

Response to ONS consultation on the future of population and migration statistics in England and Wales

26th October 2023

In the introduction to the [consultation on the future of population and migration statistics in England and Wales](#), National Statistician Ian Diamond has said “Our society needs a flexible, inclusive statistical system for the 21st century, one that maintains a stable level of accuracy over time and is fit for purpose in responding to unexpected change in a timely way”.

Sex Matters is a human rights organisation that campaigns for clarity on sex in law and policy in the UK.¹ We are very concerned that current data on sex (whether a person is male or female) are neither stable, accurate nor fit-for purpose, since many data collectors have adopted ideas about fluid gender identities, abandoned clear definitions of sex and corrupted their data.

As Alice Sullivan, Kath Murray and Lisa Mackenzie point out in “Why Do We Need Data on Sex?”, even small numbers of people identifying as the opposite sex can have real implications for research findings and for assessing policy interventions.² Furthermore confusion about categories supports confusion about rules and policies, which encourages unfairness (most often resulting in unfairness towards women, with loss of focus on their specific needs).

In 2021 the Inclusive Data Taskforce said that “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.”³ But in practice sex is regularly confused with self-identified gender and UKSA has done little to address this.

¹ Sex Matters (2023). *About us*.

² Alice Sullivan, Kath Murray and Lisa Mackenzie (2023). ‘Why Do We Need Data on Sex?’. *Sex and gender: a contemporary reader*.

³ UK Statistics Authority (2021). *Inclusive Data Taskforce recommendations report: Leaving no one behind – how can we be more inclusive in our data?*

In 2021 the Office for Statistics Regulation published draft guidance on collecting and reporting data about sex in official statistics. It promised to finalise this guidance but has not done so.⁴

The ONS proposal which suggests abolishing the decennial census, and replacing it with a system based on administrative data (such as from tax, benefits, health and education systems) will make this problem worse. Before any such change is made there needs to be a clear harmonised data standard for collecting data on sex, implemented across the public sector.

In our work⁵ we have mapped the state of disarray in some of the most common areas of personal data collection and identity certification:

- Passports (and border data) do not accurately record sex, since individuals are allowed to change the “gender” which is recorded on their passport based on a doctor’s note.
- The sex recorded on a driver’s licence and associated DVLA records can be changed in a similar way.
- GPs change the sex recorded on a patients’ records on request. The NHS has developed a range of different data standards such as “person stated gender code” and “person phenotypic sex classification”, but these are not used consistently.
- Tax and benefit systems record a person’s sex as legally recorded, either on their birth certificate (or for the around 5,000 people who have one) on a gender recognition certificate.

These changes have been made piecemeal and it is clear that public bodies have not considered the accuracy of data collection as an objective in their record keeping on sex. HM Passport Office undertook a review in which it outlined several different reasons for recording sex (or “gender”) on passports such as a biographic detail for confirming identity, to identify the correct gender of foreign names and to enable appropriate customer interactions.⁶ It did not include accurate collection of data amongst its purposes.

Yet the ONS had planned to allow people to use the sex (or “gender”) written on their passport as an answer to the sex question in the census in 2021, until it was stopped by a judicial review brought by grassroots feminist organisation Fair Play for Women. The ONS argued unsuccessfully that “sex”, as used in the Census Act 1920 was an “umbrella term” that could include a person’s self-identified sex.

In addition to confusion about what is meant by sex, the ONS introduced a new question to the census on whether a person’s gender identity is the same or different from their sex registered at birth. This is based on an ideological framework that views people as having a gender identity, which either matches or doesn’t match their sex. A woman is said to have a feminine

⁴ Office for Statistics Regulation (2021). *Draft Guidance: Collecting and reporting data about sex in official statistics*.

⁵ Sex Matters (2022). *Sex and digital identities*.

⁶ HM Passport Office (2021). *Gender marking in passports: internal review of existing arrangements and possible future options*.

gender identity which she shares with a man who identifies as a woman (what the ONS calls a “trans woman”). Despite significant concerns about the quality of the data that question generated,⁷ as well as its ideological basis the Government Statistical Service (GSS) promotes this as a harmonised approach.

Recording data on sex should not be difficult, as we have set out in our guidance *Data matters*. There are only two sexes, and human beings cannot change sex.⁸ Resolving the problem of how to consistently collect accurate data on sex whilst respecting reasonable personal privacy requires attention and innovation. The impact of Section 22 of the Gender Recognition Act 2004 should be reviewed. An analogue solution to data privacy may not be fit for a digital world. There is an opportunity for administrative and statistical data standards to integrate with data standards for digital identities in order to protect individual privacy proportionately consistent with Article 8 without destroying data accuracy.⁹

- **We welcome the announcement of the Sullivan Review** of data collection on sex and gender, and encourage the ONS to cooperate with it.
- **We call on UKSA to work with the Department for Science, Innovation and Technology and with the Government Statistical Service develop a simple harmonised standard for recording actual sex**, whether it is used for conventional administration, statistics, personal identification or AI decision making.
- **We do not support the ending of the census** before methodologies based on administrative data collection have been demonstrated to be robust.

⁷ Michael Biggs (2023). *Gender Identity in the 2021 Census of England and Wales: What Went Wrong?*

⁸ Sex Matters (2023). *Data matters: How to collect personal data on sex and transgender identity*.

⁹ Sex Matters (2022). *Sex and digital identities*.