

We wish to record our support for Petition 1876.

The accurate recording of data on sex is essential for policymaking: for monitoring and tackling the discrimination, harassment and violence experienced by women on the basis of sex. Women's ability to name the violence they are subjected to by men also matters at a personal, individual level.

[For Women Scotland](#) formed in June 2018 to campaign for women's rights. We are particularly concerned about the redefinition of 'woman' in law and policy. We are currently [appealing](#) a judgment in a judicial review of the Scottish Government's decision to redefine 'woman' for the purposes of the Gender Representation on Public Boards Act 2018. We also provided [written](#) and [oral](#) evidence on the framing of the sex question during the passage of the Census (Amendment) (Scotland) Act 2019.

The loss of data on sex

We are extremely troubled by the Scottish Government Chief Statistician's recently published [guidance](#) for public bodies which advocates the cessation of collection of data on sex, other than in exceptional circumstances. We note, however, that the guidance does acknowledge the salience of sex in relation to serious sexual offending.

"The most likely scenarios where data on biological sex is required would be... in a criminal context where a serious sexual offence is being investigated."

Evidence [submitted](#) by Professor Alice Sullivan demonstrates that concerns about the corruption of sexual offences data is not hypothetical. This shows that over the seven-year period from 2012 to 2018, 436 individuals in England and Wales prosecuted for rape were recorded as women. Professor Sullivan has since confirmed to us that the CPS cannot state whether these cases are male or female without interrogating the individual records.

Campaign group Fair Play For Women has [established](#) via FOI that several police forces in England and Wales record suspected and convicted rapists as female if they no longer wish to identify with their male birth sex.

Misplaced concerns about Article 8 rights

We are also concerned that a number of public bodies – including the [Equality and Human Rights Commission](#) – claim that it is a potential breach of Article 8 rights to record data on (biological) sex. During the passage of the Census (Amendment) (Scotland) Act 2019, a number of government-funded lobby groups made such claims in relation to the sex question:

"the proposal to require 'sex at birth' seems freighted with practical difficulty. Firstly, it seems likely to breach individuals' right to privacy."

Stage 1 [written evidence](#) (Engender, Rape Crisis Scotland, Scottish Women's Aid, Close The Gap, Equate Scotland)

"The European Court of Human Rights has been clear that the reason that trans people have the ability to change their legal gender is to protect their privacy, and

asking people about their biological sex characteristics when they were born is a breach of their privacy.”

Tim Hopkins, Equality Network, [Official Report](#), 6 December 2018

We would like to draw the Committee’s attention to the [legal opinion](#) commissioned by Woman’s Place UK, which states that it is legitimate to collect data on biological sex.

The Equal Treatment Bench Book (ETBB)

The [ETBB](#), produced by the Judicial Institute, states that its function is “to offer assistance and advice to judges who are duty bound to ensure that all who come before the courts are dealt with in an understanding and sensitive fashion, regardless of their personal backgrounds”. Chapter 8 on ‘Sexual orientation and gender identity’ states:

“As a basic principle, language used to or about LGBT people should reflect how they themselves wish to be addressed or referred to. This applies particularly to the title (e.g. Mr, Ms, etc.) and first and other names of transgender people, as well as the personal pronoun used to refer to them. In the vast majority of circumstances, there will be no need to discuss the transgender status or any former name of a transgender person.”

This creates a situation whereby it is now possible that a woman who is the alleged victim of male violence might be compelled by a judge to refer to her attacker as ‘she’, if that individual identifies as a woman.

This situation occurred in an assault trial in 2018, in which the complainant was rebuked by the judge for refusing to refer to her attacker as ‘she’ and withheld compensation. We would encourage Committee members to read about this [case](#).

In common with other Scottish public bodies which have embraced gender self-identification as a principle in their policies, in developing this guidance, the Judicial Institute was advised by the Scottish Trans Alliance (STA) whose contribution is acknowledged in the guidance.

In addition to supporting the petition, it is our view that the ETBB should be reviewed and a full equality impact assessment undertaken to consider its impact on all protected characteristics listed under the 2010 Equality Act.

For Women Scotland
28 September 2021