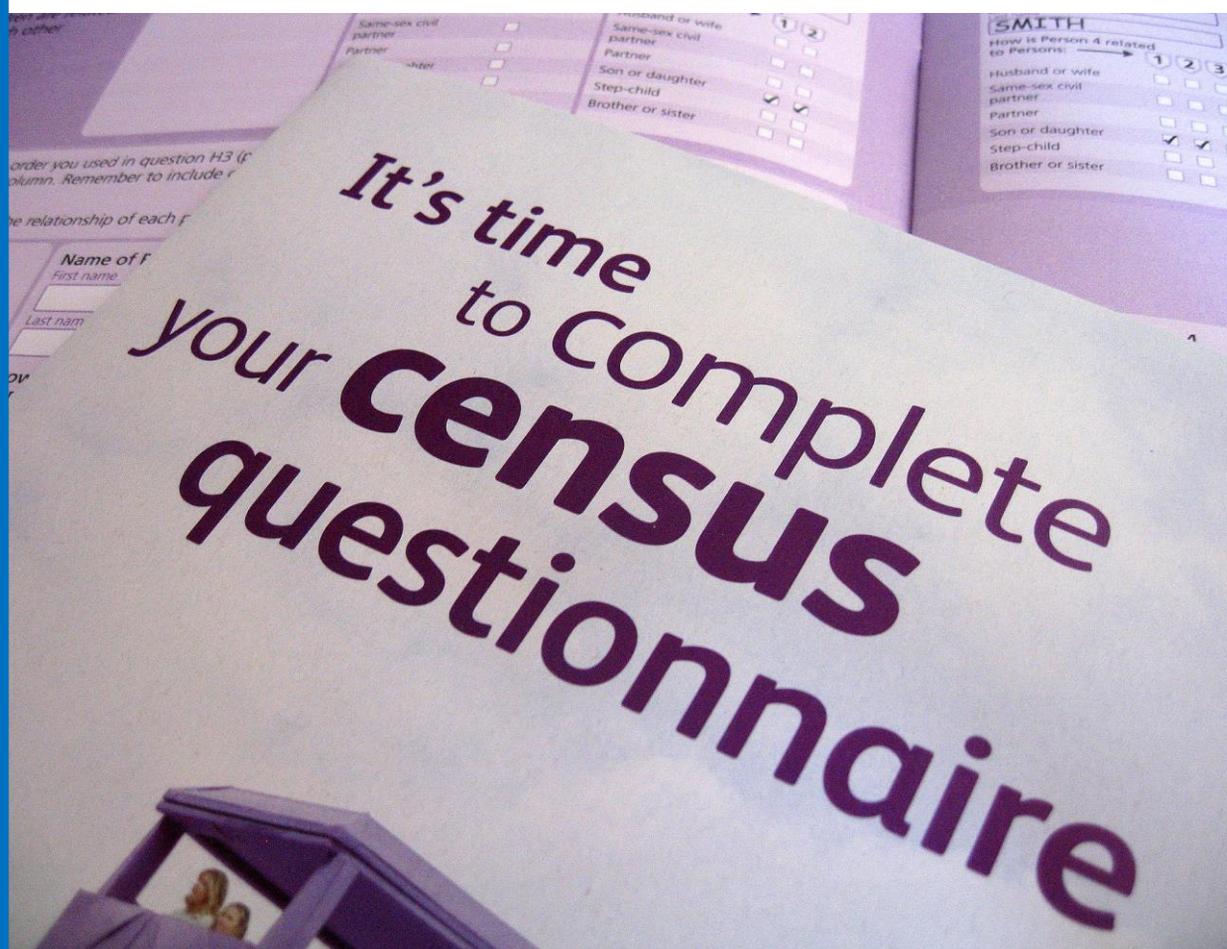


Myth busting: The sex question in Scotland's 2021 census



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 **EDI** Scotland

Introduction

The Scottish Parliament's Culture, Tourism, Europe and External Affairs Committee will soon consider evidence related to the design of the sex question in Scotland's 2021 census. Although the question wording and response options are now [confirmed](#) (What is your sex? Female, Male), debate continues about the guidance that will accompany the question.

This is important as guidance shapes the meaning of the question. Guidance will therefore advise respondents to answer in line with their **'legal sex'** (a general definition does not exist in law but commonly relates to the sex marker on a person's current birth certificate, male or female) or **'lived sex'** (how a person identifies and is perceived by society).

During the past year, several myths have spread about the design and purpose of Scotland's census. There exists a risk that these myths might detract from the weight of research and expert opinion of organisations including the National Records of Scotland and the Office for National Statistics.

This guide addresses these confusions head-on and provides seven helpful explainers that cover the use of census data, the alignment of the census with the 2010 Equality Act, international practice, past practice in Scotland and what is meant by self-identification.

1. Is census data used to inform decision making related to people's 'biological sex'?

How we collect sex and gender data is vital to help address many of society's inequalities. Whether it's the use of transport networks, perceptions of crime or educational attainment, this data can inform the diagnosis of a problem and determine the best actions in response.

There are situations where information related to a person's 'biological sex' (categorisation as male or female according to a mixture of biological factors) is important, such as particular health screenings (cervical, prostate etc) and exposure to dangerous chemicals. However, this data is collected by organisations responsible for this work rather than via a national dataset. In Scotland, for example, **the NHS does not use census data to inform its daily practice** but instead relies on its own patient information datasets (such as the NHS Central Register).

The value of national datasets, such as the census, is not found in what it says about individual respondents. Instead its power comes from what it says about how identity groups fit within wider structures that are most often gendered, racialised and in-built with heteronormative assumptions about ability, class, nationality and other identity characteristics. Whether you are advantaged or disadvantaged by these structures often has little to do with biology but a lot to do with the meanings society has attached to markers of difference, whether this be skin colour, sex characteristics, physical or mental ability, language or a range of other reasons.

2.

Is census data used to inform decision making related to people's 'legal sex'?

A fundamental issue with discussions about 'legal sex' is that there is **no general definition of this concept in UK law**. Therefore, when we speak about 'legal sex' what we are actually speaking about is the sex registered on a person's current birth certificate.

For the majority of the population, the sex on their birth certificate will match their current sex. However, for some trans and non-binary people this will not be the case. Furthermore, among people who have a Gender Recognition Certificate, and been issued a new birth certificate to reflect their identity, their 'legal sex' (birth certificate sex) will match their current sex.

It is also the case that the vast majority of official documents — including passports, driving licenses, bank cards and degree certificates — can be changed without the requirement of a GRC or change to a person's birth certificate.

Any move to introduce a 'legal sex' question in the 2021 census would mean that, if respondents answer this question 'correctly', the 'female' and 'male' categories would include a diversity of people with very different experiences of living in a sexed/gendered society.

3.

Does the census need to align with identities and wording in the Equality Act?

A census has been conducted in Scotland since 1801, whereas the bringing into law of the Equality Act in 2010 is a comparatively recent event. It is hard to predict what will happen in the future but the census, in some shape or form, will likely outlive the Equality Act, as how we conceive of identities and their protections in law continues to evolve.

There is **no requirement for the questions asked in the census to align with the wording or language used in the Equality Act**. A quick review of the 2011 census reminds us that most questions asked in the census have no direct links to the Equality Act. For example, the census asked ‘How do you travel to your place of work or study?’ and ‘What type of central heating do you have in your accommodation?’ These questions provide important data for policymakers but do not align with anything in the Equality Act.

Even when we consider identity characteristics, the 2011 census asked whether a person has caring responsibilities for a family member or friend. Vital information to collect, even though caring responsibilities are not a Protected Characteristic covered in the Equality Act.

4. How do other countries ask about sex in their census?

The collection of data via a census takes place in countries across the world. It is therefore helpful to position ongoing debates in Scotland against what is taking place elsewhere. Although an international one-size-fits-all model is not feasible, as statistical organisations will collect and use their data in different ways, the most recent censuses in Australia, Ireland, New Zealand and Canada **did not ask respondents to answer the sex question according to their ‘legal sex’** or the sex stated on their birth certificate.

As noted in the research report [Looking beyond Scotland — Sex and gender in the census](#) (2019), previous censuses in Australia and New Zealand did not explicitly note that the question is about ‘sex’ and instead asked ‘Is [person name] male or female?’ and ‘Are you male or female?’

It is important that data collected by National Records of Scotland harmonises with the data collected by the Office for National Statistics (who carry out the census in England and Wales) and the Northern Ireland Statistics and Research Agency. **It is the intention of the ONS and NISRA to continue to ask a sex question in 2021 where respondents [answer in line with how they live](#).**

Changing the meaning of the sex question in the 2021 census would therefore position Scotland as an outlier, both in terms of data harmonisation within the UK and other comparable English-speaking countries.

5. How has Scotland's census previously asked about sex?

The 2011 census in Scotland advised respondents to **answer the sex question according to their 'lived sex'**. Prior to 2011, it remains unclear how respondents in Scotland were advised to respond (although in 2001, respondents in England and Wales were also advised to answer according to 'lived sex'). However, it can be assumed that, without explicit guidance, people **answered the question in the way that they felt best reflected their sex**.

In their [evidence provided](#) to the Culture, Tourism, Europe and External Affairs Committee on 12 September 2019, National Records of Scotland reaffirmed that, following extensive quality assurance checks of the sex data collected in the 2011 census, they have **no reason to believe that the data quality was in any way negatively impacted** following the provision of guidance that respondents should answer according to their 'lived sex'.

Departing from this precedent poses a greater threat to data quality, particularly in the case of longitudinal studies (as the 2021 census would explicitly request respondents to answer the question differently from past censuses).

6.

What is self-identification and will the sex question lose its value if it advises respondents to ‘self-identify’?

Self-identification is the assigning of a particular characteristic or categorisation to oneself. This differs from situations where a person assigns an identity to another person.

Debates around self-identification risks taking people down a philosophical path fixated on the nature of being and meanings of sex and gender rather than a consideration of how identity characteristics impact on people’s everyday lives.

It is therefore important to focus on practical considerations and what we can learn from work taking place elsewhere, as questions asked in the 2021 census on identity characteristics have all been asked before by other organisations and in other sectors.

Respondents currently self-identify for all questions in the census related to identity characteristics. In other words, there is no requirement to provide evidence of your identity nor does anyone check. It is assumed that the person completing the form will know best. Where one person completes the census on behalf of a household, they are requested to ask others in the household how they would answer these questions.

6. ...continued

In fact, for many identities asked about in the census, it is not really possible to provide evidence that you belong to a particular identity group. For example, how would someone prove to a census official their religion, ethnicity or sexual orientation?

The inability to provide proof doesn't make these identities any less meaningful than identities that come with legal documentation (for example, someone who is married or someone who has UK citizenship). It therefore does not make sense to raise concerns about a self-identified sex question when the same approach equally applies to all other identity questions in the census, including ethnicity, religion and sexual orientation.

7.

What do experts think about a self-identified sex question?

National Records of Scotland continue to recommend a binary sex question with self-identification guidance. This follows two rounds of extensive research conducted by ScotCen ([2017](#), [2019](#)) and Ipsos MORI ([2017](#)). This position aligns with the evidence-based recommendations of the Office for National Statistics and Northern Ireland Statistics and Research Agency.

The majority of organisations with expertise in this area support a sex question that allows respondents to answer according to their 'lived sex', including [women's organisations](#) (for example, Engender, Scottish Women's Aid, Close the Gap, Rape Crisis Scotland and Equate Scotland) and [LGBTI organisations](#) (for example, Equality Network, Stonewall Scotland and LGBT Youth Scotland).

Furthermore, on 20 September 2019, 53 researchers, academics, practitioners and data users wrote to the Committee to [express their support for NRS's recommendation](#) that the 2021 census continue to ask a question about 'lived sex'. This letter was signed by a [diverse range of experts](#) working in universities, higher education agencies and other organisations across Scotland and the UK. Together they possess a breadth of expertise in the collection and use of data on identity characteristics, equality monitoring, statistical analysis and experience of working with complex datasets, including census data.

Conclusion

Any move to depart from a self-identified sex question raises questions as to what is actually meant by the concept of 'legal sex', goes against practice across the UK and comparable English-speaking countries, and establishes a dangerous precedent for the collection of other data related to identity characteristics.

These explainers help address some of the myths in circulation and **support National Records of Scotland's recommendation that the sex question in Scotland's 2021 census should continue to provide self-identification guidance.**

About the author



EDI Scotland provides research and data consultancy on issues related to equality, diversity and inclusion in Scotland.

Data, research and evidence are powerful tools in the fight against injustice and inequality. EDI Scotland promotes robust research with a radical edge and works with organisations (big and small) to make Scotland a fairer place for everyone.

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