

Digital identity consultation response

1st May 2026

About Sex Matters

Sex Matters is a UK human-rights charity (number 1207701) with a single objective: to restore clarity about sex to law, policy and language in order to protect everybody's rights.

We do this by helping people use the legal framework, and working with policy-makers to protect everyone's sex-based rights and to win back institutions to their mission and purpose.

Summary

1. If a national digital ID is developed it should **include sex as a voluntary field**, and that field must be **accurate**.
2. Sex is personal information that is **often needed** and can be an eligibility criterion for services in the public and private sectors, and for some jobs, accommodation and other use cases.
3. There is **currently no simple way** for people in the UK to prove their sex using an official ID or administrative data.
4. The development of a national digital identity is an opportunity to provide a **simple, useful, inclusive and trusted** way for people to verify their sex.
5. It would not be difficult or disproportionate to include accurate sex data on digital ID as a **voluntary field**.
6. For people born in the UK it could be done by checking against **birth register records**, which remain accurate.
7. Enabling people to prove their sex using digital ID would be **simple, cost-effective, privacy-protecting and rights-respecting for everyone**.
8. Failing to do so will **create difficulty, confusion, compliance problems and costs**.
9. The government is the **only body** that can solve the sex data problem: it should not be left to the private sector to navigate through the mess left by decades of official confusion.
10. Allowing people to voluntarily include their sex accurately on digital ID and to share it with consent when needed **would not harm transgender people's rights**. They could use digital ID in the same way as others to share their sex data when they want to and keep it private where they don't.

Our response is to this part of the government’s proposal (that is, it answers the question in chapter 3.1 of the consultation about what other personal data should be included).

Sex or gender information

In the UK, sex and gender data can cover three categories:

- **Biological sex.**
- **Legal or certified sex.** This is sex as recorded on your original birth certificate or as amended under the Gender Recognition Act 2004. In almost all cases, legal or certified sex reflects a person’s biological sex.
- **Gender.** A broad term that is sometimes used interchangeably with sex or when specifically referring to social rather than biological differences between sexes. It can also capture data that equates to biological, legal or certified sex.

Information about sex and gender is not necessary for the intended purpose of the digital ID. Inclusion of this information would not enhance checks that the digital ID belongs to the person presenting it. Checks will be done programmatically and through biometric authentication, neither of which require specific sex or gender data.

Additionally, digital right to work checks and many checks in the private sector (including Know Your Customer and simple age-verification checks) do not require the collection or sharing of information about a person’s sex or gender. Similarly, access to most public services does not require this information. In specific scenarios where sex or gender information is required, it is better collected and verified by other means appropriate to that scenario, rather than contained in the digital ID.

For these reasons, and in line with data minimisation principles, we do not intend to include sex or gender information in the digital ID.

The context

Sex has a clear meaning

Sex is a basic piece of personal information. It refers to reproductive biology:

- **Female** refers to people who have the type of body with the potential to produce eggs and become mothers.
- **Male** refers to people who have the type of body with the potential to produce sperm and become fathers.

Everyone has a sex, including people who identify as transgender or non-binary.

When a baby is born, their parents and medical professionals can see what sex they are. This information is put on their medical record. The parents are required to register the birth, including the child's sex. This attribute is part of a person's foundational identity and is immutable:

- **Human beings cannot change sex.**
- **In the UK the birth register cannot be changed** (a correction may be made by means of a note in the margin if sex was recorded wrongly).
- **The law recognises that sex is immutable.** The Supreme Court in *For Women Scotland v Scottish Ministers* has clarified that in relation to the Equality Act, and other relevant laws, "sex" means biological sex.

As the Supreme Court says, the biological meaning of sex (which is also the common-law meaning) is something that can be "**plainly intended**" by other laws and in practical situations. It is a characteristic about a person that is immutable and amenable to verification.

There are good reasons to include sex

The proposal says that "information about sex and gender" is unnecessary for the intended purpose of the digital ID.

It is true that "gender" is not defined and cannot be verified.

It is also true that sex is not needed for:

- ✗ **identity matching between a person and their ID**, which will be done through biometric authentication.
- ✗ **some uses**, such as right-to-work checks, Know Your Customer (KYC) and age-verification checks, which do not require the collection or sharing of information about a person's sex.

However, **in many everyday situations, people will need or want to declare their sex, and this should be able to be verified.** Examples include:

- ✓ joining a dating service
- ✓ joining a single-sex association, such as Girlguiding or the Women's Institute
- ✓ applying for a bursary, prize or award that is only for women
- ✓ joining a gym and using its ID to access male or female changing rooms
- ✓ registering for sport with a national governing body or sports team, or for competitions
- ✓ applying for a job in social care, policing, prisons or a single-sex service
- ✓ seeking to rent in a shared house, homestay, hall of residence or dormitory
- ✓ registering with a healthcare or social-care provider
- ✓ registering with a single-sex service such as a rape crisis centre or women's refuge, or being referred between such services.

As with other pieces of personal information, people should be able to verify this information simply and reliably.

The problem

People in the UK have no reliable way of verifying their sex

In the UK, we lack a single, authoritative way to prove that we are the sex we say we are.¹ This is because of ad hoc accommodations that have been made for cross-dressers and transsexuals over the years, allowing authoritative records of sex to be repurposed as unreliable records of sex or gender identity:

- **Passport:** recorded sex can be changed with a doctor's note or simply a personal declaration indicating that the person wishes to live "as the opposite gender" – 3,188 records known to be affected over the last five years.²
- **eVisa:** a person's recorded sex can be changed if their name is changed by deed poll or if the "sex" marked on their home-country passport is changed.
- **Driving licence:** a person's recorded sex can be changed on request. Sex does not appear on the face of the driving licence, but is encoded in the licence number – 15,481 records known to be affected over the last six years.³
- **NHS records:** a person's recorded sex in NHS data can be changed on request, after which a new NHS number is issued.

Because these public authorities have not treated sex as immutable, their datasets are corrupted. There is no legal basis for this. Identity documents issued by other jurisdictions (including the Republic of Ireland) are also often based on corrupted datasets, for the same reason, and cannot be relied on to be accurate about sex.

Online and offline, public and private services have no simple way of verifying sex from administrative records. What is worse, apparently authoritative documents such as passports, driving licences and health records contain inaccurate information.

This affects not only the records of people who have changed their recorded sex: it affects everyone. It means that even if a particular person's sex *is* accurately recorded on their passport, driver's licence or NHS record, they cannot use the document to prove their sex, because there is no way of knowing that their documents are trustworthy.

It is impossible to ask people robustly for consent to share data on their sex when it is being shared into or from a field that mixes sex and gender identity.

Lack of a simple reliable means to verify sex causes problems

Although people can almost always tell what sex other people are in person, the lack of reliable administrative means to verify sex and the existence of unreliable records create problems:

1. **Proving sex is confusing, complex and burdensome.** Unreliable "information" is worse than useless, as it leads to confusion, conflict, risk and costly duplication. Organisations are

¹ Sex Matters (2024). *Sex and the Data Bill*.

² Figures compiled from [freedom-of-information requests through Who Do They Know](#).

³ Figures compiled from [freedom-of-information requests through Who Do They Know](#) and Steph Spyro (2024). 'Changing gender on official papers is "too easy" amid record high for driver's licences', *Daily Express*.

unclear about how to ask or what to ask, and when they record “sex” from an unreliable source it cannot later be relied on as reliable. This creates unnecessary cost and administration, undermines efficiency in both public and private sectors, and makes it harder to provide single-sex services, which are particularly important for women.

2. **The government cannot deliver services effectively.** This lack of a single proof of sex and consistent data records leads to problems such as trans people missing out on health screening tests and men having to be asked if they are pregnant before having an X-ray. Lack of sex data prevents services from accurately monitoring impacts and outcomes for women and men.
3. **Mixed data creates security risks.** When sex and gender identity are conflated or individuals are allowed to change their sex marker, this creates data risks that individuals may be highlighted as trans when they do not want that to be recorded. Private-sector Digital Verification Service (DVS) providers will not be able to verify sex unless there is an authoritative source.
4. **Transgender people face accidental exclusion.** If the “sex” field is left in a muddle, transgender people are more likely to raise anti-fraud red flags because they appear to have mismatched records. If sex is recorded accurately wherever it is recorded, then there is no possibility of a mismatch.

These are the kinds of problems digital identity sets out to solve.

It is not “better” to exclude sex: it is better to include accurate sex

The government appears to have recognised that because “sex” on passports and other official documents is unreliable, data on this personal attribute from these sources should not be included on digital ID. Excluding these unreliable data sources from digital ID is a step forward.

However, the government’s proposal says:

“In specific scenarios where sex or gender information is required, it is better collected and verified by other means appropriate to that scenario, rather than contained in the digital ID.”⁴

It does not give any reason **why** it would be better not to enable people to use digital ID to accurately prove their sex.

It is not true that a national digital ID that fails to afford people the opportunity to prove their sex is better than one that does not. It is undeniably **worse**.

Nor does it make sense to suggest that there are different answers to a question about sex for different scenarios, or different ways to verify it. There is only one correct answer to whether someone is male or female. That is their sex, as observed and accurately recorded at birth.

Asking further questions to clarify that the information needs to be accurate for a particular purpose is costly and prone to mistakes. It undermines the purpose of digital ID.

⁴ Cabinet Office (2026). Chapter 3.1, *Making public services work for you with your digital identity*.

Proposed solution

Include sex as a voluntary field

Sex Matters proposes that sex should be a voluntary field on digital ID:

- People may choose to have it included when they register for digital ID.
- They may choose to have it added or removed at any time by having their digital ID reissued.

Making this data field voluntary allays privacy and data-minimisation concerns for those who do not want this data on their digital ID.

It also means that if individuals lack an easy administrative means to prove their sex from documentation (as will currently be the case if they were not born in the UK, and have not been married or given birth in the UK), they will not be excluded from having a digital ID.

Like other fields, sex would be amenable to selective disclosure. For example, no one needs to share data on their sex when they are seeking to verify their age.

Use the birth register as the primary authoritative source

For people born in the UK, the most straightforward administrative approach would be to draw the data directly from the **birth register** (which is being digitised), since this has been kept accurate (including for people who also have a record in the separate gender-recognition register).

For those born in other countries, other reliable administrative data sources would need to be found. These could include:

- certain statutory records. For example, if someone is registered as the mother on the birth record of a child born in the UK, this is proof that the person is female.
- if a person married in the UK before 2004 and is registered as a husband or wife
- their GP vouching for their sex (in response to an unambiguous question about sex, not gender identity)
- a cheek-swab test from a validated source (such as for an athlete).

The government is also exploring whether people with a digital ID should be legally required to inform the government within an appropriate timeframe of certain changes (such as a name change) or errors to their personal information. This mechanism would provide a means to solve the problem of unreliable sex data. Everyone knows their own sex. If people who want to have their sex on their digital ID are legally required to give the correct answer and not allowed to change the record based on gender self-ID, the system would become self-correcting.

Do not include gender or “legal sex”

Gender is an undefined term which has different meanings for different people.

It includes but is not limited to trans woman, trans man, non-binary, genderqueer, femme, masc,

mtf, ftm, agender.⁵ Gender or gender identity cannot be verified and should not be included on digital ID.

Under the Gender Recognition Act, **“acquired gender”** can be male or female. For a person who has acquired a gender under the act it is recorded in the gender-recognition register and used for some legal purposes such as marriage. Their sex for other legal purposes remains their sex. “Acquired gender” as recorded on the gender-recognition register can be verified, but including it in the sex field means that field then cannot be used to verify sex. It should not be included on digital ID.

People are free to express their feelings about gender identity by the way they dress, and by changing their name or the way they refer to themselves, such as Ms/Mr and she/he. None of this is relevant to or undermines the case for having accurate sex on digital identity.

Following *For Women Scotland v Scottish Ministers*, the descriptor **“legal sex”** should not be used for data purposes. In common law, a person’s “legal sex” is their biological sex. If a person has a gender-recognition certificate their “legal sex” changes for the purpose of certain laws but not for others. This means that if someone has a gender-recognition certificate they have two “legal sexes”.

As the Supreme Court says in FWS (§156):

“...section 9(1) of the GRA 2004, read with section 9(2) and (3), has the effect that the gender of a person with a GRC becomes the acquired gender ‘for all purposes’...unless there is a specific exception in the GRA 2004 itself or unless the terms and context of an enactment, including a subsequent enactment, demonstrate that there is ‘provision made’ by that enactment pursuant to section 9(3) that negates the effect of section 9(1). **In other words, section 9(1) applies unless section 9(3) applies.**”

In short, the question “What is your legal sex?” is not specific enough to identify a unique piece of personal information that could be subject to robust verification or safe exchange.

Rationale for including accurate sex information

Including sex in digital identity would protect everyone’s rights

People who identify as transgender may wish to keep their sex private (or not have it recorded) in situations where that information is not needed.

Digital identity is designed to work based on selective disclosure. Not all information will need to be shared every time the digital ID is used. For example, for some situations it might be sufficient to share that a person is over 16, over 18 or over 65, rather than reveal their date of birth, or that they have a right to work, rather than reveal their nationality. The digital ID is designed to allow people to share just enough information to prove eligibility for a given purpose.

This means that the system could also be designed so that accurate data about a person’s sex is included but disclosed only when the person chooses to share that information. For example, a

⁵ Wikipedia (accessed May 2026). [‘List of gender identities’](#).

person proving their age in order to buy alcohol or their identity in order to rent a flat would not disclose their sex.

Having sex included on digital ID would not harm transgender people's rights. It would not stop people declaring or expressing their "gender identity", or require them to reveal their sex when the information is not needed. They could have privacy about their sex when sex is not relevant, and they would be able to access services lawfully available to them.

Accurately recording that someone is male or female is a simple way to ensure data minimisation: that factual data does not disclose trans identity. Any additional data (such as "gender identity") creates risks of privacy breaches and knock-on issues.

Leaving the challenge to be solved by the private sector is irrational and irresponsible

Part of the intended purpose of the national digital ID is to provide a coherent foundation for the DVS system.

The birth register provides the foundational identity for people born in the UK. It is used to establish a person's identity (including their sex) for their first passport. Allowing the birth record to be used to accurately verify sex for those who wish to have it on digital ID is proportionate.

Not allowing people to access and use their birth record in this way, either for DVS or digital identity, would be a breach of Article 8.

Allowing access to the accurate birth register via the application for digital ID is a straightforward way to do this. It moves the need to explain that the data field means sex, not gender identity, from private-sector DVS providers to the state.

Having a clearly defined field for biological sex supports data minimisation as it enables people to choose to share it or keep it private.

Solving the sex-data problem at source so that people can verify their sex is the responsibility of the state. It will allow the core principles, such as data minimisation, accuracy and consent, to be built into digital ID and DVS from the beginning.

The proposed approach meets the public-sector equality duty

Sex Matters has created an equality impact assessment (EIA) for the purposes of considering the equality impact of:

1. the Sex Matters proposal to include sex as a voluntary, accurate field on digital ID
2. the government proposal to not include sex
3. the alternative proposal of including unreliable data sources (such as "passport sex").⁶

In doing so, Sex Matters has been mindful of all nine protected characteristics but has focused on the seven most relevant to its consultation response, namely age, disability, gender reassignment,

⁶ Sex Matters (2026). *Sex on digital identity – an equality impact assessment*.

race, religion or belief, sex and sexual orientation. The EIA also considers the position in respect of human rights, recognition of sex and “gender identity” and administrative coherence.

The public-sector equality duty (PSED) requires public bodies to have regard the need to:

- eliminate unlawful discrimination, harassment, victimisation and any other unlawful conduct prohibited by the Equality Act 2010
- advance equality of opportunity between people who share and people who do not share a relevant protected characteristic
- foster good relations between people who share and people who do not share a relevant protected characteristic.

The Supreme Court in *For Women Scotland v Scottish Ministers [UKSC 2025]* stated that:

“All organisations subject to the PSED must have due regard, in considering their rules, policies or practices, to the matters set out in section 149, undertaking where appropriate an equality impact assessment in order to understand how and to what extent the policy in question will affect specific groups with different protected characteristics.”

The Supreme Court emphasised that the PSED is an obligation to consider the distinct discrimination and disadvantage faced by groups that share protected characteristics, and that women are a group who have experienced and continue to experience discrimination or disadvantage related to their sex flowing from shared biology, societal norms and prejudice related to women. It clearly recognised that the purpose of addressing the particular needs, disadvantages or participation levels of women as a group with the protected characteristic of sex is undermined if women as a group cannot be identified, simply defined or spoken about.

The conclusion from the EIA is that the government proposal to exclude sex from digital ID would not meet the requirements of Section 149 and would undermine the objectives of the PSED by making it materially more difficult for public- and private-sector organisations and individuals to meet the specific needs of women.

Including accurate sex as a voluntary field would not result in unlawful direct or indirect discrimination related to the protected characteristic of gender reassignment or any other protected characteristic, nor would it breach the human rights of trans-identifying individuals. And (in contrast to the government proposal) it would meet the government’s obligations under section 149 by ensuring that there is a trusted way to verify sex in situations where sex is relevant.