

# Response ID ANON-NK9B-YHZU-4

Submitted to Review of Sex & Gender Data Recording - Stakeholder Feedback  
Submitted on 2025-06-22 11:49:27

## More information

### Stakeholder feedback questions

1 To what extent do you agree or disagree with the proposed approach for recoding sex and gender for Police Scotland?

Disagree

Which option is your preference for 'Question 1' in the 'More information' section above?:

B

Please provide any further comments:

The given definition of sex is incorrect as sex is not "assigned at birth". We would suggest an alternative definition of: "Sex means being male or female. It is an objective, biological characteristic about a person that is observed at birth."

For consistency across organisations the form of the question should follow the UK Censuses (England and Wales, Northern Ireland, Scotland) question "What is your sex?" with the response categories "Female, Male".

If needed, and to clarify a Gender Recognition Certificate is not taken into account, guidance for the sex question should provide clarity on the target of the question as follows. "This question is about your sex at birth".

Since this question relates to intimate searches, an accurate response is necessary for the safeguarding and dignity of the respondent and police officers. It is therefore not appropriate to offer an option to not disclose the information and further investigation should be undertaken to establish the facts if needed.

2 Do you support the proposed response options in 'Question 2' within the 'More information' section above?

No

Please provide any further comments:

Care should be taken only to collect information which is needed. For the purposes of conducting intimate searches the relevant information is sex, so a transgender question should not be asked in this context.

We strongly recommend that the option of "gender diverse" is not included in any question as this can easily be seen to include people who do not conform with gender stereotypes but do not consider themselves to be transgender.

The Hate Crime and Public Order (Scotland) Act 2021 is the only legislation that references "transgender identity". In order to categorise crimes for this purpose the form of the question should follow its terms (allowing for a "No", and "Prefer not to say" response) as follows:

Do you consider yourself to be:

- (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.

"Transgender identity" in the Hate Crime Act is different from the term "gender identity" and applying a concept from a small group who consider themselves transgender to the broader population is problematic. "Gender identity" is a disputed and controversial concept, and there is no agreed definition. Indeed the definition given in the accompanying notes to this consultation allows for a gender identity to be the same as sex at birth. But gender identity is not sex, they are different and distinct concepts with different definitions, so this cannot be correct. Any such conflation is confusing and unhelpful.

"Gender identity" is also not a protected characteristic and there is no requirement under the PSED for such data to be collected.

Consideration should be given instead to asking about the protected characteristic of gender reassignment which may be necessary for the purposes of equalities monitoring. A question on transgender identity is unlikely to be a good substitute or specific enough as some identities (non-binary, agender, etc) are not covered by the gender reassignment characteristic and will not assist in compliance with the PSED.

The definition of gender reassignment given in the information accompanying this consultation erroneously includes the phrase "the process of changing one's sex to align with a person's gender identity". However, the definition of gender reassignment in the Equality Act does not refer to the concept of "gender identity" and we recommend the Act's definition should be adhered to without any additions.

To capture the protected characteristic of gender reassignment, we suggest asking a direct question addressed to this target, such as: "Do you have the

protected characteristic of gender reassignment?" with response options: Yes/No/Don't know/Prefer not to say.

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."

Despite the cumbersome language of the legislation, testing by the Equality and Human Rights Commission suggests that respondents are willing to answer a question framed in these terms.

However, data should only be collected which is needed for a specific purpose. The PSED does not imply a duty to ask for data which is unlikely to be useful and it may be that the collection of sensitive data which identifies a small group of people is not necessary.

3 Should we include a 'not disclosed' option when asking for sex and gender data?

Should we include a 'not disclosed' option whenever asking for sex and gender identity?:

No

Please provide any further comments:

NB. This is a different Question 3 from that given in the notes accompanying the consultation. We have answered that question about gender reassignment in Question 2 above.

Where sex data is collected for the purposes of intimate searches a "not disclosed" option should not be provided since an accurate answer is necessary for the safeguarding, welfare and dignity of the respondent and police officers. Further investigation should be undertaken to establish the facts if needed.

Collection of data on sex is required to fulfil the PSED and, in order to give an accurate picture as possible, an opt out should not be given. Accuracy in crime statistics is similarly important and any proportion of respondents not disclosing their sex could quickly lead to a significant distortion in data, particularly when crime numbers for a particular offence are small or crimes are sex specific. Where information on sex is not essential it is fine to provide an option not to disclose but organisations should not be asking the question where the information is not required. Sex data is not sensitive data and if it is needed, it should be provided accurately with no opt out.

Data on "gender" should not be collected at all. This is a confusing term and is likely to lead to corrupted data that is a mix of sex and "gender identity". Where questions are asked about the specific concept of gender identity the respondent should have the option of "None" as well as "prefer not to say". Similarly, with a gender reassignment question the option not to disclose should be available since this may be considered sensitive data and relates to a small population.

4 What else would you like us to know?

What else would you like us to know?:

The Sullivan Review: "Review of data, statistics and research on sex and gender" has informed our responses to the consultation questions. For ensuring consistency across organisations, research and its recommendations please see:

<https://assets.publishing.service.gov.uk/media/67d98b8a4ba412c67701ed92/review-of-data-statistics-research-on-sex-and-gender.pdf>

Your organisation

5 What is your name?

What is your name?:

Trina Budge

6 What is the name of the organisation you represent / this response is from?

What is the name of the organisation you represent / this response is from?:

For Women Scotland

7 What is your email address?

What is your email address?:

info@forwomen.scot