

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

Strongly disagree

'What is your sex registered at birth?' is the strongest and most objective measure of sex. It is a question which asks about factual recording undertaken on the basis of observation by medical professionals. In their judgment, the Supreme Court ruled that: "*... in the Equality Act 2010 (the Act), 'sex' means biological sex. This means that, under the Act:*

- *A 'woman' is a biological woman or girl (a person born female)*
- *A 'man' is a biological man or boy (a person born male)"*

The term 'sex', therefore, does not need any qualifier (eg reference to chromosomes or reproductive organs), it simply means **biological sex** - male/man or female/woman. We do not agree with either of the other options. Sex is not 'assigned at birth' and this term is used to create doubt about biological fact, suggesting that there is no objective reality behind the terms 'male' and 'female' and inferring that sex is no more than educated guesswork.

'Birth sex' may appear to be a clear term, but it is open to subjective interpretation by people who wish to claim an opposite-sex identity.

In relation to 'gender identity', experience shows that this term means different things to different people and it does, therefore, need further explanation. For example, it is not simply about how people perceive themselves but also what they call themselves, and there is an ever-growing range of terms that people can use to describe themselves in terms of 'gender identity'. In particular, it needs to be made clear that, unlike gender reassignment, gender identity is not a protected characteristic under the Equality Act 2010 (EA) and care should be taken that the two terms do not become conflated.

The term 'gender reassignment', particularly as described under the EA, will be an unfamiliar concept to many people and requires clear and accurate explanation. Although the EA description is provided, Police Scotland goes further by stating that gender reassignment is "the process of changing one's sex to align with a person's gender identity". This statement should be removed. It is inaccurate, and it suggests that it is possible for humans to change sex. This is in conflict with the recent Supreme Court judgment. In addition, by introducing the term 'gender identity' (a term not used in the EA) within the description of gender reassignment Police Scotland are again conflating two terms, one of which is a protected characteristic and one which is not.

**2 Do you support the proposed response options in ‘Question 2’? [Question 2: do you consider yourself to be a) transgender b) non-binary c) gender diverse]**

No

The **terms used by Police Scotland must be unambiguous and clearly defined**. In particular, the terms ‘non-binary’ and ‘gender diverse’ (which again will be unfamiliar to many people) require explanation otherwise there is a significant risk that requirements under the EA and the hate crime legislation, together with the different terminology and definitions used, become conflated.

Research by Murray Blackburn Mackenzie

(<https://murrayblackburnmackenzie.org/2023/08/07/clarity-matters-how-placating-lobbyists-obscures-public-understanding-of-sex-and-gender/>)

showed that around a third of respondents did not understand that a transwoman is a man. The 2021 England and Wales census data has been found to be unreliable because people with English as a second language were more likely to identify as transgender; this is thought to be because of poor understanding of the term.

It is recognised that not everyone with a gender identity would also describe themselves as having the protected characteristic of gender reassignment. If Police Scotland also wishes to capture information on gender identity (beyond that required, for example, under the Hate Crime and Public Order (Scotland) Act 2021) as well as the protected characteristic of gender reassignment, the difference between the two terms needs to be made absolutely clear when questions are framed **so that, again, the two terms do not become conflated**.

The difference between the two also needs to be made absolutely clear in any guidance.

There are examples within the questionnaire where the **terms ‘gender identity’ and ‘gender reassignment’ are conflated**. For example, towards the end of the section on ‘Our Proposed Approach’, the statement is made that “...it is the responsibility of official statistics producers to determine whether there is a legitimate need to collect data about **sex, gender identity, both or neither**....” The protected characteristic of **gender reassignment has been omitted here**, giving the impression that the term ‘gender identity’ is interchangeable with ‘gender reassignment’. This occurs again at the first bullet point which states that “**Data about sex and gender identity should be explained...**”.

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

Yes

There is no legal requirement for people to disclose their sex or gender reassignment to the police and therefore an option will be required where someone refuses/declines. The term recommended by Professor Alice Sullivan in her report on the Independent Review of Data, Statistics and Research on Sex and Gender is ‘prefer not to say’ where an explicit response is necessary.

Police Scotland has opted for 'self-reporting' as its preferred method for data collection, unless it is not given or thought to be inaccurate, in which case it can be taken as 'observed'. It is essential that, where data on sex, gender reassignment or gender identity is 'observed', the fact that this is observational data must also be recorded.

#### **4 What else would you like us to know?**

This information is going to be widely disseminated and used operationally by Police Scotland officers. It is essential that the definitions given are clear, accurate and unambiguous. We believe that clarity and accuracy have not yet been achieved.

- 'Sex' is not assigned at birth, it is observed.
- 'Sex' cannot be changed and any suggestion that it can be conflicts with the recent Supreme Court judgment
- 'Gender identity' is not a protected characteristic and this has to be made clear or there is a risk that it will become conflated with 'gender reassignment', resulting in flawed data collection
- Many people are unfamiliar with the concepts of 'gender reassignment' and 'gender identity' and both terms require clear explanation
- Terms such as 'non-binary' and 'gender diverse' have broad and contested meanings and interpretations and require clear definition