

Written evidence submitted by Sex Matters (DUAB14)

Written evidence submission to the House of Commons Committee on the Data (Use and Access) Bill

This evidence relates to clauses 28, 45 and 140, and to the issue of unreliable data on sex feeding into digital-identity attribute data from public authorities.

It relates to amendments Gov 10, 11 and 15 which would remove safeguards inserted by the House of Lords.

About Sex Matters

1. Sex Matters is a UK human-rights charity (registered charity number 1207701) that works to restore clarity about sex to law, policy and language in order to protect everybody's rights.¹

International and regional human-rights standards and data protection

2. The protection of personal data is a fundamental human right and a key component of the right to privacy. Article 8 of the European Convention on Human Rights guarantees the right to respect for private and family life, home and correspondence. Public authorities can interfere with this right where this is lawful, necessary and proportionate in order to: protect national security, public safety, the economy, health or morals, disorder or crime; or protect the rights and freedoms of other people.
3. UK GDPR, the Data Protection Act and the Data Protection Act 2018 are important means to protect privacy based on seven key principles: lawfulness; fairness and transparency; purpose limitation; data minimisation; accuracy; storage limitation; integrity and confidentiality; and accountability.

The meaning and importance of sex

4. Sex is a biological category that refers to whether someone is male or female. It has long been recognised by biologists that the feature which defines the two sexes across animal and plant life is difference in the size of germ cells (gametes).² Human males have the type of bodies that produce small gametes (sperm) and may become fathers, and females have the type of bodies that produce large gametes (eggs) and may become mothers. Human bodies are built around these two development plans in every aspect. This results in differences in strength, size, speed and many other features. In societies and cultures that lack clear laws protecting women and girls, their freedom is constrained by measures taken to avoid male violence and sexual predation.
5. Sex is observed at birth and is part of the information required by law on the birth

¹ www.sex-matters.org info@sex-matters.org

² Horatio Hackett Newman (1924) *Outlines of General Zoology*. The MacMillan Company, New York

register.³ Birth registration is a human right and provides the basis for a person's "foundational identity". This record cannot be changed. Even when a person gets a gender-recognition certificate (GRC), this is recorded on a separate gender-recognition register and the original birth record remains.⁴

6. Until the mid-20th century a person's sex was determined by reference to outward appearance. The case of *Corbett v Corbett [1971]* provided a more precise articulation of this natural category as based on "genes, gonads and genitals". The case concerned the validity of a marriage between Arthur Corbett and April Ashley, the latter of whom was born male but had undergone genital remodelling surgery. The question was whether Ashley was now female. In assessing the medical evidence, the court was clear that "the purpose of these operations is, of course, to help to relieve the patients' symptoms... not to change their sex." The court concluded that Ashley remained male: "it is common ground between all the medical witnesses that the biological sexual constitution of an individual is fixed at birth (at the latest), and cannot be changed."
7. This approach was affirmed in subsequent cases: *Bellinger v Bellinger [2003] UKHL, A v Chief Constable of West Yorkshire Police [2004] UKHL 21* and more recently *Forstater v CGD Europe & Ors [2021] UKEAT*.
8. The government has recently successfully defended the case of *Ryan Castellucci v Gender Recognition Panel and Others [2025]* at the Court of Appeal. This concerned the request of a person from California to recognise "non-binary" identity in place of sex. Evidence given by Anna Thompson, the Deputy Director of the Equality Hub in the Cabinet Office, confirmed that sex is registered at birth based on "the [legal] test identified in *Corbett v Corbett*". She said that all children, even those who have disorders of sex development (sometimes called "intersex" conditions) are capable of being classified as male or female based on medical assessment and are recorded as such.
9. In its evidence in this case, the Government said it had undertaken a scoping exercise and found that male/female identifiers "are intrinsic to systems that departments use to function and provide services to the public". The court summarised the Government's evidence as saying that:

"Sex is... an important factor in the provision of a wide variety of public sector services: the prison estate is exclusively split into male and female accommodation; hospitals may have single sex wards; and local authorities may fund rape crisis centres and domestic abuse refuges that offer their services to

³ Schedule 1 of The Registration of Births, Deaths and Marriages Regulations 1968 in England and Wales; Schedule 1 of The Registration of Births, Still-births, Deaths and Marriages (Prescription of Forms) (Scotland) Regulations 1997; and Schedule 1 of The Civil Registration Regulations (Northern Ireland) 2012

⁴ The Gender Recognition Register Regulations 2005

females only.”⁵

10. The terms “sex” and “gender” are often used synonymously as labels for data. For example, Schedule 1 of The Education (Pupil Information) (England) Regulations 2005 includes “gender” among the contents of the common transfer file of pupil information between schools (the information recorded is sex). But “gender” is also sometimes used to refer to a different concept. That is the idea that everyone has a sense of self which is aligned to masculinity or femininity (or both or neither) and that does not depend on having a male or female body. In this sense, “gender” is subjective and self-asserted, and may be changeable over time. The NHS says:

“Someone may see themselves as a man, a woman or neither (non-binary). Being non-binary can mean having no gender, a different gender, or being in between genders. Gender can be fixed or fluid. Some people identify with a gender opposite to the sex they were registered with.”⁶

The operation of the Digital Verification Service system

11. The Data (Use and Access) Bill will establish the legislative framework for digital identity services that will enable people to prove who they are and key facts about themselves (“attributes”). The elements of this system include the **Trust Framework** (Clause 28), which includes a scoring framework for the reliability of data. **the DVS Register** (Clauses 33-44) and the **Information Gateway** (Clause 45).
12. This system will rely on public authorities providing information to registered private-sector digital verification (DV) services. It will provide (and where necessary remove) a **“trustmark”** from these certified apps and services according to whether they are following the rules.
13. This system is privacy-preserving and consent-based, seeking to allow people to “remain in control of how their data is used”, as the Secretary of State has said.⁷ It does this by only sharing each individual piece of personal data on any occasion with user consent. In this it differs from showing a passport, driving licence or bank statement, which may reveal more information than is needed for the particular purpose.
14. For this system to be successful, fundamental criteria include: that trustmarked apps and services are clear about what individual pieces of information are; that they verify only information that is true; and that they do not falsely verify information that is wrong or unreliable. When the system is asked to verify someone’s date of birth it should provide their actual date of birth, not a different date. When asked to confirm whether someone is a UK citizen it should provide the correct answer, not the wrong answer. When asked someone’s sex it should respond with their actual sex, not the answer

⁵ <https://www.judiciary.uk/wp-content/uploads/2025/02/Castellucci-v-Gender-Recognition-Panel.pdf>

⁶ NHS – Sex, gender and sexuality <https://service-manual.nhs.uk/content/inclusive-content/sex-gender-and-sexuality>

⁷ The Rt Hon Peter Kyle – Hansard 12th February 2025, [Second Reading of the DUA Bill](#)

to a different question about subjective “gender identity”.

15. The censuses carried out in England and Wales in 2021, and in Scotland in 2022 experimented, for the first time in the UK, with collecting data on gender identity. This was done by adding a voluntary question as well as the mandatory sex question. The two census counted about 100,000 people who identified as a “transgender man” or a “transgender woman”, and overall over 280,000 people who appeared to indicate that their sex and gender identity differed.⁸ (There are, however, some concerns about the accuracy of this data.)⁹ The Office For Statistics Regulation reviewed the question and the data and concluded that:

“the question developed to determine the size of the trans population of England and Wales did not work as intended. The evidence indicates that people may have found the question confusing and therefore gave a response that did not reflect their gender identity. This appears to be more likely for people who do not speak English as their first language”.¹⁰

The results were downgraded from accredited national statistics.

16. The problems experienced with the census are illustrative of the difficulty of collecting robust data on “gender identity”, a personal characteristic that is simply asserted, cannot be verified, has no agreed definition and is not commonly understood. To confuse this categorisation scheme with data on biological sex would degrade the quality of data on sex, which is vital demographic data. This would significantly harm administrative coherence, the rule of law, the exchange of information in situations where sex matters, and the protection of individuals’ data. Unless data users are clear whether they are asking for “sex” or “gender identity”, they will be unable to handle a person’s data correctly and with due regard for that person’s consent and privacy.
17. A data verification service may not need to know a person’s sex (or asserted gender identity) at all in order to confirm who they are (which can be done with biometrics, for example). But sex is also a fact (“data attribute”) about a person that is relevant for certain use cases of personal data, namely those where sex matters to the service user or the service provider. Giving the wrong answer can result in serious harms, including: people receiving the wrong diagnosis, medication or screening tests; women’s services being unable to reassure themselves of the sex of individuals seeking access; male competitors using digital identities to participate in women’s sports; women who have requested a female healthcare professional being examined by a man identifying as a woman; and safeguarding risks being mismanaged or ignored.

⁸ Office for National Statistics (2023). ‘Gender identity’, Data and analysis from Census 2021, and Scotland’s Census (2024). Sexual orientation and trans status or history.

⁹ Michael Biggs (2024). ‘Gender Identity in the 2021 Census of England and Wales: How a Flawed Question Created Spurious Data’, *Sociology*, 0(0).

¹⁰ <https://osr.statisticsauthority.gov.uk/publication/review-of-statistics-on-gender-identity-based-on-data-collected-as-part-of-the-2021-england-and-wales-census-final-report/>

18. Ensuring that data is accurate does not mean that it needs to be disclosed at all times. On the contrary, the digital identity system is designed so that each piece of data is shared only with consent and only for a specific use. In other instances the data can remain private. For example a digital verification app can be used by pubs and nightclubs to prove that a person is over 18 without revealing their name, date of birth or sex. Or a digital verification service might be used to prove to a potential landlord that a person has the right to rent. In these use cases, sex is an attribute that need not be asked about or disclosed. In other situations – such as using a digital verification service to enable sharing of healthcare information, to join a gym or a dating service, to establish a sporting record, to access a women’s refuge, to apply to join the armed forces, or in the criminal justice system – information about a person’s sex is likely to be needed.

The problem of unreliable sex data from public authorities

19. The DVS system relies on public authorities as providers of authoritative data, and the Office for Digital identities and Attributes at DSIT which is designing the digital identity framework have assumed that proving your sex is the same as “proving the sex on your passport” or other official record.

20. But many public bodies (through ad hoc, evolved custom and practice rather than a consistent approach) do not record sex reliably and have instead allowed tens of thousands of people to substitute their asserted “gender identity” for their sex. **This means that the documents and the underlying records can no longer be used to prove anyone's sex.**

21. The Passport Office allows people to self-identify as the sex they seek to “live as”, including for “crossdressers”, without any medical diagnosis or supervision.¹¹ So does the DVLA.¹² The NHS will change a person’s sex recorded in the core demographic data record of a patient on request, by issuing the person with a new NHS number.¹³ In none of these cases is the ability to change these records related to the Gender Recognition Act, or to any type of diagnosis or surgery. These public bodies do not keep consistent, accessible records of such changes, meaning that they cannot sift out the reliable records from the ones that have been changed.

22. It is not known how many records have been changed, but FOI responses show that 3,188 sex records were changed by the Passport Office over the past five years,¹⁴ and 15,481 were changed by the DVLA over the past six years.¹⁵ A person who changes one record is under no obligation to change the rest, so a person may have different “sexes”

¹¹ <https://www.gov.uk/government/publications/gender-recognition/gender-recognition-accessible>

¹² HM Government (accessed February 2025). ‘Identity documents needed for a driving licence application’.

¹³ NHS Primary Care Support England (accessed February 2025). ‘Adoption and gender reassignment processes’.

¹⁴ Figures compiled from [freedom-of-information requests through Who Do They Know](#).

¹⁵ 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’, *Express*.

recorded on their passport and driving licence, or on their NHS record and birth register.

23. When the data that is needed concerns actual sex, “passport sex” is inadequate as an answer. Consider, for example, Edinburgh Women’s Aid. It has recently released a statement that it lawfully excludes “transgender women” (i.e. males) from its shared refuge space, 24-hour refuges, and employment and volunteer roles because it is a women-only service.¹⁶ It cannot rely on “passport sex” to enforce this rule, since HM Passport Office allows people to change their recorded sex. Yet the current design of the data framework marks HMPO as an authoritative source of data on a person’s sex.
24. If public authorities such as HMPO, DVLA and the NHS are allowed to provide data on a person’s sex via the automated **information gateway**, they will provide a mixture of correct and wrong answers with no means to distinguish between the two.
25. Not only does this create specific risks of individuals being misclassified and given the wrong medical treatment or other services; it also creates risks for people who have changed their sex records in some places but not in others. Such people may receive a “red flag” and get locked out of digital services altogether because their mismatched records mean they appear to be a fraud risk.
26. Furthermore, the provision of inaccurate information will create a systemic problem: it will be impossible to create *any* DVS application that can verify sex accurately. Because the data is interoperable, it is impossible for some parts of the system to maintain people’s sex as an immutable, accurate and reliable data attribute if other parts treat the same interoperable data category (with the same metadata description as “sex”) as changeable, or accept unreliable data sources as authoritative. The question of whether sex refers to the facts of a person’s body (as recognised in common law) or the fiction of a variable administrative designation (with no legal basis) must be fixed at the design stage or the data will be irretrievably corrupted.
27. An organisation such as Women’s Aid may want to become a provider of digital verification services as well as a user, since women are routinely referred between the members of its network and to other providers. In this case it needs to be able to reliably share information on actual sex. The same is true for any organisation sharing personal data on sex, for example for the purpose of healthcare, sport or safeguarding. These organisations will be locked out of the DVS system, which will become the identity layer for public life, if the rules require them to regard a government record saying “F” as true, even when it contradicts the physical fact that a person is male. The costs of not solving this problem at the outset have not been estimated but are likely to be considerable, as organisations that need to collect accurate sex data will be forced to develop their own parallel systems.

The safeguards

28. During the Lords stage of this Bill, three amendments were introduced which would

¹⁶ Edinburgh Women’s Aid (2025) [Statement on single sex services](#)

together ensure that unreliable data from public authorities is not allowed into the digital verification system.

- **Clause 28(4)** provides that The Secretary of State must assess whether public authorities handle personal data accurately and reliably when developing the **Trust Framework**.
- **Clause 45(6)** provides that public authorities can only share data via the **Information Gateway** that is accurate, and they must know what it refers to.
- **Clause 140** provides that the Secretary of State may establish a **“data dictionary”** so that different items of data are not muddled up.

29. These safeguards would not “out” transgender people when they are using digital identity for purposes which do not require their sex, such as to prove their age or their right to rent.

30. What the safeguards would do is ensure that only reliable sources (such as the electronic registers of birth, reliable healthcare records, or the results of cheek swab tests for athletes) are allowed as sources of data on sex for people who *do* want to share this information. Unreliable sources, such as records currently held by HMPO or DVLA, could not be used as sources of verified data on a person’s sex (since these institutions have not maintained the data integrity to provide this).

31. Clause 45(6) also includes a provision that a public authority can share information if it is able to attest that it has been corrected lawfully. This is crucial to enable rare administrative corrections to be integrated effectively. The case of the baby girl Lilah, born last year and accidentally recorded as “male”, highlights this need.¹⁷ The Registration of Births, Deaths and Marriages Regulations 1968 sets out precise instructions on lawful rectification of errors in birth records, but the result is a handwritten note in the margin of the birth register. As things stand, a child whose sex has been recorded wrongly and corrected in this analogue fashion will have that wrong sex in their official digital records for life, with the correction lost in the “Marginal Note” field.¹⁸ This system needs careful translation into the digital age so that it deals properly with rare, genuine administrative errors without enabling individuals to change their sex based on gender self-ID.

Human-rights analysis

32. The government is seeking to remove the safeguards from clause 28 and 45 and 140. The Rt Hon Peter Kyle MP, Secretary of State for Science, Innovation and Technology, has made a statement on the face of the Data (Use and Access) Bill that he is unable to confirm that clause 45(6) is compatible with the Convention rights. The Department of Science, Innovation and Technology (DSIT) says it considers that clause, which requires public authorities to verify only data that is accurate, is a disproportionate (and therefore

¹⁷ Amelia Hill (2024). “We were horrified”: parents heartbroken as baby girl registered as male’. *The Guardian*.

¹⁸ UK Government (accessed February 2025). lev.api/mock/birth_registration_v0.json

unlawful) interference with the rights protected by Article 8.

33. DSIT has not published a detailed basis for its human-rights analysis, but it appears to be based on two misunderstandings:

- Ministers have said that the safeguards would mean individuals being required to disclose their sex when it is not needed. At the second reading the Secretary of State said:

“People will use digital identities to buy a house, to rent a car and to get a job. The intention of clause 45(6) is to force public authorities to share whether someone’s information, such as their sex, has changed when disclosing information under clause 45 as part of a digital verification check. That would mean passing on an excessive amount of personal data.”¹⁹

- Conversely, ministers seem to believe that it is already possible to “prove your sex” using documents such as a passport.

Both of these objections misunderstand the issue and the proposed solution.

34. The issue is that unless safeguards are put in place to prevent unreliable public data sources being marked as “authoritative”, *no one* will be able to use digital identity services to verify their actual immutable sex, and instead the system will confidently provide wrong answers, allowing males to be verified as female and females to be verified as male for all purposes, even if they do not have a GRC.

35. The solution is to require public authorities to provide only information that is accurate and adequate, including on sex.

36. Parliament has a choice (and a responsibility to consider) two mutually exclusive options. The first is to legislate to develop a system that will “verify” unreliable and false data as reliable and true. This would be, in effect, a law enabling gender self-ID. The second is to legislate to develop a system designed to verify sex data robustly wherever that data is needed, such as for safety, dignity, fairness and the protection of women's rights. **It cannot do both. And if it tries to avoid answering it will have chosen the first option by default.**

37. Ensuring the system keeps data about sex accurate does not stop people from expressing themselves by declaring a gender identity, changing their name and title, or changing their appearance.

38. The requirements of proportionality in the human-rights context are well-established (see the decision of the Supreme Court in *Bank Mellat v HM Treasury (No. 2)* [2012] UKSC). Four questions must be asked:

¹⁹ The Right Hon Peter Kyle – Hansard 12th February 2025, [Second Reading of the DUA Bill](#)

- i) Is there a sufficiently important objective which the measure pursues?
- ii) Is there a rational connection between the means chosen and that objective?
- iii) Are there less intrusive means available?
- iv) Is there a fair balance struck between the rights of the individual and the general interests of the community?

39. The objective of the safeguards is to ensure that when people provide consent for a piece of their data to be shared via the DVS system, that piece of data is accurate. This would be achieved by ensuring that data coming from public authorities is labelled with clear **metadata**, and that those authorities **do not provide unreliable data** or data that answers a different question. There are no *less intrusive* means for providing accurate data than ensuring it is accurate.
40. Safeguards that prevent false and unreliable data feeding into the DVS system are justified as necessary and proportionate in order to protect public safety, the economy, health/ morals, disorder/ crime, and the rights and freedoms of other people.
41. Since each piece of data will be recorded only with consent, and shared only with consent on each specific occasion it is requested, there is no breach of Article 8.
42. However, the Government appears to assume that it would breach Article 8 *not* to allow the system to provide false data on sex (that is, that it *must* be allowed to provide a person's asserted gender identity in place of their sex). This is a misreading of the judgment in the ECHR case of *Goodwin v UK [2002]*. In this case ECHR found that the UK had breached a transsexual's Article 8 rights where the person would be forced to reveal their sex data *where it was not needed*. This was an analogue problem that related to the use of paper documents. In a digital world, each data attribute is handled separately. The practical issue for people who don't want to declare their sex in a situation where it is not needed has been removed. No elaborate system of data falsification is needed since the digital identity service shares only the data that is needed.
43. The Article 8 argument about asking for accurate sex data has already been tested in *Fair Play For Women v UK Statistics Authority [2021] EWHC*. This case was taken by FPFW, a grassroots women's-rights group, after the Office for National Statistics issued guidance for the 2021 census stating that people could answer the sex question with whatever was stated on any official document (such as "passport sex" or "driving-licence sex"). When this was challenged in the High Court, the ONS argued that asking about people's actual sex risked a breach of Article 8. The judge disagreed and found that FPFW had a "strongly arguable case". He said:

"I doubt there would be any breach of article 8(1) rights [from asking for a particular definition of sex] but, if there were, it would be justified. The question would be posed in pursuit of legitimate objectives... and any interference would be justified on

the fair balance principle, in particular, given the careful and confidential way in which census information is used.

44. Around the same time, the Equality and Human Rights Commission clarified in relation to the Scottish Census that:

“Collecting information on sex assigned at birth can be, but will not always be, an interference with a trans person’s right to a private life.”²⁰

45. Without the safeguards discussed in this submission, the digital-identity framework will introduce “gender self-ID” (that is, will overwrite sex by asserted gender identity in public life, thus destroying sex-based rules and institutions) without adequate consideration. Legislating for gender self-ID has already been rejected by the Government, and both the Labour Party and the Conservatives. The introduction of gender self-ID would be a weighty policy measure with serious impacts on women’s rights. It should not happen by accident.

46. In 2023 the Scottish Government passed the Gender Recognition Reform Bill (Scotland). The UK government said that the GRRB which would have brought in gender self-ID in Scotland would create adverse impacts for the safety of women and girls, and for the operation of protections against sex discrimination in the Equality Act.²¹ The impact of gender self-ID on lesbians has been raised as a particular concern.²² The Outer House of the Court of Session ruled that the UK government had acted lawfully, and that its concerns for women’s safety and for fairness and administrative coherence were reasonable.

47. It is not a breach of human rights to provide a system that *can* accurately verify sex. However, it may well be a breach of human rights to develop an overarching national system for personal data verification that *cannot* do so. The Government has failed to consider human-rights risks related to:

- individuals being unable to share information on their own sex reliably
- organisations being locked out of the system if they do not follow rules that treat a government record saying “M” or “F” as more trustworthy than discernible evidence of the material reality of a person’s sex
- women and girls being harmed by a de facto system of gender self-ID, with sex replaced by gender identity in all verified records, carelessly and without due consideration.

March 2025

²⁰ Equality and Human Rights Commission (2020). Letter to Kiri Tunks, Judith Green and Ruth Serwotka, co-founders, Woman’s Place UK.

²¹ <https://www.gov.uk/government/publications/statement-of-reasons-related-to-the-use-of-section-35-of-the-scotland-act-1998/html-version>

²² <https://labourwomensdeclaration.org.uk/labour-mp-briefing-issues-facing-lesbians-in-the-labour-party/>