

1. Overview

The second reading of the Data (Use and Access) Bill in the House of Lords is on Tuesday 19th November. The government promises that it will boost the UK economy by £10 billion and free up millions of staff hours in the police and NHS, saving hundreds of millions of pounds and making it easier for people to do business and access services. **The aim is *not* to create a mandatory digital ID system or to introduce “ID cards”,** but to create a sound basis for people and organisations to voluntarily share and use trustworthy information.

On Monday 18th November, Sex Matters published a new report on the risks and opportunities of the bill, *Sex and the Data Bill* – see sex-matters.org/data-bill.

It is a basic requirement of data protection that organisations keep the information accurate that they hold about individuals. But when it comes to data about what sex people are, this principle has been ignored for decades. Public bodies including the NHS, the passport office, the driving licence agency and many others have conflated sex and gender identity, making it impossible to tell from official records who is really male and who is really female. This undermines everyone’s safety and privacy, and can cause serious harm to individuals in areas including healthcare, policing, sport and single-sex services.

The report argues that unless the issues around sex data are resolved, the measures enabled by the bill will end up costing more than they save, as data users will need to develop workarounds every time they need to record information on a person’s sex.

2. The problem: existing data sources are unreliable

The government’s digital identities and attributes framework relies on “authoritative” sources for verifying personal information. But these sources do not reliably record the sex of individuals, allowing sex to be replaced with “gender identity”.

- **Passport:** recorded sex can be changed with a doctor’s note or a personal statement indicating that the person wishes to live “as the opposite gender” – *3,188 records known to be affected over the past five years.*
- **Driving licence:** a person’s recorded sex can be changed on request – *15,481 records known to be affected over the past six years.*
- **NHS record:** a person’s recorded sex can be changed on request, after which a new NHS number is issued – *no information available on how many records have been changed*
- **UK birth certificate:** this records either a person’s actual sex or their sex as modified by a gender-recognition certificate (GRC) – *8,464 records known to be affected over the past 20 years.*

3. The result: serious harm and avoidable risk

The Data Bill seeks to enable interoperable data standards between public and private sector. Inaccurate and unreliable records create problems, confusion and significant risks of harm. Examples:

- **People with mismatched identities risk being flagged up as a “synthetic identity” risk.** This could lead to transgender people being excluded or disadvantaged when accessing services such as banking or renting property.

- **Authorities with statutory safeguarding responsibilities will be unable to robustly assess risk** related to the sex of children or vulnerable people, and the sex of potential abusers. Children’s and vulnerable people’s healthcare records risk being lost if they identify as transgender.
- **Illnesses may be misdiagnosed, treatments misprescribed and medical risks unidentified** due to the wrong sex being stated in a person’s medical records.
- **People will be unable or less likely to access services for their sex** (such as cervical and prostate screening services) if they are recorded as the wrong sex.
- **Police and others aiding law enforcement risk being unable to identify people** who have been recorded as the wrong sex.
- **Disclosure and Barring Service checks** may fail to match an individual with their criminal record because of searching the wrong “gender”.
- **Service providers will be less able to use digital verification to develop services that create value in the economy and meet social needs**, because those records do not contain reliable sex information.
- **People risk being placed unexpectedly and non-consensually in intimate situations** with members of the opposite sex, causing discomfort, humiliation and exposure.

If the government continues to develop a data verification services framework that does not ensure that sex is recorded accurately and reliably, data users will have to develop workarounds that waste time and introduce complexity and risk (such as NHS radiographers being told to ask all patients if they might be pregnant because the administrative recording of patients’ sex is inaccurate).

4. The solution: acting now will avoid years of costly confusion

The fundamental requirement to fix this problem is authoritative data sources. The report identifies two main sources:

- **Birth records:** The bill makes provision for digital birth records. This register can provide an accurate source of sex data that people should be able to query to verify their sex.
- **Healthcare records:** The bill makes provision for a new health and social care data standard. This must also ensure that sex is recorded accurately and would provide another authoritative source.

Unreliable data sources on sex must be excluded as a means of verification. This means passport and driving-licence records cannot be relied on unless and until the responsible agencies demonstrate they can provide accurate information again.

5. Recommendations and key messages

- **Ministers** must make clear that enabling accurate everyday verification of sex is a policy objective, and give clear policy direction to officials in the Office for Digital Identities and Attributes (ODIA).
- **The Office for Digital Identities and Attributes** must investigate the issue. It should convene stakeholders and publish a technical paper proposing a practical approach.
- **The Information Commissioner’s Office** should provide detailed commentary on whether current data systems are in breach of data-protection principles, and on the proposed approach.

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