Act 2010 (Gender Pay Gap Information) Regulations 2017.<sup>722</sup>

Guidance on preparing data for submission published by the UK Government Equalities Office (GEO) states employers 'should be sensitive to how an employee identifies in terms of their gender' and that 'gender pay gap regulations do not define the terms 'men' and 'women'.<sup>723</sup> The terms are, however, defined in the Equality Act, which is the relevant parent act, and defines man as a 'male of any age' and woman as a 'female of any age'.<sup>724</sup> The GEO guidance also advises 'where the employee does not self-identify as either gender, an employer may omit the individual from the gender pay gap calculation'. Earlier guidance published jointly by the GEO and Acas in February 2019 carried similar advice for employers.<sup>725</sup> In late 2019 feminist campaign group Woman's Place UK wrote to the then Minister for Women and Equalities calling on her to revise the guidance, stating that 'The guidance conflates

712 Ministry of Justice and HM Prison and Probation Service (2022), *HMPPS annual staff equalities report*.

<https://www.gov.uk/government/collections/hmpps-annual-staff-equalities-report>

713 Ministry of Justice and HM Prison and Probation Service (2023), *HM Prison & Probation Service Staff Equalities Report: 2022-2023*.

<https://www.gov.uk/government/statistics/hm-prison-probation-service-staff-equalities-report-2022-2023/hm-prison-and-probation-service-annual-staff-equalities-report-2022-to-2023>

714 Ministry of Justice (2023), *HM Prison and Probation Service annual staff equalities report: 2022 to 2023 tables*.

<https://assets.publishing.service.gov.uk/media/655e4ced02e2e10012433687/hmpps-staff-equalities-tables-202223 ods>

715 Ministry of Justice and HM Prison and Probation Service (2021), *HMPPS annual staff equalities report 2020 to 2021: technical guide and glossary* (Protected characteristic information).

<https://www.gov.uk/government/statistics/hm-prison-and-probation-service-staff-equalities-report-2020-to-2021/hmpps-annual-staff-equalities-report-2020-to-2021-technical-guide-and-glossary#annual-staff-equalities-report-glossary>

716 NHS England (2023), *National Workforce Data v3.4 Data Specifications* (NWD Dataset tab, line 102).

[https://digital.nhs.uk/binaries/content/assets/website-assets/data-and-information/datasets/nwd-and-nhs-occupation-codes/3.4/nwd\\_v3.4\\_data\\_set\\_specification\\_final.xlsx](https://digital.nhs.uk/binaries/content/assets/website-assets/data-and-information/datasets/nwd-and-nhs-occupation-codes/3.4/nwd_v3.4_data_set_specification_final.xlsx)

717 Northern Ireland Department of Education (online), *Education workforce*.

<https://www.education-ni.gov.uk/articles/education-workforce>

718 NISRA (2023) *Teacher workforce statistics in grant-aided schools in Northern Ireland, 2022/23*. <https://www.education-ni.gov.uk/sites/default/files/publications/education/teacher-work-for-61753306%20%281%29.pdf>

719 Northern Ireland Executive Office (2023), *Public Appointments Report for Northern Ireland: 2019/20; 2020/21; 2021/22*.

<https://www.executiveoffice-ni.gov.uk/sites/default/files/publications/office/annex-a-public-appointments-report-for-northern-ireland-201920%3B%202021%3B%20202122.pdf>

720 Department for Transport and Maritime and Coastguard Agency (2023), *Seafarers in the UK Shipping Industry: 2022*.

<https://www.gov.uk/government/statistics/seafarers-in-the-uk-shipping-industry-2022/seafarer-statistics-publications>

721 House of Commons Library (2024), *The gender pay gap*. <https://commonslibrary.parliament.uk/research-briefings/sn07068/>

722 The Equality Act 2010, (*Gender Pay Gap Information*) Regulations 2017. <https://www.legislation.gov.uk/uksi/2017/172/contents/made>

723 Government Equalities Office (2024), *Preparing your data ('Recording employees' gender')*. <https://tinyurl.com/3yz7e7z8>

724 Equality Act 2010, Section 212.

<https://www.legislation.gov.uk/ukpga/2010/15/section/212>

725 Acas/Government Equalities Office (2019), *Managing gender pay gap reporting*.

[https://web.archive.org/web/20200730060423/https://archive.acas.org.uk/media/4764/Managing-gender-pay-reporting/pdf/Managing\\_gender\\_pay\\_reporting\\_07.02.19.pdf](https://web.archive.org/web/20200730060423/https://archive.acas.org.uk/media/4764/Managing-gender-pay-reporting/pdf/Managing_gender_pay_reporting_07.02.19.pdf)

the distinct concepts of ‘sex’ and ‘gender identity’, and risks undermining our ability to measure and tackle income differentials between men and women in the UK.<sup>726</sup>

In practice, gender pay gap data reflects a mix of sex and self-identified gender identity but excludes those with non-binary identities. This makes it impossible to determine whether non-binary males have different labour market experiences from non-binary females.

### HMPPS Workforce Statistics, England and Wales

HM Prison and Probation Service Workforce Statistics provide information on staffing numbers of directly employed staff of HM Prison and Probation Service.<sup>727</sup>

Gender is incorrectly presented as a protected characteristic in both the workforce bulletin<sup>728</sup> and in the User Guide.<sup>729</sup> Data tables for December 2023 are labelled **gender**, with **male and female** categories<sup>730</sup>

### HMPPS Recruitment Diversity Statistics, England and Wales

HM Prison and Probation Service Recruitment Diversity Statistics likewise present information on **gender (male, female)**. The December 2023 report states that the statistics in the report are ‘**based on self-declared information**’ provided at recruitment.<sup>731</sup>

### Home Office Workforce Diversity Statistics, England and Wales

Home Office workforce diversity statistics are based on data from the central HR reporting system (Metis).<sup>732</sup> Most data is self-reported by staff and is voluntary. Staff can also separately declare their gender identity on Metis. The main publication incorrectly refers to ‘gender’ as a protected characteristic. Outputs in the 2022/23 report are also labelled **gender (male, female)**.<sup>733</sup>

### Ministry of Defence Joint Personal Administration (JPA) database

The Ministry of Defence (MoD) publish a range of official statistics, including data on personnel (civilian and military), the cadet forces, and veterans. Some publications draw from or are linked to MoD personnel data, which is recorded on the Joint Personnel Administration (JPA) database used by the British Armed Forces.

Sex is self-declared on the JPA and may be amended without a GRC. MoD ‘Policy for the Recruitment and Management of Transgender Personnel in the Armed Forces’ (JSP 889) states:

‘If a Serviceperson voluntarily provides a full GRC, all service records, documents and employment details must be changed to reflect the individual’s acquired gender. Thus, copies of old birth certificates and academic certificates etc. should be replaced with versions that reflect the transgender person’s affirmed gender. If a transgender Serviceperson is unable to, or chooses not to obtain a GRC, **the service records etc. should still be amended to reflect the transgender person’s affirmed gender**. However, it will not be possible for the transgender person to obtain a new birth certificate and other official documents.

Personal records should be updated with the consent of the transgender Service person to ensure that the records accurately reflect the correct name, title and gender.<sup>734</sup> (emphasis added)

A UK Parliament written question (13 October 2023) indicated that the record change is not flagged on a person’s record:

‘For those who transition their gender (gender reassignment), the record for sex in [the Joint Personnel Administration] will be changed accordingly. That a person has transitioned their gender is not recorded.’<sup>735</sup>

726 Woman’s Place UK (2019), ‘Gender’ Pay Gap: Letter to Penny Mordaunt. 1 April 2019.

<https://womansplaceuk.org/2019/04/01/gender-pay-gap-letter-to-penny-mordaunt/>

727 Ministry of Justice and HM Prison and Probation Service (2024), *HM Prison and Probation Service workforce statistics*.

<https://www.gov.uk/government/collections/national-offender-management-service-workforce-statistics>

728 Ministry of Justice and HM Prison and Probation Service (2024), *HM Prison and Probation Service workforce quarterly: December 2023*.

<https://www.gov.uk/government/statistics/hm-prison-probation-service-workforce-quarterly-december-2023/hm-prison-and-probation-service-workforce-quarterly-december-2023>

729 HM Prison & Probation Service (2024), *Workforce Statistics Guide* (Methodology, Glossary). <https://www.gov.uk/government/statistics/hm-prison-and-probation-service-workforce-quarterly-march-2024/workforce-statistics-guide>

730 Ministry of Justice and HM Prison and Probation Service (2024), *HMPPS workforce statistics bulletin: December 2023 tables*.

<https://assets.publishing.service.gov.uk/media/65cb2b6273806a0010ec772f/hmppps-workforce-statistics-tables-dec-2023.ods>

731 HM Prison & Probation Service (2024), *Recruitment Diversity Statistics: December 2023*. <https://www.gov.uk/government/statistics/hm-prison-probation-service-workforce-quarterly-december-2023/recruitment-diversity-statistics-december-2023>

732 Home Office (2024), *Home Office workforce diversity statistics: 2022 to 2023* (Representation percentages).

<https://www.gov.uk/government/statistics/home-office-workforce-diversity-statistics-2022-to-2023/home-office-workforce-diversity-statistics-2022-to-2023>

733 As above (Part 2.4. Gender).

734 Ministry of Defence (2019), *JSP 889 Policy for the Recruitment and Management of Transgender Personnel in the Armed Forces* (page 24). <https://assets.publishing.service.gov.uk/media/5dd3c2da40fb606f39e340a/JSP889.pdf>

735 UK Parliament (2023), *Navy: Transgender People. Question for Ministry of Defence. UIN 201802* (23 October 2023).

<https://questions-statements.parliament.uk/written-questions/detail/2023-10-13/201802/>

JPA records are also used by the ONS, to help populate armed forces population statistics.<sup>736</sup>

### UK Armed Forces Biannual Diversity Statistics

These accredited Ministry of Defence statistics are intended to meet ‘obligations under the Public Sector Equality Duty to provide information on its workforce identified by the Equality Act 2010’.<sup>737</sup> The 2023 statistics provide data on **gender**, which is incorrectly described as a protected characteristic, with **male and female categories**.

### NHS Staff Survey and NHS England equality and diversity monitoring

The annual NHS Staff Survey began in 2003 and is one of the largest workforce surveys in the world.<sup>738</sup> The survey is used to monitor staff experiences, and to track change over time, and between different staff groups. Results are also used by the Care Quality Commission, to help assess compliance with quality and safety standards.

Archived questionnaires show that from 2003 to 2016 the survey collected binary data on gender.<sup>739</sup> In 2017, the question changed to include a ‘prefer to self-describe’ response option, with a free-text box.<sup>740</sup> The response options changed again in 2021, to include a non-binary response option.<sup>741</sup> The 2023 survey asked, ‘**what of the following best describes you**’ (**female, male, non-binary, prefer to self-describe [open text], prefer not to say**).<sup>742</sup> Respondents were then asked, ‘Is your gender identity the same as the sex you were registered at birth?’, with yes, no and prefer not to say response options.

### NHS England Equality and diversity monitoring

The NHS England Equality and diversity monitoring template is intended for use by different NHS organisations. The template states, ‘The information that we are asking you to provide is informed by our duties under the Equality Act 2010, and includes information about your age, race, sex and sexual orientation’. However, the template monitoring form asks, ‘**what is your gender**’ (**male, female, prefer to self-identity - please write in, prefer not to say**).<sup>743</sup>

### No definition or not clear

### Judiciary statistics, England and Wales

Judicial Diversity Statistics are collated from the Bar Standards Board, Solicitors Regulation Authority, and the Chartered Institute of Legal Executives (CILEX).<sup>744</sup> The publication uses the term sex.<sup>745</sup> A footnote in the main publication states that an ‘other’ category was introduced in 2020, but given the small numbers, these are grouped in the unknown category, which also includes ‘prefer not to say’.<sup>746</sup> Conversely, the User Guide states, ‘for the avoidance of doubt, this is based on self-declared data provided about sex (males and females) not data relating to gender identity’.<sup>747</sup>

736 Office for National Statistics (2017), *UK Armed Forces data: quality assurance of administrative data used in population statistics, Jan 2017*. <https://www.ons.gov.uk/peoplepopulation-andcommunity/populationandmigration/populationestimates/methodologies/ukarmedforcesdataqualityassuranceofadministrativedatausedinpopulationstatisticsjan2017>

737 Ministry of Defence (2023), *UK Armed Forces Biannual Diversity Statistics*.

<https://www.gov.uk/government/statistics/uk-armed-forces-biannual-diversity-statistics-april-2023/uk-armed-forces-biannual-diversity-statistics-april-2023>

738 NHS England (online), *About the Survey*.

<https://www.nhsstaffsurveys.com/about-the-survey/>

739 NHS England (2003), *NHS National Staff Survey* (page 10)

<https://doc.ukdataservice.ac.uk/doc/5733/mrdoc/pdf/5733questionnaire.pdf>

NHS England (2016), *National NHS Staff Survey 2016* (page 7).

<https://www.nhsstaffsurveys.com/static/b62e78df3b223ade2c509bb87d52de0d/2016-core.pdf>

740 NHS England (2017), *National NHS Staff Survey 2017* (page 7). <https://www.nhsstaffsurveys.com/static/568728e86a5a904f48d3f9933096b78d/2017-core.pdf>

741 NHS England (2021), *National NHS Staff Survey 2021* (page 7). <https://www.nhsstaffsurveys.com/static/5051c9bf4e3622339dc41f581d4739e7/Core-questionnaire-2021.pdf>

742 NHS England (2023), *National NHS Staff Survey 2023* (page 7). [https://www.nhsstaffsurveys.com/static/d54dca14cc9f29d533f31d89329b751/NSS23-Main-Questionnaire\\_FINAL.pdf](https://www.nhsstaffsurveys.com/static/d54dca14cc9f29d533f31d89329b751/NSS23-Main-Questionnaire_FINAL.pdf)

743 NHS England (online), *Equality and Diversity monitoring form* (Appendix 6).

<https://www.england.nhs.uk/wp-content/uploads/2021/06/B0435-app-6-equality-and-diversity-monitoring-form.docx>

744 Ministry of Justice (2023), *Diversity of the judiciary: 2023 statistics* (2023). <https://www.gov.uk/government/statistics/diversity-of-the-judiciary-2023-statistics>

745 Ministry of Justice (2023), *Diversity of the judiciary: Legal professions, new appointments and current post-holders - 2023 Statistics*.

<https://www.gov.uk/government/statistics/diversity-of-the-judiciary-2023-statistics/diversity-of-the-judiciary-legal-professions-new-appointments-and-current-post-holders-2023-statistics>

746 As above (footnote 8).

747 Ministry of Justice (2023), *User guide to diversity of the judiciary statistics* (section 3.3). <https://www.gov.uk/government/statistics/diversity-of-the-judiciary-2023-statistics/user-guide-to-diversity-of-the-judiciary-statistics#fn:19>

## 11.2 Employers and employees survey data

### Sex, no definition (male, female)

#### Civil Service Statistics/Annual Civil Service Employment Survey

These accredited statistics provide information on all home civil service organisations.<sup>748</sup> The information is drawn from the Annual Civil Service Employment Survey (ACSES), which requests detailed information from all Civil Service organisations on their workforce.

The 2018 Technical Report states that a ‘sex at birth’ question was added in 2017 and the gender identity question expanded to include an ‘I identify in another way’ response.<sup>749</sup> A copy of the 2022 questionnaire suggests, however, that sex is not clearly defined as such. Respondents are asked ‘**what is your sex**’ (male, female, prefer not to say). This is followed by, ‘Is the gender you identify with the same as your sex registered at birth?’ (yes, no – please enter your gender

identity, prefer not to say).<sup>750</sup>

The 2023 statistical tables present data labelled sex (male, female),<sup>751</sup> although the dataset details published by the ONS refer to gender.<sup>752</sup>

#### Health and Social Care Staff Experience Survey, Scotland

This Scottish Government survey collects data on the views and work experiences of staff working in Scotland’s Health Boards and Health and Social Care Partnerships in Scotland.<sup>753</sup> The survey was rolled out between 2015 and 2017, with all eligible organisations participating in 2017.<sup>754</sup>

As shown below, the sex question in the survey has changed over time. In 2017 and 2020 the survey asked for details on gender identity (we could not locate the questions for 2018 and 2019). Since 2021 the survey has asked, ‘**what is your sex**’ (male, female), which is not defined.

Table 13. Sex and gender in the Scottish Government Health & Social Care Staff Experience Survey, 2017 to 2024

Year	Survey question	Response options
2017	What best describes your gender	Male, Female, Other, Prefer not to answer <sup>755</sup>
2020	What is your gender identity	Male, Female, Non-binary, Prefer not to answer <sup>756</sup>
2021	What is your sex	Male, Female <sup>757 758 759</sup>
2022		
2023		

748 Cabinet Office (2024), *Civil Service Statistics*.

<https://www.gov.uk/government/collections/civil-service-statistics>

749 Cabinet Office (2018), *Civil Service People Survey 2018 Full Technical Guide* (page 10).

[https://assets.publishing.service.gov.uk/media/5c1225f4ed915d0bbf782c5c/Civil\\_Service\\_People\\_Survey\\_2018\\_-\\_Full\\_Technical\\_Guide.pdf](https://assets.publishing.service.gov.uk/media/5c1225f4ed915d0bbf782c5c/Civil_Service_People_Survey_2018_-_Full_Technical_Guide.pdf)

750 Malthouse, K. (2022), *Civil Service People Survey 2022 questionnaire* (page 28).

<https://committees.parliament.uk/publications/28641/documents/172571/default/>

751 Cabinet Office (2023), *Statistical tables - Civil Service Statistics: 2023* (for example, Table 6, 6A, 7).

[https://assets.publishing.service.gov.uk/media/64c7b1ce5c2e6f0013e8d78f/Statistical\\_tables\\_-\\_Civil\\_Service\\_Statistics\\_2023.ods](https://assets.publishing.service.gov.uk/media/64c7b1ce5c2e6f0013e8d78f/Statistical_tables_-_Civil_Service_Statistics_2023.ods)

752 Office for National Statistics (online), *NOMIS: Annual Civil Service Employment Survey*.

<https://www.nomisweb.co.uk/datasets/acses4>

753 NHS Scotland (online), *Health and Social Care Staff Experience Report*. <https://www.staffgovernance.scot.nhs.uk/monitoring-employee-experience/health-and-social-care-staff-experience-report/>

754 Scottish Government (2018), *Health and Social Care Staff Experience Report 2017* (page 4). <https://www.staffgovernance.scot.nhs.uk/media/1590/health-and-social-care-staff-experience-report-2017.pdf>

755 Scottish Government (2018), *Health and Social Care Staff Experience Report 2017* (page 66). <https://www.staffgovernance.scot.nhs.uk/media/1590/health-and-social-care-staff-experience-report-2017.pdf>

756 Scottish Government (2021), *Everyone Matters Pulse Survey 2020* (page 63). <https://tinyurl.com/4awzzsj9>

757 Scottish Government (2022), *Health and Social Care Staff Experience Report 2021* (page 62). <https://tinyurl.com/bj5mk8y7>

758 Scottish Government (2023), *Health and Social Care Staff Experience Report 2022* (page 65). <https://tinyurl.com/339a4tp6>

759 Scottish Government (2024), *Health and Social Care Staff Experience Report 2023* (page 62). <https://tinyurl.com/647uv9n>

## Sex subject to GRC

### Civil Service People Survey, Scottish Government Workforce statistics

The annual Civil Service People Survey began in 2009. The survey is used to track civil servants' 'attitudes to, and experience of working in government department, using a census methodology' (i.e. not a sample).

Following consultation, in 2017 a 'sex at birth' question was added.<sup>760</sup> In 2020 this was replaced with '**what is your sex**' (male, female), to align with the 2021 England and Wales Census. This suggests the question is intended to capture **sex subject to GRC**.<sup>761</sup>

The 2022 data tables present data for females, males, and a composite variable which is made up of response options from the sex and gender identity questions, with **male, female and other** categories.

'J01A asks 'What is your sex?' ('Male', 'Female', 'Prefer not to say') and J01 asks 'Is the gender you identify with the same as your sex registered as birth?' (Yes', 'No', 'Prefer not to say') where the respondent could enter free text if they answered 'No'. Answers to these questions were then used to derive the sex/gender variables that are reported in this document.'

J1A is 'Composite sex/gender identity' ('Male', 'Female' or 'Other'), J1B is 'Gender identity history' ('Cisgender' or 'Transgender-Other'). J1C is 'Detailed sex/gender identity' ('Cis-Male', 'Cis-Female', 'Trans-Male', 'Trans-Female' or 'Other').<sup>762</sup>

The Civil Service People survey also populates Scottish Government workforce statistics.<sup>763</sup> The Scottish Government report refers to 'sex and gender,' whilst the data is labelled 'sex' (male, female). It is not clear how the Scottish Government has treated the underlying data (for example, whether the sex and gender identity responses are combined).

## Gender, no definition (male, female)

### Northern Ireland Business Register and Employment Survey

The Business Register and Employment Survey collects data from businesses in Northern Ireland. The information is used to maintain a register of businesses to support Government statistical enquiries and populate employee statistics.<sup>764</sup> The questionnaire asks for data on **males and females**,<sup>765</sup> which is labelled **gender** in outputs.<sup>766</sup>

## Gender, self-identified (male, female)

### Armed forces Continuous Attitude Survey

This Ministry of Defence staff survey collects staff views on a range of areas, including data on morale, pay, deployments, work/life balance, health, and fairness at work.<sup>767 768</sup> The statistics are accredited official statistics.

The survey asks respondents for permission to link to JPA records (for example, the Royal Navy questionnaire states, 'researchers will link your responses to JPA to provide some information, such as your Branch or Trade, gender, age... so that we don't have to ask you these questions in the survey').<sup>769</sup> As noted above, JPA records provide for gender self-identification (see page 100).

The data tables present limited data on **males and females** (the variable is **not labelled**). The survey also asks respondents if they have been the subject of discrimination in a Service environment in the last 12 months on the grounds of gender, although surprisingly this data is not disaggregated by sex/gender.<sup>770</sup>

## Gender identity (multiple categories)

### Financial Services Culture Board Annual Survey, UK

The Financial Services Culture Board (FSCB) was a not-for-profit membership body, open to regulated financial services firms operational in the UK, closing in 2023. The FSCB Annual Survey of Culture collected data on organisational culture, behaviour, and competence

760 Cabinet Office (2018), [Civil Service People Survey 2018 Full Technical Guide](https://assets.publishing.service.gov.uk/media/5c1225f4ed915d0bbf782c5c/Civil_Service_People_Survey_2018_-_Full_Technical_Guide.pdf) (page 10). [https://assets.publishing.service.gov.uk/media/5c1225f4ed915d0bbf782c5c/Civil\\_Service\\_People\\_Survey\\_2018\\_-\\_Full\\_Technical\\_Guide.pdf](https://assets.publishing.service.gov.uk/media/5c1225f4ed915d0bbf782c5c/Civil_Service_People_Survey_2018_-_Full_Technical_Guide.pdf)

761 Cabinet Office (2023), [Civil Service People Survey 2022: results by gender](https://assets.publishing.service.gov.uk/media/6475de53103ca60013039607/Annex_A_to_AFCAS_Main_Report_-_Questionnaires.pdf) (2023) See 'Cover'.

762 As above.

763 Scottish Government (2023), [Diversity and inclusion of the Scottish Government workforce - 2023](https://data.gov.scot/workforce-diversity-2023/). <https://data.gov.scot/workforce-diversity-2023/>

764 NISRA (2023), [Business Register and Employment Survey](https://datavis.nisra.gov.uk/economy-and-labour-market/BRES-2022.html). <https://datavis.nisra.gov.uk/economy-and-labour-market/BRES-2022.html>

765 NISRA (2020), [Business Register and Employment Survey questionnaire](https://www.nisra.gov.uk/sites/nisra.gov.uk/files/publications/BRES%202020%20Questionnaire%20-%20Sample%20Copy.pdf) (page 3). <https://www.nisra.gov.uk/sites/nisra.gov.uk/files/publications/BRES%202020%20Questionnaire%20-%20Sample%20Copy.pdf>

766 (NISRA (2023), [Business Register and Employment Survey](https://datavis.nisra.gov.uk/economy-and-labour-market/BRES-2022.html). <https://datavis.nisra.gov.uk/economy-and-labour-market/BRES-2022.html>

767 Ministry of Defence (2023), [Armed Forces Continuous Attitude Survey: 2023](https://www.gov.uk/government/statistics/armed-forces-continuous-attitude-survey-2023#full-publication-update-history) (2023). <https://www.gov.uk/government/statistics/armed-forces-continuous-attitude-survey-2023#full-publication-update-history>

768 Ministry of Defence (2023), [UK Regular Armed Forces Continuous Attitude Survey Results 2023](https://assets.publishing.service.gov.uk/media/64c26738331a65000d934cc9/AF-CAS_2023_Main_Report_Accessible_FINAL_ContextUpdtd.pdf) [https://assets.publishing.service.gov.uk/media/64c26738331a65000d934cc9/AF-CAS\\_2023\\_Main\\_Report\\_Accessible\\_FINAL\\_ContextUpdtd.pdf](https://assets.publishing.service.gov.uk/media/64c26738331a65000d934cc9/AF-CAS_2023_Main_Report_Accessible_FINAL_ContextUpdtd.pdf)

769 Ministry of Defence (2023), [Annex A to AFCAS Main Report - Questionnaires](https://assets.publishing.service.gov.uk/media/6475de53103ca60013039607/Annex_A_to_AFCAS_Main_Report_-_Questionnaires.pdf) (page 3). [https://assets.publishing.service.gov.uk/media/6475de53103ca60013039607/Annex\\_A\\_to\\_AFCAS\\_Main\\_Report\\_-\\_Questionnaires.pdf](https://assets.publishing.service.gov.uk/media/6475de53103ca60013039607/Annex_A_to_AFCAS_Main_Report_-_Questionnaires.pdf)

770 Ministry of Defence (2023), [Annex B to AFCAS Main Report - Reference tables \(ODS\)](https://assets.publishing.service.gov.uk/media/6581ca44fc07f300128d44f0/Annex-B_to_AFCAS_Main_Report_-_Reference_Tables_Excel_Revised_Dec_23.ods) (Table B13.8). [https://assets.publishing.service.gov.uk/media/6581ca44fc07f300128d44f0/Annex-B\\_to\\_AFCAS\\_Main\\_Report\\_-\\_Reference\\_Tables\\_Excel\\_Revised\\_Dec\\_23.ods](https://assets.publishing.service.gov.uk/media/6581ca44fc07f300128d44f0/Annex-B_to_AFCAS_Main_Report_-_Reference_Tables_Excel_Revised_Dec_23.ods)



among employees of member organisations.<sup>771</sup> We include the survey because it is a striking example of a major body adopting gender identity principles in data collection at a relatively early point. As shown in Table

6, the survey collected data on **self-identified gender**, from the outset (2016), with multiple amendments to the question over time.

Table 14. *Financial Services Culture Board Annual Survey, Gender question, 2016-2022*

Year	Question	Response options
2016	What is your gender?	Male, Female, Non-binary, Prefer not to say
2017	As above	Female, Male, Something else, Rather not say
2018- 2020	What best describes your gender?	Female, Male, Prefer not to say, Prefer to self-describe (please enter below) [free text]
2021	As above	Female, Male, Prefer not to say, I use another term [free text]
2022	As above	Man, Woman, Prefer not to say, I use another term, for example, non-binary (please enter below) [free text]

### Ministry of Defence Officer Cadet Survey

The Officer Cadet Survey (OCS) was established in 2010 to monitor Officer Cadets' experience of training. The survey collects data on officer cadets' experience of training, facilities, support, and treatment in the respective Army, Royal Navy, Royal Marine, and RAF colleges.<sup>772 773</sup>

Prior to 2021/22 the survey collected data on gender, with male and female categories.<sup>774</sup> Since then the survey has collected data on **gender identity**. The 2022/23 published tables show that respondents are asked whether they are **male, female, another gender identity** or **I'd rather not say**.<sup>775</sup>

### Ministry of Defence Recruit Training Survey

The Ministry of Defence Recruit Trainee Survey was established in 2002. The survey covers the three British armed forces and collects views on training, facilities, food, support and fairness of treatment.<sup>776</sup>

Like the Officer Cadet Survey, the 2022/23 Recruit Training Survey presents data on **gender identity (male, female, another gender identity, I'd rather**

**not say)**.<sup>777</sup> This question was similarly introduced in 2021/22, having previously collected data on gender (male, female).<sup>778</sup>

### Pay and Morale Survey, Police Federation of England and Wales

This annual survey began in 2014 and collects data on federated rank members' views on pay, conditions, attitudes to their work and the police service in general.

The 2023 survey report presents data on **gender (male, female)**, but notes 'it is not possible to present results for people who identify as **non-binary, or who use a different term to non-binary, male or female**, due the amount of data being below the reporting threshold.'<sup>779</sup>

### Royal Navy Sexual Harassment Survey

The Royal Navy Sexual Harassment Survey collects data on the extent, impact, and management of sexual harassment in the Royal Navy and Royal Marines.<sup>780</sup> Despite its clear relevance to the subject matter, the survey does not collect data on sex. Instead, the survey asks, '**Do you identify as,**' (**female, male, non-binary**).<sup>781</sup>

771 UK Data Service (online), *FSCB Annual Survey of Culture, 2016-2022*. <https://beta.ukdataservice.ac.uk/datacatalogue/studies/study?id=9080>

772 Ministry of Defence (2023), *Officer Cadet survey*. <https://www.gov.uk/government/collections/officer-cadet-survey>

773 Ministry of Defence (2023), *Officer Cadet Survey 2022 to 2023: Executive summary*. [https://assets.publishing.service.gov.uk/media/64b131b807d4b800133472c6/Officer\\_Cadet\\_Survey\\_2022\\_to\\_2023\\_Executive\\_summary.pdf](https://assets.publishing.service.gov.uk/media/64b131b807d4b800133472c6/Officer_Cadet_Survey_2022_to_2023_Executive_summary.pdf)

774 For example: Ministry of Defence (2021), *Officer Cadet Survey 2020 to 2021: Tables*. [https://assets.publishing.service.gov.uk/media/613b1d8c8fa8f503bd458a47/OCS\\_tables ods](https://assets.publishing.service.gov.uk/media/613b1d8c8fa8f503bd458a47/OCS_tables ods)

775 Ministry of Defence (2023), *Officer Cadet Survey 2022 to 2023: Tables* (Table 11). [https://assets.publishing.service.gov.uk/media/64b12f4707d4b800133472bd/Officer\\_Cadet\\_Survey\\_2022\\_to\\_2023\\_Tables ods](https://assets.publishing.service.gov.uk/media/64b12f4707d4b800133472bd/Officer_Cadet_Survey_2022_to_2023_Tables ods)

776 Ministry of Defence (2023), *Recruit trainee survey: financial year 2022/23*. <https://www.gov.uk/government/statistics/recruit-trainee-survey-financial-year-202223>

777 Ministry of Defence (2023), *Recruit Trainee Survey 2022 to 2023: Tables (Phase 1 training)* (Table 13). [https://assets.publishing.service.gov.uk/media/64b1303c48826b00103a9e3a/Recruit\\_Trainee\\_Survey\\_2022\\_to\\_2023\\_Tables\\_Phase\\_1\\_training ods](https://assets.publishing.service.gov.uk/media/64b1303c48826b00103a9e3a/Recruit_Trainee_Survey_2022_to_2023_Tables_Phase_1_training ods)

778 See: Ministry of Defence (2021), *Recruit Trainee Survey 2020 to 2021: Tables (Phase 1 training)*

(Background information tab; Gender). [https://assets.publishing.service.gov.uk/media/613b1edbe90e07043d565ce6/Recruit\\_Trainee\\_Survey\\_2020\\_to\\_2021\\_Tables\\_Phase\\_1\\_of\\_training ods](https://assets.publishing.service.gov.uk/media/613b1edbe90e07043d565ce6/Recruit_Trainee_Survey_2020_to_2021_Tables_Phase_1_of_training ods)

779 Police Federation of England and Wales (relevant screenshots provided to Review team).

780 Ministry of Defence (2022), *Royal Navy Sexual Harassment Survey 2021*. <https://www.gov.uk/government/statistics/royal-navy-sexual-harassment-survey-2021>

781 Ministry of Defence (2021), *RN and RM Sexual Harassment Survey 2021 Questionnaire*. [https://assets.publishing.service.gov.uk/media/62305d56d3bf75a8d1651e8/Annex\\_A\\_Royal\\_Navy\\_and\\_Royal\\_Marines\\_Sexual\\_Harassment\\_Survey\\_2021\\_Survey\\_Questionnaire.pdf](https://assets.publishing.service.gov.uk/media/62305d56d3bf75a8d1651e8/Annex_A_Royal_Navy_and_Royal_Marines_Sexual_Harassment_Survey_2021_Survey_Questionnaire.pdf)

### Survey of Employment Tribunal Applications, England and Wales, Scotland

This Department for Business and Trade survey collects data on claimant and employer experiences of the employment tribunal system. The survey began in 1987 and usually undertaken every five years.<sup>782</sup>

The 2013 questionnaire instructed interviewers to ask claimants 'Are you' (male, female).<sup>783</sup> This changed in 2018, with an instruction to interviewers to directly ask claimants and employers whether the claimant was **male or female**. The 2018 survey also included an '**claimant defines themselves in another way**' option that was not read out but could be used if required.<sup>784</sup>

### UK Judicial Attitude Survey

This survey began in 2014 and is conducted by the Judicial Institute of University College London on behalf of the Lady Chief Justice of Northern Ireland, Lord Chief Justice of England and Wales, Lord President of Scotland and the Senior President of Tribunals. The survey collects data on the experience of being a judge, morale, working conditions, welfare, remuneration, training and personal development, retention and leadership. The 2022 questionnaire asked '**are you**' **male, female or other**.<sup>785</sup>

782 Department for Business and Trade and Department (2020), *Survey of employment tribunal applications 2018*. <https://www.gov.uk/government/publications/survey-of-employment-tribunal-applications-2018>

783 Department for Business and Trade and Department (2018), *Survey of employment tribunal applications Claimant questionnaire* (page 8). [https://doc.ukdataservice.ac.uk/doc/7727/mrdoc/pdf/7727\\_seta2013\\_claimant\\_questionnaire.pdf](https://doc.ukdataservice.ac.uk/doc/7727/mrdoc/pdf/7727_seta2013_claimant_questionnaire.pdf)

784 Department for Business and Trade and Department (2018), *Survey of employment tribunal applications Claimant and Employer Questionnaire* (page 13). [https://doc.ukdataservice.ac.uk/doc/8783/mrdoc/pdf/8783\\_seta\\_2018\\_claimant\\_and\\_employer\\_questionnaire.pdf](https://doc.ukdataservice.ac.uk/doc/8783/mrdoc/pdf/8783_seta_2018_claimant_and_employer_questionnaire.pdf)

785 Judicial Institute of University College London (2023), *2022 UK Judicial Attitude Survey* (page 165). <https://www.judiciary.uk/guidance-and-resources/judicial-attitude-survey-2022/>

# Chapter 12: Labour market, income, and housing

This chapter looks at statistics on the labour market, income, and housing. This includes the flagship Labour Force Survey and Annual Survey of Hours and Earning, both published by the ONS, and Gender Pay Gap data, published by the Government Equalities Office (GEO).

Several key surveys covered in the chapter have retained an interviewer-coded sex question, including the Family Resources Survey, and Living Costs and Food Survey. Others have replaced older sex variables with questions that provide for gender self-identification. These include Social Housing Letting statistics in England and the Labour Force Survey, which since 2021 has defined the sex variable as ‘current sex’, thereby providing for self-identified responses. As highlighted throughout the chapter, data collected in the Labour Force Survey and other major surveys is also used to populate a wide range of other official statistics.<sup>786</sup> As such, how data on sex is recorded in one survey may have implications for the reliability or otherwise of other datasets.

## 12.1 Labour market, income, and housing administrative data

### Sex, no definition (male, female)

#### People experiencing homelessness, England and Wales

The ONS publication People Experiencing Homelessness presents data on people at hostels and temporary shelters, drawing on **2021 England and Wales Census data**.<sup>787</sup> Data is labelled **sex (male, female)**. The statistics are accredited official statistics. In practice, this is likely to include data reported on a self-identified basis, given the different approaches to collecting data on sex across the duration of the census (see further chapter five, section 5.3.1).

### Gender, no definition (male, female)

#### Northern Ireland Quarterly Employment Survey

These accredited official statistics provide short-term employee jobs estimates for Northern Ireland, which are used by the ONS to produce quarterly workforce jobs estimates for the UK.<sup>788</sup>

The 2024 methodology report shows that the survey collects information on the number of **males and females** in full-time and part-time employment by business activity, which is referred to as ‘**gender**’.<sup>789</sup>

#### Homelessness in Scotland

This accredited Scottish Government bulletin provides statistical information on all stages of the homelessness process, and data on the characteristics of the homelessness population.<sup>790</sup> The statistics are based on administrative data collected by Scotland’s 32 local authorities, using standardised data returns. The main data return (HL1 form) collects data on the **gender of applicants and household members (male, female)**.<sup>791</sup>

#### Homelessness statistics, Wales

Welsh Government annual homelessness statistics present information on households applying to local authorities for housing assistance and homeless households in temporary accommodation.<sup>792</sup> The statistics are a statutory requirement under the Housing (Wales) Act 2014 and are accredited official statistics.<sup>793</sup>

The most recent release (April to September 2023) presents limited data on **gender (male, female)** in the accompanying tables published by StatsWales.<sup>794</sup>

#### Northern Ireland House Condition Survey

The Northern Ireland House Condition Survey dates to 1974 and is undertaken approximately every five

786 Office for National Statistics (2023), *A guide to labour market data*. <https://www.ons.gov.uk/employmentandlabourmarket/peopleinwork/employmentandemployeetypes/methodologies/aguidetolabourmarketdata#employment>

787 Office for National Statistics (2023), *People experiencing homelessness, England and Wales: Census 2021*. <https://www.ons.gov.uk/peoplepopulationandcommunity/housing/articles/peopleexperiencinghomelessnessenglandandwales/census2021#:~:text=Of%20all%20people%20identified%20as%20homeless%2C%20around%20two%2Dthirds%20were,compared%20with%2051.0%25%20females>.

788 NISRA (online), *Quarterly Employment Survey*. <https://www.nisra.gov.uk/statistics/labour-market-and-social-welfare/quarterly-employment-survey>

789 NISRA (2024), *Quarterly Employment Survey Background and Methodology Report* (pages 4, 3). [https://web.archive.org/web/20240809094146/https://www.nisra.gov.uk/sites/nisra.gov.uk/files/publications/QES\\_background\\_methodology\\_2024.pdf](https://web.archive.org/web/20240809094146/https://www.nisra.gov.uk/sites/nisra.gov.uk/files/publications/QES_background_methodology_2024.pdf)

790 Scottish Government (2023), *Homelessness in Scotland: 2022-23*. <https://www.gov.scot/publications/homelessness-in-scotland-2022-23/>

791 Scottish Government (2022), *Homelessness data (HL1) output specification and associated guidance. January 2023* (pages 19, 21, 25). <https://tinyurl.com/88eavtfn>

792 Welsh Government (2024), *Homelessness statistics*.

<https://www.gov.wales/homelessness-statistics>

793 Welsh Government (2023), *Homelessness: quality report*.

<https://www.gov.wales/homelessness-quality-report-html>

794 For example: StatsWales (online), *Households for which assistance has been provided by outcome, age and gender*. <https://statswales.gov.wales/Catalogue/Housing/Homelessness/Statutory-Homelessness-Prevention-and-Relief/householdsforwhichassistancehasbeenprovided-by-outcome-age-gender>

years.<sup>795</sup> The survey collects information on the condition and energy efficiency of housing in Northern Ireland

The 2016 survey asked about the **gender of household members (male, female)**.<sup>796</sup> At the time of writing, results from the 2023 survey are forthcoming.<sup>797</sup>

### Rough sleeping snapshot in England

The Department for Levelling Up, Housing and Communities publishes a Rough sleeping snapshot in England, which estimates the number and characteristics of people sleeping rough on a single night in Autumn. The survey collects data on **gender (male, female)**, which may be either self-reported or pre-reported.<sup>798</sup> The Technical report states:

‘Demographic information was collected either by asking the person found sleeping rough or by referring to existing knowledge (if that person was already known). If a person refused to give, or did not want to share, their personal information, they would still be recorded as sleeping rough and demographic information including age, gender and nationality would be recorded as ‘Not known’. If it was not possible to record demographic information, due to an individual sleeping for example, then it was recorded as ‘Not known’.<sup>799</sup>

## Gender, self-identified (male, female)

### Social housing lettings in England

Social housing lettings and sales statistics for England are available from 2011 onward.<sup>800</sup> Data are recorded through the Continuous Recording of Lettings and Sales (CORE) system, which includes data on the sex of tenants and buyers. A record of changes to the data fields states that up until 2018/19, CORE collected binary data on the biological sex of household members, and that in 2019/20, this was changed to ‘**self-reported gender**’, (**male, female, other**).<sup>801</sup>

‘For years where self-reported gender as opposed

to biological sex were collected (2019/20 onward) the bedroom standard has been calculated using self-reported gender’.<sup>802</sup>

### Social Security Scotland Client Diversity and Equalities Analysis, Scotland

Social Security Scotland publish data on Client Diversity, based on an Equalities Monitoring and Feedback form. A report covering the period June 2021 to March 2023 states the data is self-identified:

‘The proportion of clients who self-identified as ‘Man’ (16%) remained lower than those who self-identified as ‘Woman’ (77%) (Chart 3, Table 2). In Scotland in 2021, 52% of the population aged 16 and over were female, and 48% were male.’<sup>803</sup>

Data tables covering the period up to March 2023 show a wider range of response option, with **man, woman, in another way, and prefer not to say** categories, which are labelled ‘**gender**’.<sup>804</sup> Separate data is collected on transgender status.

## 12.2 Labour market, income, and housing survey data

### Sex, no definition (male, female)

#### Annual Survey of Hours and Earning

The Annual Survey of Hours and Earnings (ASHE) is a large-scale survey of individual earnings in the UK, administered by the ONS.<sup>805</sup> ASHE collects data on the wages, paid hours of work, and pensions arrangements in nearly one per cent of the working population. The ASHE sample is drawn from National Insurance records for working individuals, and survey forms are sent to their respective employers to complete.

The survey instructs employers to ‘**enter the sex of the employee**’ (**M, F**).<sup>806</sup> and does not allow for missing values.<sup>807</sup> ASHE data is also used to populate a range of other statistics. These include Employee Earnings in the UK. Employee workplace pensions in the UK, Low

795 NI Department for Communities (2023), *Northern Ireland Housing Statistics 2022-23*. <https://www.communities-ni.gov.uk/publications/northern-ireland-housing-statistics-2022-23>

796 NI Housing Executive (2016), *Northern Ireland House Condition Survey, 2016* (page 107). [https://doc.ukdataservice.ac.uk/doc/8595/mrdoc/pdf/8595\\_hcs-main-report-2016.pdf](https://doc.ukdataservice.ac.uk/doc/8595/mrdoc/pdf/8595_hcs-main-report-2016.pdf)

797 NI Housing Executive (online), *House Condition Survey*.

<https://www.nihe.gov.uk/working-with-us/research/house-condition-survey>

798 Department for Levelling Up, Housing & Communities (2023), *Rough sleeping snapshot in England: Autumn 2022*.

<https://www.gov.uk/government/statistics/rough-sleeping-snapshot-in-england-autumn-2022/rough-sleeping-snapshot-in-england-autumn-2022#fn:2>

799 Department for Levelling Up, Housing & Communities (2023), *Rough sleeping snapshot in England: autumn 2022 - technical report* (1.14).

<https://www.gov.uk/government/statistics/rough-sleeping-snapshot-in-england-autumn-2022/rough-sleeping-snapshot-in-england-autumn-2022-technical-report>

800 Department for Levelling Up, Housing and Communities and Ministry of Housing, Communities & Local Government (2024), *Social housing lettings*.

<https://www.gov.uk/government/collections/rents-lettings-and-tenancies>

801 Department for Levelling Up, Housing and Communities (2023), *CORE 2019/20 Log Change Guidance* (page 1).

[https://doc.ukdataservice.ac.uk/doc/7603/mrdoc/pdf/7603\\_core\\_2019-20\\_log\\_change\\_guidance.pdf](https://doc.ukdataservice.ac.uk/doc/7603/mrdoc/pdf/7603_core_2019-20_log_change_guidance.pdf)

802 Department for Levelling Up, Housing and Communities (2024), *Social housing lettings in England, technical notes: April 2022 to March 2023* (See: 3.4: Bedroom Standard). <https://www.gov.uk/government/statistics/social-housing-lettings-in-england-april-2022-to-march-2023/social-housing-lettings-in-england-technical-notes-april-2022-to-march-2023#data-quality>

803 Scottish Government (2023), *Social Security Scotland Client Diversity and Equalities Analysis for June 2021 to March 2023* (page 6).

<https://www.socialsecurity.gov.scot/asset-storage/production/downloads/Client-diversity-to-March-2023-Publication-14u89.pdf>

804 Scottish Government (2023), *Social Security Scotland client diversity and equalities analysis to March 2023. Tables*. (Table 2).

<https://www.socialsecurity.gov.scot/asset-storage/production/downloads/Client-diversity-to-March-2023-Tables-328j9.xlsx>

805 Office for National Statistics (2024), *Annual Survey of Hours and Earnings (ASHE)*. <https://www.ons.gov.uk/surveys/informationforbusinesses/businesssurveys/annualsurveyofhoursandearningsashe>

<https://www.ons.gov.uk/file?uri=/surveys/informationforbusinesses/businesssurveys/annualsurveyofhoursandearningsashe/asheeft2023.xlsx>

806 Office for National Statistics (2023), *Annual Survey of Hours and Earnings (ASHE). Employers survey* (see: Survey, column C). <https://www.ons.gov.uk/file?uri=/surveys/informationforbusinesses/businesssurveys/annualsurveyofhoursandearningsashe/asheeft2023.xlsx>

807 Office for National Statistics (2022), *Annual Survey of Hours and Earnings Dataset Notes* (page 6). [https://doc.ukdataservice.ac.uk/doc/6689/mrdoc/pdf/6689\\_userguide\\_2022.pdf](https://doc.ukdataservice.ac.uk/doc/6689/mrdoc/pdf/6689_userguide_2022.pdf)

and high pay in the UK, and Gender pay gap statistics, all of which are published by the ONS,<sup>808</sup> and the Northern Ireland Annual Survey of Hours and Earnings, which is published by NISRA.<sup>809</sup>

## Sex, interviewer-coded (male, female)

### Family Resources Survey

The Family Resources Survey (FRS) is a continuous household survey that has run in Great Britain since October 1992 and was extended to cover Northern Ireland in 2002/3.<sup>810</sup> It is conducted by the ONS on behalf of the Department for Work and Pensions and has accredited official statistics status.<sup>811</sup> The survey collects information about income, living standards and family circumstances. Data from the survey is also used to populate Houses Below Average Income statistics.

From the outset, the survey has required interviewers to **code respondent sex (male, female)**.<sup>812</sup> Separately, interviewer instructions state respondents who are transgender may select the 'Other' box in the sexual identity question.<sup>813</sup>

This is an unusual example of a survey that conflates gender identity with sexual identity; but does not conflate gender identity with sex. FRS data is also used to populate other statistical outputs.<sup>814</sup>

### English Housing Survey

The English Housing Survey began in 2008. It is a

continuous national survey, currently commissioned by the Department for Levelling Up, Housing and Communities (DLUHC).<sup>815</sup> The statistics are accredited official statistics.

The survey consists of a household survey and, for a subsample of respondents, an inspection of the property. The 2021/22 survey asked interviewers to **code respondent sex (male, female)**, without further instruction.<sup>816</sup>

### Living Costs and Food Survey

The ONS Living Costs and Food survey (LCF) collects UK-wide information on spending patterns and the cost of living.<sup>817</sup> Survey results are published in the ONS Family spending bulletins<sup>818</sup> and in Department for Environment, Food and Rural Affairs Family food statistics.<sup>819</sup> Data from the LCF is also combined with longitudinal Survey of Living Conditions (SLC) data to populate the Household Finances Survey.<sup>820</sup>

The 2021/22 survey asked interviewers to **code respondent sex (male, female)**, without further instruction.<sup>821</sup>

### Wealth and Assets Survey

The Wealth and Assets Survey (WAS) began in 2006 and is conducted by the ONS.<sup>822</sup> The survey is longitudinal and collects data on household assets, savings, debt and financial planning. WAS data is also

- 808 Office for National Statistics (online), *Employee Earnings in the UK*. <https://www.ons.gov.uk/employmentandlabourmarket/peopleinwork/earningsandworkinghours/bulletins/annualsurveyofhoursandearnings/previousReleases>  
Office for National Statistics (online), *Employee workplace pensions in the UK*. <https://www.ons.gov.uk/employmentandlabourmarket/peopleinwork/workplacepensions/bulletins/annualsurveyofhoursandearningspensionstables/2021provisionaland2020finalresults>  
Office for National Statistics (online), *Low and high pay in the UK*. <https://www.ons.gov.uk/employmentandlabourmarket/peopleinwork/earningsandworkinghours/bulletins/lowandhighpayuk/2023>  
Office for National Statistics (online), *ONS Gender pay gap report*. <https://www.ons.gov.uk/employmentandlabourmarket/peopleinwork/earningsandworkinghours/bulletins/genderpaygapintheuk/2023/pdf>
- 809 NISRA (online), *Northern Ireland Annual Survey of Hours and Earnings*. <https://tinyurl.com/bd7d2bjy>
- 810 Department for Work and Pensions (2024), *Family Resources Survey*. <https://www.gov.uk/government/collections/family-resources-survey--2>
- 811 Office for National Statistics (online), *Family Resources Survey*. <https://www.ons.gov.uk/surveys/informationforhouseholdsandindividuals/householdandindividualsurveys/familyresourcesurvey#:~:text=The%20Office%20for%20National%20Statistics,Department%20for%20Work%20and%20Pensions.>
- 812 See: OPCS/Social and Community Planning Research (1994), *Family Resources Survey Annual Report on the first survey year* (page 27). <https://doc.ukdataservice.ac.uk/doc/3332/mrdoc/pdf/3332userguide.pdf>  
Office for National Statistics (2022), *Family Resources Survey Question Instructions 2021/2022* (page 14). [https://doc.ukdataservice.ac.uk/doc/9073/mrdoc/pdf/9073\\_gb\\_frs\\_2021-22\\_question\\_instructions\\_final\\_v7.pdf](https://doc.ukdataservice.ac.uk/doc/9073/mrdoc/pdf/9073_gb_frs_2021-22_question_instructions_final_v7.pdf)
- 813 As above (page 34).
- 814 See: Department for Work and Pensions (2024), *Households Below Average Income*. <https://www.gov.uk/government/statistics/households-below-average-income-for-financial-years-ending-1995-to-2023/households-below-average-income-series-quality-and-methodology-information-report-fye-2023>  
Scottish Government (2024), *Poverty and Income Inequality in Scotland*. [https://data.gov.scot/poverty/#Data\\_source](https://data.gov.scot/poverty/#Data_source)  
Department for Work and Pensions (2023), *Pensioners' Incomes Series*. <https://www.gov.uk/government/statistics/pensioners-incomes-series-financial-year-2021-to-2022/pensioners-incomes-series-financial-year-2021-to-2022#what-you-need-to-know>  
Northern Ireland Department for Communities (online), *Northern Ireland Poverty Bulletin* (online). <https://www.communities-ni.gov.uk/publications/northern-ireland-poverty-bulletin-2020-21>
- 815 UK Data Service (online), *English Housing Survey*. <https://beta.ukdataservice.ac.uk/datacatalogue/series/series?id=200010>
- 816 Department for Levelling Up, Housing and Communities (2022), *English Housing Survey Questionnaire Documentation Year 14 (2021/22)* (page 11). [https://assets.publishing.service.gov.uk/media/6399b86fd3bf77b68afc11/EHS\\_Questionnaire\\_documentation\\_2021-22.pdf](https://assets.publishing.service.gov.uk/media/6399b86fd3bf77b68afc11/EHS_Questionnaire_documentation_2021-22.pdf)
- 817 Office for National Statistics (2017), *Living Costs and Food Survey. User guidance and technical information*. <https://www.ons.gov.uk/peoplepopulationandcommunity/personalandhouseholdfinances/incomeandwealth/methodologies/livingcostsandfoodsurvey>
- 818 Office for National Statistics (2023), *Family spending in the UK Statistical bulletins*. <https://www.ons.gov.uk/peoplepopulationandcommunity/personalandhouseholdfinances/expenditure/bulletins/familyspendingintheuk/previousReleases>
- 819 Department for Environment, Food and Rural Affairs (2023), *Family food statistics*. <https://www.gov.uk/government/collections/family-food-statistics>
- 820 Office for National Statistics (2022), *Household Finances Survey*. <https://www.ons.gov.uk/peoplepopulationandcommunity/personalandhouseholdfinances/incomeandwealth/methodologies/householdfinancesurvey>
- 821 Office for National Statistics (2023), *Questionnaire User Guide, 2021/2022: Household Characteristics* (Household characteristics: line 20). [https://doc.ukdataservice.ac.uk/doc/9123/mrdoc/excel/9123\\_volume\\_b\\_and\\_c\\_questionnaire\\_2021-22.xlsx](https://doc.ukdataservice.ac.uk/doc/9123/mrdoc/excel/9123_volume_b_and_c_questionnaire_2021-22.xlsx)
- 822 Office for National Statistics (2022), *Wealth and Assets Survey QMI*. <https://www.ons.gov.uk/peoplepopulationandcommunity/personalandhouseholdfinances/debt/methodologies/wealthandassetsurveyqmi>

used to populate a range of other publications.<sup>823</sup> The statistics are accredited official statistics.

The 2018 questionnaire asked the interviewer to confirm and code the sex of existing respondents, and to **code the sex** of new respondents (**male, female**).<sup>824</sup>

## Sex, self-identified (male, female)

### Labour Force Survey

The Labour Force Survey (LFS) began in 1973. It collects information on employment circumstances and is the largest household survey in the UK.<sup>825</sup> The survey is managed by the ONS in Great Britain, and by the Northern Ireland Statistics and Research Agency (NISRA) in Northern Ireland.

Prior to 2021 the LFS instructed interviewers to code respondent sex as male or female.<sup>826</sup> In 2021 the ONS introduced guidance for interviewers explaining that sex question is ‘referring to **current sex**’ (**male, female**), thereby putting it on a self-identified basis.

The 2021 survey also introduced a gender identity question, asking, ‘Is the gender you identify with the same as your sex registered at birth?’<sup>827</sup> As noted earlier, LFS data is used to produce and/or populate a range of statistics, including the Annual Population Survey (APS), which has accredited official statistics status,<sup>828</sup> and a range of other statistics.<sup>829</sup>

## Gender identity (multiple categories)

### Financial Capability Survey, UK-wide

The Financial Capability Survey is a nationally representative survey of UK residents, initially commissioned by the Financial Services Authority, and from 2015 onward by the Money and Pensions Service.<sup>830</sup> The survey collects data on personal financial management, and the data is used to support the UK Financial Capability Strategy.<sup>831</sup>

In 2005, the survey asked interviewers to code respondent sex as male or female.<sup>832</sup> In 2015, this changed to a ‘gender’ question, with an additional ‘prefer not to say’ response option for the respondent, and an ‘other’ option available for additional household members.<sup>833</sup>

In 2018, the question changed again, asking, ‘**Which of the following describes how you think of yourself?**’ (**male, female, in another way**).<sup>834</sup>

- 823 See: Office for National Statistics (2019), *Household debt in Great Britain*. <https://www.ons.gov.uk/peoplepopulationandcommunity/personalandhouseholdfinances/incomeandwealth/bulletins/householddebtgreatbritain/latest>  
Office for National Statistics (2022), *Household total wealth in Great Britain*. <https://www.ons.gov.uk/peoplepopulationandcommunity/personalandhouseholdfinances/incomeandwealth/bulletins/totalwealthgreatbritain/latest>  
Office for National Statistics (2022), *Pension wealth: wealth in Great Britain*. <https://www.ons.gov.uk/peoplepopulationandcommunity/personalandhouseholdfinances/incomeandwealth/datasets/pensionwealthgreatbritain/latest>  
Office for National Statistics (2022), *Saving for retirement in Great Britain*. <https://www.ons.gov.uk/peoplepopulationandcommunity/personalandhouseholdfinances/incomeandwealth/bulletins/pensionwealthgreatbritain/latest>  
Office for National Statistics (2022), *Total Wealth: Wealth in Great Britain*. <https://www.ons.gov.uk/peoplepopulationandcommunity/personalandhouseholdfinances/incomeandwealth/datasets/totalwealthgreatbritain/latest>
- 824 Office for National Statistics (2018), *Household Assets Survey Round 7 Main Stage*. [https://doc.ukdataservice.ac.uk/doc/7215/mrdoc/pdf/7215\\_was\\_questionnaire\\_round\\_7.pdf](https://doc.ukdataservice.ac.uk/doc/7215/mrdoc/pdf/7215_was_questionnaire_round_7.pdf)
- 825 Office for National Statistics (online), *Labour Force Survey*. <https://www.ons.gov.uk/surveys/informationforhouseholdsandindividuals/householdandindividualsurveys/labourforcesurvey>
- 826 See: Office for National Statistics (2007), *Labour Force Survey: 2007 Questionnaire* (page 6) <http://www.ons.gov.uk/ons/guide-method/method-quality/specific/labour-market/labour-market-statistics/volume-2---2007.pdf>  
Office for National Statistics (2020), *User Guide volume 2. LFS Questionnaire 2020* (page 11). <https://www.ons.gov.uk/file?uri=/employmentandlabourmarket/peopleinwork/employmentandemployeetypes/methodologies/labourforcesurveyuserguidance/volume2od20.pdf>
- 827 Office for National Statistics (2021), *User Guide VOLUME 2 – LFS Questionnaire 2021* (pages 11, 235). <https://www.ons.gov.uk/file?uri=/employmentandlabourmarket/peopleinwork/employmentandemployeetypes/methodologies/labourforcesurveyuserguidance/volume2od2021.pdf>
- 828 Office for National Statistics (2012), *Annual Population Survey*. <https://www.ons.gov.uk/employmentandlabourmarket/peopleinwork/employmentandemployeetypes/methodologies/annualpopulationsurveyapsqmi>
- 829 See: Department for Business and Trade (2023), *Trade Union statistics*. <https://www.gov.uk/government/statistics/trade-union-statistics-2022>  
NISRA (2022), *Women in Northern Ireland*. <https://www.nisra.gov.uk/system/files/statistics/women-in-Northern-Ireland-2020-2021.pdf>  
Office for National Statistics (2024), *Employment in the UK: May 2024*. <https://www.ons.gov.uk/employmentandlabourmarket/peopleinwork/employmentandemployeetypes/bulletins/employmentintheuk/may2024>  
Office for National Statistics (2024), *Labour Market Overview*. <https://www.ons.gov.uk/employmentandlabourmarket/peopleinwork/employmentandemployeetypes/bulletins/uklabourmarket/april2024>  
Office for National Statistics (2024), *Public Sector Employment*. <https://www.ons.gov.uk/employmentandlabourmarket/peopleinwork/publicsectorpersonnel/bulletins/publicsectoremployment/december2023>  
Office for National Statistics (2023), *Working and workless households in the UK*. <https://www.ons.gov.uk/employmentandlabourmarket/peopleinwork/employmentandemployeetypes/bulletins/workingandworklesshouseholds/previousReleases>  
Office for National Statistics (2023), *Workless households for regions across the UK*. <https://www.ons.gov.uk/employmentandlabourmarket/peoplenotinwork/unemployment/bulletins/workless-householdsforregionsacrosstheuk/2022>  
Office for National Statistics (2024), *Young people not in education, employment or training*. <https://www.ons.gov.uk/employmentandlabourmarket/peoplenotinwork/unemployment/datasets/youngpeoplenotineducationemploymentortrainingneetable1>  
Scottish Government (2024), *Labour Market Trends 2024*. <https://www.gov.scot/publications/labour-market-trends-april-2024/>  
Scottish Government (2024), *Scotland's Labour Market Insights*. <https://www.gov.scot/publications/scotlands-labour-market-insights-april-2024/>  
Welsh Government (2024), *Labour Market Statistics*. <https://www.gov.wales/labour-market-statistics-annual-population-survey-2023-html#:~:text=The%20employment%20rate%20in%20North.increase%20of%200.8%20percentage%20points>
- 830 Money and Pensions Service (online), *Financial Capability Survey*. <https://www.fincap.org.uk/en/articles/financial-capability-survey>
- 831 Money and Pensions Service (online), *UK Strategy*. [https://www.fincap.org.uk/en/uk\\_strategies/uk-strategy](https://www.fincap.org.uk/en/uk_strategies/uk-strategy)
- 832 Financial Services Authority (2006), *Financial Capability baseline survey: questionnaire* (page 4). <https://doc.ukdataservice.ac.uk/doc/5697/mrdoc/pdf/5697questionnaire.pdf>
- 833 Money Advice Service (2015), *Financial Capability Survey 2015* (page 2). [https://doc.ukdataservice.ac.uk/doc/8184/mrdoc/pdf/8184\\_fincap2015\\_questionnaire.pdf](https://doc.ukdataservice.ac.uk/doc/8184/mrdoc/pdf/8184_fincap2015_questionnaire.pdf)
- 834 Money Advice Service (2018), *Financial Capability Survey 2018 Technical Report* (page 43). [https://doc.ukdataservice.ac.uk/doc/8454/mrdoc/pdf/8454\\_fin\\_cap\\_2018\\_technical\\_report.pdf](https://doc.ukdataservice.ac.uk/doc/8454/mrdoc/pdf/8454_fin_cap_2018_technical_report.pdf)

# Chapter 13: Social and political attitudes

This chapter reviews several major surveys on social and political attitudes, administered in England and Wales, Northern Ireland, and Scotland, and looks at how data collection on sex has changed over time. Attitudinal data is used by governments and policymakers to develop and evaluate policies and interventions, for example, in relation to social acceptability. The flagship UK surveys are British Social Attitudes, Scottish Social Attitudes, and the Northern Ireland Life and Times series. We also look at the long-running British, Northern Ireland and Scottish election studies, and the Northern Ireland Young Person's and Attitudes survey.

In some surveys, the long-standing sex question has been replaced with a gender identity question. The earliest example of this is the Northern Ireland Young Life and Times Survey series, which replaced sex with a gender identity question in 2014. The adult survey followed suit in 2018. Published data returns for the sex question suggest that very few people respond using options other than male or female.

The notable exception to this trend is the Scottish Election Study, which recently clarified that sex refers to biological sex. The flagship British Social Attitudes survey has also reverted to collecting data on sex subject to GRC, most likely to align with the sex question in the England and Wales 2021 Census. Prior to this, it has collected data on self-reported sex, interviewer observed sex, and self-identified gender, with differing response options over time.

## Sex, no definition (male, female)

### Scottish Social Attitudes Survey

Scottish Social Attitudes was launched by ScotCen Social Research (formerly the Scottish Centre for Social Research) in 1999, following devolution.<sup>835</sup> The survey is administered annually and collects public opinions on a range of topics. As part of the survey, since 2004 the Scottish Government has funded questions about public attitudes to government, the economy, and

public services.<sup>836</sup>

The 1999 questionnaire asked interviewers to code or ask the respondent their sex (male, female).<sup>837</sup> Documentation held by UKDS shows an interviewer observed approach was used up to 2019.<sup>838</sup> At the time of writing we could not locate the 2021/22 questionnaire, although a Scottish Government report on SSA data shows data labelled **sex (male, female, prefer not to say)**.<sup>839</sup>

## Sex at birth (male, female)

### Scottish Election Study

The Scottish Election Study (SES) is an ESRC-funded study of politics and elections in Scotland. It has run surveys at every devolved election in Scotland, as well as the 1997 Scottish devolution referendum, the 2014 Scottish Independence Referendum, and 2017 and 2021 UK General Elections.<sup>840</sup> The SES project also runs online opinion polls in partnership with YouGov.

Fieldwork is also undertaken by YouGov. Earlier questionnaires do not show a sex question,<sup>841</sup> which suggests that the data was based on details provided to YouGov by its registered panellists. In 2007 the outputs are labelled gender, with male and female responses.<sup>842</sup>

Unusually, the 2021 post-General Election survey, also administered by YouGov, asked a targeted question on biological sex: **'What sex were you assigned at birth, on your original birth certificate?' (male, female)**.<sup>843</sup>

## Sex subject to GRC (male, female)

### British Social Attitudes

The British Social Attitudes (BSA) survey series began in 1983.<sup>844</sup> It is undertaken by NatCen (previously 'Social and Community Planning Research'). The survey collects data in England, Wales, and Scotland. In addition, since devolution in 1999, the Scottish Social Attitudes survey has collected separate data in Scotland (see below).

835 Natcen (online), *Scottish Social Attitudes*.

<https://natcen.ac.uk/participant-contents/scottish-social-attitudes>

836 Scottish Government (online), *Scottish Social Attitudes Survey*. <https://www.gov.scot/collections/scottish-social-attitudes-survey/>

837 Natcen (1999), *Scottish Social Attitudes, 1999 Note to Users*. <https://doc.ukdataservice.ac.uk/doc/4346/mrdoc/pdf/a4346uab.pdf>

838 Scotcen (2020), *Scottish Social Attitudes survey 2019. Data documentation* (page 4). [https://doc.ukdataservice.ac.uk/doc/9066/mrdoc/pdf/9066\\_ssa\\_2019\\_data\\_documentation.pdf](https://doc.ukdataservice.ac.uk/doc/9066/mrdoc/pdf/9066_ssa_2019_data_documentation.pdf)

839 Scottish Government (2022), *Scottish Social Attitudes Survey 2021/22: Public Views of Telephone and Video Appointments in General Practice* (page 60).

<https://tinyurl.com/yc3z8pax>

840 Scottish Election Study (online) *About*.

<https://scottishelections.ac.uk/about-scottish-elections/>

841 Johns et al. (2007), *Scottish Election Study 2007: Documentation to accompany archived datasets* (page 1).

<https://doc.ukdataservice.ac.uk/doc/6026/mrdoc/pdf/6026userguide.pdf>

842 Johns et al. (2007), *Scottish Election Study 2007: Data dictionary*. [https://doc.ukdataservice.ac.uk/doc/6026/mrdoc/allissue/sesagg\\_UKDA\\_Data\\_Dictionary.rtf](https://doc.ukdataservice.ac.uk/doc/6026/mrdoc/allissue/sesagg_UKDA_Data_Dictionary.rtf)

843 Henderson et al. (2021), *Scottish Election Study 2021: Pre-Election Wave* (page 32). [https://doc.ukdataservice.ac.uk/doc/9062/mrdoc/pdf/9062\\_ses\\_21\\_pre\\_questionnaire.pdf](https://doc.ukdataservice.ac.uk/doc/9062/mrdoc/pdf/9062_ses_21_pre_questionnaire.pdf)

844 UK Data Service (online), *British Social Attitudes Survey*. <https://beta.ukdataservice.ac.uk/datacatalogue/series/series?id=200006>

Over time, the BSA has variously collected data on self-reported sex, interviewer observed sex, self-identified gender, and sex subject to GRC. The 1984 BSA asked a simple binary sex question (male, female) with no instructions to interviewers.<sup>845</sup> In 2019, interviewers either coded sex on observation ('please code sex of respondent... male, female'), or asked respondents directly in the self-completion questionnaire ('are you... male, female').<sup>846</sup> In 2020, NatGen amended the question, asking instead 'Which of these options describes how you think of yourself?', with female, male, and 'in another way' response options.<sup>847</sup>

In 2021 the BSA reverted to a binary question, asking '**what is your sex**' (female, male), with guidance that provided for responses based on sex subject to GRC. Replicating the 2021 England and Wales Census guidance, this stated:

'If you are considering how to answer, use the sex recorded on your birth certificate or Gender Recognition Certificate.'<sup>848</sup>

### Northern Ireland Young Persons' Behaviour and Attitudes Survey

The Northern Ireland Young Persons' Behaviour and Attitudes Survey (YPBAS) is a school-based survey, conducted among 11–16-year-olds. The survey began in 2000 and is conducted every three years.<sup>849</sup>

The 2000 and 2003 surveys asked pupils directly, 'are you a boy or a girl', and presented the results as male or female.<sup>850</sup>

From 2007 to 2016, schools provided this information, based on the question 'is the pupil a boy or a girl?'<sup>851</sup> A schools-based approach was also used in 2016, 2019 and 2022, with male or female response options. Northern Ireland Education Authority guidance states '**A pupil's gender on SIMS should remain the one**

**that was registered when the Unique Pupil Number was assigned, unless the birth certificate/legal gender is changed by way of a Gender Recognition Certificate'**.<sup>852</sup> Given the minimum age for acquiring a GRC is 18 years, this suggests that YPBAS data will reflect biological sex, with potential for variation in year 14, by which point some pupils are eighteen years old.

## Mix of sex and gender identity

### British Election Study

The British Election Study (BES) began in 1964 and is one of the world's longest-running social surveys and looks at determinants of electoral behaviour. The study includes face-to-face probability surveys and an internet panel study (BESIP), which is administered by YouGov. The latter has followed the same respondents since 2014 (with new additions at each sweep) to track changes in attitudes and voting preferences over time.<sup>853 854</sup>

Early surveys collected interviewer-coded sex. For example, the 1974 survey asked interviewers to 'note sex of respondent' as male or female.<sup>855</sup> The 2017 face-to-face post-general election survey asked the interviewer to record respondent gender (male, female) and also asked respondents directly in a self-completion module.<sup>856</sup>

The 2019 post-election random probability survey (postal, face-to-face and self-administered) asked '**how you think of yourself?**' (male, female, in another way).<sup>857</sup>

Technical documentation from the internet panel study (covering 2014 to 2024) indicates that the survey utilises a YouGov Profile Variable, which asks participants, '**are you male or female**', and is labelled **gender**.<sup>858</sup>

845 Social and Community Planning Research (1985), *British Social Attitudes 1984 Survey Technical Report*. (page 157).

846 Natcen (2019), *British Social Attitudes 2019. Documentation of the Blaise questionnaire* (pages 8, 167).

847 Natcen (2020), *British Social Attitudes 2020. Documentation of the Blaise questionnaire* (page 6). [https://doc.ukdataservice.ac.uk/doc/9005/mrdoc/pdf/9005\\_bsa\\_2020\\_documentation\\_final.pdf](https://doc.ukdataservice.ac.uk/doc/9005/mrdoc/pdf/9005_bsa_2020_documentation_final.pdf)

848 Natcen (2021), *British Social Attitudes 2021. Documentation of the Blaise questionnaire* (page 4).

849 [https://doc.ukdataservice.ac.uk/doc/9072/mrdoc/pdf/9072\\_bsa\\_2021\\_documentation\\_questionnaire.pdf](https://doc.ukdataservice.ac.uk/doc/9072/mrdoc/pdf/9072_bsa_2021_documentation_questionnaire.pdf)

849 NISRA (online), *Young Persons' Behaviour & Attitudes Survey*.

<https://www.nisra.gov.uk/statistics/find-your-survey/young-persons-behaviour-attitudes-survey>

850 NISRA (2003), *Young Persons' Behaviour and Attitudes Survey Technical Report* (page 5). <https://www.nisra.gov.uk/sites/nisra.gov.uk/files/publications/YPBAS2000TechnicalReport%26ToplineResults%28unweighted%29.pdf>

851 See: NISRA (2008), *Young Persons' Behaviour and Attitudes Survey Bulletin* (page 13).

<https://doc.ukdataservice.ac.uk/doc/6134/mrdoc/pdf/6134results.pdf>

852 NISRA (2010), *Young Persons' Behaviour & Attitudes Survey 2010* (page 6). [https://doc.ukdataservice.ac.uk/doc/6918/mrdoc/pdf/6918results\\_reports.pdf](https://doc.ukdataservice.ac.uk/doc/6918/mrdoc/pdf/6918results_reports.pdf)

853 Education Authority (2021), *Guidance for Schools, EOTAS Centres and Youth Service on Supporting Transgender Young People* (paragraph 11.39). <https://www.eani.org.uk/sites/default/files/2021-01/Guidance%20for%20Schools%20and%20EOTAS%20Centres%20and%20Youth%20Service%20on%20Supporting%20transgender%20young%20people.pdf>

854 UK Data Service (online), *British Election Study*. <https://beta.ukdataservice.ac.uk/datacatalogue/series/series?id=200003>

854 Mellon, J. (2020), *British Election Study Data* (page 3). [https://ukdataservice.ac.uk/app/uploads/britishelectionstudy\\_mellon.pdf](https://ukdataservice.ac.uk/app/uploads/britishelectionstudy_mellon.pdf)

855 Social and Community Planning Research (1974), *British Election Study Technical Report* (page 59).

<https://doc.ukdataservice.ac.uk/doc/422/mrdoc/pdf/a422uab.pdf>

856 GfK Social Research (2017), *British Election Study, 2017: Face-to-Face Post-Election Survey* (pages 35, 50).

[https://doc.ukdataservice.ac.uk/doc/8418/mrdoc/pdf/8418\\_bes\\_2017\\_f2f\\_ukds\\_codebook.pdf](https://doc.ukdataservice.ac.uk/doc/8418/mrdoc/pdf/8418_bes_2017_f2f_ukds_codebook.pdf)

857 Fieldhouse, E. et al. (2021), *2019 British Election Study Post-Election Random Probability Survey User Guide and Codebook v.1.2.0* (page 113). [https://doc.ukdataservice.ac.uk/doc/8875/mrdoc/pdf/8875\\_bes\\_rps\\_2019\\_doc\\_1-2-0.pdf](https://doc.ukdataservice.ac.uk/doc/8875/mrdoc/pdf/8875_bes_rps_2019_doc_1-2-0.pdf)

858 Universities of Manchester, Oxford and Nottingham (2024), *British Election Study 2014-2024 Combined Waves 1-15 Internet Panel Codebook* (page 198). [https://www.britishelection-study.com/wp-content/uploads/2019/06/Bes\\_wave15Documentation\\_V2.pdf](https://www.britishelection-study.com/wp-content/uploads/2019/06/Bes_wave15Documentation_V2.pdf)



## Gender, interviewer-coded (male, female)

### Northern Ireland General Election Survey

The Northern Ireland General Elections surveys covers post-general election surveys conducted from 2010 onward, most recently in 2019. The 2010 Northern Ireland General Election Attitude Survey directly asked respondents are you male or female.<sup>859</sup> General Elections surveys conducted in 2015, 2017 and 2019 instructed the interviewer to **code respondent gender (male, female)**.<sup>860</sup>

## Gender identity (multiple categories)

### Community Life Survey, England

The Community Life Survey is a representative annual household survey of residents in England aged 16 and over. At the time of writing it is conducted by Kantar, on behalf of the Department for Digital, Culture, Media and Sport.<sup>861</sup> The survey includes measures on volunteering, charitable giving, neighbourhood, civic engagement, social action, and well-being.

The 2012/13 questionnaire asked the interviewer to ‘code the sex of each adult in the household’ as male or female, only asking the respondent ‘if necessary’.<sup>862</sup> The 2016/17 questionnaire directly asked respondents, ‘are you male or female’ and ‘what is the gender of each adult in your household?’ (male, female).<sup>863</sup>

In 2018/19, Kantar revised the response options, adding an ‘other’ option. The Technical Report states this change was made to reflect guidance published by the Market Research Society (MRS) ([see chapter five](#)).

‘At the start of each survey year, we review all socio-demographic questions to ensure they reflect the latest recommendations. As a result, the gender question was updated to include an ‘other’ option

based on MRS guidance.’<sup>864</sup>

In 2021/22 the question changed again, asking ‘**what is your gender**’ (male, female, identify in some other way, don’t know, prefer not to say).<sup>865</sup>

### Department for Energy Security and Net Zero Public Attitudes Tracker

The Department for Energy Security and Net Zero (DESNZ) conducts a range of Public Attitudes Tracker (PAT) surveys that collect data on public awareness, behaviours and attitudes relating to the department’s policy areas. These include surveys on Net Zero and climate change, and under the former Department for Business, Energy and Industrial Strategy (BEIS),<sup>866</sup> surveys on workers’ rights, consumer rights, AI and other areas.<sup>867</sup> The survey began in 2012.

We could not easily locate the sex question over time, although data tables indicate that the early face-to-face surveys collected binary sex data.<sup>868</sup> From 2021 onward the survey collected data on gender identity. The 2023 questionnaire asked respondents ‘**would you describe yourself as...**’ (male, female, prefer to self-describe [please type in], prefer not to say).<sup>869</sup>

### Northern Ireland Life and Times Survey series

The Northern Ireland Life and Times Survey began in 1989, initially as an extension of British Social Attitudes, called Northern Ireland Social Attitudes (NISA).<sup>870</sup>

In 1998 the Northern Ireland Life and Times Survey (NILT) replaced the NISA.<sup>871</sup> A companion survey, Young Life and Times (YLT) surveyed 12- to 17-year-olds living in the same house as the adult respondent.

Since 2003 the YLT has run independently of the adult survey, recording the views of 16 year olds.<sup>872</sup> A separate Kids’ Life and Time Survey began in 2008,

859 MRNI Research (2010), *Northern Ireland General Election Attitudes Survey* (page 33). <https://doc.ukdataservice.ac.uk/doc/6553/mrdoc/pdf/6553userguide.pdf>

860 See: Social Market Research (2015), *Northern Ireland General Election Survey 2015* (page 16). [https://doc.ukdataservice.ac.uk/doc/7523/mrdoc/pdf/7523\\_final\\_questionnaire.pdf](https://doc.ukdataservice.ac.uk/doc/7523/mrdoc/pdf/7523_final_questionnaire.pdf)

Social Market Research (2017), *NI General Election Survey Technical Report 2017* (page 19). [https://doc.ukdataservice.ac.uk/doc/8234/mrdoc/pdf/8234\\_escr\\_smr\\_ni\\_election\\_survey\\_technical\\_report\\_and\\_questionnaire.pdf](https://doc.ukdataservice.ac.uk/doc/8234/mrdoc/pdf/8234_escr_smr_ni_election_survey_technical_report_and_questionnaire.pdf)

Social Market Research (2020), *NI General Election Survey Technical Report 2020* (page 20). [https://doc.ukdataservice.ac.uk/doc/8619/mrdoc/pdf/8619\\_n\\_ireland\\_2019\\_general\\_election\\_survey\\_technical\\_report\\_and\\_questionnaire.pdf](https://doc.ukdataservice.ac.uk/doc/8619/mrdoc/pdf/8619_n_ireland_2019_general_election_survey_technical_report_and_questionnaire.pdf)

861 UK Data Service (online), *Community Life Survey*. <https://beta.ukdataservice.ac.uk/datacatalogue/series/series?id=2000100>

862 TNS/BMRB (2021), *Community Life Survey Questionnaire 2012-2013* (page 5). [https://doc.ukdataservice.ac.uk/doc/7405/mrdoc/pdf/7405\\_community\\_life\\_survey\\_2012-13\\_questionnaire.pdf](https://doc.ukdataservice.ac.uk/doc/7405/mrdoc/pdf/7405_community_life_survey_2012-13_questionnaire.pdf)

863 Kantar Public (2016), *Community Life Online and Paper Survey Technical Report 2016-17* (pages 117, 64). [https://doc.ukdataservice.ac.uk/doc/8294/mrdoc/pdf/8294\\_community\\_life\\_questionnaires\\_technical\\_report\\_2016-17.pdf](https://doc.ukdataservice.ac.uk/doc/8294/mrdoc/pdf/8294_community_life_questionnaires_technical_report_2016-17.pdf)

864 Kantar Public (2019), *Community Life Survey Technical Report* (page 14). <https://tinyurl.com/2vpan62w>

865 HM Government (2021), *The Community Life Survey 2021-22* (page 2). [https://doc.ukdataservice.ac.uk/doc/9079/mrdoc/pdf/9079\\_community\\_life\\_survey\\_2021\\_22\\_paper\\_questionnaire.pdf](https://doc.ukdataservice.ac.uk/doc/9079/mrdoc/pdf/9079_community_life_survey_2021_22_paper_questionnaire.pdf)

866 In July 2016, the Department of Energy and Climate Change (DECC) merged with the Department for Business, Innovation and Skills (BIS), to form the Department for Business, Energy and Industrial Strategy (BEIS). From Spring 2023 onwards, following departmental restructuring, the Department for Energy Security and Net Zero (DESNZ) is responsible for the PAT.

867 Department for Energy Security and Net Zero (2024), *DESNZ Public Attitudes Tracker*. <https://www.gov.uk/government/collections/public-attitudes-tracking-survey>

868 Department of Energy & Climate Change (2013), *Public attitudes tracking survey: wave 5 dataset* (See value labels tab, line 570). [https://assets.publishing.service.gov.uk/media/5a7b133ee5274a319e77cd80/Wave\\_5\\_Excel\\_dataset.xlsx](https://assets.publishing.service.gov.uk/media/5a7b133ee5274a319e77cd80/Wave_5_Excel_dataset.xlsx)

869 Department for Energy Security and Net Zero (2024), *DESNZ Public Attitudes Tracker, Winter 2023* (page 4). [https://assets.publishing.service.gov.uk/media/65e8978d62ff48001187b-2ba/DESNZ\\_PAT\\_Wave\\_9\\_Online\\_Questionnaire.pdf](https://assets.publishing.service.gov.uk/media/65e8978d62ff48001187b-2ba/DESNZ_PAT_Wave_9_Online_Questionnaire.pdf)

870 Social and Community Planning Research (1993), *British Social Attitudes Technical Report* (page 30). <https://beta.ukdataservice.ac.uk/datacatalogue/series/series?id=2000041>

871 ARK (online), *Northern Ireland Life and Times Survey* (NILT). <https://www.ark.ac.uk/ARK/nilt>

872 CESSDA data catalogue (online), *Young Life and Times Survey*. <https://datacatalogue.CESSDA.eu/detail?q=bddf418b1e29083881aa1e29f16de212b304037109cbdc580a98661e1cd9ab9e>

which collects data from ten and eleven year olds.<sup>873</sup> All three surveys are administered by Access Research Knowledge (ARK), which is a joint resource between Queen’s University Belfast and the University of Ulster.

In each survey, data collection on sex has changed over time, with variation between the different surveys. The first significant change can be seen in the YLT, which replaced the sex variable with a gender identity variable in 2014. This was followed by the main adult survey in 2018, and the Kids survey in 2020. These changes are documented in more detail below.

### Northern Ireland Life and Times Survey (Adult)

Early NISA questionnaires instructed interviewers to either code respondent sex (male, female), or to ask for respondent sex.<sup>874</sup> Following the relaunch in 1998, the survey continued to ask respondents for binary data on sex, without further guidance.<sup>875</sup>

In 2016 the survey introduced a transgender identity question in the self-completion questionnaire,<sup>876</sup> whilst retaining a binary sex question in the main questionnaire.<sup>877</sup>

The 2018 main questionnaire introduced an ‘in another way’ response option,<sup>878</sup> putting the ‘sex’ variable on a self-identified basis. The 2020 main questionnaire asked respondents to complete a household grid with options labelled as ‘**gender**’ (male, female, in another way, I don’t know, prefer not to say).<sup>879</sup> This approach was also taken in 2022, but referring to both **gender and sex**.<sup>880</sup> Data returns for the sex question suggest that very few people have responded using options other than male or female (fewer than 0.5% in 2020 and 2021, and none in 2018, 2019 and 2022).<sup>881</sup>

### Northern Ireland Young Life and Times Survey

Earlier sweeps of the YLT survey asked a binary sex question, ‘are you male or female’.<sup>882</sup> In 2014, ARK fully replaced the sex question, asking instead ‘**what is your gender identity**’ with multiple response options.<sup>883</sup> <sup>884</sup> The 2023 questionnaire asked the same question, with **male, female, non-binary, male to female transgender, female to male transgender, and other** [please write in] options.<sup>885</sup>

Outputs from the YLT survey do not directly reflect these response options. Between 2014 and 2016, the survey only reported male and female responses, suggesting an underpinning binary sex question.<sup>886</sup> The 2023 outputs grouped six different response categories into female, male, and ‘other’ responses. Whilst this approach is standard practice in survey research (for example, age is usually grouped into bands), here it is unclear how trans-identified, non-binary, and ‘other’ response are classified.<sup>887</sup>

### Northern Ireland Kids’ Life and Times Survey

The first KLT survey sweep in 2008 asked respondents, ‘are you a boy or a girl’.<sup>888</sup> The questionnaire changed in 2019, adding ‘neither’ and ‘I don’t want to say’ response options to the same question.<sup>889</sup> The 2023 sweep asked, ‘**which one of the following describes you best?**’ (boy, girl, neither, I don’t want to say).<sup>890</sup>

873 Access Research Knowledge (online), *Kids’ Life and Times Survey*. <https://www.ark.ac.uk/ARK/kit>

874 Natcen (1996), *Northern Ireland Social Attitudes* (page 59). <https://doc.ukdataservice.ac.uk/doc/4130/mrdoc/pdf/4130userguide1.pdf>

875 Natcen (1998), *Northern Ireland Life and Times Survey 1998* (page 64). <https://doc.ukdataservice.ac.uk/doc/4130/mrdoc/pdf/4130userguide1.pdf>

876 ARK (2016), *Northern Ireland Life and Times Survey, 2016 self-completion questionnaire* (page 5). [https://doc.ukdataservice.ac.uk/doc/8246/mrdoc/pdf/8246\\_sc\\_questionnaire\\_2016.pdf](https://doc.ukdataservice.ac.uk/doc/8246/mrdoc/pdf/8246_sc_questionnaire_2016.pdf)

877 ARK (2016), *Northern Ireland Life and Times Survey, 2016 main questionnaire* (page 2). [https://doc.ukdataservice.ac.uk/doc/8246/mrdoc/pdf/8246\\_main\\_questionnaire\\_2016.pdf](https://doc.ukdataservice.ac.uk/doc/8246/mrdoc/pdf/8246_main_questionnaire_2016.pdf)

878 ARK (2018), *Northern Ireland Life and Times Survey 2018 Main questionnaire* (page 2). [https://doc.ukdataservice.ac.uk/doc/8507/mrdoc/pdf/8507\\_nilt\\_2018\\_main.pdf](https://doc.ukdataservice.ac.uk/doc/8507/mrdoc/pdf/8507_nilt_2018_main.pdf)

879 ARK (2020), *Northern Ireland Life and Times Survey 2020 Main questionnaire* (page 4). [https://doc.ukdataservice.ac.uk/doc/8843/mrdoc/pdf/8843\\_nilt\\_2020\\_cawi.pdf](https://doc.ukdataservice.ac.uk/doc/8843/mrdoc/pdf/8843_nilt_2020_cawi.pdf)

880 ARK (2022), *Northern Ireland Life and Times Survey 2022 Main questionnaire* (page 4). [https://doc.ukdataservice.ac.uk/doc/9138/mrdoc/pdf/9138\\_nilt\\_2022\\_cawi.pdf](https://doc.ukdataservice.ac.uk/doc/9138/mrdoc/pdf/9138_nilt_2022_cawi.pdf)

881 ARK (2018) *Sex of respondent 2018*. <https://www.ark.ac.uk/nilt/2018/Background/RSEX.html>

ARK (2019) *Sex of respondent 2019*. <https://www.ark.ac.uk/nilt/2019/Background/RSEX.html>

ARK (2020) *Sex of respondent 2020*. <https://www.ark.ac.uk/nilt/2020/Background/RSEX.html>

ARK (2021) *Sex of respondent 2021*. <https://www.ark.ac.uk/nilt/2021/Background/RSEX.html>

ARK (2022) *Sex of respondent 2022*. <https://www.ark.ac.uk/nilt/2022/Background/RSEX.html>

882 ARK (online), *Variable RSEX*.

<https://www.ark.ac.uk/yilt/2003/Background/RSEX.html>

883 An academic paper co-authored by the lead investigator reported ‘In 2014, 1,939 respondents completed the YLT survey. For the first time, respondents were given the option to self-identify as male, female, other, male-to-female transgender, or female-to-male transgender. Ten respondents in the sample identified as gender non-conforming—five said they were transgender; and another five said they were something other than male or female, but not transgender’. See: McBride, R. & Schubotz, D. (2017), *Living a fairy tale: the educational experiences of transgender and gender non-conforming youth in Northern Ireland*. *Child Care in Practice*, 23:3, 292-304 (requires institutional access). <https://www.tandfonline.com/doi/full/10.1080/13575279.2017.1299112?scroll=top&needAccess=true>

884 ARK (2014), *Young Life and Times Survey 2014* (page 2). [https://doc.ukdataservice.ac.uk/doc/7747/mrdoc/pdf/7747\\_yltquest2014\\_a-orange.pdf](https://doc.ukdataservice.ac.uk/doc/7747/mrdoc/pdf/7747_yltquest2014_a-orange.pdf)

885 ARK (2023), *2023 YLT questionnaire – Version A* (page 2). [https://doc.ukdataservice.ac.uk/doc/9166/mrdoc/pdf/9166\\_ylt2023\\_questionnaire\\_a.pdf](https://doc.ukdataservice.ac.uk/doc/9166/mrdoc/pdf/9166_ylt2023_questionnaire_a.pdf)

886 ARK (2014), *What is your gender identity 2014*. <https://www.ark.ac.uk/yilt/2014/Background/RSEX.html>

ARK (2015), *What is your gender identity 2015*. <https://www.ark.ac.uk/yilt/2015/Background/RSEX.html>

ARK (2016), *What is your gender identity 2016*. <https://www.ark.ac.uk/yilt/2016/Background/RSEX.html>

887 Outputs for all YLT sweeps are available [here](https://www.ark.ac.uk/yilt/).

888 ARK (2008), *Kids’ Life and Times Survey 2008 Technical notes* (page 11). [https://doc.ukdataservice.ac.uk/doc/6261/mrdoc/pdf/6261\\_userguide.pdf](https://doc.ukdataservice.ac.uk/doc/6261/mrdoc/pdf/6261_userguide.pdf)

889 ARK (2019), *KLT Questionnaire 2019* (page 1). [https://doc.ukdataservice.ac.uk/doc/8907/mrdoc/pdf/8907\\_klt\\_questionnaire\\_2019.pdf](https://doc.ukdataservice.ac.uk/doc/8907/mrdoc/pdf/8907_klt_questionnaire_2019.pdf)

890 ARK (2023), *Kids’ Life and Times Survey 2023 Questionnaire* (page 2). [https://doc.ukdataservice.ac.uk/doc/9165/mrdoc/pdf/9165\\_klt2023\\_questionnaire.pdf](https://doc.ukdataservice.ac.uk/doc/9165/mrdoc/pdf/9165_klt2023_questionnaire.pdf)

# Chapter 14: Sport, leisure and recreation

This chapter reviews a range of major surveys on sport, leisure, and recreation. Despite the overwhelming relevance of sex to sport, none of the reviewed surveys collect reliable data on sex. Notable surveys here include the Sports England Active Lives survey, which ceased collecting data on sex in 2017. The recent 2021/22 survey asked respondents, ‘which of the following best describes you?’, with non-binary and ‘prefer to self-describe’ response options.

The Department for Culture, Media and Sport flagship ‘Taking Part’ survey also no longer collects data on sex, only gender identity. Accompanying documentation explains that this change was made to comply with the Market Research Society Code of Conduct:

‘Allowing respondents to provide information in a way that reflects the view they want to express is explicitly set out in the MRS Code of Conduct and this also applies to describing their gender. We must facilitate and recognise the fluidity of gender identity’.<sup>891</sup>

In Scotland, the national agency for sport in Scotland (sportscotland) relies on data collected in the Scottish Household Survey (SHS), which is reviewed in chapter sixteen. This shows that officials replaced the sex question in the SHS with a gender identity question in 2018, later reverting to a self-identified binary sex question. This means that sportscotland cannot track the protected characteristic of sex for the purposes of policymaking and funding decisions. Detailed analysis by Devine concluded that this shift has damaged the ability of sportscotland to address the significant under-funding for female sports and physical recreation and meet its requirements under the Equality Act 2010.<sup>892</sup>

A failure to collect data on sex is also evident in other leisure and recreation surveys. The Natural England ‘People and Nature Survey for England’ asks parents and carers if their child is male, female, or ‘other’, or if they ‘don’t know’. Of the two OFCOM surveys included

in the chapter, one ceased collecting data on sex in 2018 and has since only asked about gender identity, in differing formats.

## Sex, no definition (male, female)

### The Participation Survey, England

The Participation Survey began in 2021 and collects data on adult engagement with the cultural sectors, major events, sports, and the digital sectors. It now sits within the Department for Science, Innovation and Technology and is currently run by Verian.<sup>893</sup> Prior to 2024 the survey was under the Department for Culture, Media and Sport (DCMS). All Participation Survey questionnaires are published on a single webpage, making it easy to track change over time.<sup>894</sup>

In 2022/23 the survey asked, ‘would you describe yourself as... male, female, prefer to self-describe (open)’.<sup>895</sup> This identity-based format was also used in 2023/24.<sup>896</sup> This changed to a sex question in the 2024/25 online survey which asks, ‘**what is your sex**’ (**male, female, prefer not to say**) with a note that a question on gender identity will follow.<sup>897</sup>

## Sex (male, female) and gender identity (multiple options)

### Active Lives Children and Young People

The Active Lives Children and Young People (ALCYP) is part of the longer-running Active People and Active Lives surveys. The surveys provide a key measure of physical activity among adults and children and young people in England, to inform Department for Culture, Media and Sport (DCMS) strategy.<sup>898</sup>

Since its introduction in 2017, the ALCYP survey has collected data on binary sex in the parental and early years questionnaire (years one and two), and data on gender identity for children from year three upward. The 2021/22 questionnaires asked parents of children in years one or two (ages five to seven) ‘**is your child a...**

891 Ipsos MORI (2019), *Taking Part: England's survey of Culture, Leisure and Sport Interviewer Instructions* (pages 35-36). [https://doc.ukdataservice.ac.uk/doc/8631/mrdoc/pdf/8631\\_taking\\_part\\_interviewer\\_instructions.pdf](https://doc.ukdataservice.ac.uk/doc/8631/mrdoc/pdf/8631_taking_part_interviewer_instructions.pdf)

892 See: Devine, C (2021), *Sex, sport and Data: The importance of sex disaggregated sport and physical recreation data for compliance with the 2010 Equality Act in Scotland*. <https://murray-blackburnmackenzie.org/wp-content/uploads/2021/05/sex-sport-and-data.-c.-devine-12.5.21.pdf>

893 Department for Culture, Media and Sport (2024), *Participation Survey*. <https://www.gov.uk/guidance/participation-survey>

894 Department for Culture, Media and Sport (2024), *Participation Survey: Questionnaires*. <https://www.gov.uk/government/publications/participation-survey-questionnaires>

895 Department for Culture, Media and Sport (2024), *Participation Survey 2022/23: Online questionnaire*.

<https://www.gov.uk/government/publications/participation-survey-questionnaires/participation-survey-202223-online-questionnaire>

896 Department for Culture, Media and Sport (2024), *Participation Survey 2023/24: Online questionnaire*.

<https://www.gov.uk/government/publications/participation-survey-questionnaires/participation-survey-202324-online-questionnaire>

897 Department for Culture, Media and Sport (2024), *Participation Survey 2024/25: Online questionnaire*.

<https://www.gov.uk/government/publications/participation-survey-questionnaires/participation-survey-202425-online-questionnaire>

898 Sport England (online) *Active Lives*.

<https://www.sportengland.org/research-and-data/data/active-lives>

**boy, girl**'.<sup>899</sup> The same was asked (are you...) of year one and two pupils.<sup>900</sup>

For children in year three upwards, the survey asked, 'are you a...' (**boy, girl, other, prefer not to say**).<sup>901</sup> Children in years seven to 11 who responded 'other' were then asked an additional open text gender identity question: 'You have not categorised yourself as a boy or a girl. How would you describe yourself?'<sup>902</sup>

## Gender identity (multiple categories)

### Active People/Active Lives Surveys

As noted above, the annual Active People/Active Lives surveys provide a key measure of physical activity among adults and children and young people in England.<sup>903</sup> The series began as the Active People (AP) survey which ran from 2005 to 2016 (telephone-only).<sup>904</sup> The Active Lives (AL) survey superseded the AP survey, with a separate survey for school children and young people introduced in 2017, as detailed above.

The approach to collecting data on sex has changed over time. The original AP survey recorded binary data on sex for its full duration (labelled 'gender' in documentation). Questionnaires instructed interviewers to code respondent 'gender' as male or female, without asking the person. Separately, the 2014/15 survey introduced a gender identity question, directly asked of respondents. The accompanying Technical report stated: 'The new gender question will enable Sport England to capture the range of gender groups. This addition... is in response to the Equality Act of 2010 which outlines the responsibility of public authorities to eliminate unlawful discrimination, advance equality of opportunity and foster good relations across all aspects of equality'.<sup>905</sup>

In 2015/16 Sport England launched the AL survey. The sex question is inconsistent over time, and at points, between different survey modes (postal or online). In 2015/16 the online survey asked, 'what is your sex', offering male, female, and an 'other' response option.<sup>906</sup> By contrast, the postal questionnaires for adults and young people only offered male and female response options.<sup>907</sup>

Between 2017/18 and 202/2021, the AL survey asked, 'Which of the following describes how you think of yourself?' and replaced the 'other' response option with 'In another way'.<sup>908</sup>

The 2021/22 online questionnaire asked, 'Which of the following best describes you? (female, male, non-binary, prefer to self-describe (open text box), prefer not to say)'.<sup>909</sup> The postal questionnaire offered the same options without the 'prefer not to say' option.<sup>910</sup>

### People and Nature Survey for England

This annual Natural England survey gathers information on people's experiences and views about the natural environment, and its contributions to health and wellbeing.<sup>911</sup> The survey was introduced in 2020 as a successor to the long-standing Monitor of Engagement with the Natural Environment (MENE) survey that ran from 2009 to 2019. A separate survey for children was also introduced in 2020. The statistics are accredited official statistics.

In 2016 the MENE survey introduced 'other' and 'prefer not to say' responses to the 'what is your sex' question.<sup>912</sup> Following the launch of the 2020 People and Nature Survey for England, in October 2020 the 'sex' question was replaced with a gender identity question (**what gender do you identify as**).<sup>913</sup>

899 Sport England and Ipsos (2023), *Active Lives Children and Young People Survey Year 3-11 and parents Questionnaire Academic year 2021-22 (Year 5)* (page 9). [https://doc.ukdataservice.ac.uk/doc/9111/mrdoc/pdf/9111\\_als\\_child\\_year\\_5\\_yr\\_3-parents\\_qnr\\_v1\\_public.pdf](https://doc.ukdataservice.ac.uk/doc/9111/mrdoc/pdf/9111_als_child_year_5_yr_3-parents_qnr_v1_public.pdf)

900 Ipsos (2023), *Active Lives Child Survey Year 1-2 Children Questionnaire Academic Year 2021-22 (Year 5)* (page 10). [https://doc.ukdataservice.ac.uk/doc/9111/mrdoc/pdf/9111\\_als\\_child\\_year\\_5\\_yr\\_1-2\\_qnr\\_v1\\_for\\_se.pdf](https://doc.ukdataservice.ac.uk/doc/9111/mrdoc/pdf/9111_als_child_year_5_yr_1-2_qnr_v1_for_se.pdf)

901 As above (page 36).

902 As above.

903 UK Data Service (online), *Active Lives and Active People Surveys*. <https://beta.ukdataservice.ac.uk/datacatalogue/series/series?id=2000120>

904 Sport England (online), *Active People Interactive*. <https://activepeople.sportengland.org/>

905 TNS BMRB/Sport England (2016), *Active People Survey 5-9 Technical Report*. [https://doc.ukdataservice.ac.uk/doc/8038/mrdoc/pdf/8038\\_aps\\_9\\_technical\\_report.pdf](https://doc.ukdataservice.ac.uk/doc/8038/mrdoc/pdf/8038_aps_9_technical_report.pdf)

906 Ipsos MORI (2015) *Active Lives Survey: Online questionnaire documentation. Year 1: 2015-2016*. (page 32) [https://doc.ukdataservice.ac.uk/doc/8223/mrdoc/pdf/8223\\_active\\_lives\\_adult\\_online\\_questionnaire.pdf](https://doc.ukdataservice.ac.uk/doc/8223/mrdoc/pdf/8223_active_lives_adult_online_questionnaire.pdf)

907 Ipsos MORI (2015) *Active Lives Survey. Adult postal questionnaire* (page 10). [https://doc.ukdataservice.ac.uk/doc/8223/mrdoc/pdf/8223\\_active\\_lives\\_adult\\_postal\\_questionnaire\\_year\\_1\\_phase\\_2.pdf](https://doc.ukdataservice.ac.uk/doc/8223/mrdoc/pdf/8223_active_lives_adult_postal_questionnaire_year_1_phase_2.pdf)

Ipsos MORI (2015) *Active Lives Survey (14-15 year olds). Postal questionnaire* (page 10). [https://doc.ukdataservice.ac.uk/doc/8223/mrdoc/pdf/8223\\_active\\_lives\\_14-15\\_postal\\_questionnaire\\_year\\_1\\_phase\\_2.pdf](https://doc.ukdataservice.ac.uk/doc/8223/mrdoc/pdf/8223_active_lives_14-15_postal_questionnaire_year_1_phase_2.pdf)

908 Ipsos MORI (2017) *Sport England Questionnaire for WEB by IPSOS MORI* (page 32). [https://sportengland-production-files.s3.eu-west-2.amazonaws.com/s3fs-public/2021-04/Active%20Lives%20April%202019%20-%20Online%20questionnaire.pdf?VersionId=FopDis-bPF0XJfProJG\\_Lb3abl5hxDa0](https://sportengland-production-files.s3.eu-west-2.amazonaws.com/s3fs-public/2021-04/Active%20Lives%20April%202019%20-%20Online%20questionnaire.pdf?VersionId=FopDis-bPF0XJfProJG_Lb3abl5hxDa0)

Ipsos MORI (2017) *Active Lives Survey Questionnaire for Web* (page 51). <https://sportengland-production-files.s3.eu-west-2.amazonaws.com/s3fs-public/2022-12/Active%20Lives%20April%202022%20-%20Online%20questionnaire.pdf?VersionId=nevXYN-B9ToK9Hlm53.4vdgYsA9XfPGin>

909 Ipsos MORI (2022), *Active Lives Survey questionnaire for web year 6* (page 51). <https://sportengland-production-files.s3.eu-west-2.amazonaws.com/s3fs-public/2022-12/Active%20Lives%20April%202022%20-%20Online%20questionnaire.pdf?VersionId=nevXYNB9ToK9Hlm53.4vdgYsA9XfPGin>

910 Ipsos MORI (2021) *Active Lives Survey. Adult postal questionnaire* (page 10). [https://doc.ukdataservice.ac.uk/doc/9136/mrdoc/pdf/9136\\_active\\_lives\\_survey\\_year\\_7\\_adult\\_questionnaire\\_postal\\_version.pdf](https://doc.ukdataservice.ac.uk/doc/9136/mrdoc/pdf/9136_active_lives_survey_year_7_adult_questionnaire_postal_version.pdf)

911 Natural England (2024) *The People and Nature Surveys for England*. <https://www.gov.uk/government/collections/people-and-nature-survey-for-england>

912 Natural England (2019) *Monitor of Engagement with the Natural Environment. Technical Report to the 2009 - 2019 surveys* (page 68). [https://assets.publishing.service.gov.uk/media/5e7a3962d3bf7f52f3c78eff/MENE\\_Technical\\_Report\\_Years\\_1\\_to\\_10v2.pdf](https://assets.publishing.service.gov.uk/media/5e7a3962d3bf7f52f3c78eff/MENE_Technical_Report_Years_1_to_10v2.pdf)

913 Natural England (2023) *The People and Nature Surveys for England (Accredited Official Statistics) Technical Report. Version 6* (page 40). [https://assets.publishing.service.gov.uk/media/6570814d74693000d488913/PaNS\\_Technical\\_Report\\_2023\\_update\\_published\\_Dec23.pdf](https://assets.publishing.service.gov.uk/media/6570814d74693000d488913/PaNS_Technical_Report_2023_update_published_Dec23.pdf)

The 2023 questionnaire asked parents or carers, ‘**Is this child...**’ (male, female, other, don’t know, prefer not to say). The variable is labelled **gender**.<sup>914</sup> The most recent 2024 adult questionnaire asked three questions on ‘sex’ and gender, including one labelled sex.<sup>915</sup> None of these questions, even in combination, provide reliable data on sex. These are shown below.

**‘What is your sex?** Please select one answer only  
Male Female Other (specify)

**Is the gender you identify with the same as your sex registered at birth?** If the answer is no you will have another question to confirm which gender you identify as.

Yes No Don’t know Prefer not to say

**What gender do you identify as?** Please select one answer only  
Male Female.’

## OFCOM Public Service Tracker

The independent communications regulator OFCOM (Office of Communications) undertakes surveys across a range of topics. These include surveys on attitudes to the media, media standards, ad-hoc consumer research, and tracker surveys.<sup>916</sup> The annual Public Service Media Tracker explores adults’ perceptions of public service broadcasters and their on-demand services.<sup>917</sup>

In 2015 the questionnaire asked a simple binary sex question (are you...? Male, Female).<sup>918</sup> In 2018 OFCOM replaced the sex question with a gender identity question, with further changes to the response options in subsequent years. The survey (2023) asked, ‘**Which of the following describes how you think of yourself?**’ (man, woman, non-binary, prefer to use my own term (please specify), prefer not to say). Changes from 2017 onward are shown below (we could not locate the 2020 questionnaire).

*Table 15. Question and response options in the OFCOM Public Service Tracker questionnaire, 2017-2019 and 2021-2023*

Year	Question	Response options
2017	Are you	Male, Female
2018		Male, Female, Other
2019	Which of the following describes how you think of yourself?	Male, Female, In another way (please specify)
2021		Male, Female, Non-binary, Prefer to use my own term (please specify), Prefer not to say
2022		Man, Woman, Non-binary, Prefer to use my own term (please specify), Prefer not to say
2023		

Source: Office of Communications (OFCOM).<sup>919</sup>

914 Natural England (2023), *The Children’s People and Nature Survey for England Questionnaire 2023 - Waves 5 and 6* (page 5). <https://publications.naturalengland.org.uk/file/6424427194220544>

915 Natural England (2024), *The Adults’ People and Nature Survey for England* (page 6). <https://publications.naturalengland.org.uk/file/6424427194220544>

916 OFCOM (online), *Research and data*. <https://www.ofcom.org.uk/research-and-data>

917 OFCOM (online), *Understanding what people in the UK need from public service media* (Public Service Media Tracker). <https://www.ofcom.org.uk/research-and-data/tv-radio-and-on-demand/public-service-media-psm-tracker>

918 OFCOM (2015), *Public Service Tracker questionnaire* (page 2). [https://www.ofcom.org.uk/data/assets/pdf\\_file/0029/251696/ofcom-psb-tracker-2015-questionnaire.pdf](https://www.ofcom.org.uk/data/assets/pdf_file/0029/251696/ofcom-psb-tracker-2015-questionnaire.pdf)

919 OFCOM (2017), *Public Service Tracker questionnaire* (page 3). [https://www.ofcom.org.uk/data/assets/pdf\\_file/0031/251698/ofcom-psb-tracker-2017-questionnaire.pdf](https://www.ofcom.org.uk/data/assets/pdf_file/0031/251698/ofcom-psb-tracker-2017-questionnaire.pdf)

OFCOM (2018), *Public Service Tracker questionnaire* (page 4). [https://www.ofcom.org.uk/data/assets/pdf\\_file/0020/142427/PSB-tracker-2018-questionnaire.pdf](https://www.ofcom.org.uk/data/assets/pdf_file/0020/142427/PSB-tracker-2018-questionnaire.pdf)

OFCOM (2019), *Public Service Tracker questionnaire* (page 3). [https://www.ofcom.org.uk/data/assets/pdf\\_file/0015/251700/ofcom-psb-tracker-2019-questionnaire.pdf](https://www.ofcom.org.uk/data/assets/pdf_file/0015/251700/ofcom-psb-tracker-2019-questionnaire.pdf)

OFCOM (2021), *Public Service Tracker questionnaire* (page 2). [https://www.ofcom.org.uk/data/assets/pdf\\_file/0026/233387/ofcom-psm-tracker-questionnaire-2021.pdf](https://www.ofcom.org.uk/data/assets/pdf_file/0026/233387/ofcom-psm-tracker-questionnaire-2021.pdf)

OFCOM (2022), *Public Service Tracker questionnaire* (page 4). <https://www.ofcom.org.uk/siteassets/resources/documents/research-and-data/data/statistics/2023/psm-tracker-2022-psm-tracker-2022-questionnaire.pdf>

OFCOM (2023), *Public Service Tracker questionnaire* (page 4). <https://www.ofcom.org.uk/siteassets/resources/documents/research-and-data/data/statistics/2024/psm-tracker-2023-psm-questionnaire-2023.pdf>

## Taking Part Survey

The Taking Part survey was commissioned by the Department for Culture, Media and Sport (DCMS) in 2005 and has run continuously since.<sup>920</sup> Previously run by Ipsos, since 2021 it has been conducted by Verian. It is the department's flagship study. The survey collects data on public participation in sport, leisure, and culture in England, with separate questionnaires for adults and children.

From 2005/6<sup>921</sup> to 2017/18<sup>922</sup> the adult and child surveys collected binary data on sex, either coded by the interviewer, or asked if necessary. In 2015 DCMS consulted on planned changes to the survey, although this did not identify any change to the sex question.<sup>923</sup>

In 2018/19, the survey question changed to ask the respondent, '**which of the following describes how you think of yourself? (male, female, in another way)**'. The Technical Report states the change was made to capture non-binary responses and make the survey 'more inclusive'.<sup>924</sup> Referring to the MRS Code of Conduct, explanatory notes for interviewers prepared by Ipsos MORI stated, 'we must facilitate and recognise the fluidity of gender identity'. These are shown below.

'It is important that all research participants feel satisfied that their voice is being heard. Allowing respondents to provide information in a way that reflects the view they want to express is explicitly set out in the MRS Code of Conduct and this also applies to describing their gender. We must facilitate and recognise the fluidity of gender identity.

Gender and gender identity is complicated. It is the way that an individual describes themselves and identifies with a gender category. A person's identity may or may not correspond with their biological sex and is quite separate and distinct from their sexual orientation. It is also not fully covered by the standard Male and Female categories. The wide range of non-binary gender identities means that some people may identify

as male or female and some may identify with an alternative third option gender identity such as transgender. Other identities may include polygender, intergender, nongender, agender or transsexual. In short, gender identity may not be static and it can be complex.<sup>925</sup>

The 2019/20 survey asked adult respondents, '**which of the following describes how you think of yourself? (male, female, in another way)**'. For other adults in the household, interviewers asked, '**Is ... male or female**', but with an '**other**' response option.<sup>926</sup> The same format was followed in the 2019/20 youth questionnaire.<sup>927</sup> A separate questionnaire for parents/carers of children aged five to ten years asked the **interviewer to code respondent sex (male, female)**.<sup>928</sup>

920 Department for Culture, Media and Sport (2021), *Taking Part Survey*. <https://www.gov.uk/guidance/taking-part-survey>

921 Department for Culture, Media and Sport (2010), *Taking Part Survey 2005/6 Adult Questionnaire* (page 6) and *Taking Part 2005-2006 Child survey* (page 2) [https://doc.ukdataservice.ac.uk/doc/5717/mrdoc/pdf/5717tpyr1\\_adult\\_questionnaire\\_2005-06.pdf](https://doc.ukdataservice.ac.uk/doc/5717/mrdoc/pdf/5717tpyr1_adult_questionnaire_2005-06.pdf)  
[https://doc.ukdataservice.ac.uk/doc/5717/mrdoc/pdf/5717tpyr1\\_child\\_questionnaire\\_2006.pdf](https://doc.ukdataservice.ac.uk/doc/5717/mrdoc/pdf/5717tpyr1_child_questionnaire_2006.pdf)

922 Department for Culture, Media and Sport (2018), *Taking Part Survey – 2017/18* (pages 6, 99, 125). [https://doc.ukdataservice.ac.uk/doc/8442/mrdoc/pdf/8442\\_taking\\_part\\_adult\\_child\\_youth\\_questionnaire\\_y13\\_2017-18.pdf](https://doc.ukdataservice.ac.uk/doc/8442/mrdoc/pdf/8442_taking_part_adult_child_youth_questionnaire_y13_2017-18.pdf)

923 Department for Culture, Media and Sport (2016), *Taking Part: the next five years*. [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/511407/The\\_Future\\_of\\_Taking\\_Part\\_-\\_FINAL\\_29032016.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/511407/The_Future_of_Taking_Part_-_FINAL_29032016.pdf)

924 Ipsos MORI (2019), *Taking Part Year 14 (2018/19): Cross-sectional survey Technical Report* (pages 10, 16). [https://assets.publishing.service.gov.uk/media/600ae4af8fa8f5654fced30/Taking\\_Part\\_Year\\_14\\_Technical\\_report\\_V2.pdf](https://assets.publishing.service.gov.uk/media/600ae4af8fa8f5654fced30/Taking_Part_Year_14_Technical_report_V2.pdf)

925 Ipsos MORI (2019) *Taking Part: England's survey of Culture, Leisure and Sport Interviewer Instructions* (pages 35-36). [https://doc.ukdataservice.ac.uk/doc/8631/mrdoc/pdf/8631\\_taking\\_part\\_interviewer\\_instructions.pdf](https://doc.ukdataservice.ac.uk/doc/8631/mrdoc/pdf/8631_taking_part_interviewer_instructions.pdf)

926 Natcen (2020), *Taking Part Survey – 2019/20 Questionnaire* (page 6). [https://doc.ukdataservice.ac.uk/doc/8745/mrdoc/pdf/8745\\_taking\\_part\\_year\\_15\\_adult\\_child\\_youth\\_questionnaire.pdf](https://doc.ukdataservice.ac.uk/doc/8745/mrdoc/pdf/8745_taking_part_year_15_adult_child_youth_questionnaire.pdf)

927 As above (page 137).

928 As above (page 112).

# Chapter 15: Travel and Transport

This chapter reviews a selection of statistics on travel and transport, including accredited official statistics. Note that statistics on travel and transport in Scotland are derived from the Scottish Household Survey, which is reviewed in chapter sixteen (see page 174). Welsh Government active travel statistics are derived from the National Survey for Wales, which is reviewed in the same chapter. UK government statistics on walking and cycling are also collected in the Active Lives Survey which is covered in the previous chapter.

Most of the statistics in this chapter collect binary data on sex, including the flagship National Travel Survey and long-running International Passenger Survey. The main exceptions are administrative data on driving tests and Blue Badges, which provide for gender identity, and the large-scale Sustrans survey on walking and cycling.

## 15.1 Travel and transport administrative data

### Sex, no definition (male, female)

#### Reported Road Casualty statistics

These accredited Department for Transport statistics provide information on reported road traffic casualties in Great Britain.<sup>929</sup> The data is based on police reports to the Department for Transport, using the STATS19 reporting system for road collisions. The STATS19 road injury report form collects data on the **sex** of the driver and any casualties (**male, female**).<sup>930</sup>

STATS19 data is also used to populate ‘Reported road casualties in Great Britain: pedestrian factsheet’,<sup>931</sup> and the Welsh Government bulletin Reported road casualties Wales,<sup>932</sup> both of which have accredited official statistics status.

### Gender, self-identified (male, female)

#### Driving test statistics, Driving licence statistics

The Department for Transport and Driver and Vehicle Standards Agency publish driving test statistics, including information on **male and female** candidate pass rates, which is labelled **gender**.<sup>933</sup> The data are based on records held by the Driver and Vehicle Licensing Agency (DVLA), at the time of booking a test. DVLA driving licence statistics<sup>934</sup> similarly present data on gender (male, female).

The DVLA allows people to apply for,<sup>935</sup> or to change<sup>936</sup> the name or gender on a full or provisional driving licence, with relevant supporting documentation. A DVLA Freedom of Information response indicated that over 16,000 people have changed the gender marker on their driving licence since 2018.<sup>937</sup>

### Gender identity (multiple categories)

#### Blue Badge Scheme Statistics

Local authorities issue Blue Badges to disabled individuals with severe mobility conditions. Statistics on the scheme are published by the Department for Transport (DfT), based on the Blue Badge Digital Service online database.<sup>938</sup> Blue Badge scheme statistics are also published as part of Department for Transport ‘Disability, accessibility and blue badge statistics’, which are accredited official statistics.<sup>939</sup> We could only find published data on ‘gender’ at a local authority level.<sup>940</sup>

DfT guidance for local authorities in England states that applicants can apply for badges using their self-declared gender identity.<sup>941</sup> Similar guidance for local authorities is published by the Welsh Government.<sup>942</sup>

929 Department for Transport (2023), *Reported road casualties Great Britain, annual report: 2022*. <https://www.gov.uk/government/statistics/reported-road-casualties-great-britain-annual-report-2022/reported-road-casualties-great-britain-annual-report-2022#:~:text=In%20reported%20road%20collisions%20in,of%2012%25%20compared%20to%202019>

930 Department for Transport (2021), *STATS19 forms and guidance*. <https://www.gov.uk/government/publications/stats19-forms-and-guidance>

931 Department for Transport (2023), *Reported road casualties in Great Britain: pedestrian factsheet, 2022*. <https://www.gov.uk/government/statistics/reported-road-casualties-great-britain-pedestrian-factsheet-2022/reported-road-casualties-in-great-britain-pedestrian-factsheet-2022>

932 Welsh Government (2024), *Reported road casualties Wales, 2023*. <https://www.gov.wales/reported-road-casualties-2023>

933 Department for Transport (2024), *Driving test statistics (DRT)*. <https://www.gov.uk/government/statistical-data-sets/driving-test-statistics-drt>

934 Department for Transport (2024), *GB Driving Licence Data*. <https://www.data.gov.uk/dataset/d0be1ed2-9907-4ec4-b552-c048f6aec16a/gb-driving-licence-data>

935 DVLA (online), *Identity documents needed for a driving licence application*.

<https://www.gov.uk/id-for-driving-licence>

936 DVLA (online), *Change the name or gender on your driving licence*.

<https://www.gov.uk/change-name-driving-licence>

937 Express (2024), *Changing gender on official papers is ‘too easy’ amid record high for driver’s licences* (1 April 2024).

<https://www.express.co.uk/news/politics/1883568/gender-drivers-licence-campaigners-vulnerable-people>

938 Department for Transport (2024), *Blue Badge scheme statistics: data tables (DIS)*.

<https://www.gov.uk/government/statistical-data-sets/blue-badge-scheme-statistics-data-tables-dis#full-publication-update-history>

939 Department for Transport (2023), *Disability, accessibility and blue badge statistics: 2021 to 2022*.

<https://www.gov.uk/government/statistics/disability-accessibility-and-blue-badge-statistics-2021-to-2022/disability-accessibility-and-blue-badge-statistics-2021-to-2022>

940 For example, Gloucestershire County Council (2017) *Service User Diversity Report 2016/17* (page 29).

<https://www.gloucestershire.gov.uk/media/umrfj4h/service-user-diversity-report-16-17-final.pdf>

941 Department for Transport (2022), *Blue Badge scheme local authority guidance (England)*. <https://www.gov.uk/government/publications/the-blue-badge-scheme-local-authority-guidance-england/blue-badge>

942 Welsh Government (2023), *Blue Badge Scheme in Wales: guidance for local authorities 2021*. <https://www.gov.wales/sites/default/files/pdf-versions/2023/6/4/1686820783/blue-badge-scheme-wales-guidance-local-authorities-2021.pdf>

Extracts from the DfT guidance are shown below.

‘3.26 Non-binary, transsexual and many transgender people live permanently in a gender other than that assigned at birth. Accordingly, their name and personal details will have changed. Discrimination against such people in many circumstances will be unlawful and best practice will always be to regard the individual in the gender with which they identify. In addition, the Gender Recognition Act 2004 affords privacy of gender history to transsexual people who have obtained a Gender Recognition Certificate. Disclosure of that gender history, except in certain limited circumstances (see section 22 of the Act), is a criminal offence. A Gender Recognition Certificate should never be requested as proof of identity.

3.27 Some applicants, particularly those who have recently commenced living in a different gender, may, for a number of reasons, find it difficult to

provide the appropriate documentation, so local authorities will need to be more flexible in assessing the proof of identity of transgender people. Respect for the individual and privacy of gender history are of paramount importance. For more advice and information on transsexual and transgender issues please contact: [agender@homeoffice.gov.uk](mailto:agender@homeoffice.gov.uk).

3.28 Since 15 October 2007, the Blue Badge has included a non-binary gender marker (not exclusively Male/Female). Since February 2019, the gender marker now includes those who may identify in a different way. It is important that local authorities deal with applications made by non-binary, transsexual and transgender people sensitively, and issue badges under the requested gender.’

Response options for blue badge applicants vary between local authorities. Examples are shown in the table below.

*Table 16. Question and response options in Blue Badge statistics applications*

Local authority	Question	Response options
West Sussex	Gender	Man (or boy), Women (or girl), Identity in a different way. Enter gender identified with.
Hampshire	Gender	Male, Female, I identity in a different way
Cumberland	Gender	Male, Female
Gloucestershire	Gender	Male, Female, Prefer not to say

Source: Local councils. 943

943 West Sussex County Council (2020), *Apply for a Blue Badge*. [https://www.westsussex.gov.uk/media/6528/blue\\_badge\\_individual\\_application\\_form.pdf](https://www.westsussex.gov.uk/media/6528/blue_badge_individual_application_form.pdf)  
 Hampshire County Council (online), *Blue Badge Application Disabled Person's Parking Badge*. <https://documents.hants.gov.uk/bluebadge/BBApplication.pdf>  
 Cumberland Council (online), *Blue Badge Application Form*. [https://www.cumberland.gov.uk/sites/default/files/2023-09/download\\_the\\_blue\\_badge\\_application\\_form.pdf](https://www.cumberland.gov.uk/sites/default/files/2023-09/download_the_blue_badge_application_form.pdf)  
 Gloucestershire County Council (online), *Disabled Person's Parking Badge Scheme (Blue Badge)*. <https://www.gloucestershire.gov.uk/media/2seae5rs/1-bb-application-form-v10-sep-tember-2021.pdf>



## 15.2 Travel and transport survey data

### Sex, interviewer-coded sex (male, female)

#### National Travel Survey and Travel Attitudes Survey

The National Travel Survey (NTS)<sup>944</sup> is sponsored by the Department for Transport (DfT) and designed to provide regular, up-to-date data on personal travel and to monitor changes in travel behaviour. The first survey was commissioned in 1965. The statistics are accredited official statistics.

The NTS continues to collect binary data on sex. This can be seen in the 2003 and 2022 questionnaires respectively, both of which asked the interviewer to **code the sex of the respondent (male, female)**.<sup>945</sup> The Travel Attitudes survey is based on a subset of NTS respondents and uses the same demographic data as provided to the NTS.<sup>946</sup> NTS data are also used to populate DfT Annual Bus Statistics,<sup>947</sup> Rail Factsheets,<sup>948</sup> and the Collection of Short Walk Data in the NTS.<sup>949</sup>

#### Travel Survey for Northern Ireland

The Travel Survey for Northern Ireland (TSNI) began in 1999 and collects information on how and why people travel within Northern Ireland.<sup>950</sup> The survey is based on the National Travel Survey run by the DfT, as noted above, and likewise collects data on sex. The 2021 questionnaire instructed interviewers to **'please enter sex of ...' (male, female)**.<sup>951</sup>

#### International Passenger Survey

The International Passenger Survey (IPS) collects information about passengers entering and leaving the UK, and associated expenditure. It has run continuously since 1961 and is administered by the ONS. The survey is used to produce estimates of overseas travel and tourism, and to populate international migration statistics. Data users include the Department for

Transport, Home Office, HM Revenue and Customs, VisitBritain and national and regional Tourist Boards. The statistics are accredited official statistics.

The sex variable has seen minimal change over time. The 1994 questionnaire (we could not locate an earlier copy) asked a binary sex question, without further instructions.<sup>952</sup> The 2022 questionnaire instructed interviewers to **'ask or record the sex of the respondent' (male, female)**.<sup>953</sup> Separately, in a report on the sex question in the 2021 England and Wales Census, an ONS official stated:

'The main international migration source to date has been the International Passenger Survey (IPS), where the interviewer would typically record what they believed the respondent to be. Clearly in most cases this will be the same as sex at birth, but people who have transitioned to living in a new gender may well have been recorded in that gender'.<sup>954</sup>

## Gender identity (multiple categories)

### Experiences of Passenger Assist, Office of Rail and Road

Passenger Assist is a service that enables passengers with disabilities, or other people who require help, to book and receive assistance. Since 2017 the Office of Rail and Road (ORR) has commissioned annual research on the extent to which the scheme meets user needs and expectations.

The 2021/22 and 2022/23 surveys asked, **'Are you/ your companion.. female, male, other, prefer not to say'**.<sup>955</sup> <sup>956</sup> Prior to this, the survey asked the interviewer to code respondent gender as male or female.<sup>957</sup> We found it difficult to locate earlier questionnaires, although a copy of the 2014 questionnaire shows that the survey previously asked, 'are you' (male, female).<sup>958</sup>

944 Department for Transport (2024), *National Travel Survey*. <https://www.gov.uk/government/collections/national-travel-survey-statistics>

945 See: Hayler et al. (2005), *National Travel Survey 2003 & 2004 Technical Report* (page 211) [https://doc.ukdataservice.ac.uk/doc/5340/mrdoc/pdf/5340\\_nts\\_technical\\_report\\_2003\\_2004.pdf](https://doc.ukdataservice.ac.uk/doc/5340/mrdoc/pdf/5340_nts_technical_report_2003_2004.pdf)

Ipsos (2022), *NTS 2022 Questionnaire* (page 2). [https://assets.publishing.service.gov.uk/media/64e873cc63587000d1dbf68/Appendix\\_A3\\_-\\_Questionnaire\\_specification.odt](https://assets.publishing.service.gov.uk/media/64e873cc63587000d1dbf68/Appendix_A3_-_Questionnaire_specification.odt)

946 Department for Transport (2023), *National Travel Attitudes Study Wave 8*. <https://www.gov.uk/government/statistics/national-travel-attitudes-study-wave-8/national-travel-attitudes-study-wave-8#background-notes>

947 Department for Transport (2024), *Annual bus statistics: year ending March 2023 (revised)*. <https://www.gov.uk/government/statistics/annual-bus-statistics-year-ending-march-2023/annual-bus-statistics-year-ending-march-2023#bus-passenger-satisfaction>

948 Department for Transport (2023), *Rail Factsheet: 2022*. <https://www.gov.uk/government/statistics/rail-factsheet-2022/rail-factsheet-2022#:~:text=In%20the%20year%20ending%20March%202022%2C%20the%20total%20amount%20of,compared%20to%20the%20previous%20year.>

949 Department for Transport (2015), *Collection of Short Walk Data in the National Travel Survey*. <https://assets.publishing.service.gov.uk/media/5a7f550640f0b62305b867f0/short-walk-collection.pdf>

950 NI Department for Infrastructure (online), *Travel Survey for Northern Ireland latest publications*. <https://www.infrastructure-ni.gov.uk/articles/travel-survey-northern-ireland>

951 NI Department for Infrastructure (2022), *Northern Ireland Travel Survey Technical Report 2021* (page 28). <https://www.infrastructure-ni.gov.uk/system/files/publications/infrastructure/tsni-technical-report-2021.pdf>

952 Central Statistical Office (1995), *The Methodology of the International Passenger Survey* (page 27). <https://doc.ukdataservice.ac.uk/doc/3484/mrdoc/pdf/a3484uab.pdf>

953 Office for National Statistics (2022), *IPS questionnaire for 2022* (page 27). [https://doc.ukdataservice.ac.uk/doc/9122/mrdoc/pdf/9122\\_ips\\_2022\\_questionnaire\\_routing\\_guide\\_november\\_2022.pdf](https://doc.ukdataservice.ac.uk/doc/9122/mrdoc/pdf/9122_ips_2022_questionnaire_routing_guide_november_2022.pdf)

954 ONS Methodology Assurance Review Panel (MARF) (2021), *Methodology for decision making on the 2021 Census sex question concept and associated guidance* (page 30). <https://web.archive.org/web/20210215201105/https://uksa.statisticsauthority.gov.uk/wp-content/uploads/2021/02/EAP148-Methodology-for-decision-making-on-the-2021-Census-sex-question-concept-and-associated-guidance.pdf>

955 Office of Rail and Road (2022), *Experiences of Passenger Assist* (page 73).

<https://www.orr.gov.uk/sites/default/files/2021-07/passenger-assist-research-report-2021.pdf>

956 Office of Rail and Road (2023), *Experiences of Passenger Assist 2023* (July 2023) 11. <https://www.orr.gov.uk/sites/default/files/2023-07/2022-2023-passenger-assist-report-by-mel.pdf>

957 Office of Rail and Road (2020), *Experiences of Passenger Assist 2019/20* (page 11). <https://www.orr.gov.uk/sites/default/files/om/experiences-of-passenger-assist-research-report-2019-20.pdf>

958 Passenger Focus (2014), *National Rail Passenger Survey Autumn 2014* (page 11). <https://d3cez36w5wymj.cloudfront.net/migrated/National%20Rail%20Passenger%20Survey%20-%20NRPS%20-%20Autumn%202014%20-%20questionnaire.pdf>

## National Rail Passenger Survey

The UK-wide National Rail Passenger Survey began in 1999. It was paused in 2020 due to the pandemic and at the time of writing had not recommenced.<sup>959</sup> The survey is carried out by external research companies, on behalf of Transport Focus, the independent watchdog for transport users, which is sponsored by the DfT. The survey collects data on customer views on rail companies' performance, which is used as a key performance indicator for train operating companies.

The questionnaire has changed over time, to provide for gender identity responses. Both the 2019 and 2020 questionnaires asked, '**are you**' (male, female, prefer another term).<sup>960 961</sup>

## Sustrans Walking and Cycling Index

The Walking and Cycling Index, formerly known as 'Bike Life', is the largest UK survey of walking, wheeling and cycling. The survey began in 2015 and collects data on behaviour and attitudes towards cycling, walking, and transport more generally, in participating cities. Data collection is currently administered by NatCen.

The 2015 survey was administered by ICM Unlimited, using a gender quota (we could not find the criteria for this).<sup>962</sup> In 2019, NatCen administered the survey in each participating city.<sup>963</sup> This asked, '**which of the following describes how you think of yourself?**' (male, female, in another way).<sup>964</sup> The 2021 UK-wide report shows that the 'in another way' category accounted for 0.6% of respondents.<sup>965</sup>

959 Transport Focus (online), *National Rail Passenger Survey*, <https://www.transportfocus.org.uk/insight/national-rail-passenger-survey/>

960 Transport Focus (2019), *National Rail Passenger Survey Technical Report Autumn 2019 (Wave 41)* (page 52).

<https://d3cez36w5wymxj.cloudfront.net/wp-content/uploads/2020/04/28102108/NRPS-Technical-Report-Autumn-2019-Final-090420.pdf>

961 Transport Focus (2020), *National Rail Passenger Survey Technical Report Spring 2020 (Wave 42)* (page 60).

<https://d3cez36w5wymxj.cloudfront.net/wp-content/uploads/2020/07/31154731/NRPS-Technical-Report-Spring-2020-v8-30.07.20.pdf>

962 Sustrans (2015), *Where does the data in the Bike Life reports come from?* (page 1). <https://www.sustrans.org.uk/media/12304/bike-life-2015-explanation-of-data-sources-and-methodologies-v2.pdf>

963 Sustrans (2019), *Bike Life 2019 Data sources and methodologies* (page 39). <https://www.sustrans.org.uk/media/12307/bike-life-2019-data-sources-and-methodologies-v40.pdf>

964 As above (page 50).

965 Sustrans (2022), *Walking and Cycling Index 2021* (page 4). <https://www.sustrans.org.uk/media/10527/sustrans-2021-walking-and-cycling-index-aggregated-report.pdf>

# Chapter 16: General Household Surveys

This chapter looks at several large-scale general household surveys. These are cross-cutting, and typically cover a range of topics and policy areas. In some surveys, for example the ONS Opinions and Lifestyle Survey, government departments or private organisations can pay for a set of questions to be included.

The surveys covered in the chapter variously ask about sex (without any direction), self-identified sex, and a mix of sex and gender identity. The analysis shows that some data producers have made changes to the sex question over time, for example the question in the National Survey for Wales has changed six times since 2012. The Scottish Household Survey has also seen significant change. Both surveys have recently reinstated a binary sex question. From 2019/20 onward the Northern Ireland Continuous Household Survey has included guidance that provides for responses based on ‘current sex’. Whilst seemingly minor, this change fundamentally reinterprets the variable, putting it on a self-identified basis. A self-identified binary sex question is also asked in the Scottish Household Survey, which is aligned with the sex question in the 2022 Scotland Census.

The chapter also looks in more detail at Scottish Surveys Core Questions (SSCQ) statistics, which are made up of harmonised questions asked in the Scottish Household Survey, Scottish Health Survey, and Scottish Crime and Justice Survey. We look at how the approach to collecting data on sex has diverged between the constituent surveys, and the drivers that led to this.

Note that we do not review the ONS Annual Population Survey (APS),<sup>966</sup> as this is populated by data collected by the Labour Force Survey, which is covered in chapter twelve on labour market statistics (see page

160). Nor do we cover the Integrated Household Survey, which in turn, is based on APS data.<sup>967</sup>

## Sex, no definition (male, female)

### National Survey for Wales

The National Survey for Wales is commissioned by the Welsh Government and collects representative data on topics previously collected across several large-scale social surveys (Welsh Health Survey, Active Adults Survey, Arts in Wales Survey, and Welsh Outdoor Recreation Survey).<sup>968</sup> ONS ran the survey from 2016, and Verian from March 2024. The survey has accredited official statistics status.<sup>969</sup> The data is also used (with other sources) to populate ‘Wellbeing of Wales’ statistics, which have accredited official statistics status.<sup>970</sup>

The approach to collecting data on sex has undergone several changes as summarised below.

- Between 2012/13 and 2014/15, interviewers were asked to record respondent gender, with an ‘ask or record’ instruction. For other household members, interviewers asked, ‘Is [name] male or female?’ without reference to sex or gender.<sup>971</sup>
- In 2016/17, the survey added ‘other’ as a spontaneous response option (the question text remained the same).<sup>972</sup>
- For 2018/19, 2019/20 and 2020, gender was explicitly referenced in the question text, for both respondents and other household members: ‘Ask all [Respondent’s/Name’s] gender’, with male, female, and ‘Other’ (spontaneous) response options.<sup>973</sup>
- For January to March 2021, interviewers read out a standardised text: ‘And what is [your/Name’s] sex, male or female?’. The question was also relabelled sex.<sup>974</sup>

966 Office for National statistics (2012), *Annual population survey*. <https://www.ons.gov.uk/employmentandlabourmarket/peopleinwork/employmentandemployeetypes/methodologies/annualpopulationurveyapsqmi/methodology-background>

967 Office for National statistics (2016), *Integrated Household Survey*. [https://www.ons.gov.uk/peoplepopulationandcommunity/culturalidentity/sexuality/methodologies/integratedhouseholdsurvey#:~:text=The%20Integrated%20Household%20Survey%20\(IHS, social%20data%20after%20the%20census\\_](https://www.ons.gov.uk/peoplepopulationandcommunity/culturalidentity/sexuality/methodologies/integratedhouseholdsurvey#:~:text=The%20Integrated%20Household%20Survey%20(IHS, social%20data%20after%20the%20census_)

968 Welsh Government (online), *National Survey for Wales*. <https://www.gov.wales/national-survey-wales>

969 Office for National Statistics (2024), *National Survey for Wales*. [https://www.ons.gov.uk/surveys/informationforhouseholdsandindividuals/householdandindividualsurveys/nationalsurveyforwales#:~:text=The%20Office%20for%20National%20Statistics%20\(ONS\)%20was%20contracted%20to%20run,commence%20from%20March%202024%20onwards\\_](https://www.ons.gov.uk/surveys/informationforhouseholdsandindividuals/householdandindividualsurveys/nationalsurveyforwales#:~:text=The%20Office%20for%20National%20Statistics%20(ONS)%20was%20contracted%20to%20run,commence%20from%20March%202024%20onwards_)

970 Welsh Government (2023), *Wellbeing of Wales, 2023* (‘Data sources’). <https://www.gov.wales/wellbeing-wales-2023-healthier-wales-html#129713>

971 Welsh Government (2012), *National Survey for Wales 2012 Questionnaire* (page 16). <https://www.gov.wales/sites/default/files/statistics-and-research/2019-02/national-survey-wales-questionnaire-jan-mar-2012.pdf>

Welsh Government (2013), *National Survey for Wales 2013/14 Questionnaire* (page13). <https://www.gov.wales/sites/default/files/statistics-and-research/2019-02/national-survey-wales-questionnaire-2013-14.pdf>

Welsh Government (2014) *National Survey for Wales 2014/15 Questionnaire* (page 14). <https://www.gov.wales/sites/default/files/statistics-and-research/2019-02/national-survey-wales-questionnaire-2014-15.pdf>

972 Welsh Government (2016), *National Survey for Wales 2016/17 Questionnaire* (page 8). <https://www.gov.wales/sites/default/files/statistics-and-research/2020-01/national-survey-wales-questionnaire-2016-17.pdf>

973 For example: Welsh Government (2018), *National Survey for Wales 2018/19 Questionnaire* (page 8). <https://www.gov.wales/sites/default/files/statistics-and-research/2020-01/national-survey-wales-questionnaire-2018-19.pdf>

974 The Welsh Government told us that standardised text was introduced in response to interviewer feedback and to ensure consistent interpretation of the question. The question was relabelled sex ‘to clarify what data is being captured and to ensure consistency with the harmonised standard’. See: Welsh Government (2021), *National Survey for Wales Telephone Questionnaire 2021* (page14). <https://www.gov.wales/sites/default/files/statistics-and-research/2021-11/national-survey-questionnaire-january-march-2021.pdf>

- For 2021/22, the response option ‘Other [spontaneous only]’, was replaced with ‘Respondent prefers not to select male or female here [Spontaneous only]’. Additional interviewer instructions stated, ‘It’s important that you ask the question, even if you feel the respondent’s sex is obvious, to ensure it is recorded correctly’.<sup>975</sup>
- For 2022/23, additional explanatory text stated, ‘IF NECESSARY: We ask this so we can produce results for different groups of people. Like all your answers, this information will only ever be used for research purposes and you will never be identifiable from the results.’<sup>976</sup>
- For 2024-25, ‘Female’ was listed first, then ‘Male’.<sup>977</sup>

### ONS Opinions and Lifestyles survey

The Opinions and Lifestyle Survey (formerly ONS Opinions Survey or Omnibus) began in 1990. The survey collects data on a range of subjects commissioned by both the ONS internally, and external clients (government departments, charities, non-profit organisations and academia).<sup>978</sup> It is the largest regular household survey in the UK, and currently samples around 5,000 households in England, Wales and Scotland on a fortnightly basis.<sup>979</sup>

Questionnaires lodged with the UKDS show the survey asked a sex question (male, female) until at least 2018.<sup>980</sup> At the time of writing we could not locate more recent questionnaires, although a 2019 to 2023 Variable Catalogue lodged with the ONS continues to show a binary sex data.<sup>981</sup> A GSS overview of demographic questions indicates that the question is framed as ‘**my sex**’ (male, female, prefer not to say).<sup>982</sup>

## Sex, self-identified (male, female)

### Northern Ireland Continuous Household Survey

The Northern Ireland Continuous Household Survey (CHS) began in 1983 and is carried out by the Northern Ireland Statistics and Research Agency (NISRA). The survey provides government departments with information on populations, housing, employment, education and health.<sup>983</sup> Data from the CHS is also used to populate the Northern Ireland Housing Statistics report,<sup>984</sup> which is an annual compendium of statistics related to housing, including household characteristics.<sup>985</sup>

The original 1983 questionnaire asked for data on the sex of household members, (male, female) with no further instructions.<sup>986</sup> A similar approach can be seen through to 2018/19.<sup>987</sup> In 2019/20, the survey retained **male and female** responses; however, a new note for interviewers explained that the sex question referred to ‘**current sex**’, thereby putting it on a self-identified basis.<sup>988</sup>

### Scottish Household Survey

The Scottish Household Survey (SHS) began in 1999. It is an annual, cross-sectional survey that provides evidence on the composition, characteristics, attitudes and behaviour of private households and individuals, and physical household conditions. The survey is currently run by Ipsos on behalf of the Scottish Government.<sup>989</sup> The SHS also incorporates the Scottish House Condition Survey, which is published separately.<sup>990</sup> SHS data is also used to inform sportscotland policy, including funding decisions, and has accredited official statistics status.<sup>991</sup>

975 The Welsh Government told us that this was changed ‘due to the emphasis of the question on capturing sex rather than gender, i.e. binary female or male response options’. See: Welsh Government (2021), *National Survey for Wales 2021/22 Questionnaire* (pages 19-20). <https://www.gov.wales/sites/default/files/statistics-and-research/2022-05/national-survey-for-wales-questionnaire-april-2021-to-march-2022.pdf>

976 The Welsh Government told us that the additional text was added in response to interviewer feedback. See: Welsh Government (2022), *National Survey for Wales 2022/23 Questionnaire* (page 20). <https://www.gov.wales/sites/default/files/statistics-and-research/2023-06/national-survey-for-wales-telephone-questionnaire-april-2022-to-march-2023.pdf>

977 As advised by the Welsh Government.

978 UK Data Service (online), *Opinions and Lifestyle Survey*. <https://beta.ukdataservice.ac.uk/datacatalogue/series/series?id=2000043>

979 Office for National Statistics (2023), *Opinions and Lifestyle Survey QMI*. <https://www.ons.gov.uk/peoplepopulationandcommunity/healthandsocialcare/healthandlifeexpectancies/methodologies/opinionsandlifestylesurveyqmi>

980 Office for National Statistics (2018), *Opinions and Lifestyle Survey Classificatory Questions April 2018* (page 3). [https://doc.ukdataservice.ac.uk/doc/9109/mrdoc/pdf/9109\\_opn\\_classifications\\_201804.pdf](https://doc.ukdataservice.ac.uk/doc/9109/mrdoc/pdf/9109_opn_classifications_201804.pdf)

981 Office for National Statistics (online), *Complete Variable Catalogue* (section A: line 1014). [https://doc.ukdataservice.ac.uk/doc/8635/mrdoc/excel/8635\\_opn\\_srs\\_complete\\_variable\\_catalogue\\_020223.xlsx](https://doc.ukdataservice.ac.uk/doc/8635/mrdoc/excel/8635_opn_srs_complete_variable_catalogue_020223.xlsx)

982 Government Statistical Service (online), *Health and care statistics for England* (‘Sex’). <https://analysisfunction.civilservice.gov.uk/dashboard/tools/health-and-care-statistics/question-bank.html>

983 NISRA (online), *Continuous Household Survey*. <https://www.nisra.gov.uk/statistics/find-your-survey/continuous-household-survey>

984 NI Department for Communities (2023), *Northern Ireland Housing Statistics 2022-23*. <https://www.communities-ni.gov.uk/publications/northern-ireland-housing-statistics-2022-23>

985 See: NI Department for Communities (2023), *Northern Ireland Housing Statistics 2022-23* (Table T6\_13). <https://www.communities-ni.gov.uk/system/files/publications/communities-ni-housing-stats-22-23-tables6 ods>

986 Social Research Division (1983), *Continuous Household Survey, 1983* (page 62). <https://doc.ukdataservice.ac.uk/doc/4973/mrdoc/pdf/4973userguide.pdf>

987 NISRA (2018), *Continuous Household Survey 2017/18 Questionnaire* (page 4). [https://doc.ukdataservice.ac.uk/doc/8585/mrdoc/pdf/8585\\_chs\\_201718\\_questionnaire.pdf](https://doc.ukdataservice.ac.uk/doc/8585/mrdoc/pdf/8585_chs_201718_questionnaire.pdf)

988 NISRA (2020), *Continuous Household Survey 2019/20 Questionnaire* (page 4). <https://www.nisra.gov.uk/sites/nisra.gov.uk/files/publications/CHS201920Questionnaire.pdf>

989 Scottish Government (online), *Scottish Household Survey*. <https://www.scottishhouseholdsurvey.com/>

990 Scottish Government (online), *Scottish House Condition Survey* <https://www.gov.scot/collections/scottish-house-condition-survey/>

991 For analysis on how the sex question in the SHS affects sports policy, see: Devine, C. (2020), *Sex, sport and Data: The importance of sex disaggregated sport and physical recreation data for compliance with the 2010 Equality Act in Scotland*. <https://mbmpolicy.files.wordpress.com/2021/05/sex-sport-and-data.-c.-devine-12.5.21.pdf>

The SHS sex question has changed over time. Prior to 2018, the SHS the survey asked a simple sex question (is ... male or female).<sup>992</sup> In 2018 the Scottish Government replaced this with a gender identity question, asking ‘how would you describe your gender identity? (man/boy, woman/girl, in another way [if you would like to, please tell me what other words you use]).’<sup>993</sup>

In 2022, the questionnaire changed to align with the self-identified binary sex question asked in Scotland’s 2022 Census. This instructed SHS interviewers, ‘if necessary’, to advise respondents that answers could be given on a self-identified basis.

‘If you are non-binary or you are not sure how to answer, you could use the sex registered on your official documents, such as your passport. If you are transgender the answer you give can be different from what is on your birth certificate’.<sup>994</sup>

Further background on these changes to the SHS are provided in the analysis of the Scottish Survey Core Questions below.

## Sex (no definition) and self-identified sex (male, female)

### Scottish Surveys Core Questions

The Scottish Surveys Core Questions (SSCQ)<sup>995</sup> is an annual Scottish Government publication which gathers survey responses from identical indicator questions in three surveys into a single output. This results in an annual sample of around 20,000 respondents. The constituent surveys are the Scottish Household Survey (SHS), Scottish Crime and Justice Survey (SCJS) and Scottish Health Survey (SHeS).

From 2018 onward, despite the need for harmonisation, the sex question in the three constituent surveys has varied. As detailed above, between 2018 and 2020 the Scottish Household Survey moved to a self-identified

gender identity question. At the same time, the SHeS and SCJS continued to ask a binary sex question (is ... male or female).

This divergence arose principally due to a tension between, on the one hand, government ambitions to futureproof for the planned introduction of non-binary legal recognition<sup>996</sup> and on the other, a continued user need for data on sex. These developments are detailed below.

## Futureproofing for non-binary legal recognition

In 2017 the Scottish Government undertook a review of the SSCQ questionnaire. The consultation paper proposed to replace the existing sex question with a self-identified gender question, with a third response option for non-binary respondents, as part of wider plans to introduce legal gender recognition for non-binary people:

‘It is important in an inclusive Scotland that this group of people have somewhere to identify within the Scottish Government household surveys. Results may also be able to be used to detect whether or not this group experience disadvantage across the wide range of policy areas covered by the surveys.

The SG are reviewing and reforming gender recognition legislation; one aspect of which is to introduce legal recognition for non-binary people, therefore this question has to be able to capture all options.’<sup>997</sup>

Government officials consulted with four LGBT organisations on the proposed change (Equality Network/Scottish Transgender Alliance; LGBT Health and Wellbeing; LGBT Youth Scotland; Stonewall Scotland),<sup>998 999</sup> along with other governmental

992 Scottish Government (2018), *Scottish Household Survey 2017 Questionnaire* (page 11).

<https://tinyurl.com/2sbftcww>

993 Scottish Government (2018), *Scottish Household Survey 2018 Questionnaire* (page 11). <https://www.gov.scot/binaries/content/documents/govscot/publications/statistics/2019/08/scottish-household-survey-questionnaire/documents/questionnaires/scottish-household-survey-2018-questionnaire/scottish-household-survey-2018-questionnaire/govscot%3Adocument/Scottish%2BHousehold%2BSurvey%2B2018%2BQuestionnaire.pdf>

994 Scottish Government (2022), *Scottish Household Survey 2022 Questionnaire* (page 3). <https://www.gov.scot/binaries/content/documents/govscot/publications/statistics/2023/12/scottish-household-survey-2022-methodology-fieldwork-outcomes/documents/household-questionnaire/household-questionnaire/govscot%3Adocument/household-questionnaire.docx>

995 Scottish Government (online), *Scottish Surveys Core Questions* (SSCQ). <https://www.gov.scot/collections/scottish-surveys-core-questions/>

996 The Scottish Government announced that it would not proceed with legislating for non-binary legal recognition in June 2019. See: Scottish Government (2023), *Non-binary equality action plan* (page 9).

<https://www.gov.scot/binaries/content/documents/govscot/publications/strategy-plan/2023/11/non-binary-equality-action-plan/documents/nonbinary-equality-action-plan-2023-2028/nonbinary-equality-action-plan-2023-2028/govscot%3Adocument/nonbinary-equality-action-plan-2023-2028.pdf>

997 Scottish Government (2017), *Scottish Government Lead Analysts Responses to the Scottish Household Survey 2018-2021 Questionnaire Review* (page 48). <https://www.gov.scot/binaries/content/documents/govscot/publications/statistics/2019/08/scottish-household-survey-questionnaire/documents/shs-survey-questionnaire-review-2018-21/scottish-household-survey-2018-2021-annex-3a-questionnaire-review/scottish-household-survey-2018-2021-annex-3a-questionnaire-review/govscot%3Adocument/SHS%2B2018-2021%2BQuestionnaire%2BReview%2B-%2BAnnex%2B3a.pdf>

998 As above (pages 45-50).

999 In response to a press article on the potential loss of the sex question in the England and Wales Census, Scottish Government officials acknowledged that the government had not consulted women’s groups on the SHS question change: ‘We’ve been coming at this from an LGBT angle because the main purpose of this work on the surveys is to add a third option to a question on gender and measure those with non-binary gender identity. The response in the above articles from some prominent feminists has made me consider whether we should update and seek comments at this stage from women’s equality organisations such as Engender’. See: Scottish Government Equality Statistics (2017), *Internal correspondence 10 October 2017* (page 23).

<https://www.gov.scot/binaries/content/documents/govscot/publications/foi-eir-release/2021/07/foi-202100209858/documents/foi---202100209858---information-released---annex-a-to-e/foi---202100209858---information-released---annex-a-to-e/govscot%3Adocument/FOI%2B-%2B202100209858%2B-%2BInformation%2BReleased%2B-%2BAnnex-%2BA%2Bto%2BE.pdf>

See also: The Independent (2017), *Census considering removal of sex question over discrimination against transgender and non-binary people* (8 October 2017). <https://www.independent.co.uk/news/uk/home-news/census-gender-transgender-nonbinary-concerns-women-written-out-of-existence-germaine-greer-a7988991.html>

departments and agencies. A response from the National Records of Scotland raised a concern about a loss of UK-wide harmonisation and potential divergence with the forthcoming Scottish census question, which at the time was not confirmed.<sup>1000</sup>

‘Ideally the Census question will be identical to the core questions. NRS has harmonisation across the UK as a commitment, so while SG prefer the wording you have proposed, it is not yet clear that this will be the census question. Feedback suggested stakeholders on the whole were content with male/female rather than man/women’.

In response, officials stated that a decision on the SSCQ was needed now, and continuing with a binary question was ‘unacceptable’.

‘In terms of timing it would of course be better for us if the new Census question was known now, and for the Core match this would obviously have its benefits. However, as it is, the Core question review is underway and the Survey teams need to know next week what should go into the new questionnaire from early 2018 - it would be **unacceptable** to continue forward with a binary question’.<sup>1001</sup> (emphasis added)

This was reiterated in an undated PowerPoint presentation, shown below.<sup>1002</sup>

### *Gender in the Household Surveys, Scottish Government PowerPoint*

#### **The Current Question**

- Is [name] male or female?

#### **Q1 Why do we want to change the existing question?**

A. It is no longer acceptable to the Scottish Government that people who do not identify as a man or a woman have nowhere to record this in its surveys

#### **Q2 What do we want to measure?**

A. Scottish Government policy primarily focuses on gender equality

A. Scottish Government would like a count of people with non-binary gender

#### **Q3 What question do we ask?**

A. Stakeholders have developed a question inclusive to those with a nonbinary gender identity

HOW WOULD YOU DESCRIBE YOUR GENDER IDENTITY/HOW WOULD YOU DESCRIBE THE GENDER IDENTITY OF [NAME]?

Man/Boy

Woman/Girl

In another way (if you would like to, please tell me what other words you use [Other specify])

#### **The three main reasons for the change are:**

1. Inclusivity
2. A better defined concept
3. An official count of non-binary people in Scotland

<sup>1000</sup> Scottish Government (2017), *Scottish Government Lead Analysts Responses to the Scottish Household Survey 2018-2021 Questionnaire Review* (page 52). <https://www.gov.scot/binaries/content/documents/govscot/publications/statistics/2019/08/scottish-household-survey-questionnaire/documents/shs-survey-questionnaire-review-2018-21/scottish-household-survey-2018-2021-annex-3a-questionnaire-review/scottish-household-survey-2018-2021-annex-3a-questionnaire-review/govscot%3Adocument/SHS%2B2018-2021%2BQuestionnaire%2BReview%2B-%2BAnnex%2B3a.pdf>

<sup>1001</sup> Scottish Government Equality Statistics (2017), *Email to National Records of Scotland*. Freedom of Information response, 28 February 2017 (page 6). <https://web.archive.org/web/20210705190432/https://www.gov.scot/binaries/content/documents/govscot/publications/foi-eir-release/2021/07/foi-202100209858/documents/foi---202100209858---information-released---annex-a-to-e/foi---202100209858---information-released---annex-a-to-e/govscot:document/FOI+-+202100209858+-+Information+Released+-+Annex+A+to+E.pdf>

<sup>1002</sup> Scottish Government Communities Analysis (undated) *Gender in the Household Surveys*. Freedom of Information response (pages 62-67). <https://web.archive.org/web/20210705190432/https://www.gov.scot/binaries/content/documents/govscot/publications/foi-eir-release/2021/07/foi-202100209858/documents/foi---202100209858---information-released---annex-a-to-e/foi---202100209858---information-released---annex-a-to-e/govscot:document/FOI+-+202100209858+-+Information+Released+-+Annex+A+to+E.pdf>

In correspondence with ONS, officials further outlined Scottish Government intentions to replace sex with gender identity in the forthcoming census (emphasis added), with a separate trans question:

‘The intention of revising ‘sex’ to ‘gender’ and adding a third response option is in order to recognise non-binary people. Being non-binary means that a person identifies as having a gender in between or beyond ‘man’ and ‘woman’, or which fluctuates between ‘man’ and ‘woman’, or people who have no gender all or some of the time. It does not refer to a person’s biological sex. A third option on a sex question should therefore not be used to measure non-binary gender identity, which is the concept the SG would like to see measured in the census. **Scottish Government don’t think there should be both sex and gender identity questions in 2021.** We support the testing of a question asking if the respondents had ever identified as trans in order to collect data on the trans population. Scottish Government would like the 2021 Scottish Census to be in line with the new Gender Recognition Act reform which is anticipated will be introduced in Scotland the year prior to the Census’.<sup>1003</sup>

Internal government concerns about the proposed change included the loss of data on biological sex in the SHeS and SCJS. Technical problems also arose in relation to the need to reroute questions in the respective surveys, and the timing of implementation:

‘From discussing with ScotGen, there would be a fair bit of work involved in this and it would be risky at this stage in terms of making sure that everything is working properly to go into the field at the start of January. I am supposed to be signing off the final questionnaire tomorrow and we would not have time to test the re-routing’.<sup>1004</sup>

Despite these reservations, in January 2018 officials informed the Cabinet Secretary for Communities, Social Security and Equalities that the SHS would proceed on a non-binary basis:

‘following a successful question testing exercise... a new non-binary question on gender identity is now live in the field, as of 1 January 2018. This is the first time a non-binary question on this topic has been included in a major Scottish Government survey. The SHS will now be inclusive to those who don’t self-identify as a man or a woman, and the first results from this question are expected to be published in September 2019’.<sup>1005</sup>

The SCJS and SHeS, however, retained the existing binary sex question. This divergence, later described by officials as ‘not ideal’,<sup>1006</sup> prompted a review by the Office for Statistics Regulation, during which the Scottish Government committed to reharmonise the sex question:

‘Currently the sex and gender question is asked differently across the 3 household surveys... This divergence arose after a review of SHS in 2018 suggested a change to the wording for this survey. This was implemented on the advice of the equalities unit and their liaisons with equality stakeholders...

SHeS and SCJS had specific concerns around moving to a gender identity question rather than a sex question – e.g. there is a need for data on biological sex for health specific considerations and also for sex based crime reporting. Therefore these surveys continued to ask a binary sex question (although SHeS also asks about gender identity in the self- completion module).

During a recent review by OSR<sup>1007</sup> we committed to re-harmonising the data collected on sex and gender in the three household surveys and to implementing the guidance from the sex and gender working group at the earliest possible point after it is finalised’.<sup>1008</sup>

The OSR review identified a range of flaws with the approach taken in the SHS, noting, ‘there are lessons to be learned by Scottish Government on the approach taken following the question consultation in

1003 Scottish Government Equality Statistics (2017), *Email to ONS, 30 August 2017*. Freedom of Information response, 30 August 2017 (page 15). <https://web.archive.org/web/20210705190432/https://www.gov.scot/binaries/content/documents/govscot/publications/foi-er-release/2021/07/foi-202100209858/documents/foi---202100209858---information-released---annex-a-to-e/foi---202100209858---information-released---annex-a-to-e/govscot:document/FOI+-+202100209858+-+Information+Released+-+Annex+A+to+E.pdf>

1004 Scottish Government (2017), *Internal correspondence*. Freedom of Information response, 20 November 2017 (page 42). <https://web.archive.org/web/20210705190432/https://www.gov.scot/binaries/content/documents/govscot/publications/foi-er-release/2021/07/foi-202100209858/documents/foi---202100209858---information-released---annex-a-to-e/foi---202100209858---information-released---annex-a-to-e/govscot:document/FOI+-+202100209858+-+Information+Released+-+Annex+A+to+E.pdf>

1005 Scottish Government Equality Statistics (2018), *Email to Cabinet Secretary for Communities, Social Security and Equalities*. Freedom of Information response (page 51). <https://www.gov.scot/binaries/content/documents/govscot/publications/foi-er-release/2021/07/foi-202100209858/documents/foi---202100209858---information-released---annex-a-to-e/foi---202100209858---information-released---annex-a-to-e/govscot:document/FOI+-+202100209858+-+Information+Released+-+Annex+A+to+E.pdf>

1006 Scottish Government (2021), *Sex and Gender in Household Surveys. Questions from OSR and suggested responses*. Freedom of Information response (page 29). <https://www.gov.scot/binaries/content/documents/govscot/publications/foi-er-release/2022/08/foi-202200303620/documents/foi-202200303620---information-released/foi-202200303620---information-released/govscot%3Adocument/FOI%2B202200303620%2B-%2BInformation%2BReleased.pdf>

1007 The compliance check was requested by Scotland’s Chief Statistician in May 2021.

See: Office for Statistics Regulation (2021), *Roger Halliday to Ed Humpherson: Gender identity and Scottish Household Survey* (28 May 2021). <https://osr.statisticsauthority.gov.uk/correspondence/roger-halliday-to-ed-humpherson-gender-identity-and-scottish-household-survey/>

1008 Scottish Government (2021), *Proposed approach for SSCQ core questions in the 2022 data collection*. Freedom of Information response (pages 27–28). <https://web.archive.org/web/20240514081125/https://www.gov.scot/binaries/content/documents/govscot/publications/foi-er-release/2022/08/foi-202200303620/documents/foi-202200303620---information-released/foi-202200303620---information-released/govscot%3Adocument/FOI%2B202200303620%2B-%2BInformation%2BReleased.pdf>

2017, particularly on matters such as consistency of approach, suitability of interview guidance to support respondents and the requirements to respond on behalf of others'. The OSR review also highlighted the lack of a clear audit trail, commenting that 'unpicking the Scottish Government's decision making from 2017 – when there have been many changes to staffing, the policy, and public thinking on matters in relation to sex and gender identity – has been complicated'.<sup>1009</sup>

## From self-identified gender to self-identified sex

The 2022 SSCQ surveys aligned the sex question with Scotland's 2022 Census and the Chief Statisticians 2021 guidance on data collection. At face value, this saw the SHS return to a binary sex question; however, guidance to the 2022 Census provided for self-identified responses to the sex question:

'If you are transgender the answer you give can be different from what is on your birth certificate. You do not need a Gender Recognition Certificate (GRC). If you are non-binary or you are not sure how to answer, you could use the sex registered on your official documents, such as your passport.'<sup>1010</sup>

Similarly, as detailed in chapter three, Scottish Government guidance on data collection for public authorities defined sex as a characteristic with biological, legal, and self-identified 'aspects' and recommended that public bodies align data collection with the census.<sup>1011</sup> This fundamental change in the definition of sex is not made clear in SSCQ documentation, which refers to the sex question in the census; but not to the guidance that provides for self-identification.<sup>1012</sup>

In practice, some discrepancies remained in the 2022 SSCQ surveys. Both the SHeS<sup>1013</sup> and SCJS<sup>1014</sup> asked, 'What is the sex of [respondent]', with male, female, and 'prefer not to say' options, but did not provide guidance. In contrast, the SHS questionnaire included guidance providing for self-identification, broadly mirroring that in the 2022 Census.<sup>1015</sup>

1009 Office for Statistics Regulation (2022), *Ed Humpherson to Alastair McAlpine: Office for Statistics Regulation's review of gender identity question and the Scottish Household Survey*. (1 July 2022). <https://osr.statisticsauthority.gov.uk/correspondence/ed-humpherson-to-alastair-mcalpine-office-for-statistics-regulations-review-of-gender-identity-question-and-the-scottish-household-survey/>

1010 National Records of Scotland (2023), *Scotland's Census 2022: sex question guidance*. <https://www.scotlandscensus.gov.uk/documents/scotland-s-census-2022-sex-question-guidance/>

1011 Scottish Government (2021), *Data collection and publication guidance: Sex, Gender Identity, Trans Status* (page 7). <https://tinyurl.com/4yrvxvdh5>

1012 Scottish Government (2024), *Core and Harmonised Questions* (page 3). <https://www.gov.scot/binaries/content/documents/govscot/publications/factsheet/2020/12/scottish-surveys-core-and-harmonised-questions/documents/core-and-harmonised-questions/govscot%3Adocument/Core%2Band%2BHarmonised%2BSurvey%2BQuestions%2B-%2B2024.docx>

1013 Scottish Government (2023), *Scottish Health Survey 2022. Questionnaire documentation* (page 13). <https://www.gov.scot/binaries/content/documents/govscot/publications/statistics/2023/12/scottish-health-survey-2022-volume-2-technical-report/documents/questionnaire-documentation/questionnaire-documentation/govscot%3Adocument/questionnaire-documentation.pdf>

1014 Scottish Government (2023), *SCJS 2021/2022 Questionnaire and user notes* (page 129). <https://www.gov.scot/binaries/content/documents/govscot/publications/statistics/2023/11/scottish-crime-justice-survey-2021-22-main-findings/documents/questionnaire/questionnaire/govscot%3Adocument/questionnaire.pdf>

1015 Scottish Household Survey (2022), *Household questionnaire 2022* (page 3). <https://www.gov.scot/binaries/content/documents/govscot/publications/statistics/2023/12/scottish-household-survey-2022-methodology-fieldwork-outcomes/documents/household-questionnaire/household-questionnaire/govscot%3Adocument/household-questionnaire.docx>



# Appendix 1. Legal advice

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## IN THE MATTER OF THE SULLIVAN REVIEW

### Advice

1. I have been instructed to provide written Advice in relation to an independent Review of Data, Statistics and Research and Gender (“the Review”) which is being carried out by Alice Sullivan, Professor of Sociology and Head of Research at the UCL Social Research Institute.
2. The Review examines a number of issues relating to the collection of data on sex, gender, gender reassignment, gender identity, and related matters. I understand that its purpose is to consider the impact of a move by both public bodies and private organisations, away from collecting data on **sex**, and instead towards collecting data that conflates sex with **gender identity**.
3. The Review has three main aims:
  - (1) To provide an overview of the current situation regarding data collection on sex and gender identity in the UK;
  - (2) To identify barriers to research and to make recommendations to assist universities, research organisations and other relevant bodies in overcoming these; and
  - (3) To provide clear guidance to help public bodies and other data owners to collect accurate and consistent data on sex and gender identity.

The third aim is of particular relevance to this Advice.

4. This Advice is in three main sections. The first section discusses the current legal understanding of sex, gender, gender reassignment, gender identity, and related concepts. The second section discusses the main legal areas that are relevant to the subject matter of the Review, including the Equality Act 2010, the Human Rights Act 1998, the tort of misuse of private information (or “MOPI”), data protection law, and the Gender Recognition Act 2004. The third specifically addresses some of the proposed recommendations in the Review (these are also referred to at various points in the first two sections). I end with some concluding points, including as to the limitations of this Advice.
5. This Advice discusses the legal position in the UK. There are three UK jurisdictions: England and Wales; Scotland; and Northern Ireland. I refer to these separately where appropriate. Where I refer simply to the legal position in the UK, I am referring to the position across all three jurisdictions.

### Section 1: current legal understanding of key concepts

6. This section discusses the current legal definition and understanding of the following concepts: sex; gender; gender reassignment; gender identity; and transgender (or trans).

#### Sex<sup>1016</sup>

7. This concept is best understood historically, by reference to three successive stages of legal development.
8. **First**, there is the common law understanding, as set out in cases such as *Corbett v Corbett* [1970] 2 All ER 33, *R v Tan* [1983] QB 1053, and *Bellinger v Bellinger* [2003] UKHL 21. This approach to the concept of sex has three main elements to it: (a) sex is a biological category, determined by physiological considerations, and not by an individual’s mode of living or self-perception; (b) sex is fixed at birth (at the latest), and cannot be changed by subsequent surgical or hormonal intervention; and (c) sex is binary, i.e. no sexes are recognised other than male or female. This common law understanding of sex equates with what is sometimes referred to as “biological sex”, or “natal sex”, or “sex at birth”. In this Advice I shall use the term “sex at birth”.

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<sup>1016</sup>See generally Michael Foran, *Defining Sex in Law* (forthcoming in Law Quarterly Review): [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=4740870](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4740870)

- 9. Secondly**, there is the modification to the concept of sex as a result of the Gender Recognition Act 2004 (“GRA 2004”), enabling individuals to apply for a gender recognition certificate (“GRC”). The effect of a GRC is that the person in question is treated for various legal purposes as having changed their sex. Hence there may now be a difference between a person’s sex at birth, and their legal sex (i.e. their sex as modified for certain legal purposes by a GRC). Note that in this Advice when I refer to “legal sex” I mean sex as modified by any GRC: I am not referring to situations where other official documents (e.g. passports) may record a sex that differs from sex at birth, even where a GRC has not been issued. I note **recommendation 9**, which (rightly) emphasises the need for clarity as to what is meant by any reference to “legal sex”.
10. The background to GRA 2004 was that in *Goodwin v United Kingdom* (2002) 35 EHRR 447, the European Court of Human Rights held that the UK was in breach of both Article 8 (respect for private life) and Article 12 (right to marry) of the European Convention on Human Rights, arising from the fact that the applicant (described in the judgment as a post-operative male to female transsexual) was treated in UK law as a man. GRA 2004 was introduced to give effect to this decision. As indicated above, it modified the legal understanding of sex, by enabling those who satisfied specified conditions (set out in section 2 of that Act) to apply for a GRC.
11. The effect of a GRC is stated to be as follows (see section 9):
- (1) *Where a full gender recognition certificate is issued to a person, the person’s gender becomes for all purposes the acquired gender (so that, if the acquired gender is the male gender, the person’s sex becomes that of a man and, if it is the female gender, the person’s sex becomes that of a woman).*
  - (2) *Subsection (1) does not affect things done, or events occurring, before the certificate is issued; but it does operate for the interpretation of enactments passed, and instruments and other documents made, before the certificate is issued (as well as those passed or made afterwards).*
  - (3) *Subsection (1) is subject to provision made by this Act or any other enactment or any subordinate legislation.*
- Note that section 2 does not require a person to undergo any particular hormonal, surgical, or other medical treatment, as a precondition for obtaining a GRC.
12. The issuing of a GRC will not, however, alter a person’s legal sex in all circumstances. GRA 2004 itself sets out various exceptions: for instance, section 12 provides that the issue of a GRC does not affect the status of the person as the father or mother of a child. Moreover, section 9(3) provides that the effect of a GRC is subject to any provision made by other legislation. It is therefore open to the Courts to construe other legislation as having effectively excluded the effect of any GRC, so that (for the purposes of that legislation) a person’s sex is unaffected by the issuing of a GRC.
13. As set out above, GRA 2004 section 9(1) provides for the issue of a GRC in either a male or a female “acquired gender”. There is no provision for any other form of GRC (e.g. a non-binary GRC). In *R (Castelucci) v Gender Recognition Panel and the Minister for Women and Equalities* [2024] EWHC 54 (Admin), the Divisional Court confirmed that GRA 2004 was limited in this way, holding that an individual whose change of gender from male to non-binary had been recognised by the State of California was not entitled to be issued with a non-binary GRC in the UK<sup>1017</sup>.
- 14. Thirdly**, it is relevant to consider how “sex” is defined in the Equality Act 2010 (“EA 2010”), and the interaction between GRA 2004 and EA 2010.
15. The EA 2010 sets out nine “protected characteristics”, in relation to which various forms of conduct (including direct and indirect discrimination) are prohibited in specified contexts (e.g. in employment). For further details about the protected characteristics and about prohibited conduct under EA 2010, see section 2 of this Advice.
16. One of the nine protected characteristics is sex, defined as follows by EA 2010 section 11:

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<sup>1017</sup> I note the case is subject to appeal, due to be heard in 2025.

*In relation to the protected characteristic of sex—*

- (a) a reference to a person who has a particular protected characteristic is a reference to a man or to a woman;*
- (b) a reference to persons who share a protected characteristic is a reference to persons of the same sex.*

Section 212 (general interpretation) further provides that “man” means a male of any age, and “woman” means a female of any age.

17. For a person who does not have a GRC, my view is that their “sex” for the purposes of the Equality Act 2010 will be their sex at birth. This is so even if the person has the protected characteristic of “gender reassignment” under the Equality Act 2010 (as to which, see below): see *R (Green) v Secretary of State for Justice* [2013] EWHC 3491 (Admin), and *For Women Scotland v The Lord Advocate* [2022] CSIH 4, e.g. at paragraph 38, and see generally the article by Michael Foran referred to at note 1, above.
18. There is ongoing litigation as to whether a GRC has the legal effect of changing a person’s sex for the purposes of the protected characteristic in EA 2010 section 4. In *For Women Scotland Limited v The Scottish Ministers* [2023] CSIH 37 the Inner House of the Court of Session held that a GRC did have this effect, but the case is currently being appealed to the Supreme Court. Until the Supreme Court determines the point, there is uncertainty as to whether “sex” as a protected characteristic in EA 2010 means sex at birth, or legal sex. There is a difference between these two concepts in the case of individuals with a GRC, but (in my view) not otherwise.

## Gender

19. There are three points to make in relation to this concept.
20. *First*, in ordinary usage, the term “gender” is used in a variety of ways. Sometimes it is used as a synonym for biological sex. Sometimes it is used to denote the social expectations that are applied to those who are biologically male or female: “gender” in this sense is about “gender roles”, or “gender stereotypes”, or “gender norms”. Sometimes it is used to denote “gender identity”, understood as a person’s innate sense of being a man, a woman, or neither: see further the discussion of this concept below. And sometimes it refers to a person’s “gender expression”: whether they dress, behave, etc., in a manner that reflects the social norms that are currently applied to the male or female sex.
21. The World Health Organisation (WHO) explains some of these different senses of “gender” on its website, as follows<sup>1018</sup>:

*Gender refers to the characteristics of women, men, girls and boys that are socially constructed. This includes norms, behaviours and roles associated with being a woman, man, girl or boy, as well as relationships with each other. As a social construct, gender varies from society to society and can change over time.*

*Gender is hierarchical and produces inequalities that intersect with other social and economic inequalities. Gender-based discrimination intersects with other factors of discrimination, such as ethnicity, socioeconomic status, disability, age, geographic location, gender identity and sexual orientation, among others. This is referred to as intersectionality.*

*Gender interacts with but is different from sex, which refers to the different biological and physiological characteristics of females, males and intersex persons, such as chromosomes, hormones and reproductive organs. Gender and sex are related to but different from gender identity. Gender identity refers to a person’s deeply felt, internal and individual experience of gender, which may or may not correspond to the person’s physiology or designated sex at birth.*

22. The different meanings of “gender”, as set out at paragraph 20 above, mean that the term risks giving rise to considerable confusion when used in a policy context or in data collection. **Recommendations 18 and 38-39** (rightly) recognise this uncertainty, and the difficulties to which it could give rise.
23. *Secondly*, the GRA 2004 itself gives rise to further potential confusion by using the terms sex and gender interchangeably. See the wording of section 9(1) of GRA 2004, set out above. That said, it is reasonably clear that in GRA 2004 “gender” is being used simply as a synonym for “sex”.

<sup>1018</sup>See [https://www.who.int/health-topics/gender#tab=tab\\_2](https://www.who.int/health-topics/gender#tab=tab_2)

24. *Thirdly*, as explained above the protected characteristic in EA 2010 is sex not gender. It is surprisingly common to see the term “gender”, rather than “sex”, in what purport to be lists of the protected characteristics (e.g. as set out by public authorities on their websites). It would be preferable to refer to “sex”, reflecting the language of EA 2010. Referring to sex, rather than gender, will assist in compliance with the Public Sector Equality Duty (discussed below).

25. It is true that at various points EA 2010 refers to “gender” instead of or as well as “sex”.

- Section 79 is headed “Gender pay gap information”. It provides that regulations may require employers to publish information relating to the pay of employees for the purpose of showing whether there are difference in the pay of male and female employees. The Equality Act 2010 (Gender Pay Gap Information) Regulations 2017 have been made under this provision.
- EA 2010 section 195 (sport) defines a category of “gender-affected activity” (see section 195(3)):

*A gender-affected activity is a sport, game or other activity of a competitive nature in circumstances in which the physical strength, stamina or physique of average persons of one sex would put them at a disadvantage compared to average persons of the other sex as competitors in events involving the activity.*

In both section 79 and section 195, “gender” is clearly being used as a synonym for “sex”. This does not alter the fundamental point that the protected characteristic under EA 2010 section 4 is sex, not gender.

## Gender reassignment

**26. Gender reassignment** is one of the nine protected characteristics under the EA 2010. It is defined as follows, by section 7(1):

*A person has the protected characteristic of gender reassignment if the person is proposing to undergo, is undergoing or has undergone a process (or part of a process) for the purpose of reassigning the person’s sex by changing physiological or other attributes of sex.*

27. A person with the protected characteristic of gender reassignment is referred to in EA 2010 as a “transsexual person”: see section 7(2). The terms “transgender” or “trans” do not appear in EA 2010.

28. The fact that a person has the protected characteristic of gender reassignment does not in itself alter the person’s sex for the purposes of EA 2010: these are different questions (see paragraph 17 above).

29. A person who understands their gender identity<sup>1019</sup> as being at variance with their biological sex will not necessarily have the protected characteristic of gender reassignment. Such a person may not have undergone (or be undergoing or proposing to undergo) a *process* as referred to in section 7(1). Similarly, a person who understands themselves to be transgender or trans will not necessarily have the protected characteristic of gender reassignment, given the breadth of the terms transgender and trans in current usage: see further the discussion at paragraphs 36-41 below.

30. There is room for some uncertainty as to whether the protected characteristic of gender reassignment covers an individual who is non-binary (i.e. who does not identify either as a man or a woman). The statutory definition refers to the *reassignment* of a person’s sex. Given that sex has historically been viewed in law as a binary concept<sup>1020</sup>, the statutory wording would suggest that the concept applies to male-to-female transsexuals<sup>1021</sup>, or female-to-male transsexuals, but not to non-binary individuals. The decision of the Employment Tribunal in *Taylor v Jaguar* (1304471/2018) has been treated by some commentators<sup>1022</sup> as supporting the proposition that a non-binary individual can have the protected characteristic of gender reassignment. However, it is strongly arguable that the point did not arise on the specific facts of that case; and in any event an Employment Tribunal decision has no binding authority as a precedent and cannot, in itself, make new law. As matters stand, therefore, there is no authoritative legal ruling as to whether non-binary individuals can have the protected characteristic of gender reassignment. If not, then this increases the cohort of individuals who: (a) assert a gender identity that is at variance with their biological sex; but (b) fall outside the protected characteristic of gender reassignment.

<sup>1019</sup>This concept is discussed at paragraphs 31-35 (page 183).

<sup>1020</sup>See e.g. *R (on the application of Elan-Cane) v Secretary of State for the Home Department* [2021] UKSC 56, paragraphs 52-53; and see generally paragraph 8 above.

<sup>1021</sup>I use the term “transsexual” here, reflecting the language of EA 2010: see section 7(2).

<sup>1022</sup>See e.g. <https://www.hrmagazine.co.uk/content/news/gender-fluid-and-non-binary-ruling-in-jaguar-land-rover-case-calls-for-a-rewrite-of-equality-policies/>

## Gender identity

31. **Gender identity** is widely deployed as a concept in discussions regarding sex and gender.

32. For instance, the widely-cited Yogyakarta Principles ( a document published following a meeting of international human rights groups in Yogyakarta, Indonesia in November 2006) define “gender identity” as follows:

*Gender identity is understood to refer to each person’s deeply felt internal and individual experience of gender, which may or may not correspond with the sex assigned at birth, including the personal sense of the body (which may involve, if freely chosen, modification of bodily appearance or function by medical, surgical or other means) and other expressions of gender, including dress, speech and mannerisms.*

33. However, the concept of gender identity does not currently feature in any statutory provision in any of the UK jurisdictions. In other words, there are no legal rights in the UK that are conferred by reference to gender identity, and no UK statutory definition of the concept.

34. Broadly speaking, the concept is usually seen as denoting a person’s interior sense of themselves as being a man, a woman, or something else. See the WHO and Yogyakarta definitions set out above, and see also the following text from the NHS Digital website<sup>1023</sup>:

*Gender identity is a way to describe a person’s innate sense of their own gender, whether male, female, or non-binary, which may not correspond to the sex registered at birth.*

35. As the Review points out, there are a range of views in relation to the concept of gender identity. There are a number of people who would not claim to have a gender identity themselves: e.g. because they reject the concept as incoherent, or because they assert that it applies in relation to some people but not to themselves, or because the concept is unfamiliar to them and not understood. Any assertion that *everyone* has a gender identity<sup>1024</sup> is therefore contentious, and carries significant legal risks in relation to compliance with the public sector equality duty, and data protection law (see discussion below): **recommendation 25** (rightly) warns against making any such assumption.

## Transgender or trans

36. In current discussions regarding sex and gender identity, there are frequent references to individuals as being “transgender” or “trans”. Currently, it appears to more common for individuals to self-describe using these terms, rather than to describe themselves as transsexual.

37. That said, as indicated above, EA 2010 uses the term “transsexual” to refer to a person with the protected characteristic of gender reassignment. The terms “transgender” and “trans” are not used in EA 2010.

38. I note that the Hate Crime and Public Order (Scotland) Act 2021 defines the term “transgender identity” in section 11(7) as follows:

*A person is a member of a group defined by reference to transgender identity if the person is—*

*(a) a female-to-male transgender person,*

*(b) a male-to-female transgender person,*

*(c) a non-binary person,*

*(d) a person who cross-dresses,*

*and references to transgender identity are to be construed accordingly.*

39. To illustrate the wide understanding current usage of the terms “transgender” or “trans”, the Review quotes the following definition from Stonewall:

*“Trans people may describe themselves using one or more of a wide variety of terms, including (but not limited to) transgender, transsexual, gender-queer (GQ), gender-fluid, non-binary, gender-variant, crossdresser, genderless,*

<sup>1023</sup> <https://digital.nhs.uk/data-and-information/data-collections-and-data-sets/data-sets/mental-health-services-data-set/submit-data/data-quality-of-protected-characteristics-and-other-vulnerable-groups/gender-identity#:~:text=Gender%20identity%20is%20a%20way.who%20someone%20is%20attracted%20to.>

<sup>1024</sup> This assertion appears to be implied by the reference to “each person” in the Yogyakarta definition of gender identity.

*agender, nongender, third gender, bi-gender, trans man, trans woman, trans masculine, trans feminine and neutrois.*<sup>1025</sup>

40. In the light of the broad understanding of the terms “transgender” and “trans”, it cannot safely be assumed that every person who asserts a transgender identity: (a) would have the protected characteristic of gender reassignment under EA 2010; or (b) would themselves assert that they had that protected characteristic.
41. Conversely, there may be individuals who would have the protected characteristic of gender reassignment, but who would not assert a transgender identity. One potential example is detransitioners, i.e. people who embark on a transition process but then abandon or reverse that process. There could very well be detransitioners who would not currently assert a transgender identity, but who would nevertheless have the protected characteristic of gender reassignment, on the basis that they had (at some point in the past) undergone a process falling within section 7(1) of EA 2010.

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<sup>1025</sup> On 27<sup>th</sup> June, Stonewall amended this definition to drop the reference to “crossdresser”: see <https://sex-matters.org/posts/updates/stonewall-redefines-trans-to-exclude-crossdressers/>

## Section 2: main relevant legal provisions

42. This section discusses the main legal provisions that are relevant to the Review, under the following headings:

- (1) Equality Act 2010 (“EA 2010”): protected characteristics and prohibited conduct.
- (2) EA 2010: the Public Sector Equality Duty (PSED).
- (3) Human Rights Act 1998 (“HRA 1998”), giving further effect in the UK to the European Convention on Human Rights (“the Convention”).
- (4) The tort of misuse of private information (or “MOPI”).
- (5) Data protection law, in particular as set out in the UK General Data Protection Regulation (“UK GDPR”) and in the Data Protection Act 2018 (“DPA 2018”).
- (6) The Gender Recognition Act 2004 (“GRA 2004”).

### EA 2010: protected characteristics and prohibited conduct

43. As indicated above, EA 2010 sets out nine “protected characteristics”. These are central to the scheme of the Act. They are listed in EA 2010 section 4, as follows:

*The following characteristics are protected characteristics:*

*age;*

*disability;*

*gender reassignment;*

*marriage and civil partnership;*

*pregnancy and maternity;*

*race;*

*religion or belief;*

*sex;*

*sexual orientation.*

As already indicated (above), “sex” is a protected characteristic, but “gender” is not, and nor is “gender identity”. There is a protected characteristic of “gender reassignment”, and a person with this protected characteristic is referred to in EA 2010 as a “transsexual person” (see EA 2010 section 7(2)). Being “transgender”, or “trans”, is not itself listed as a protected characteristic.

44. In the first section of this Advice I discussed how the protected characteristics of sex and gender reassignment are defined in EA 2010.

45. EA 2010 defines four types of prohibited conduct (see generally Part 2, Chapter 2 of the Act): direct discrimination, indirect discrimination, harassment, and victimisation. The first three of these are expressly tied to the protected characteristics. For instance, the general definition of discrimination (EA 2010 section 13(1)) is that (emphasis added):

*A person (A) discriminates against another (B) if, because of a protected characteristic, A treats B less favourably than A treats or would treat others.*

As to victimisation, the general definition (section 27(1)) is:

*A person (A) victimises another person (B) if A subjects B to a detriment because—*

*(a) B does a protected act, or*

*(b) A believes that B has done, or may do, a protected act.*

A “protected act” (as defined by section 27(2)) is, in summary, bringing proceedings under the Act, or taking certain other specified steps in relation to the Act. It follows from all of this that the concept of victimisation is also closely tied to the protected characteristics, even though section 27(1) does not refer to them expressly.

46. EA 2010 does not enact a general prohibition on direct and indirect discrimination, harassment, and victimisation. Instead it prohibits these forms of conduct in various specified contexts: e.g. in relation to services and public functions (Part 3), premises (Part 4), or work (Part 5).

## EA 2010: the PSED

47. Section 149(1) of EA 2010 provides as follows:

*A public authority must, in the exercise of its functions, have due regard to the need to—*

- (a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act;*
- (b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;*
- (c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it.*

The duty imposed by section 149 is usually referred to as the Public Sector Equality Duty (which is the heading to section 149), or the PSED for short.

48. The relevant protected characteristics for the purpose of section 149(1) are defined by section 149(7): of the nine protected characteristics in section 4, only marriage and civil partnership is excluded, and hence both sex and gender reassignment are included. “Public authorities” are defined for this purpose by section 150 and Schedule 19.
49. The PSED incorporates a duty of inquiry: see e.g. *R (Bracking) v SSWP* [2013] EWCA Civ 1345 at paragraph 26(8). Hence there may be a breach of the PSED where there is an absence of information before the decision-maker enabling them to assess the relevant impacts on a protected characteristic: see for example *R (Law Centres Federation Ltd) v Lord Chancellor* [2018] EWHC 1588 (Admin), paragraphs 104-5; *R (DMA) v SSHD* [2020] EWHC 3416 (Admin); *R (DXK) v Secretary of State for the Home Department and others* [2024] EWHC 579 (Admin), paragraphs 124-158. Proper compliance with the PSED may therefore require collection of data about the relevant protected characteristics, including sex and gender reassignment.
50. Given the ambiguities of the term “gender” (see above), and given that “gender” is not itself a protected characteristic, it is likely that the collection of data about gender will not assist in compliance with the PSED and will be a source of confusion, unless it is made clear that the term “gender” is simply being used as a way of referring to the protected characteristic of sex under EA 2010. The difficulties associated with the term gender are (rightly) recognised **by recommendations 18 and 39** of the Review.
51. “Gender identity” is not itself a protected characteristic, and nor does it correspond with any of the protected characteristics: see the discussion above. Hence the PSED does not provide a basis for collecting such data, and if “gender identity” is substituted for or conflated with sex or gender reassignment, then this is likely to create a significant risk of a failure to comply with the PSED: see **recommendation 17** of the Review.
52. As explained above, there is currently some uncertainty as to whether “sex” in EA 2010 means sex at birth, or legal sex. **The Review recommends collecting data about the former, as “sex” rather than “legal sex”,** on the basis that (a) the current difference between these variables is small, (b) this approach will assist in ensuring consistency over times, and (c) this approach is likely to be sufficient in practice to satisfy the PSED: see **recommendation 3 and 15**. In my view this is an appropriate approach to take. **Recommendation 7** (rightly) emphasises the importance of being clear as to exactly what is meant by “sex” when such information is requested.

## HRA 1998 and the Convention

53. Article 8 of the ECHR provides as follows:

1. *Everyone has the right to respect for his private and family life, his home and his correspondence.*
2. *There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic wellbeing of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.*



54. As will be apparent, this is a qualified not an absolute right: i.e. interference with the right may nevertheless be justified, in the circumstances set out in Article 8(2). Where there is interference that is not justified under Article 8(2), then there is a violation of the right.
55. Under the Human Rights Act 1998 (“HRA 1998”), it is unlawful for a public authority to act in a way which is incompatible with a Convention right: HRA 1998 section 6(1). If a public authority interferes with the Article 8 right, and the interference cannot be justified under Article 8(2), then the public authority will be in breach of HRA 1998 section 6(1).
56. The duty under section 6(1) does not extend beyond public authorities. However, the UK courts have developed the common law so as to give effect to the values underpinning Article 8 in cases not involving public authorities: the effect of this development is that the common law now recognises a tort of misuse of private information (or “MOPI”). This tort is separately discussed below.
57. The collection and storage of information about individuals by public authorities is highly likely to engage Article 8(1) (i.e. to constitute an interference with the right to respect for private life): see e.g. *Rotaru v Romania* (2000) 8 BHRC 449 and *R (on the application of Catt) (AP) (Respondent) v Commissioner of Police of the Metropolis and another (Appellants)* [2015] UKSC 9. It follows from this wide approach to the scope of Article 8(1) that the collection by a public authority of data about sex (whether by reference to sex at birth, or legal sex) is likely to engage Article 8(1). The same applies as regards the collection of data by reference to any of the other concepts discussed above, i.e. gender, gender reassignment, gender identity, or transgender/trans status.
58. Where there is an interference with the Article 8(1) right, the question is whether the interference can be justified under Article 8(2): if it cannot, then the interference will be unlawful. This will require consideration of whether the interference is: (a) necessary for one of the matters set out in Article 8(2); (b) “in accordance with the law”; and (c) proportionate. The test of necessity is one of reasonable rather than absolute necessity. Interference will be “in accordance with the law” if (put shortly) it is governed by a sufficiently accessible and foreseeable framework of law and policy: see e.g. the summary in *R (ota Bridges) v Chief Constable of South Wales Police and others* [2020] EWCA Civ 1058, at paragraph 55. As to proportionality, the test is set out in *Bank Mellat v HM Treasury (No 2)* [2013] UKSC 39, paragraph 20, as follows:
- The question depends on an exacting analysis of the factual case advanced in defence of the measure, in order to determine (i) whether its objective is sufficiently important to justify the limitation of a fundamental right; (ii) whether it is rationally connected to the objective; (iii) whether a less intrusive measure could have been used; and (iv) whether, having regard to these matters and to the severity of the consequences, a fair balance has been struck between the rights of the individual and the interests of the community. These four requirements are logically separate, but in practice they inevitably overlap because the same facts are likely to be relevant to more than one of them.*
59. It follows from all of the above that there is nothing in Article 8 that imposes an absolute barrier on the collection by public authorities of data about sex, or any of the others matters discussed in section 1 above. In practice, the question will be whether such collection can be justified under Article 8(2).
60. Note for example the decision of the Supreme Court in *R (C) v Secretary of State for Work and Pensions* [2017] UKSC 72, which considered the policies of the Department for Work and Pensions (“DWP”) regarding the retention of, and access to, information about individuals with GRCs (including their sex at birth, the fact that they had a GRC, and the date of the GRC). Those policies were held to constitute an interference with the Article 8(1) right (see judgment, paragraph 31). However, the relevant policies were held to be justified on the basis of the requirements for administration of the benefits system, including properly calculating state pension entitlement and identifying and detecting fraud (see judgment, paragraphs 32-38).
61. In relation to justification under Article 8(2), one important consideration will be data accuracy. When data is inaccurate, and where this is because of the way in which the public authority has gone about collecting the data (e.g. by failing clearly to specify what data it is seeking to collect), then: (a) it will be difficult to establish that the collection, retention and monitoring of the data is necessary for any of the purposes specified in Article 8(2); and (b) it will likewise be difficult to satisfy the proportionality test summarised in *Bank Mellat*, in

particular (i) the requirements that there must be a rational connection between the collection and retention of the data and the objective being pursued, and (ii) the requirement that there must be a fair balance between individual rights and community interests.

62. In relation to proportionality more generally, I would make the following points.

- (1) The points made below apply in particular to the collection of data about the sex of individuals who assert a transgender identity, or who have the protected characteristic of gender reassignment (including, but not confined to, individuals with a GRC). For individuals who do not assert a transgender identity and do not have the protected characteristic of gender reassignment, the collection of data about sex is likely to be much easier to justify.
- (2) These points apply in particular as regards data about sex at birth, or about the fact that an individual has a GRC (thereby revealing that there is a difference between the individual's legal sex and their sex at birth). As to GRC status, see also the provisions of GRA 2004 section 22 (discussed below).
- (3) There is an important difference between questions that seek to elicit the simple fact of someone's sex at birth or GRC status, and questions that seek to elicit further details (such as whether a person has had specific hormonal or surgical treatment). The latter will be considerably harder to justify.
- (4) A question that gives individuals the option of withholding information (e.g. by way of a "prefer not to say" option) will be easier to justify than a question that gives no such option.
- (5) Where (a) there is no option to withhold information, and (b) the information must be provided as a precondition for obtaining a benefit (e.g. employment, or a service) or for avoiding some legal liability, then the threshold for justification will be particularly high.
- (6) It is considerably easier to justify collecting data in circumstances where the data will not be used to make decisions about individuals (as will usually be the case where data is collected for research purposes).
- (7) The more widely data is to be disseminated (in a form that allows individual identification), the harder it is likely to be to justify the collection of that data.
- (8) It will be particularly difficult to justify the collection of data where the intention is to make that data public.
- (9) In considering whether the proportionality test is met (particularly in relation to the dissemination of data, or making data public) it is important to take into account any impact on third parties. In particular, it is important to consider whether third parties have an interest in knowing the sex of a particular individual (e.g. where the third parties are receiving intimate care or medical treatment from that individual).

## The tort of MOPI

63. The tort of misuse of private information ("MOPI") was developed in order to give effect to the values enshrined in the right to respect for private and family life under Article 8 of the Convention, including in cases not involving public authorities: see generally *Campbell v MGN* [2004] 2 AC 457; *Google v Vidal-Hall and others* [2015] EWCA Civ 311. The MOPI tort involves the application of a two stage test: whether the claimant has a reasonable expectation of privacy in the relevant information; and if so, whether that interest was outweighed by a countervailing interest of the defendant. For a summary of the test, see e.g. *Prismall v Google UK Limited and another* [2023] EWHC 1169 (KB) at paragraphs 66-70. Intentionally obtaining information can constitute "use" for this purpose, and so can storage of the information: *Prismall*, at paragraph 80.
64. The question, therefore, is whether and in what circumstances the deliberate obtaining and storage of information about sex would constitute the tort of MOPI.
65. In most circumstances, an individual's sex would be obvious and uncontroversial facts about themselves, clearly not giving rise to any expectation of privacy. However, individuals with a transgender identity or who have the protected characteristic of gender reassignment may well assert that they have a reasonable expectation of privacy in relation to information about their sex. These points apply in particular as regards data about sex at birth, or about the fact that an individual has a GRC (thereby revealing that there is a difference between the

individual's legal sex and their sex at birth). As to GRC status, see also the provisions of GRA 2004 section 22 (discussed below).

66. As to whether any assertion as to a reasonable expectation of privacy would be well-founded, there are a number of points to make, reflecting many of the points made above in relation to Article 8.
67. *First*, there is a distinction to be drawn between the simple fact of an individual's sex at birth, and more detailed information about themselves, such as whether the individual is transgender and has undergone particular surgical or hormonal treatment. There is much more likely to be a reasonable expectation of privacy as regards more detailed information of this nature, than as regards the simple fact that the individual's sex is male or female.
68. *Secondly*, if information is already in the public domain, then this will make it harder to assert any reasonable expectation of privacy. Whether the information is sufficiently public to defeat any reasonable expectation of privacy, will be a matter of fact and degree. If a person's sex at birth is readily apparent to anyone who encounters them (e.g. from physical appearance, or voice) then it is hard to see how there can be any reasonable expectation of privacy in the mere fact that their sex at birth is male or female.
69. *Thirdly*, even where an individual's sex at birth is not in the public domain, the question whether there was a reasonable expectation of privacy would be highly fact-specific. In this context, it would be important to take into account any impact on the rights and freedoms of others.
70. Even if there is a reasonable expectation of privacy in relation to an individual's sex, the second stage of the MOPI test requires consideration of whether that expectation is outweighed by a countervailing interest. The factors that would be relevant here would be very much the same as when considering whether any interference with the Article 8(1) right could be justified under Article 8(2). As will be apparent, therefore, there are various considerations which are potentially relevant both as to whether there is a reasonable expectation of privacy, and as to whether any such expectation is outweighed by countervailing interests.

## Data protection law

71. Data protection law (as set out in the UK GDPR and in DPA 2018) does not prohibit the collection of data about either sex at birth or legal sex. However, it imposes various requirements that need to be satisfied if such data is to be lawfully collected and used. Those requirements go beyond those imposed by Article 8 of the ECHR.
72. Data protection law imposes various obligations on *controllers* (persons or bodies who determine the purposes and means of the processing of personal data). Personal data, put shortly, means information relating to an identified or identifiable natural person: and information about an identified or identifiable person's sex (whether sex at birth or legal sex) would be personal data about that individual. Note that in order to be personal data, information does not need to be private or confidential: the scope of the concept is therefore very wide.
73. The obligations imposed by data protection law relate to the *processing* of personal data: again, this is a wide concept, extending (among other matters) to the collection, retention, and use of personal data.
74. Controllers must comply with various principles set out in UK GDPR Article 5(1) in relation to their processing of personal data. For instance, processing must be lawful, fair and transparent (Article 5(1)(a)); and every reasonable step must be taken to rectify data inaccuracy (Article 5(1)(d)). The processing of personal data must, in every case, satisfy one of the conditions in Article 6(1). The processing of "special category data" (defined in Article 9(1)) must, in addition, satisfy one of the conditions in Article 9(2). The provisions of Article 9(2) are complex, as they need to be read in conjunction with DPA 2018, which sets out in more detail the circumstances in which there will be compliance with the Article 9(2) conditions: see in particular DPA 2018 section 10 and Schedule 1.
75. Many of the conditions in Article 6 and 9 depend on the processing of data being "necessary" for various specific matters. It is well-settled that this imports a proportionality test comparable to that discussed above in relation to Article 8 of the Convention. Controllers (whether public or private sector) will therefore have to engage with considerations of proportionality – taking account of the matters discussed above in the context

of Article 8 – when determining whether processing of personal data is *necessary* for one of the matters set out in Article 6 or Article 9.

76. Will data about sex constitute special category personal data? This is defined by Article 9(1) as:  
*personal data revealing racial or ethnic origin, political opinions, religious or philosophical beliefs, or trade union membership, and the processing of genetic data, biometric data for the purpose of uniquely identifying a natural person, data concerning health or data concerning a natural person's sex life or sexual orientation*
77. As will be apparent, data relating to sex is not in itself categorised as special category data. However, such data might be special category data if it revealed one of the matters referred to in Article 9(1). For instance, if a dataset included the information that Bob's sex is male, and that Bob's partner's sex is also male, then these two items of information (taken together) disclose Bob's sexual orientation, and constitute special category data.
78. Does information about a person's transgender status constitute special category information about that person? Usually the answer to this question will be yes, and it is advisable for controllers to proceed on this basis. This question requires separate consideration in relation to the information that: (a) a person has a GRC; (b) a person has the protected characteristic of gender reassignment; and (c) a person asserts a transgender identity.
79. The information that a person has a UK GRC will almost certainly constitute information about that person's health, and hence will constitute special category data on that basis. This is because one of the conditions for the grant of such a certificate is that the person has or has had gender dysphoria: see GRA 2004 section 2(1) (a). Gender dysphoria is currently defined in the Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition, Text Revision (DSM-5-TR) (American Psychiatric Association 2022)<sup>1026</sup>. The information that a person has or has had gender dysphoria would in my view constitute information concerning that person's health, for the purposes of UK GDPR Article 9(1).
80. There is a theoretical possibility that a person might have been granted a GRC on the basis of a foreign certificate **not** dependent on such a diagnosis (by way of section 1(1)(b) of GRA 2004). However, I would expect such cases to be rare (and non-existent from 2024<sup>1027</sup>). For practical purposes, the information that a person has a UK GRC (or information that makes clear that this is the case) should in my view be regarded as special category data.
81. It is more questionable whether the information that a person has the protected characteristic of gender reassignment, or asserts a transgender identity, is special category data. That said, I note that the International Classification of Diseases Eleventh Revision (ICD-11) (World Health Organization, 2022) uses the term "gender incongruence" to describe "a marked and persistent incongruence between an individual's experienced gender and the assigned sex". This condition has been moved out of the "Mental and behavioural disorders" chapter and into the "Conditions related to sexual health" chapter so that it is not perceived as a mental health disorder. Nevertheless, the information that a person satisfies the ICD-11 definition of gender incongruence would in my view constitute information about their health. Further, it seems to me very likely that a person who has the protected characteristic of gender reassignment, or who asserts a transgender identity, would satisfy the definition of "gender incongruence"<sup>1028</sup>; hence the prudent course for a controller is to treat this information as being information about health, and therefore special category data.
82. Where information is special category personal data, the threshold for processing it is higher than in relation to ordinary personal data. For special category data, a condition in UK GDPR Article 9(2) needs to be satisfied, in addition to the conditions in Article 6(1). Article 9(2) cannot be read in isolation, but needs to be considered in conjunction with the relevant provisions of DPA 2018: see in particular section 10 of, and Schedule 1 to, DPA 2018. The conditions in Article 9(2) that are most likely to be relevant for information relating to gender reassignment or transgender identity are these:

<sup>1026</sup>In relation to the current understanding of the terms gender incongruence and gender dysphoria, see the Cass Review final report (April 2024) at page 17.

<sup>1027</sup>GRA 2004 section 1(1)(b) provides for GRC applications to be made on the basis of a foreign certificate, but only if the foreign certificate is issued by an approved country or territory, i.e. a country or territory prescribed by order made under section 2(4) of GRA 2004. The current order made under these provisions is The Gender Recognition (Approved Countries and Territories and Saving Provision) Order 2024 (SI 2024 No 401). The explanatory memorandum for this Order makes clear that the list has been drawn up so as to include countries and territories with a GRC system at least as rigorous as the UK's, including requiring a relevant clinical diagnosis which is similarly rigorous to the UK system.

<sup>1028</sup>A detransitioner might well have satisfied the definition of gender incongruence at some point in the past, even if they did not do so now. As discussed above, a detransitioner could well have the protected characteristic of gender reassignment, even if they did not currently assert a transgender identity.

- (g) *processing is necessary for reasons of substantial public interest, on the basis of domestic law which shall be proportionate to the aim pursued and provide for suitable and specific measures to safeguard the fundamental rights and the interests of the data subject;*
- (h) *processing is necessary for the purposes of preventive or occupational medicine, for the assessment of the working capacity of the employee, medical diagnosis, the provision of health or social care or treatment or the management of health or social care systems and services on the basis of domestic law or pursuant to contract with a health professional and subject to the conditions and safeguards referred to in paragraph 3;*
- (i) *processing is necessary for reasons of public interest in the area of public health, such as protecting against serious cross-border threats to health or ensuring high standards of quality and safety of health care and of medicinal products or medical devices, on the basis of domestic law which provides for suitable and specific measures to safeguard the rights and freedoms of the data subject, in particular professional secrecy;*
- (j) *processing is necessary for archiving purposes in the public interest, scientific or historical research purposes or statistical purposes in accordance with Article 89(1) (as supplemented by section 19 of the 2018 Act) based on domestic law which shall be proportionate to the aim pursued and provide for suitable and specific measures to safeguard the fundamental rights and the interests of the data subject.*

83. Processing based on limb (g) will need to satisfy a condition in Part 2 of Schedule 1 to DPA 2018.

- One of these conditions is satisfied where (put shortly) processing is necessary for the exercise of a function conferred on a person by an enactment or rule of law or for various governmental purposes, but only where the processing is in the substantial public interest: Schedule 1, Part 2, paragraph 6.
- There is also a provision allowing the processing of specified categories of personal data, where the processing is necessary for the purposes of identifying or keeping under review the existence or absence of equality of opportunity or treatment between groups of people specified in relation to that category with a view to enabling such equality to be promoted or maintained: Schedule 1, Part 2, paragraph 7. This paragraph provides a basis for data concerning health to be processed in relation to equality of opportunity or treatment between people with different states of physical or mental health; and for personal data concerning an individual's sexual orientation to be processed in relation to equality of opportunity or treatment between people of different sexual orientations.

84. Processing based on limb (h), (i) or (j) will need to satisfy a condition in DPA 2018 Schedule 1 Part 1. These conditions include that the processing is necessary for certain specified health or social care purposes (Schedule 1, Part 1, paragraph 2). There is also a condition in relation to research (Schedule 1, Part 1, paragraph 4), as follows:

*This condition is met if the processing—*

- (a) *is necessary for archiving purposes, scientific or historical research purposes or statistical purposes,*  
 (b) *is carried out in accordance with Article 89(1) of the UK GDPR (as supplemented by section 19), and*  
 (c) *is in the public interest.*

Article 89(1) and section 19, read together, impose two main requirements. First, the processing must not be likely to cause substantial damage or substantial distress to a data subject. Secondly, the processing must not be carried out for the purposes of measures or decisions with respect to a particular data subject, **unless** the purposes for which the processing is necessary include the purposes of approved medical research (defined by DPA 2018 section 19(4)).

85. I comment below on the data protection implications of three scenarios involving the processing of personal data. In each case, I have been asked to consider the scenario for the purposes of informing the Review.

**86. Scenario 1:** is there any breach of data protection law by organisations collecting data on sex and subsequently recording this data as, or conflating with, gender identity? For example a GP surgery asks a person's sex but subsequently records this data as gender identity.

87. In my view, this situation is likely to involve a breach of data protection legislation (i.e. of UK GDPR and the DPA 2018, read together), for three reasons.

88. In the *first place*, this is likely to involve a breach of the requirements as to data accuracy (see UK GDPR Article 5(1)(d)). If data is collected by reference to sex but recorded by reference to gender identity, then this will involve an assumption that sex and gender identity mean the same thing. As will be apparent from the discussion above, this is not the case. Further, an individual who does not understand themselves to have a gender identity at all, will be misdescribed by data purportedly recording their gender identity.
89. The *Castelluci* case confirms that for the purposes of UK law sex is a binary concept, and hence there is no basis on which a non-binary GRC can be issued in the UK (even to a person who has obtained a non-binary overseas certificate). It follows that, where a person asserts a non-binary gender identity, it is inaccurate to treat their sex and their gender identity as being identical.
90. *Secondly*, this situation is likely to involve a breach of the principle of fairness (see UK GDPR Article 5(1)(a)). An aspect of this principle is that the processing of personal data should be consistent with an individual's reasonable expectations. Given that sex and gender identity are different concepts, an individual would not reasonably expect that data about their sex would be recorded as being information about their gender identity.
91. *Thirdly*, Articles 13 and 14 of UK GDPR require controllers to provide information to individuals about the processing of their personal data. Article 13 applies where the information is obtained from the individual in question; if not, Article 14 applies. If information about sex is collected, but then recorded as being about gender identity, it is highly likely that the information provided by controllers under Article 13 or 14 (as the case may be) will be inaccurate.
92. **Scenario 2:** There are instances where a person is compelled to answer a question on their gender to be able to access a service, for example, 'what is your gender?', with the response options being 'female, male or prefer not to say'. Does this involve any breach of data protection law?
93. The first question is, what is meant by "gender"? Is the question about sex at birth, or legal sex? Or is it about gender identity? It may be clear from the context what is being asked. However, where this is unclear, it will be difficult for the person or body collecting the information (i.e. the controller) to satisfy any of the conditions for lawful processing in Article 6(1) UK GDPR. It is hard to establish that data is *necessary* for any of the purposes set out in Article 6(1), when it is unclear exactly what data is being collected.
94. Moreover, if a question is unclear, then there is a significant risk that the data controller will breach the data accuracy requirements (see UK GDPR Article 5(1)(d)). If an ambiguous question is asked but is interpreted by various individuals as referring to their sex, but the data is retained and treated as relating to *gender identity*, then the data are likely to be inaccurate: for instance, a non-binary person who gave their sex as female might be wrongly recorded as having a female gender identity.
95. In the light of considerations such as the above, the Review (rightly) warns against the use of questions about "gender": see **recommendations 16-17 and 39**.
96. Assume however that what is being asked about is gender identity, and that this is made clear by the controller. There is nothing in data protection law that precludes the collection of such data. A processing condition under Article 6(1) would need to be satisfied. Moreover, since the answer (in some cases) would be likely to disclose that an individual had the protected characteristic of gender reassignment and/or that they asserted a transgender identity, it would be prudent to approach the data collection in this case as involving the collection of special category data and hence as also requiring a processing condition in Article 9(2) to be met.
97. What if individuals who do not accept that there is such a thing as gender identity (or who do not understand themselves to have a gender identity) are effectively compelled to self-describe in this way? In this situation there is a significant risk of a breach of data protection legislation. In relation to *accuracy*, proceeding in this way is likely to result in recording people as (e.g.) having a female gender identity, when the true position is that their sex is female but they do not understand themselves as having a gender identity at all. In relation to *fairness*, compelling people to self-describe by reference to gender identity, when they do not accept that the concept is applicable, is likely to constitute unfair processing of their personal data.

98. One possibility would be to provide people with a “prefer not to say” option. However, this risks giving the misleading impression that certain respondents have a gender identity that they do not wish to disclose (when the true position may be that they do not regard themselves as having a gender identity). A better option would be to break down the question into two steps: first, asking whether individuals understand themselves to have a gender identity; and secondly, if so, asking them what is their gender identity.
99. For the reasons above, **recommendation 25** rightly advises that questions should not assume that individuals have a gender identity.
100. *Scenario 3*: Some data surveys record respondents’ sex based on observation by the interviewer. Can data collected in this manner be lawfully held?
101. My view is that collection of data in this way is in principle capable of being lawful, but care needs to be taken by the controller as to how the data collection is carried out.
102. First, there is an issue as to whether this involves a breach of the principle as to data accuracy (UK GDPR Article 5(1)(d)). It is true that sex as recorded on the basis of observation will not necessarily be wholly reliable (in relation to either sex at birth or legal sex). However, if the data is recorded in such a way as to make it clear that it is based solely on the interviewer’s observation then there should be no issue as to data accuracy.
103. Secondly, however, there is a potential issue as to the fairness and transparency of the data processing. There is a general principle in UK GDPR that the processing of personal data must be fair and transparent (Article 5(1)(a)). There are also specific requirements as to the information that must be provided to data subjects about the processing of their personal data: see Article 13 (which applies when data is obtained from the data subject) and Article 14 (which applies when data is not so obtained).
104. Collecting data about an individual’s observed sex, without informing them that this is being done, would in my view be likely to breach both the fairness and the transparency requirement in Article 5(1)(a), as well as breaching the requirements in Article 13 and 14 (whichever is applicable) as to the information that must be provided to data subjects<sup>1029</sup>. Hence any fair processing information provided to individuals under Article 13 or 14 would need to inform them that data about sex was being collected and recorded, and that this was done on the basis of interviewer observation. **Recommendation 20** in the review should be read with these points in mind.
105. Finally, I deal with the question of data protection impact assessments (DPIAs).
106. Article 35 of the UK GDPR materially provides as follows.
1. *Where a type of processing in particular using new technologies, and taking into account the nature, scope, context and purposes of the processing, is likely to result in a high risk to the rights and freedoms of natural persons, the controller shall, prior to the processing, carry out an assessment of the impact of the envisaged processing operations on the protection of personal data. A single assessment may address a set of similar processing operations that present similar high risks.*
  2. *[Not material]*
  3. *A data protection impact assessment referred to in paragraph 1 shall in particular be required in the case of:*
    - (a) *a systematic and extensive evaluation of personal aspects relating to natural persons which is based on automated processing, including profiling, and on which decisions are based that produce legal effects concerning the natural person or similarly significantly affect the natural person;*
    - (b) *processing on a large scale of special categories of data referred to in Article 9(1), or of personal data relating to criminal convictions and offences referred to in Article 10; or*
    - (c) *a systematic monitoring of a publicly accessible area on a large scale.*
107. The collection of data about sex or about gender identity might – depending on the circumstances – fall within Article 35(1) (whether or not by reason of Article 35(3)). The important point, in every case, is that: (a)

<sup>1029</sup>Article 13 and 14 of the UK GDPR require specified information to be provided to data subjects. Article 13 applies where personal data are collected from the data subject; Article 14 applies where personal data are not obtained from the data subject.

the controller should be clear as to what data is being collected, and why (i.e. whether it is data about sex or about gender identity); and (b) the DPIA should relate to the data that is actually being collected. The former point is of general relevance to the issues raised by the Review: see further the third section of this Advice.

## GRA 2004

108. In the first section of this Advice, I explained that GRA 2004 makes provision for the issue of a GRC in specified circumstances, and I summarised the legal effects of a GRC.
109. In relation to the collection of data about sex, gender and related matters for individuals with a GRC, particular consideration needs to be given to the impact of section 22 of GRA 2004 (prohibiting the disclosure of certain information). Section 22(1) provides that it is an offence for a person who acquires “protected information” in an “official capacity” to disclose that information, save in the circumstances set out in section 22(4).
110. Protected information is defined in section 22(2), as follows:
- “Protected information” means information which relates to a person who has made an application under section 1(1) and which—*
- (a) concerns that application or any application by the person under section 4A, 4C, 4F,5(2),5A(2) or 6(1) of this Act<sup>1030</sup>, or*
- (b) if the application under section 1(1) is granted, otherwise concerns the person’s gender before it becomes the acquired gender.*
111. Put shortly, information about an individual’s application for a GRC will constitute protected information under section 22(1)(a). If an individual has a GRC, then information about their pre-GRC status would fall within section 22(1)(b). This would include information as to the individual’s sex at birth.
112. However, crucially, section 22(1) does not prohibit the **collection** of protected information directly from the individuals to whom it relates. Nor is there anything in the GRC that requires information about an individual’s pre-GRC history (including their sex at birth) to be expunged from any records: see paragraphs 20-26 of the decision of the Supreme Court in *R (C)*, discussed above. On the contrary: the terms of section 22(3) (discussed below) assume that protected information will be acquired or collected in a range of circumstance. Rather, section 22(1) prohibits the **disclosure** of protected information by a person who has acquired the information in an official capacity; unless one of the conditions in section 22(4) applies.
113. When would data be acquired “in an official capacity”? The relevant definition is in GRA 2004 section 22(3).
- A person acquires protected information in an official capacity if the person acquires it—*
- (a) in connection with the person’s functions as a member of the civil service, a constable or the holder of any other public office or in connection with the functions of a local or public authority or of a voluntary organisation,*
- (b) as an employer, or prospective employer, of the person to whom the information relates or as a person employed by such an employer or prospective employer, or*
- (c) in the course of, or otherwise in connection with, the conduct of business or the supply of professional services.*
- Obviously, in very many cases a person who collected data for research purposes would collect it “in an official capacity” on one or other of these bases.
114. What happens if an organisation collects information about the sex at birth of an individual who has a GRC, but without being aware that the individual has a GRC? If information about that individual’s sex at birth is disclosed, does this disclosure breach section 22? In my view, the answer is no. The information as to that individual’s sex at birth is protected information, falling within section 22(2)(b). However, the disclosure would not involve the commission of an offence. This is because of section 22(4)(c), which provides that no offence is committed where:

<sup>1030</sup>The wording of section 22(2)(a) in relation to Scotland is slightly different, but the difference is not material for present purposes.



*the information is protected information by virtue of subsection (2)(b) and the person by whom the disclosure is made does not know or believe that a full gender recognition certificate has been issued.*

115. When would the disclosure of a research outcome involve the disclosure of data in breach of section 22(1)?  
That depends on whether the outcome of the research was published in a form that enabled individuals to be identified. If not, then the publication of research outcomes would not breach section 22(1): see section 22(4) (a) (no offence to disclose protected information relating to a person if the disclosure does not enable that person to be identified).
116. In short, although section 22 requires careful consideration, it does not impose any absolute prohibition on the collection of data about sex at birth, even in cases where any individual has applied for or has obtained a GRC.

### Section 3: proposed recommendations in the Review

117. I have reviewed the 59 proposed recommendations in the Review. The recommendations are, in my view, consistent with the legal analysis set out above. I have referred to some of the individual recommendations in the discussion above. I add some general comments. I have also referred to instances where failing to follow one of the recommendations could be unlawful.
118. The recommendations reflect the importance of: (a) being clear in every case about **what** data is being sought, and **why** it is being sought; and (b) being careful, when devising questions, to ensure that those questions appropriately target the data that is being sought. Leaving aside their obvious practical importance, these are key considerations when ensuring compliance with data protection law and with the other legal regimes discussed above. These practical concerns are reflected all through the recommendations in the Review: see e.g. **recommendations 3, 8, 9, 16, 17, and 24-37**.
119. The recommendations reflect the concerns expressed above about the ambiguities associated with the term “gender” (see **recommendation 18**) and about the need to avoid conflating sex and gender identity (**recommendation 17**). These are important points, both in relation to ensuring compliance with the PSED, and more generally in ensuring that data collection complies with human rights and data protection considerations.
- 120. Recommendation 6** indicates that there may be cases where omitting or discouraging the option of non-response might be appropriate. Rightly, the recommendation recognises that this approach would require careful and case-specific justification: in this regard, see the discussion above about proportionality under Article 8 of the Convention. Particular care needs to be taken in circumstances where a refusal to answer has specific adverse consequences for an individual (e.g. by making it impossible for them to obtain a benefit or a service); this could result in unlawful sex or belief discrimination.

### Conclusion

121. This Advice discusses the relevant legal framework, and considers the propos in the Review by reference to that framework.
122. Both the relevant legal framework, and the proposed recommendations, are highly fact-sensitive and will need to be applied in a wide range of different situations. This Advice is not intended to address whether the practices adopted by specific organisations or persons regarding the collection of data about sex and gender, and related issues, are legally compliant, and it should not be relied upon for that purpose. In case of doubt, organisations and individuals will need to seek legal advice that is tailored to their own factual circumstances.

**TIMOTHY PITT-PAYNE KC**

**11KBW**

**28<sup>th</sup> August 2024**

# Appendix 2. Welsh Government Chief Statistician's Written Response: Review on Data, Statistics and Research on Sex and Gender

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## Introduction

This note sets out the approach the Welsh Government's analysts have taken in relation to the collection of data on sex and gender. Historically, the terms sex and gender have been used interchangeably in data collection in Wales, even at times within legislation. This was likely because the constructs of sex and gender were previously not clearly recognised as distinct by society. The UK Statistics Authority's [Inclusive Data Task Force](#) in 2021 identified that it is essential for statistics producers to examine how different attributes combine to shape different outcomes for people in society, to make sure that we "leave no one behind". An important aspect of our role as government analysts is to make sure data and evidence meets user needs and reflects our society, including how people describe themselves, now and as it evolves overtime.

### **We develop our statistics in line with the Code of Practice for Statistics and use harmonised approaches where available**

Official Statistics in the Welsh Government are driven by adherence to the principles of the [Code of Practice for Statistics](#) which is the framework to ensure that statistics are trustworthy, good quality, and of public value. A central aspect of the Code is that we measure what is most important to users, and as producers we aim to measure that in the most reliable way.

The Office for National Statistics, on behalf of the Government Statistical Service, sets out harmonised standards to aid consistency, comparability and robustness of data and statistics across the UK. These standards help to provide a consistent and robust way of collecting data. Where appropriate, we aim to mirror the harmonised standards set out for sex and gender identity. There is a [harmonised standard for sex](#). There is no agreed best practice for gender or [gender identity](#), with harmonised standard currently in development. The harmonised standards team identified a growing need for respondents to be able to record an identity different from male or female on survey forms. Collecting data on sex and gender identity in a consistent way would build data quality and help increase understanding about people in the UK to support their needs, access to specific services and inequalities different people may experience. There is a lack of guidance and harmonisation on how to collect data on gender identity for the under 16s from the Government Statistical Service, which has proved a barrier for Welsh Government analysts. The Evidence Units' research (referred to below) will consider this in its next iteration.

### **We refer to the Office for Statistics Regulation guidance on sex and gender identity data**

The Office for Statistics Regulation published [new guidance on sex and gender identity](#) in March 2024. The guidance highlights the role official statistics producers should have to ensure their data collections maintain compliance with the Code. The key message is that data collected on sex and gender identity should be driven by user needs, clearly communicated to users and is consistent with other related statistics where appropriate. The Office for Statistics Regulation consulted the Welsh Government during development of this guidance. Examples are provided later in this paper on how the guidance has prompted changes in our statistical communication.

### **Our approach to sex and gender identity data in Welsh Government data collections**

The Welsh Government's current position is for analysts to consider adopting the Government Statistical Service harmonised standards and the Office for Statistics Regulation guidance on sex and gender identity.

Each producer of Official Statistics within the Welsh Government will continue to consider the appropriateness of how to collect and report on sex, gender and gender identity based on the user need and the relevant legislative requirements for the statistics. The Welsh Government's statistics cover a vast range of topics, so the approach is

likely to differ across the range of statistics depending on the needs identified and approach required to maintain appropriate robustness for that specific publication.

There are often a range of factors Welsh Government analysts would need to take into account if considering changes to the way in which sex and gender identity are captured in data collections alongside user need. These would include: practical constraints such as the time and financial cost that it takes to amend data capture systems or the rigidity of data systems not designed for statistical purposes; the impact on burden for those capturing the data, the impact on respondents' willingness to respond and on their ability to express their identity in the way that they wish; and the impact of introduction of such changes which might affect comparisons with earlier data.

For several of our outputs, we are secondary users of data collected and produced by another organisation such as Office for National Statistics (for example, the Census, Annual Population Survey) or part owned by another organisation (for example, School Health Research Network). In these instances, whilst we feed into conversations around what could be collected to meet the user needs in Wales the decisions are not solely ours which limits the changes we can make to our Official Statistics at data collection. We also make use of a variety of administrative data (such as when producing hospital statistics) where we might have less direct influence over how data is defined and collected. In both cases, we make sure our reporting reflects how the data is collected and meets the needs of our users.

### **Examples of changes and how we approached them**

For certain outputs we produce we have had to carefully consider the terminology we use both when collecting data and when reporting data in response to this societal step-change around the constructs of sex and gender.

#### **1. Education statistics**

The Pupil Level Annual School Census (PLASC) was established in 2003 and is one of our statutory data collections that has been subject to changes in recent years in the way data on sex and gender is collected. Previously data items within the data collection were labelled as "gender". This also reflects the terminology used in the regulations that form the basis of this collection.

In 2024, the name of this data item was altered to be labelled as "sex". People within the sector felt there was a lack of clarity around what they should be recording against the variable "gender", which prompted the changes. The change to labels from "gender" to "sex" in the data collection were implemented from January 2024, with the aim of providing clearer guidance on what should be recorded. New guidance has been circulated to schools indicating that the 'Sex' data item, "*means sex as recorded on the individual's birth certificate or Gender Recognition Certificate*".

At the same time, in response to feedback from schools and local authorities, a gender identity variable was introduced into the Welsh Government's technical documentation as a suggested method of implementation for enabling schools to voluntarily record this data locally within their management information systems (MIS). Any information on gender identity recorded by schools is for their own local use and is not collected by the Welsh Government. The Welsh Government did not provide any advice to schools on how they should collect such data if they wished to do so.

Several other statutory data collections in education will see changes from 2024 onwards, with "gender" being replaced by "sex" as a data item following a review and recommendations endorsed by the former Minister for Education and Welsh Language to ensure correct and consistent recording of this data. These include the statutory data collections for Education Otherwise Than At School (EOTAS), Post-16 Education, and Attendance (Primary and Secondary). The School Workforce Annual Census (SWAC) saw no changes as it has collected "sex" in a way that is consistent with the recommendation since its introduction in 2019.

These changes have and will continue to be clearly explained to users and people providing the data at point of collection and when communicating the data in statistical reports, so the integrity of the statistics and compliance with the Code of Practice for Statistics can be maintained.

## 2. National Survey for Wales

In the National Survey for Wales, which was established in 2012, between 2012-13 and 2018-19 neither gender nor sex were referred to explicitly within the question. In 2020-21, as a result of changes to the harmonised standards, both the question was edited to explicitly collect data on sex, and data items that were previously labelled as “gender” were changed to “sex” to ensure consistency with the harmonised standards. An additional code was also added for respondents that prefer not to select “male” or “female”. The question asked is currently “And what is your sex?” Following the 2021 Census a separate question on gender identity was considered for inclusion but later dropped for the following reasons: compared to sex there was less demand for data on gender identity, sample sizes limited the ability to do anything useful with the data and weighting at the time used the Annual Population Survey. Those with another gender are not included in weighting and in any analysis, and as someone’s gender can be different to their sex, there was a risk that it could be misinterpreted within the weights.

## 3. Population estimates

Population estimates published on StatsWales were previously published with a breakdown by “gender”. We amended this label to “sex” in 2022 to accurately reflect the information collected and published by the Office for National Statistics.

## 4. Children’s social care statistics

The Children Looked After Census and Children Receiving Care and Support Census has seen several changes since it was refreshed in 2016-17 following the implementation of the Social Services and Well-being Act 2014. Initially, “gender” was collected with the response options “male” and “female” with no further guidance. In the following year, guidance was given to clarify that gender identity – not sex at birth – should be recorded. This was to ensure gender specifically was collected. More recently, an “other” gender response option (that could include non-binary) was included from the 2024-35 collection onwards. The change to collecting gender was made following engagement with local authorities through the Social Services Technical Information Network. The reasons were partially to reduce burden on local authorities as sex at birth was not reliably collected whereas gender was more consistently collected. There was also the option to link the datasets in SAIL to get sex at birth, which would reduce burden on local authorities to collect both if it was needed by users at a later point.

### Plans to consider user need on data on sex and gender in Wales

The Welsh Government’s Equality Evidence Unit is exploring whether there is a need for Welsh-specific harmonised standards on sex, gender, and gender identity. This involves a review of existing standards and exploring a variety of user needs in Wales. We will continue to work with both the Office for Statistics Regulation and the Office for National Statistics to make sure Wales’ needs are reflected in their harmonised standards and guidance, with the intention of promoting consistency and coherence as far as is possible.

**Welsh Government Chief Statistician, June 2024.**

# Appendix 3. Call for evidence: Strand one submissions

The Review included an open call for evidence, with two strands, on data collection and barriers to research respectively. The call for evidence on data collection (shown below) gave individuals an opportunity to report on data collection that they believed to be problematic. To retain the focus in this report on data collection, this appendix presents an overview of the material submitted to Strand 1. Strand 2 submissions will be considered in a further report, to follow.

## Strand 1 call for evidence on data collection

### Strand 1: Examples of data collection

Do you have an example or examples of UK data collection on sex and/or gender identity which you perceived as inadequate or flawed? If so, we invite you to submit them for the review.

We will ask you to provide your examples (ideally including screenshots of any relevant questionnaire items) and some basic supporting information about what the data collection exercise was and why you perceived it to be flawed or inadequate.

Anyone can contribute to this strand, and there is no need to provide any personal information about yourself.

Respondents submitted evidence via a UCL project webpage, with the additional option of making submissions via email. Full information about the project was provided on the project web page. The call for evidence was widely disseminated on social media, including via the Sullivan Review X account (formerly Twitter).

The Review received 268 valid submissions (248 records made via the UCL submission system, and 20 submissions via email). Of these, 46 submissions were identified as following a template provided by a third party. We ascribe these submissions to an email sent by the Feminist Gender Equality Network to its members which contained guidance on how to respond to the call for evidence. Under 'data collection exercise', these respondents indicated that their comments referred to this review. None provided any other examples, as sought by the call for evidence, of flawed data collection on sex and/or gender identity. As such, these submissions differed from all other responses to the review, and we treat them as a distinct group below

The remainder of this appendix shows a range of submissions from the call for evidence, structured

thematically. Where requested, we include the name of the submitting party. We do not include submissions related to items already covered in the main body of this Review, double entries, unclear submissions (for example, where respondents provided examples of a gender identity question but did not make clear that this was replacing the collection of data on sex), or submissions where insufficient evidence or information was provided. Some of examples in the annex do collect data on sex but are included to illustrate how far activist language implying that sex is mutable (e.g. 'sex assigned at birth') has become mainstream. In many cases, respondents included screenshots or links to relevant websites. We were not able to look further into the individual pieces of material submitted under this strand, and therefore cannot be sure every case is exactly as presented to us. However, we believe that taken as a total body of evidence, the material here is a reliable indication of how far the loss of data on sex, and its replacement with gender identity data, extends across a diverse range of policy areas, consistent with the findings of the main body of the Review.

The responses show for example, that a public consultation by Stockport Council on the A6 corridor in Stockport asked respondents 'how would you describe your gender?', with response options such as 'gender-fluid'. A visitor survey undertaken by Grimsby Fishing Museum asked whether respondents were 'intersex'. It is difficult to understand the rationale for either of these examples. One submission, from an NHS employee, stated that inconsistent recording practices across different NHS systems created difficulties when systems interacted. Some submissions raised safeguarding concerns, for example, a children's camping programme collected data on gender identity, with male, female, and 'other' response options. Data collection exercises that asked for either gender or gender identity but did not collect data on sex included UK Civil Service internal

staff surveys, a Victims Survey and Equalities survey undertaken by Avon and Somerset Police, and the Health and Care Professions Council (HCPC) workforce census.

Some respondents noted that questions on gender identity did not provide for those without a belief in gender identity. These submissions included the gender identity question in the 2021 England and Wales census (notwithstanding that this particular question was voluntary), data collected as part of the Athena Swan award scheme, and the Department for Education Pulse Survey. A submission on the NHS England Staff Survey noted, ‘The question presumes that everyone has a gender identity which is not the case...There is no option for respondents to say that they have no gender identity...prefer not to say is not appropriate for people like me who reject gender identities because they are based on stereotypes.’ Similarly, a submission on the Royal College of General Practitioners Membership application form stated, ‘*Not possible to complete or update a membership application or change personal details without. Effectively insisting that this data is gathered... which I believe is contrary to law.*’

Submitted to the Review, and included here, are questions asking for ‘gender’, with a binary female/male response option. The fact that these were submitted of itself shows that ‘gender’ has ceased to be seen as a simple synonym for ‘sex’ and confidence in such questions clearly collecting data on sex, even where that might be the intention, has been lost.

## Health and social care

### **Arden and Greater East Midlands Commissioning Support Unit (NHS), Referral form for the Children and Young People’s Gender Incongruence National Referral Support Service**

This asks for ‘Sex assigned at birth’ (Male/female). ‘Current Gender Identity (please choose one only)’ (Female/Trans Female/Agender/Questioning/Not Known/Male/Trans Male/Non-binary/Other [please specify]).<sup>1031</sup>

### **BadgerNet, Patient information**

BadgerNet is a digital system designed for managing early pregnancy, gynaecology and maternity care. It is reported to be widely used in Maternity Services to book patients due to give birth. It collects the following data:

‘Gender’ (female/male/non-binary/gender fluid/other\_\_\_\_/prefer not to say).

‘Is your gender the same as you were assigned at birth?’ (Yes/no). [Screenshot provided].

### **Bedford NHS Foundation Trust, Post-colonoscopy feedback survey**

‘What is your sex? (Male/female/transgender/’n/a’/prefer not to say). [Screenshot provided].

### **Bradford Teaching Hospitals NHS Foundation Trust, Patient research participant demographics information form**

‘Gender’ (Male/female). [Screenshot provided].

### **Bradford Teaching Hospitals NHS Foundation Trust, Stroke research registry patient details form**

‘Gender’ (Male/female/non-binary/other\_\_\_\_/prefer not say). [Screenshot provided].

### **Cambridge University Hospitals NHS Foundation Trust, Covid vaccine consent form**

‘Gender’ (Male/female/Non-binary/Other). [Screenshot provided].

<sup>1031</sup> Arden and Greater East Midlands Commissioning Support Unit (online), *Referral Form for the Children and Young People Gender Incongruence Services*. <https://web.archive.org/web/20240624010955/https://www.ardengemcsu.nhs.uk/media/3578/cyp-gnrss-referral-form-including-risk-assessment-form.docx>

### Cambridgeshire Community Health Services NHS Trust, Referral form for Community Paediatric Services in Bedford and Luton, Version 4 2022

This form was live at time of writing and captures data on child referrals. The data fields are male, female, and transgender. No variable name/title is given.<sup>1032</sup>

### Central and North-West London NHS Foundation Trust, Supporting Transgender Service Users Policy<sup>1033</sup>

Policy document produced by the Trust Pride@ CNWL Staff Network Training Lead and ratified by the Trust Clinical Effectiveness and Policies Group.

An accompanying Equality Impact Monitoring sheet refers to 'sex/gender' and gender. The document indicates that no representative from the Trust's women's staff group (which is known to exist) was involved as part of the consultation with relevant/affected protected characteristic groups.

The document states that the policy will be audited for compliance annually, including 'Implementation of correct gender markers across IT systems'. The Trust primarily uses SystmOne for patient records,<sup>1034</sup> which records a patient's PDS gender code, with an extra field for gender identity under 'Additional Personal Information'. The policy also notes intentions for changes to the system to align records with MHSDS [Mental Health Services Data Set] gender markers in all services (not just mental health).<sup>1035</sup>

### Central and North-West London immunisation team/Vaccinations UK, Parental consent form Year 8 (school) HPV vaccination campaign

'Gender' (male/female). [Screenshot provided].

### Central and North-West London NHS Foundation Trust, IAPT/Talking Therapies Self-referral form:

'Gender' (Male/Female/Trangender Male/Transgender Female/Gender Non-Binary/'Gender Fluid / Gender Queer'/Intersex/Not known/Not specified/Unwilling to divulge).<sup>1036</sup>

The submission states that the previous form asked for 'gender' (male, female).

### City & Hackney NHS Talking Therapies (Improving Access to Psychological Therapies), Self-referral form.

'Please select your gender' (Male (including trans man)/Female (including trans woman)/prefer not to say/transgender). [Screenshot provided].

### Coventry and Warwickshire Partnership NHS Trust, Policy eliminating Mixed Sex accommodation admission.

Policy eliminating Mixed Sex accommodation admission/Transfer Check List collects data by gender, not sex. [Screenshot provided]. The respondent comments that *'The policy is about eliminating mixed sex accommodation - which cannot happen if the data collected is gender, not sex. The policy may have been updated - but the new policy is not available on their website.'*

### East London NHS Foundation Trust, Rio patient record system 'Enhanced gender, sex, pronouns and sexuality demographics' cribsheet.

New system demographic options recorded on patient records from September 2022.<sup>1037</sup> This is in addition to Spine demographics, which cannot be changed via Rio.

1032 Cambridgeshire Community Health Services NHS Trust (2022), *Community Paediatric Services*.

<https://www.cambscommunityservices.nhs.uk/docs/default-source/Online-Referral-Pack---Comm-Paed-Luton-and-Beds/referral-pack-for-community-paediatrics.docx?stfrsn=0>

1033 Central and North-West London NHS Foundation Trust (2023), *Supporting Transgender Service Users Policy*.

[https://web.archive.org/web/20240518183715/https://www.cnwl.nhs.uk/application/files/1216/9090/4281/Supporting\\_Transgender\\_Service\\_Users\\_Policy\\_2023-2028b.pdf](https://web.archive.org/web/20240518183715/https://www.cnwl.nhs.uk/application/files/1216/9090/4281/Supporting_Transgender_Service_Users_Policy_2023-2028b.pdf)

1034 See section 8.1.2 (NHS data recording practices across the UK) in the main report.

1035 For more information about the Mental Health Services Data Set (MHSDS) and definitions used, see page 170 in the main report.

1036 Central and North West London NHS Foundation Trust (online), *Self Referral Form for Westminster*.

<https://web.archive.org/web/20240522130235/https://gateway.mayden.co.uk/referral-v2/788e0d84-7e00-47a7-a339-1ebe25c5a6a0>

1037 East London NHS Foundation Trust (2023), *Rio Cribsheet CAMHS & SCYPS Gender, Pronouns, Sexuality for all Patients*.

<https://web.archive.org/web/20240806141109/https://www.elft.nhs.uk/sites/default/files/2023-02/Cribsheet%20Gender%2C%20Pronouns%2C%20Sexuality%20for%20all%20Patients.pdf>



#### 4. How Do You Describe Your Gender?

- "A person's innate sense of their own gender, whether male, female or something else (see non-binary below), which may or may not correspond to the sex assigned at birth."
- If an individual identifies as trans female, they would select female and No their gender does not align with their sex assigned at birth to indicate gender diversity

How do you describe your gender?

Does your gender align with the sex you were assigned at birth?

What pronouns do you use?

Further information

Gender options: Please Select, Male (including trans man), Female (including trans woman), Non-binary, Gender fluid, Self-described, Do not wish to share, Not known (not recorded)

c.

#### Why aren't there more options?

We appreciate that the options above do not represent everyone. This form depends on knowing your registered sex on your medical record, not your gender identity. We are working on removing the need to enter your sex or gender identity on this form by Spring 2024.

Currently, we have to ask this question in order to match your request against your medical record. We know this is not ideal and are working to remove this.

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#### GP practice Surrey, Patient online services.

The sex question for patient services is accompanied by a note stating this is 'not ideal' and that work is underway to remove it.

#### Greater Manchester and Eastern Cheshire Maternity Voices, Induction of labour experiences survey

'Which of the following options best describes how you think of yourself?' (Woman (including trans woman)/man (including trans man)/non-binary/prefer not to say). [Screenshot provided].

#### Guys' and St Thomas' NHS Foundation Trust, Maternity discharge summary

'Legal sex'. [Screenshot provided].

#### Healthwatch Dudley, Experiences accessing NHS GP services in Dudley survey

'Please tell us your gender (Man/woman/non-binary/prefer not to say).

Is your gender identity the same as your sex recorded at birth? (Response options unclear).<sup>1038</sup>

#### Healthwatch Calderdale, Survey: Women's Health and Wellbeing in Calderdale

This survey of women's experiences of healthcare included 'anyone who identifies as female'. The results report stated it covered 'Women aged 16+ and those identifying as female'.<sup>1039</sup>

#### Healthwatch, Equality monitoring survey for staff and health/social care service users

Are you...? (A woman/a man/non-binary/other/prefer not to say).

'Is your gender identity the same as the sex you were assigned at birth?' (Yes/no/prefer not to say). [Screenshot provided]

#### King's College London (TwinsUK), Health research questionnaire<sup>1040</sup>

'What gender do you identify with?' (Man/woman/non-binary/prefer not to answer). [Screenshot provided].

<sup>1038</sup>The report survey can be accessed here: Healthwatch Dudley (2024), *Exploring Access to GP services in Dudley*.

[https://nds.healthwatch.co.uk/sites/default/files/reports\\_library/20240603\\_Dudley\\_Exploring%20access%20to%20GP%20services%20in%20Dudley%20borough%20May%202024%20%281%29.pdf](https://nds.healthwatch.co.uk/sites/default/files/reports_library/20240603_Dudley_Exploring%20access%20to%20GP%20services%20in%20Dudley%20borough%20May%202024%20%281%29.pdf)

<sup>1039</sup>Healthwatch Kirklees & Calderdale (2024), *Let's hear it for women's health and wellbeing*.

<https://disabilitypartnershipcalderdale.org/wp-content/uploads/2024/03/REPORT-%E2%80%93-womens-Calderdale-5-1.pdf>

<sup>1040</sup>Submitted by Stephanie Davies-Arai.

### **London Local Authority Adult Social Care departments, Learning disabled adult service users:<sup>1041</sup>**

This detailed submission was based on FOI requests sent to all 33 London local authorities about data held on adult service users with learning disabilities. Copies of all FOI requests were included within the document. The submission highlighted the importance of collecting robust data to sex to ensure the provision of single-sex intimate care. Findings from the submission are shown below:

Almost all authorities (32) collect data on 'gender'. This is mandatory in 24 authorities.

In seven authorities, the gender variable is binary (male, female). In the remaining 25 authorities multiple response options are offered, denoting gender identity. Of these, the response options vary between authorities. The most common format is (male, female, unknown, indeterminate), as reported by 12 authorities.

Four authorities collect data on 'sex'. Of these, one specifies this is a reference to biological sex (male/female). The remaining three provide for male, female, unknown, and intersex response options.

One authority stated it recorded 'male or female' responses but could not specify if this referred to sex or gender.

Four authorities did not record data on sex but to offer same-sex intimate care.

One authority stated it would change its process to allow including the recording of sex, as a result of the FOI request.

One authority responded citing a sexual orientation variable (Bisexual, Gay Man, Heterosexual, Lesbian, Not Certain, Not Disclosed, Not Known, Other).

### **Maternity Voices in Manchester, Labour induction choices and experiences survey**

Which of the following options describes how you best think of yourself? (Woman (including trans woman)/man (including trans man)/non-binary/prefer not to say). [Screenshot provided].

### **The Museum of Homelessness, The Dying Homeless Project annual data.**

Reports deaths by 'gender', but it is unclear how this is recorded. The results report on men, women, and trans women.<sup>1042</sup>

### **National Autistic Society, Experiences and attitudes survey**

Survey participants are asked the following about the person that they know who is autistic: 'What is their gender?' (Female/male/non-binary/trans female/trans male/gender fluid/prefer not to say/other (please specify)\_\_\_\_). [Screenshot provided].

### **National Counselling and Psychotherapy Society and Counselling and Psychotherapy Central Awarding Body, Survey on Therapeutic Relationships for counsellors and trainee counsellors**

'Which of the following best describes your gender identity?' (Male/female/non-binary/prefer to self-describe). [Screenshot provided].

### **NAVIGO (NHS services provider), 'Patient journey' booklet for Older People's Mental Health Services**

'To which gender do you most identify? \_\_\_\_\_.' [Photograph of booklet provided].

This form is filled out either with or on behalf of an individual with dementia.

<sup>1041</sup> Submitted by Saladin Rospigliosi Pallavicini.

<sup>1042</sup> Museum of Homelessness (2023), *Dying Homeless Project report for 2022*.

<https://web.archive.org/web/20240603165523/https://static1.squarespace.com/static/623b05f9825aa34cda99921f/t/6440dbf5a599723818d7a28a/1681972250211/2022+Dying+Homeless+Project+Museum+of+Homelessness.pdf>

Equality Strand	Does the proposed policy/procedure/ strategy/ plan/ function etc have a positive or negative (adverse) impact on people from these key equality groups? Please describe	Are there any changes which could be made to the proposals which would minimise any adverse impact identified? What changes can be made to the proposals to ensure that a positive impact is achieved? Please describe	Have any mitigating circumstances been identified? Please describe	Areas for Review/Actions Taken (with timescales and name of responsible officer)
<b>Race</b>	Policy for the assessment of young people on a 136 suite and/or admission to an adult ward has a positive impact on all strands of equality and diversity; by seeking to be inclusive, non-stigmatising and promoting independence, well-being, and choice.	The policy provides a framework to actively counter discriminatory abuse, therefore has a positive impact on all strands of diversity.	N/A	Author to review in 3 years
<b>Gender</b> Incl. Transgender	There is a positive impact in respect of gender and sexual orientation regarding the application of the policy as it is clearly inclusive	None identified	None have been identified	As above
<b>Disability</b> Incl. Mental Health and LD	As Race	None identified	None identified	As above
<b>Religion/Belief</b>	As Race	None identified	None identified	As above
<b>Sexual Orientation</b>	As Gender	None identified	None identified	As above
<b>Age</b>	As Race	None identified	None identified	As above
<b>Social Inclusion*</b>	As Race	None identified	None identified	As above
<b>Community</b>	As Race	None identified	None identified	As above

### NHS Blood and Transplant, 'Donation if you are LGBT+' guidance

This respondent (an NHS Blood and Transplant employee) expressed concern about training and policy in this area.

Online information states, 'NHS Blood and Transplant considers all donors to be the sex and/or gender that they identify as, including nonbinary, genderfluid and agender donors... we will ask all donors their sex assigned at birth, as well as their gender when signing up to donate.'<sup>1043</sup> It also states, 'The UK's blood services continue to work with the NHSBT LGBT+ Network, experts in epidemiology, virology and psychology and external stakeholders such as Stonewall and the Terrence Higgins Trust to make blood, organ, stem cell and plasma donation more inclusive.'

Note: A previous version (archived October 2023) stated 'Haemoglobin testing is conducted in accordance with the gender with which you identify. This is because the majority of transgender people undergo hormone replacement therapy which brings their haemoglobin levels in line with most cis people of the same gender.'<sup>1044</sup>

### NHS Blood, Patient record

Sex replaced by/recorded as 'gender'. [Screenshot provided].

### NHS Chelsea and Westminster Hospital NHS Foundation Trust, Echocardiogram report

'Birth gender'. [Screenshot provided].

### NHS England, Service User Voice Representatives application form

'Which of the following options best describes how you think of yourself?' (Woman (including trans woman)/Man (including trans man)/non-binary/ in another way/prefer not to say). [Screenshot provided].

### NHS GP practice South-West London, EMIS patient record system

'Gender' (male/female). [Screenshot provided].

### NHS GP Surgery St Albans, Patient experience survey after using eConsult platform

'What is your gender?' (Woman/man/non-binary or third gender/prefer not to say/prefer to self-describe\_\_\_\_\_). [Screenshot provided].

<sup>1043</sup>NHS Blood and Transplant (2024), *Donation if you are LGBT+*.  
<https://archive.is/abXsf>

<sup>1044</sup>NHS Blood and Transplant (2023), *Donation if you are LGBT+: Donation if you are transgender*.  
<https://web.archive.org/web/20231004121255/https://www.nhsbt.nhs.uk/who-we-are/our-staff/lgbtplus-network/donation-if-you-are-lgbtplus/>

### **NHS Greater Manchester, Patient form for Ophthalmology services in Tameside.**

'Please tell us your gender' (Man/woman/non binary/prefer not to say/prefer to self describe). [Screenshot provided].

### **NHS University Hospitals Sussex NHS Foundation Trust, Maternity services self-referral form**

'What is your gender identity? (Man/woman/non-binary/other).

'What sex were you assigned at birth?' (Female/intersex/other). [Screenshot provided].

### **Nottinghamshire Healthcare NHS Foundation Trust, Data for National Confidential Inquiry into Suicide and Homicide by People with Mental Illness**

The document provided indicates that the National Confidential Inquiry provide the NHS Trust with basic identity data about an individual, so that the Trust can provide them with further data for the enquiry. Data provided to the Trust is labelled 'gender' whereas data provided to the National Confidential Inquiry is labelled 'sex'.<sup>1045</sup> It is not clear if this represents the same data with different labels, or different data.

### **Nottinghamshire Healthcare NHS Foundation Trust, Policy: 06.03 Assessment of Young People within Adult Mental Health Services.**

The respondent stated that the Trust does not record the sex of young people/children admitted under Section 136 of the Mental Health Act. The policy document has a free text 'Gender' box on the example admission form. The policy also states that patients in the Section 136 Suite should use a 'gender appropriate ward' to shower. The policy Equality Impact Assessment does not include sex.<sup>1046</sup>

### **Overdale Acute Hospital (Jersey), Hospital Concept Design Questionnaire**

'To which gender identity do you identify?' (Male/female/transgender female/transgender male/gender variant or non conforming/prefer not to say). [Screenshot provided].

### **PCMIS (NHS Electronic system), Patient record.**

The example provided is from a mental health service, and may be different in other services.

'Gender' (Male (including trans man)/Female (including trans woman)/Non-binary/Intersex/Questioning/Other (not listed)/Not Stated (person asked but declined to provide a response)/(Not Known (not recorded)). [Screenshot provided].

### **Silvercloud (Online Cognitive Behavioural Therapy programme for anxiety and depression, used by some NHS services) – Patient demographics question.**

'Please select the gender that you most closely identify with' (Male/female/other/prefer not to say). [Screenshot provided].

### **Somerset NHS Foundation Trust and NHS Greater Glasgow and Clyde, Trakcare patient record system**

The Trakcare record system uses a 'gender' variable for patient records. [Screenshot provided].

### **Tameside Metropolitan Borough Council, SEND supporting children and families survey**

Survey of parents or carers of children with special educational needs and/or disabilities about support provision.

'Are you: (Female/male/prefer not to say/other (please specify) \_\_\_)'.

'Is your gender identity the same as the sex you were assigned at birth? (Yes/no/prefer not to say) If no, please enter the gender you identify with: \_\_\_\_\_'. [Screenshot provided].

<sup>1045</sup> Nottinghamshire Healthcare NHS Foundation Trust (2009), *Information sharing protocol between Data for National Confidential Inquiry into Suicide and Homicide by People with Mental Illness and Nottinghamshire Healthcare NHS Foundation Trust*.

<https://web.archive.org/web/20240806151314/https://www.nottinghamshirehealthcare.nhs.uk/download.cfm?doc=docm93jijm4n5202.pdf&ver=8126>

<sup>1046</sup> Nottinghamshire Healthcare NHS Foundation Trust (2023), *Assessment of Young People within Adult Mental Health Services*.

<https://web.archive.org/web/20240524075452/https://www.nottinghamshirehealthcare.nhs.uk/download.cfm?doc=docm93jijm4n9076.pdf&ver=22389>

### **Tees, Esk and Wear Valleys NHS Foundation Trust, Record of agreement: New NHS number**

This policy (approved 10 November 2023) allows transgender patients to change their NHS Numbers/records on request, with the following options:

Option 1: New medical record with de-identified gender-neutral summary of history

Option 2: New medical record with de-identified gender-neutral full history

Option 3: Fully identifiable full history

Option 4: New medical record with no history transferred<sup>1047</sup>

### **The Queen Elizabeth Hospital King's Lynn NHS Foundation Trust, Policy for supporting individuals who are transgender**

Policy authored by the Lead Nurse for Older People & Liaison Services and approved by the LGBTQ+ & Allies Network Meeting. The submission states that no representative from the Trust's women's staff group (if one exists) was involved as part of the consultation with relevant/affected protected characteristic groups.

The policy on ward allocation policy for adults and children states: 'The patient should be cared for in a single sexed environment of the gender they have presented as (also in accordance with the Trusts EMSA Policy). However, they may prefer not to be placed on a ward of their identified gender so a discussion should take place first. The patient may be asked if they prefer the privacy of a side room, if one is available; but this should not be automatic or arranged without their consent'. (Royal Cornwall Hospital 2017).<sup>1048</sup>

### **Trafford Council - Equality Impact Assessment Example: Living your best life - transformation of LD and autism provision (Completed/signed off 26/10/23).**

Lists 'gender – both men and women, and transgender' as a protected characteristic.<sup>1049</sup>

'Gender identity' also separately listed. No inclusion of 'sex' on the list. It is not clear how this data is proposed to be measured/recorded.

### **Trafford Council, Mental Health Private Referral (paper form)**

Asks for 'Gender' (Male (inc trans man)/Female (inc trans female)/Non Binary/Other not listed/Transgender/Gender Queer/do not wish to disclose)). [Screenshot provided].

### **University of Glasgow College of Medical, Veterinary and Life Sciences, Research survey exploring childhood experiences and suicide risk**

This asked 'What gender do you identify as? (Male/female/other). [Screenshot provided]. The submission noted that the survey included questions on childhood sexualisation, abuse that was likely to vary by sex.

### **West Yorkshire Integrated Care Board, Survey for developing an EDI strategy**

'What is your gender?' (Prefer not to say/female/male/non-binary/unspecified/other). [Screenshot provided].

### **University of Liverpool, Induction of labour research.**

'Are you a?' (Person planning a pregnancy/person who is currently pregnant/person who is currently pregnant, or has given birth in the past/person who works in the area of vaginal birth in a professional, voluntary or research capacity). [Screenshot provided].

## **Crime and justice**

### **Cheltenham Borough Council Community Safety Partnership, Nighttime safety survey<sup>1050</sup>**

This survey was intended to 'understand safety concerns of women and girls',<sup>1051</sup> but only asked a gender identity question (female/male/non-binary/different term/prefer not to say).

The submitting group had expressed their concern to the Cheltenham Borough Council, but this had not been taken forward at the time of submission.

1047 Tees, Esk and Wear Valleys NHS Foundation Trust (2023), *Minimum standards for clinical record keeping*.

<https://web.archive.org/web/20240712220027/https://www.tevv.nhs.uk/wp-content/uploads/2021/10/Minimum-standards-for-clinical-record-keeping.pdf>

1048 Cited as: Royal Cornwall Hospitals NHS Trust (2017), *Policy for Supporting Individuals who are Transgender - v1.1*. Not available online.

1049 Trafford Council (2023), *Equality Impact Assessment Example: Living your best life - transformation of LD and autism provision*.

<https://web.archive.org/web/20240808201020/https://www.trafford.gov.uk/about-your-council/strategies-plans-and-policies/equality-and-diversity/docs/EIA-Living-Your-Best-Life.pdf>

1050 Submitted by GlosWomen.

1051 Cheltenham Borough Council (2023), *Feeling safe and enjoying Cheltenham's night time economy*.

<https://web.archive.org/web/20240119115349/https://www.cheltenham.gov.uk/news/article/2843/feeling-safe-and-enjoying-cheltenham-s-night-time-economy>

### City University of London/Greater Manchester Police, Rape and sexual assault survivors' experience of the police in England and Wales.

'I am... ' (Female/male/'non-binary/another gender': \_\_\_\_\_/prefer not to say).  
In the data report, this data is described as 'sex'.  
[Screenshot provided].

### Gloucestershire Police and Crime Commissioner, Public consultation to explore sexual violence support needs:<sup>1052</sup>

The survey collects data on 'gender' (female/male/transgender/intersex/non-binary/prefer not to say/prefer to self-describe) and asks, 'Is this gender you identify with the same gender as the gender registered at birth?' (yes/no/prefer not to say).  
[Screenshot provided].

### Greater Manchester Police, Police recording practices

'With regard to Police processes, GMP is guided by the Police and Criminal Evidence Act 1984 (PACE Code C and specifically annex L) and also that offered by the College of Policing in their (Custody Authorised Professional Practice) which is underpinned by the Equality Act 2010. Under PACE, the person would be treated in accordance to what gender they consider themselves to be and if we are in any doubt, we may ask a person what gender they consider themselves to be and should treat them in accordance with that gender. We do not ask whether a person possesses a gender recognition certificate. If there are clear grounds to doubt their stated preference (perhaps as stated to avoid "co-opting an identity at will"), they should be treated according to what appears to be their predominant lifestyle and not their stated preference. The gender recorded by the police should subsequently reflect this position and the person will be managed and treated according to that gender thereon – throughout all proceedings.' [Screenshot provided].

### Manchester City Council, Sexual harassment survey<sup>1053</sup>

'How do you describe your gender?' (A woman (including a trans woman)/a man (including a trans man)/in another way/prefer not to say).

'Do you identify as trans or transgender?' (Yes/no/in some ways/prefer not to say).

'Have you ever felt like any of the following things negatively impact your impact your safety in Manchester? Please select 'Not applicable if it does not apply to you'... Your gender or gender identity (Yes/no/maybe/I'm not sure/not applicable).  
[Screenshot provided].

### Rape Crisis and Women's Aid, Alleged perpetrator details

The OASIS case management system records: 'Gender' (Male/Female/Intersex/Gender queer/Non-binary/Other/Don't know/Not asked/Declined). 'Transgender' (Yes/no/don't know/not asked/declined).

These categories are also used for equalities monitoring. [Screenshot provided].

### SafeLives, Multi-agency risk assessment conference (MARAC) referral form

This data is collected by UK police forces, local authorities, local health agencies and charities and used for risk assessment purposes. The respondent noted that the data is also used in the ONS annual Domestic Abuse Victim's Services Bulletin. The referral form asks for 'gender' (female/male/non-binary) and whether the person's gender matches that assigned at birth.<sup>1054</sup>

### West Yorkshire Police, Complaint form

'Gender' (Female/male/intersex/prefer not to say/unknown/other – prefer to self-describe).

'Is your gender the one you were assigned at birth?' (Yes/no/prefer not to say/unknown).

'Gender identity' (Female/male/prefer not to say/unknown/other – prefer to self-describe).<sup>1055</sup>

<sup>1052</sup> As above.

<sup>1053</sup> Submitted by Women's Rights Network, Greater Manchester

<sup>1054</sup> Safelives (2018), *Referral into the Marac process*.

[https://web.archive.org/web/20240302133941/https://safelives.org.uk/sites/default/files/resources/Referral%20into%20the%20Marac%20process\\_0.pdf](https://web.archive.org/web/20240302133941/https://safelives.org.uk/sites/default/files/resources/Referral%20into%20the%20Marac%20process_0.pdf)

<sup>1055</sup> West Yorkshire Police (online), *Complaint form*.

<https://web.archive.org/web/20210327101937/https://www.westyorkshire.police.uk/form/complaints-against-the-police>

## Employers and employees

### Arts Council Northern Ireland, Equality monitoring questionnaire for funding applicants

'Men and women' (Both Men and Women/Men (including boys)/Prefer not to say/Transgender People/Unable to specify/Women (including girls). [Screenshot provided].

### Arts Council Wales, Staff diversity monitoring questionnaire

'What best describes your gender? (please put a mark in the relevant box) [Man/Non-binary/Woman/I use another term (please specify)/Prefer not to say]. 'Is this the gender you were assigned at birth?' (Yes/No/Prefer not to say). Are you trans?' (Yes/No/Unsure/Prefer not to say). [Screenshot provided].

### Bank of England, Staff survey 2024

'Which of the following best describes your gender? Please select one option from the list' (Man/Non-Binary/Woman/I prefer to use a different term/Prefer not to say). [Screenshot provided].

### BBC 50:50 Project, Equality data on contributors

This states, 'Content-makers monitor the gender identity of their contributors with the aim of featuring at least 50% women. They do not monitor whether a contributor's gender differs from their sex registered at birth. Where possible, teams will also monitor the proportion of contributors who identify as non-binary or genderqueer in order to improve their representation of all genders.'<sup>1056</sup>

## Creative Scotland, Diversity monitoring for funding applicants

### Gender

Please indicate the gender of your Staff and Board Members:

	Chair	Board Members	Chief Executive	Artistic Director/Lead	Employees	Volunteers
Male						
Female						
Other						
Prefer not to say						



What is your Sex/Gender identity?

Male

Female

Other

Prefer not to say

What is your Gender Identity History?

Cisgender - People who are assigned female at birth and identify as girls/women or who are assigned male at birth and identify as boys/men - these people are cisgender (cis)

Transgender - People who have a gender identity that doesn't match the sex they were assigned at birth - these people are transgender (trans)

Other

Prefer not to say

## Department for Education, Menopause staff survey

### GIRES, 'Monitoring gender diversity' advice for organisations

This document recommends that organisations use the following questions to monitor sex and gender:

'Do you identify as? (Woman/Man/Non-Binary/Agender/Other - provide a free text box that people can fill in/Prefer not to say).'

'Other answers which could be included: Bi-gender, Demi-boy, Demi-girl, Genderfluid, Genderqueer, Questioning, Transfeminine/Trans Femme, Transmasculine/Trans Masc, I use a culturally specific term- provide a free text box that people can fill in'.

'Do you identify with the gender you were assigned at birth? (Yes/No/Prefer not to say).'

<sup>1057</sup>

<sup>1056</sup> BBC (2021), *50:50 impact report 2022*.

<https://web.archive.org/web/20240805232006/https://www.bbc.co.uk/5050/documents/5050-impact-report-2022.pdf>

<sup>1057</sup> GIRES (2023), *Monitoring gender diversity*.

<https://www.gires.org.uk/wp-content/uploads/2023/08/GIRES-Monitoring-Questions-Guidance-August-2023.pdf>

**Greater Manchester and Eastern Cheshire Maternity Voices, Equal opportunities form**

‘What is your sex?’ (Male/female/intersex/prefer not to say).

‘Have you gone through any part of a process, or do you intend to (including thoughts or actions) to bring your physical sex appearance, and/or your gender role, more in line with your gender identity? This could include changing your name, your appearance and the way you dress, taking hormones or having gender confirming surgery.’ [Screenshot provided].

**Ministry of Justice, Civil servant development programme for individuals lower socioeconomic backgrounds equalities monitoring**

‘With which gender do you most identify?’ (Male/female/I identify in another way/prefer not to say). [Screenshot provided].

The submission stated this was a mandatory question.

**NHS England, Staff Survey**

Asks ‘What of the following best describes you?’. [Screenshot provided]. Respondents are also asked about gender-based discrimination.

**Multi Health Systems, EQ-i 2.0 Emotional Intelligence Test**

‘Gender’ (female/male/other/prefer not to say). [Screenshot provided]. The submission stated that the test was required as part of professional development.

**NHS Confederation, Leading for all: supporting trans and non-binary healthcare staff.**

This guidance, produced by the NHS Confederation LGBTQ+ Leaders Network, in partnership with the LGBT Foundation, recommends the following questions for staff records:

Which of the following options best describes how you think of yourself? (Female/Male/Non-binary/In another way (Please state)/Prefer not to say).

Is your gender identity the same as that you were assigned at birth? (Yes/No/Prefer not to say).<sup>1058</sup>

**16. In the last 12 months have you personally experienced discrimination at work from any of the following?**

a. Patients / service users, their relatives or other members of the public <sub>1</sub>  Yes <sub>2</sub>  No

b. Manager / team leader or other colleagues <sub>1</sub>  Yes <sub>2</sub>  No

*If YES to either a or b above, please answer part c below; if NO, go to Question 17*

c. On what grounds have you experienced discrimination? *Please tick all that apply*

<sub>1</sub>  Ethnic background    <sub>3</sub>  Religion    <sub>5</sub>  Disability    <sub>7</sub>  Other (please specify)

<sub>2</sub>  Gender    <sub>4</sub>  Sexual orientation    <sub>6</sub>  Age   

**27. What of the following best describes you?**

a. <sub>1</sub>  Female    <sub>2</sub>  Male    <sub>3</sub>  Non-binary    <sub>4</sub>  Prefer to self-describe:     <sub>9</sub>  Prefer not to say

b. Is your gender identity the same as the sex you were registered at birth?

<sub>1</sub>  Yes    <sub>2</sub>  No    <sub>9</sub>  Prefer not to say

c. Age: <sub>1</sub>  16-20    <sub>2</sub>  21-30    <sub>3</sub>  31-40    <sub>4</sub>  41-50    <sub>5</sub>  51-65    <sub>6</sub>  66+

1058 NHS Confederation (2023), *Leading for all: supporting trans and non-binary healthcare staff*. <https://web.archive.org/web/20240729203854/https://www.nhsconfed.org/system/files/2023-09/Leading-for-all-supporting-trans-non-binary-healthcare-staff-Sept-23.pdf>



### Queen's University Belfast, Staff Diversity and Inclusion data

'Gender Identity' (Male/female/prefer to self-describe). [Screenshot provided].

The submission stated that this was previously a binary 'gender' question.

### Royal College of General Practitioners, Membership data

Lists 'Gender identity' as a protected characteristic and omits sex. [Screenshot provided].

### Skills for Care, Report of England's Adult Social Care sector workforce data

This submission expressed concern about that ability of people to request a same-sex carer for intimate care, based on a lack of robust data on sex, as shown in the following extract:

*'In 2021/22 the gender question was changed in ASC-WDS from 'gender' to 'gender identity' and the option of 'other' was added alongside 'male', 'female' and 'I don't know'. In 2022/23, around 0.02% of workers were recorded as having 'other' gender identity by their employer in ASC-WDS. 'Not known' responses are removed prior to weighting, as with our other variables. The following detailed analysis includes 'male' and 'female' gender identities. The 'other' gender identity responses are not included in the detailed analysis because the national base is very low, and we are still understanding its representativeness.*

*It is important to note that our data is reported by employers, not the workers themselves and this may result in an underestimation of people with a gender identity other than male and female recorded. Skills for Care is continuing to monitor the results of the gender identity question and will review the question wording with employers.'*<sup>1059</sup>

### Social Work England, Professional registration form<sup>1060</sup>

'Gender identity' (Male/female/prefer to self describe/prefer not to say).

Accompanying guidance online states:

*'We are aware that many people who identify with a different gender do not hold official documentation in the correct gender for them. We are also aware that documents do not exist for nonbinary trans people, and that they are not available to all binary trans people due to cost and process.*

*If you are in this situation, please include a letter as evidence, which briefly outlines your request for us to update your gender identity. For example:*

*Dear Head of Registration,*

*I request for my gender identity to be amended to: [female/male/other/prefer not to say.] This should be effective from date [].*

*Yours sincerely*

*[Your name'*

*[Your registration number]*

*Please use the name you currently wish to be known by. If this is not the same name that we hold for you, please complete a name change request first and then send us the gender identity change letter.'*<sup>1061</sup>

The submission stated that Equality and Diversity Monitoring collects data on 'transgender and gender transition' but does not collect data on sex.

### Solicitors Regulation Authority, Diversity Data 2023

'What is your sex?' (Male/female/other preferred description/prefer not to say). [Screenshot provided].

### South Ayrshire Council, Annual employee engagement survey 2024

'Your gender' (Male/Female/Non-binary/ Prefer not to say'). [Screenshot provided].

<sup>1059</sup>Skills for Care (2023), *The state of the adult social care sector and workforce in England*. <https://web.archive.org/web/20240525110259/https://www.skillsforcare.org.uk/Adult-Social-Care-Workforce-Data/Workforce-intelligence/documents/State-of-the-adult-social-care-sector/The-State-of-the-Adult-Social-Care-Sector-and-Workforce-2023.pdf>

<sup>1060</sup>Submitted by Lucy Porteous.

<sup>1061</sup>Social Work England (online), *Gender identity*. <https://web.archive.org/web/20231208153554/https://www.socialworkengland.org.uk/registration/gender-identity/>

### Sunderland and South Tyneside NHS Foundation Trust, NHS jobs website, vacancy advert:

This stated, 'We welcome applications irrespective of peoples race, disability, gender, sexual orientation, religion/belief, gender identity, marriage and civil partnership, pregnancy/maternity, and in particular those from under-represented groups.' The submission noted the lack of sex was also reflected in the application form. The diversity section refers to gender as a protected characteristic. [Screenshot provided].

### University of Warwick, Staff personal record and equalities monitoring form

Staff record:

Legal gender (response options not clear).

Equalities monitoring form:

What is your gender identity? (Gender identity is the same as the gender originally assigned at birth/ gender identity is different to the gender originally assigned at birth/prefer not to say).

What is your gender choice? (Male/female/other preferred description/prefer not to say). [Screenshot provided].

### UK Labour Party, Job application for a parliamentary researcher, equalities monitoring

'What best describes your gender identity?' (Male/female/non-binary/other/I don't wish to answer/ prefer to self describe as: \_\_\_\_\_).

'Is your gender identity the same as the sex you were registered at birth?; (Yes/no/I don't wish to answer).

'Do you identify as trans?' (Yes/no/I don't wish to answer).<sup>1062</sup>

## Education and early years

### British Council, Women in STEM Scholarship scheme eligibility.

Eligibility criteria: 'Be or identify as a woman'.<sup>1063</sup>

### Children's Commissioner for England, 'A lot of it is actually just abuse' Young people and pornography survey report<sup>1064</sup>

Report presents survey data on 'gender' (Male/female/non-binary or alternative identity/other).<sup>1065</sup>

### LGBTQ+ STEM, A Quick guide to data collection for LGBTQ+ characteristics

The report advises, 'Your organisation probably does not need information about individuals biological sex. In most situations organisations are truly seeking information on respondents gender.'<sup>1066</sup>

### Luton Borough Council, Classification of looked after children

Data is reported by 'Gender', with male, female and transgender categories, as shown below.<sup>1067</sup>

#### Gender

There were 129 (56%) males, 100 (43%) females and 2 (1%) transgender in this cohort. There are always more males than females in the cohort and the figures are comparable to last year's cohort.

### Primary School Governing Board, National Governance Association Governing Diversity indicators form

'What is your gender?' (Female/male/prefer not to say/other gender identity, please detail \_\_\_\_). [Screenshot provided].

Accompanying guidance refers to 'gender' as the protected characteristic.

<sup>1062</sup> Labour Party/Greenhouse.com (online), *Parliamentary Researcher job application*.

[https://web.archive.org/web/20240708162433/https://job-boards.greenhouse.io/workforlabourplp/jobs/4360385101?gh\\_src=5e3dee822ue](https://web.archive.org/web/20240708162433/https://job-boards.greenhouse.io/workforlabourplp/jobs/4360385101?gh_src=5e3dee822ue)

<sup>1063</sup> British Council (2024), *Women in STEM Scholarship scheme eligibility*.

[https://web.archive.org/web/20240415082053/https://www.britishcouncil.org/sites/default/files/scholarships\\_for\\_women\\_in\\_stem\\_-\\_eligibility\\_criteria\\_2024.pdf](https://web.archive.org/web/20240415082053/https://www.britishcouncil.org/sites/default/files/scholarships_for_women_in_stem_-_eligibility_criteria_2024.pdf)

<sup>1064</sup> Submitted by Stephanie Davies-Arai.

<sup>1065</sup> Children's Commissioner for England (2023), *'A lot of it is actually just abuse' Young people and pornography survey report*.

<https://web.archive.org/web/20240801200558/https://assets.childrenscommissioner.gov.uk/wpuploads/2023/02/cc-a-lot-of-it-is-actually-just-abuse-young-people-and-pornography-updated.pdf>

<sup>1066</sup> LGBTQ+ STEM (2024), *A Quick guide to data collection for LGBTQ+ characteristics*.

<https://tinyurl.com/43tb3euh>

<sup>1067</sup> Luton Borough Council (2024), *Scrutiny Children's Services Review Group*.

<https://tinyurl.com/5enwbza2>

### Royal Society, Equality Diversity and Inclusion survey

'Gender' (Male/female/other gender).<sup>1068</sup>

### Secondary School, Year 8 student survey

'I identify my gender as' (Male/female/trans/other).  
[Screenshot provided].

### University College London, Estates Masterplan survey.

This survey asked how the needs of people are met by the environment, and the discrete needs of certain groups. It did not collect data on sex or gender. 'Do you identify as a person with a cultural, religious, ethnic or sexual identity that impacts on your user experience of UCL's buildings, spaces and facilities?' [Screenshot provided].

### University of East Anglia, Staff and student registration data:

The following extracts are from UEA guidance 'Practical support for managers/academics/those supporting others who are transitioning gender'.

Student registration: 'What gender options and titles can students and staff choose? A student registering with UEA has the following options: (Female/Male/Non binary/Gender fluid/Other - with a text box for you to express your identity as you feel is appropriate)'.

Staff data: 'A member of staff has the following options (which can be changed at any time by logging into MyView, once they have taken up post): (Female/Gender Fluid/Another way/Male/Non Binary/Prefer not to Disclose/Trans)'.

Note: This guidance was under review as of February 2023.<sup>1069</sup>

### Warwick International Higher Education Academy, Gender and LGBTQIA+ Data Collection Best Practice

This resource states it '*covers data collection best practice for gender and LGBTQIA+ related demographic data, which is GDPR-compliant and LGBTQIA+ inclusive*'.<sup>1070</sup> The guidance is part of the 'Queering University programme'.

It advises collecting data on gender ('What is your gender?' or 'What gender do you identify as?') and providing a free text response. In relation to 'cis/trans identity data collection', under the heading 'Gender Assigned at Birth, or Legal Gender Marker data' it states:

*'In very rare circumstances it may be necessary to collect data on the gender people were assigned at birth, or their legal gender marker. You should be absolutely certain that this data is required for your purpose, and that there is no alternative. For example, knowing the gender marker held by HMRC for an employee may be necessary for payroll purposes. In this circumstance, you should add a supplementary question to the gender question above, which explicitly asks this question:*

*'What gender were you assigned at birth?' or 'What is your legal gender marker as held by HMRC?'*

*You should allow a free text response where possible. The following set of response options should be used if you absolutely require a limited set of options for your purpose.*

*Male, Female, Other (where permitted for your purpose), Prefer not to say (where permitted for your purpose)*

*You should never ask these questions without also asking for gender data as set out in the section above, as it suggests that you do not consider the gender people identify as valid. This question should be asked as a subsequent follow-up question only, and only when absolutely necessary. This data should be held in the strictest confidence.'*

The guidance also advises collecting separate data on intersex status.

<sup>1068</sup>Royal Society (2021), *Diversity data report 2021*.

<https://web.archive.org/web/20240507174504/https://royalsociety.org/-/media/policy/topics/diversity-in-science/2021-diversity-data-report.pdf>

<sup>1069</sup>University of East Anglia (2023), *Staff and student registration data*.

[https://web.archive.org/web/20240515063812/https://www.uea.ac.uk/documents/20142/8711714/managers\\_guide\\_feb\\_23.pdf](https://web.archive.org/web/20240515063812/https://www.uea.ac.uk/documents/20142/8711714/managers_guide_feb_23.pdf)

<sup>1070</sup>Warwick International Higher Education Academy (online), *Gender and LGBTQIA+ Data Collection Best Practice*. [https://web.archive.org/web/20240805110455/https://warwick.ac.uk/fac/cross\\_fac/academy/activities/learningcircles/transqueerpedagogies/datacollection/](https://web.archive.org/web/20240805110455/https://warwick.ac.uk/fac/cross_fac/academy/activities/learningcircles/transqueerpedagogies/datacollection/)

**Who Gets My Vote, User questionnaire**

This academic collaborative project on voting intentions and political party policies asks for ‘Your gender’ (Female/male/non-binary/none of the above/I prefer not to say). [Screenshot provided].

**Sport, leisure and recreation****Arts Council England, multiple data collection exercises**

Several submissions related to Arts Council England (ACE) data collection exercises. Data based on these categories can be seen in the 2021/2022 Diversity, Equality and Inclusion report.<sup>1071</sup>

**ACE Project grant application form**

‘Sex’ (Female/male/intersex/prefer not to say/not known)

‘Gender identity’ (Woman/man/non-binary/I identify another way/prefer not to say/not known).

‘Sex registered at birth: Is your gender identity different to your sex registered at birth?’ (Yes/no/prefer not to say/not known).

In relation to project beneficiaries: ‘Do you plan to reach any of these specific communities with your project?’ (People in a particular age group/people who share a particular ethnicity/people who have a particular disability/people with a particular sexual orientation/people who are a particular gender).

**ACE Annual National Portfolio Organisational Survey**

‘Sex’ (Female/Male/Intersex/Prefer not to say).

‘Gender identity’ (Woman/Man/Non-Binary/In another way/Not applicable/Prefer not to say).

**Arts Council Northern Ireland, Diversity monitoring form template for monitoring external populations**

Example data sets for collecting data about external individuals (e.g. audience members or funding applicants):

‘Gender identity’ (Agender Female (cisgender and transgender)/Gender Fluid Male (cisgender and transgender)/Non-binary/Not listed/Prefer not to say).

‘Sex’ (Female/Male/Not Listed/Prefer not to say). [Screenshot provided].

**ASICS, Move Every Mind survey**

This research on the gender gap in sport asked, ‘Which of the following do you most identify with?’ (Female/Male/Non-binary or non-conforming/Transgender/Prefer not to say). [Screenshot provided]. The submission reported that World Athletics had promoted the survey.

**British Museum, Visitor survey**

‘Please tell us which gender(s) each member of your group most closely identifies with. You can choose as many as apply to you (Man/boy/woman/girl/ non-binary/genderqueer)’. [Screenshot provided].

**Castlefield Gallery, Manchester, Diversity Monitoring form for staff and volunteers**

‘Gender’ (Male (including trans men)/Female (including trans women)/non-binary (e.g. androgyne)/prefer not to say.

‘Is your gender identity different to your sex assumed to be at birth?’ (Yes/no/prefer not to say).<sup>1072</sup>

**Central Bedfordshire Council, Public consultation on Council’s Arts and Culture Strategy 2024-2029**

‘Are you; (Male/female/other/prefer not to say). [Screenshot provided].

**Children’s camping programme, Child attendee data collection**

‘Which gender does the child most identify with?’ (Select Male/female/other). [Screenshot provided].

<sup>1071</sup> Arts Council England (2023), *Diversity, Equality and Inclusion report (2021/2022)*.

<https://web.archive.org/web/20240515201156/https://www.artscouncil.org.uk/media/22187/download?attachment>

<sup>1072</sup> Castlefield Gallery, Manchester (online), *Diversity Monitoring form for staff and volunteers*.

<https://web.archive.org/web/20230512062718/https://docs.google.com/forms/d/e/1FAIpQLSeI7ZJwZPgsjKZI2DO6oook2QHUY15-SMFJl1dmvH-NMqvlYw/viewform>

### Grimsby Fishing Heritage Centre, Visitor survey

'What is your sex?' (Female/intersex/male/prefer not to say).

'Is your gender identity the same as the sex you were assigned at birth?' (Yes/no). [Photograph provided].

### Lyceum theatre, Edinburgh (via arts-culture-surveys.org), Post-show survey

'What is your sex?' (Female/intersex/male/prefer not to say). [Screenshot provided].

### National Youth Music Organisations, Annual monitoring to the Department for Education

'Gender' (male/female/non-binary/prefer not to say/not known). [Screenshot provided].

### Oxfordshire County Council, Local library equalities monitoring

'Gender' (Male/Female/I use another term/Prefer not to say). [Screenshot provided].

### Parkrun UK, Registration form

Collects data on 'gender' (female/male/another gender identity/prefer not to say),<sup>1073</sup> which is fed into an age/sex grading system.

### England Athletics, Diversity Monitoring Questionnaire for Regional Councillors

'Gender' (Male/female/non-binary/other/prefer not to say). [Screenshot provided].

Accompanying guidance refers to sex, but the questionnaire does not include a sex question.

### Let's Do This, London Marathon 2025 ballot entry form

'Gender; (Male/female/non-binary). [Screenshot provided].

This submission noted, 'UK Athletics banned all post-puberty males from the Female category in all licensed events from midnight on 31 March 2023. Despite this, London Marathon on its ballot entry form for 2025 above asked for 'gender''.

### Bradford District Museums and Galleries (Bradford Council), Bradford Museums visitor survey

'What is your sex?' (Female/male/intersex/prefer not to say).

'Is your gender identity the same as the sex you were assigned at birth?' (Yes/no/prefer not to say).

'How would you describe your gender identity? (Man/woman/non-binary/not applicable/prefer not to say/prefer to self-describe \_\_\_\_). [Screenshot provided].

### Rochdale Borough Council, Consultation on use of Rochdale Leisure services facilities

A survey exploring preferences on how a 'thermal suite' should best be used, and if sessions for using it should be segregated by gender. No option to indicate preference segregation by sex. Survey asked, 'How would you describe your gender? (Male including transgender men/female including transgender women/prefer to self-describe).<sup>1074</sup>

### MCR Active/Manchester City Council, Community Survey

This survey was conducted with Sports England and explored attitudes and perceptions toward physical activity and active leisure. It asked, 'Are you...?' (Female/male/I don't identify with a specific gender/prefer to self-describe/prefer not to say). [Screenshot provided].

## Travel and transport

### Bury Council and NHS Bury Clinical Commissioning Group, Bury Local Transport Strategy Equality Impact Assessment

Refers to 'gender' as a protected characteristic.<sup>1075</sup>

### Central Bedfordshire Council, Engagement and feedback survey prior to preparation of draft Local Transport Plan

'Are you' (Male/female/other/prefer not to say). [Screenshot provided].

<sup>1073</sup>Parkrun (online), *Registration form*.

<https://web.archive.org/web/20230510102228/https://www.parkrun.org.uk/register/?section=form>

<sup>1074</sup>Rochdale Borough Council (online), *Consultation on use of Rochdale Leisure services facilities*.

<https://web.archive.org/web/20240806201058/https://www.yourtrustrochdale.co.uk/thermal-suite-consultation-rochdale-leisure-centre/>

<sup>1075</sup>Bury Council & NHS Bury Clinical Commissioning Group (2021), *Equality Impact Assessment*. <https://web.archive.org/web/20240806213309/https://councildecisions.bury.gov.uk/documents/s37265/Appendix%204%20Bury%20Local%20Transport%20Strategy%20Equality%20Impact%20Assessment.pdf>

### **Greater Manchester Combined Authority and Transport for Greater Manchester, Vision Zero Action Plan consultation survey**

'How do you describe your gender?' (A man (including trans man)/a woman (including transwoman)/non binary/in another way/prefer not to say).

'Do you identify as trans/transgender? (Yes/no/in some ways/prefer not to say). [Screenshot provided].

### **Stockport Council, Public consultation on A6 corridor in Stockport**

'How would you describe your gender?' (Woman/man/non-binary/gender fluid/prefer not to say. If your gender is not described above, would you prefer to describe it here? \_\_\_\_). [Screenshot provided].

### **Transport for Greater Manchester, Greater Manchester's Outline Business Case to tackle Nitrogen Dioxide Exceedances at the Roadside: Example Equality Impact Assessment**

This EQIA template lists 'Gender [Men/Women/Transgender people]' as a protected characteristic, as well as gender reassignment.<sup>1076</sup>

### **Dundee Council, Place Standard Tool public survey.**

'How would you describe your gender identity? (Female/male/non-binary/prefer not to say/other). [Screenshot provided].

### **Garfield Weston Foundation, Funding application data collection**

This is one of the world's largest charitable organisations. Under Equality diversity and inclusion data, funding applicants are asked if they support specific groups, including 'gender'. This is described as 'Working exclusively with people who self-identify and live as a certain gender e.g. women and girls'. Applicants are then asked to choose a subcategory from the following list: 'Identify as female/identify as male/identify as non-binary/other'. [Screenshot provided].

### **Government Equalities Office, LGBT Survey 2018**

This survey only asked participants who did not identify as transgender for their sex 'assigned at birth'. It also asked if participants identified as intersex.<sup>1078</sup>

## **Additional submissions**

### **Association of Charitable Foundations (Funders Collaborative Hub), Diversity Equality and Inclusion data standard**

The Association of Charitable Foundations describes itself as the leading membership association for foundations and independent grant-makers in the UK. It is not clear if the data standard is mandatory for members. The Standard states that it focuses on 'self-identification'. Within a table of protected groups, the document refers to women and girls, defined as 'Those who identify and live as women and girls'.<sup>1077</sup>

### **John Lewis/Newday (via Opinium), Credit card customer survey<sup>1079</sup>**

'Are you' (Male/female/other/prefer not to say). [Screenshot provided].

### **Manchester City Council, Our Manchester 2025-2035 survey**

This public survey to gather residents' views on the city's priorities to support Council strategic planning asks, 'Which of the following describes how you think of yourself? Please tick one option' (Male (including trans man)/female (including trans woman)/non-binary/in another way). [Screenshot provided].

<sup>1076</sup>Transport for Greater Manchester (2021), Greater Manchester's Outline Business Case to tackle Nitrogen Dioxide Exceedances at the Roadside: Example Equality Impact Assessment. <https://web.archive.org/web/20210416032915/https://www.wigan.gov.uk/Docs/PDF/Resident/Environmental-Problems/GM-Clean-Air/E3-Equality-Impact-Assessment-EQIA.pdf>

<sup>1077</sup> Association of Charitable Foundations (Funders Collaborative Hub) (2022), *Diversity Equality and Inclusion data standard*. <https://web.archive.org/web/20240522211850/https://drive.google.com/file/d/1DXP9e-FcwzDBCLDi5cpudjURHVCtpeof/view>

<sup>1078</sup> Government Equalities Office (2018), *LGBT Survey 2018*. <https://web.archive.org/web/20231022143705/https://assets.publishing.service.gov.uk/media/5b3b2d1eed915d33e245fe3/LGBT-survey-research-report.pdf>

<sup>1079</sup> Submitted by Jenny Smith.

### **Greater Manchester Combined Authority and Greater Manchester Fire Service, Equality Impact Assessment Template and guidance**

This EQIA template refers to 'Sex/gender'. Under this heading, it asks

'Do your services consider that men, women, and gender variant people may articulate different needs and aspirations?' and 'Are your services accessible to men, women, and gender variant people in terms of facilities, location, and time?' [Screenshot provided].

### **Marks & Spencer, Customer satisfaction survey**

Which gender do you most associate with? (Male/female/prefer to self-describe [please specify]/prefer not to say). [Screenshot provided].

### **Rochdale Borough Council, Maclure Road Conservation Area Appraisal: Equality Impact Assessment<sup>1080</sup>**

Uses 'sex' and 'gender' interchangeably. [Screenshot provided].

### **Salford City Council, Equality Impact Assessment Example: Commissioning of new Interpretation and Translation Services for Salford City Council: Equality Impact Assessment**

This EQIA lists 'gender' as a protected characteristic. As an example of this, it cites 'a person identifying as female may wish to have a female interpreter'. [Screenshot provided].

### **Trafford Council, Equality Impact Assessment Template**

The EQIA template correctly lists the protected characteristics but then refers to 'gender', defined as 'both men and women, and transgender'. It also asks how negative impacts can be reduced for 'Gender, including pregnancy & maternity, gender reassignment, marriage & civil partnership'. [Screenshot provided].

<sup>1080</sup> Rochdale Borough Council (2023), *Maclure Road Conservation Area Appraisal and Management Plan. Equalities Impact Assessment*. [https://consultations.rochdale.gov.uk/research/maclure-road-conservation-area-appraisal-and-manag/supporting\\_documents/Equalities%20Impact%20Assessment%20Maclure%20Road.docx](https://consultations.rochdale.gov.uk/research/maclure-road-conservation-area-appraisal-and-manag/supporting_documents/Equalities%20Impact%20Assessment%20Maclure%20Road.docx)

## Submissions solicited by the Feminist Gender Equality Network (FGEN) network

FGEN circulated a 'Guide to completing the Survey' via email. This referred to both strands of the call for evidence, as shown below.

*Figure A4.3. FGEN Guide to completing the survey*

### Guide to completing the Survey

#### Background

A project is being conducted by academics at UCL about research on sex and gender. It is being carried out for the government and is intended to feed into a government report for research and data collection in Higher Education.

The project includes a "call for evidence" and involves two surveys or strands:

- Strand 1 is about "Data Collection on Sex and Gender"
- Strand 2 is about "Barriers to research into Sex and Gender"

We are quite concerned about this project because of its discriminatory and biased nature. The surveys do not meet basic standards for research.

We are particularly concerned given its potential to enable the government to introduce measures which restrict research in UK Higher Education Institutions.

Given the issues we've outlined, we have compiled a short guide to help people complete it. In summary:

- For Strand 1, we invite people to respond to the survey about problematic surveys by citing this very survey. Of course, feel free to cite other examples of poor quality surveys you have come across.
- For Strand 2, we have provided some general examples and suggest people complete with it their own personal examples of how good research has been, and is being, silenced.

For strand one (data collection), the Guide instructed respondents to 'respond to the survey about problematic surveys by citing this very survey'. The FGEN guide to completing the survey is shown below.



Figure A5.1 FGEN Strand 1 submission guidance

What is your sex?

Female

Male

reset

Do you consider yourself to be trans, or have a trans history?

Yes

No

reset

### Strand 1 Questions: “Data Collection on Sex and Gender”

1. **What UK data collection exercise is your submission about?**
  - A review led by Professor Alice Sullivan of University College London (UCL), commissioned by the UK Department of Science, Innovation and Technology (DSIT) and funded by the Economic and Social Research Council (ESRC).
2. **What organisation collected the data? (e.g., NHS Lothian)**
  - Institute of Education, UCL
3. **Please upload screenshots of the question(s), if applicable. If screenshots are not available, please describe the question(s).**
  - What is your sex? Male Female
  - Do you consider yourself to be trans, or have a trans history? Yes No

We ascribe 46 submissions (out of a total of 263 submissions) to FGEN.

The text of these submissions under Question 1 was typically exactly as per the FGEN guide, i.e., ‘A review led by Professor Alice Sullivan of University College London (UCL), commissioned by the UK Department of Science, Innovation and Technology (DSIT) and funded by the Economic and Social Research Council (ESRC)’. Many submissions also included the screenshots and web links relating to Strand 2 of this review precisely as instructed under points 2 and 3 in the FGEN guide.

Recurring comments and phrases in these submissions included all of the points FGEN members were instructed to make under point 5. Many respondents simply pasted in the seven bullet points provided by FGEN verbatim.

Most of these submissions included the phrase ‘It is not clear that this survey received ethical approval’. (That the review has ethical approval is in fact stated on the information sheet for respondents).

Strand 2 of the call for evidence included supplementary voluntary equalities monitoring questions, intended to gather data on the characteristics of respondents. These questions were not included in Strand 1 (the strand discussed here). Complaints about the equalities monitoring section of the call for evidence were, however, made in line with the FGEN instructions, including the fact that this section included a binary sex question, that it did not include an intersex category, that there was no ‘gender’ question.

Below we provide a selection of responses which we identified as being solicited by FGEN. Respondents were able to consent to being quoted verbatim or not, and this selection of responses is from respondents who agreed to this.

“It seems designed to elicit only condemnatory responses about organisations which seek to be inclusive. This is not worthy academic research.

You are racists. Gender critical feminists are white feminists who are racists. [Respondent gave name as 'Poo bum'].”

“There are no questions on gender at all regardless of how gender is defined so the survey is unable to achieve its stated aims. 2. question design is too narrow for the results to be useful no data collection on gender no category allowing for intersex people under sex and no preferred not to say or other option which is standard in surveys asking identity questions. 3. the project website gives no details on methodology so it is not transparent who the stakeholders are and which existing sources will be used no reference to existing research intersection gender in the relevant disciplines is made EG sociology philosophy cultural studies history etc. 4. the question on trans history is potentially triggering for anyone who's been but no longer identifies as trans. 5 The sex data will not be usable because of this narrowness it can only ever elicit questions on people's sex identity because sex is also an identity category and anyone who thinks identity is more complex than the options presented with either a) not participate or b) be forced to choose an option that is incorrect.”

“Questions contained: what is your sex male female do you consider yourself to be trans or have a trans history yes no as a study on sex and gender data collection it's really strange that this doesn't collect information on gender the sex option excludes intersex people and the wording of the second question which should just say are you transgender if that was a relevant question for the study is instead worded in a way that questions the identity and is likely to lead to people choosing not to participate leading to a selection bias in the results.”

“The way that the question about sex is framed is very narrow and outdated. A substantial proportion of the population are intersex so the two choices of male and female excludes them forcing people to select one of two options that may not represent their lived reality will put off a lot of people from participating. It seems odd that the survey does not ask about gender identity especially given that the survey aims to focus on data about sex and gender. Unfortunately many surveys and clinical trials do have a data collection problem the restrictive ways in which sex and gender are framed ends up excluding trans non binary and gender diverse populations leading to a loss of knowledge about

the expansive and multiplicities of sex and gender in the population I cannot see any full confirmation of ethical approval usually there is a reference number on surveys.”

“The terms of reference for this survey seem to be entirely biased in favour of biological sex rather than actually being about sex and gender research. There seems to be an assumption that problems will arise when collecting information about gender attributed at birth and that researchers who want to collect such data will be prevented from doing so. This is likely to skew the data collected.”

“Only provides male and female as options for sex no option to not disclose or to list being intersex.”

“Given that the aim of the survey is to assess a potential loss of data on sex and gender there is only a question on sex not one on gender and the question on sex does not include intersex a category which represents a significant portion of the population. These limited options exclude some potential respondents and may lead to dropouts thus artificially restricting the population who participate. This is concerning given the aim to collect thorough data on sex and gender additionally there is no stated guidance to my knowledge which would suggest the use of the question on trans history to be included with the question about whether the participant is trans - if this is relevant to the data collection effort a specific question which is phrased in a more relevant manner would be more appropriate; the way this question is asked is potentially upsetting and not clear. Additionally it is unclear whether the survey itself received ethical approval.”

“The question what is your sex is too narrow and discriminatory. Why ask this question and not about gender identity which would be more inclusive for trans and non-binary people? Sex is about how you define the participants gender is about how they define themselves. It is bizarre and worrying that in the context of a survey about gender and sex nowhere can participants offer their gender identity. This survey itself seems discriminatory it is not clear whether the survey received ethical approval which should be made clear to participants.”

“The question does not ask for the participants gender identity which is surprising given the survey is justified based on the lack of data on sex and gender. This means that the survey will have flawed data on its participants and undercuts the survey's

legitimacy. There are no intersex options in the sex question meaning those who are born intersex aren't able to participate. There is no indication that the study received ethical approval."

"I thought it was a joke initially a research study asking about barriers to sex and gender research asking for my sex but not my gender giving me only one of two options to select. Even if no gender question was included in the sex binary categories they totally exclude people with differences of sexual development (intersex) then asking whether I have a trans history a very triggering question I imagined for a trans person responding to this survey potentially meaning that some trans people would decide not to participate in the study at all meaning their views would not be represented in the results. It is unclear why these questions are being asked at all but if they need to collect this data for the purpose of the survey then they will have a high level of inaccuracy and a low level of granularity highlighting the very issue they are purporting to be researching. Overall it did not feel like an inclusive "let's hear everyone's voices and improve scientific research" but more a way to gather the voices of a specific target group of gender critical individuals who do not reflect the views of the majority population. It was not well circulated (I only found out by chance) and I was unclear of the ethical approval that it (hopefully?) had received."

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