

07 October 2022

By email from: info@forwomen.scot
to: equalityevidencestrategy@gov.scot

Dear Sir/Madam

We have found it impossible to answer the Equality Evidence Strategy 2023-25 consultation point by point because we have several fundamental objections to the proposal for the improvement of Equality Data collection drafted by the Scottish Government.

The proposal states that data and evidences will be gathered on all nine protected characteristics as described in the Equality Act 2010 (EA2010), namely age, disability, sex, gender reassignment, marriage or civil partnership (in employment only), pregnancy and maternity, race, religion or belief, sexual orientation. Amongst these protected characteristics, the understanding of two of the nine characteristics hinge on the definition of the sex characteristic - sexual orientation and gender reassignment - as the comparative for gender reassignment is the birth sex of the person with the protected characteristic of gender reassignment and sexual orientation is understood as same sex attraction according to the definition of sex in the EA2010. In the EA2010, sex is defined as male or female. However, throughout the proposal, sex and gender (which is not a listed protected characteristic) are conflated and the characteristic of gender reassignment is replaced by trans status (a term with no legal definition or standing in the EA2010). Therefore, the proposal does not do what it says: it does not collect data on protected characteristics as defined in the EA2010. Recently, the Scottish Government was taken to court over the its definition of “woman” in the Gender Representation on Public Boards (Scotland) Act 2018 and lost its case as it became clear that the definition used by the Scottish Government was incompatible with that of the EA2010 and therefore outwith its legislative competence. It seems the Scottish Government is continuing to ignore this [ruling](#).

Worryingly, the proposal has been drafted in collaboration with the ONS and Scotland’s chief statistician. As written by Prof Sullivan in the paper [Sex and the Census: Why Surveys Should Not Conflate Sex and Gender Identity](#):

“Increasingly, accurate data collection on sex is being undermined by the conflation of three distinct categories: sex, gender and gender identity.

1. Sex: In humans, sex is a binary biological category. Individuals are classified by reproductive function as male or female. Sex is determined in utero, and is immutable (Kashimada and Koopman 2010; Sobel, Zhu and Imperato-McGinley 2004).

2. 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).

3. Gender identity: The term 'gender identity' refers to some people's sense that they identify psychologically as a member of the male or female sex, particularly when this identity clashes with their biological sex. It refers to how individuals see themselves, rather than how society sees them."

For the purpose of the latest census collection, Scotland's chief statisticians and the ONS (until the latter were taken to court and had to change their census guidance for England and Wales) define, the protected characteristic of sex as (3) self-declared gender identity, undermining the collection of data on sex. This caused thousands of people to protest in their census return and caused a fiasco reported in the press. It is not clear what definition of sex is applied for the purpose of equality data gathering here.

We therefore have no faith that the proposal for the Equality Evidence Strategy 2023-25 will collect useful data on one of the most salient parameter and protected characteristic (sex) on which the understanding of two other protected characteristics hinge.

The first Action point of the proposal confirms our concerns as the data collected on child protection and looked-after children will have a "prefer not to say" option in line with recent Scottish Government guidance (how did this guidance come about, who advised it?). Considering the increased risk of sexual harassment, shaming and sexual violence female children and teenagers encounter at school, in public life, family life and in care, and the high proportion of trans-identified females compared to males (3/4 vs 1/4, respectively, according to the latest GIDs available data) in the age group 14 to 20+, it is particularly important to record data on sex for these age groups. It is baffling that the Government is actively encouraging children to withhold that information, we believe to their own detriment. For instance, the effect of taking testosterone for a young female has wide ranging physical and mental health effects that males on oestrogen will not have and vice versa. How can information and data on such vulnerability be gathered if birth sex is not known?

For Action point 6 and 7 (on crime and justice), no data will be gathered on sex. This is more than puzzling. Biological sex is the primary predictor of criminality both in terms of frequency of criminal behaviour and type of crimes (see Prof Sullivan's paper, linked above), with sexual crimes being overwhelmingly perpetrated by males (however they identify) and the victims being mostly female (however they identify). Considering the abysmal record on male violence against women in Scotland, it is puzzling that sex (as defined in the EA2010) is not the main characteristic investigated here.

Several Action points cite the wrong protected characteristics : trans status is used instead of gender reassignment and gender instead of sex. We reiterate that these two terms (trans status and gender) have no legal definitions and standing in UK equality legislation.

For Action 33, the census did not gather data on the protected characteristic of sex. As such the census data is useless for one of the key parameters used in social science to

understand population behaviour. Again sex and gender are conflated. The goal of Action point 33 can therefore not be met.

Overall, the proposal to improve the gathering and analysis of equality data is undermined by the willingness of the Scottish Government to conflate sex and gender. The definitions adopted by the Scottish Government for some of the protected characteristics do not agree with the definitions in the EA2010 despite purporting that they do. We question how usable these data would be for stakeholders and prospective users and how clear it would be made to potential users that the way the protected characteristics are defined is not in line with UK legislation.

In summary, we believe this is a very poor effort by the Scottish Government and we would advise, as a feminist group which would otherwise use these equality data, to go back to the drawing board and define clearly the protected characteristics to be studied, in line with UK legislation (EA2010) and gather data on protected characteristics relevant to the various Action points listed (crime, child protection...).

Yours faithfully,

Trina Budge, Marion Calder, Susan Smith
Directors, For Women Scotland