



MSP briefing - December 2021

About us

Established in late 2018, [MurrayBlackburnMackenzie](#) has undertaken extensive analysis of the adoption of gender self-identification principles in law and public policy in Scotland and across the UK. We have provided oral and written [evidence](#) to the UK and Scottish Parliaments and regularly comment in the [media](#). Our work is available on an open access basis via our website, including [academic papers](#), briefing notes and media articles. Most of our work has been done on an unpaid basis, with some support via [funding](#) from crowdfunders and donations.

Gender recognition reform

The Scottish Government intends to bring forward draft legislation to reform the Gender Recognition Act (GRA) 2004. In its Programme for Government, the Scottish Government stated that intended to “bring forward the Gender Recognition Reform (Scotland) Bill, removing the current medical requirements and reducing the time that applicants for gender recognition need to have lived in their acquired gender from two years to three months”.

The Scottish Government has undertaken two consultations on GRA reform: the first in 2017 and the second in 2019. Our work to date has considered the potential impact of reform on women’s existing sex-based rights. In our view, a model of legal sex change based on a system of self-declaration (often termed ‘self-identification’ or ‘self-ID’) is incompatible with maintaining legal protections which exist to address the discrimination and disadvantage experienced by women on the basis of sex, including women only spaces and services.

We recently published polling data which showed that while the majority of Scots are supportive of people freely expressing their transgender identity, this does not translate into support for a self-declaration model. We have also published a package of reform options aimed at modernising and simplifying the 2004 Act, whilst maintaining an element of medical approval.

Relevant briefings:

- [MBM opinion poll on public support for gender recognition reform](#) (December 2021)
- [Alternative GRA reform options](#) (December 2021)
- [Gender recognition reform and international developments](#) (September 2021)
- [MBM submission to the 2019 consultation](#) (March 2020)
- For additional briefings and evidence see: [Gender Recognition reform](#)

Data collection

We have [documented](#) how public bodies have changed their data collection practices, sometimes ceasing to collect data on sex altogether or conflating the separate demographic variables of sex and gender identity. Such changes have often taken place without wider consultation with affected groups and stakeholders. This shift puts the collection of robust, high quality data on sex at risk, which is essential to our ability to measure, understand, and remedy discrimination and disadvantage experienced by women on the basis of sex.

Scotland’s 2022 Census

The Scottish Government has agreed guidance to accompany the sex question in the next Scottish census (due to take place in March 2022), which will advise respondents that they may

answer based on their self-declared gender identity. This is despite the fact that there is a new, separate question on trans status.

Similar guidance for the 2021 census in England and Wales was [successfully challenged](#) in the English High Court in March this year by feminist campaign group Fair Play For Women (FPFW). FPFW have now launched a [legal action](#) against Scottish Ministers which will likely be heard early in the new year. They have instructed Roddy Dunlop QC for the case.

Relevant briefings:

- [Q&A on the sex question guidance for the 2022 Scottish census](#) (December 2021)
- [Did MSPs approve the guidance for the sex question in Scotland's census?](#) (Dec 2021)
- [International evidence and the risks of reframing the sex question in the census](#) (Nov 2020)
- For additional briefings and evidence see: [Sex and the Census](#)

Chief Statistician's guidance

In September, the Scottish Government Chief Statistician published [guidance](#) for Scottish public bodies on the collection of data on sex and gender. It advises that public bodies should cease collecting data on physical sex other than in exceptional circumstances, and otherwise defines 'sex' as a mix of biological, legal and self-defined characteristics. If widely adopted, this is likely to have a detrimental impact on Scottish policy-making.

We established via a freedom of information request that the guidance was [heavily influenced](#) by [advice](#) from the Equality and Human Rights Commission (EHRC) which stated that collecting data on biological sex might be in breach of Article 8 privacy rights. This is disputed by a [legal opinion](#) prepared by Scottish advocate Aidan O'Neill QC commissioned by feminist campaign group Woman's Place UK. The EHRC has since admitted in that its advice was not clear and that it would ensure public bodies had clearer guidance on this matter.

Relevant briefings:

- [Diminishing the value of public sector data](#) (November 2021)
- [MBM response to Chief Statistician's draft guidance](#) (May 2021)

Petition on recording rape

Earlier this year, it [emerged](#) that Police Scotland had changed its recording practices so that a person directly charged with rape or attempted rape could be recorded as female. This issue has received some media coverage in the last week.

In June, we lodged a [petition](#) with the Citizen Participation and Public Petitions Committee which calls on the Scottish Parliament to urge the Scottish Government to require Police Scotland, the Crown Office and the Scottish Court Service to accurately record the sex of people charged or convicted of rape or attempted rape. The petition, which received over 12k signatures, was considered in October, when the Committee [decided](#) to take further evidence.

Relevant briefings:

- [MBM submission to Citizen Participation and Public Petitions Committee](#) (June 2021)
- [MBM response to Scottish Government submission on the petition](#) (October 2021)

Hate crime

In the last Parliament, we closely scrutinised the Hate Crime and Public Order (Scotland) Act. We also continue to take an interest in the work of the Independent Working Group on Misogyny and Criminal Justice in Scotland. Our work in this area can be found [here](#).

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