



Engender submission to the Office of the Chief Statistician on:

Sex/gender: Gathering and using data to advance women's equality and rights in Scotland

February 2020

1. INTRODUCTION

Engender is a feminist policy and advocacy organisation working to realise women's economic, social and political rights and gender equality in Scotland. We do this work because men and women, boys and girls, are still living different lives in 21st century Scotland, and have different access to resources, to power, and to safety.

In order to make public policy and legislation that works for women, and that can advance equality and realise women's rights, it is imperative that public bodies, including Scottish Government, generate and use data that captures women's experiences. During Engender's 27-year history, we have worked to advocate for better quality gender-sensitive sex-disaggregated data¹. We were formed with the purpose of ensuring that the detail of women's lives was visible, counted, and understood in policymaking processes².

In this short submission we are following up on our meeting with the Chief Statistician as part of the Working Group about a Person's Sex and Gender. In the sections below we will:

- Set out the connection between gender-sensitive sex-disaggregated data and women's equality and rights;
- Give our assessment of the key issues around women's equality and rights and data gathering and analysis in Scotland; and
- Provide our recommendations for:

¹ Terms in bold are defined in a 'terminology' section that follows the introduction.

² Engender. "You'll Have Had Yer Feminism? Episode 1." On the Engender. <https://www.engender.org.uk/content/on-the-engender-podcast/>.

- actions to improve data gathering and analysis, and
- principles and approaches for inclusion in the working group's statement of principles and guidance³; and
- Asking questions about individuals' sex.

It is our view that focus on the method for asking questions about an individual's sex has generated more heat than light, and leaves unanswered the critical questions around how to generate and use data to advance women's equality and rights. We consider the issue in some detail in section 4 of this paper, with the remainder focussed on the wider question of gathering the data needed to evidence making material improvements to women's lives.

1.1 TERMINOLOGY

The nomenclature around sex and gender is currently experiencing a moment of considerable contestation within the public discourse. Some of this conversation is a reflection of work, spanning many decades, within a whole range of feminist academic disciplines and activist spaces that has explored the question of how we should define 'woman'.

Other parts of this conversation reflect the differences of meaning that have been attached to the word 'gender' in different contexts. A detailed history of these differences is beyond the scope of this submission, but it has been used to mean:

- The social imposed division of the sexes (in use from the 1940s);
- An internal sense of whether you are a man or a woman (in use from the 1940s);
- A synonym for sex (in use from the 1500s).⁴

To avoid confusion, we offer the following working definitions within the scope of this paper. We set out our thinking around this in section 4.

Sex

Whether you are a man or a woman.⁵

³ Scottish Government. 2019. "Working Group about a Person's Sex and Gender: Terms of Reference." <https://www.gov.scot/publications/sex-and-gender-in-data-working-group-terms-of-reference/>.

⁴ Cameron, Deborah. 2016. "A Brief History of 'Gender.'" *Language: A Feminist Guide*. <https://debut.wordpress.com/2016/12/15/a-brief-history-of-gender/>.

⁵ In terms of equality data collection, this would also include an 'other' option, in which individuals may describe themselves as e.g. non-binary.

Gender

Gender is a socially constructed set of norms, roles, and relationships that is constituted in our social mores, laws, processes and policies. It is time and culture specific and functions as a hierarchy.

Gender identity

Whether an individual's internal sense of themselves aligns with their sex as assigned or observed at birth.

Gender-sensitive data

Statistics and other information that adequately reflect gendered differences and inequalities in the situation of women and men in all areas of life.

Sex-disaggregated data

Data that is broken down by sex, so that it is possible to compare and contrast differences between men and women.

Gender-disaggregated data

This is a widely used, if literally inaccurate, synonym for data that is both gender-sensitive and sex-disaggregated.

(To) gender (e.g. policy or data)

To make gender-sensitive, i.e. to ensure gendered differences and inequalities in the situation of women and men are reflected.

Gender-competence

This refers to the skills, knowledge and analytical capability to develop statistics, data, policy, or programmes that are well-gendered; that take account of the socially constructed difference between men's and women's lives and experiences.

Gender mainstreaming

This involves the integration of a gender perspective into the preparation, design, implementation, monitoring and evaluation of statistics, policies, regulatory measures and spending programmes, with a view to promoting equality between women and men, and combating discrimination.

2. WHY GENDER-SENSITIVE DATA IS ESSENTIAL FOR WOMEN'S EQUALITY AND RIGHTS

The work of feminist gender justice advocates is predicated on the notion that inequalities persist between the sexes, and that the unequal distribution of power, resources, and safety fundamentally negatively shapes the lives of women and girls. There are emblematic issues for women's equality and rights, including: women's representation in political and public life, anti-discrimination law and access to justice, violence against women, participation in the labour market and the gender pay gap, publicly-funded childcare, maternity and parental leave, abortion and reproductive justice, and divorce and family law. However, gender justice concerns do not stop there. Policy within transport, planning and public space, social and unpaid care, women's health, employability, social security, and economic development must also be gender-sensitive if women and girls are to enjoy equal access to public goods and services.⁶

The critical methodology for ensuring that states and public bodies integrate consideration of the differences between men's and women's lives into policymaking is called gender mainstreaming. In 1995, following the UN's Fourth World Council on Women, the UK and many other UN member states signed up to the Beijing Platform for Action on twelve critical areas of concern to women's equality and rights⁷. This included a firm commitment to gender mainstreaming and to developing associated programmes of data collection and analysis.⁸

Feminist calls for gender-sensitive sex-disaggregated data did not begin in 1995, of course. By this time, gender justice advocates were already writing about the dearth of women in official statistics⁹; detailed analyses of why gender-blind data about labour market participation led to flawed policy interventions¹⁰; and designing and administering community victimisation surveys to partly fill the gaps in the

⁶ Engender. 2017. "Gender Matters Roadmap: Towards Women's Equality in Scotland."

⁷ The European Institute of Gender Equality tracks work within EU member states and the Commission to enable work against the 113 Beijing Platform for Action indicators. This is available here: <https://eige.europa.eu/gender-statistics/dgs/browse/bpfa>

⁸ United Nations, and World Conference on Women. 1995. "Beijing Declaration and Platform for Action: Fourth World Conference on Women." In UN Women. <https://www.unwomen.org/en/digital-library/publications/2015/01/beijing-declaration>.

⁹ All in, Paul, and Audrey Hunt. 1982. "Women in Official Statistics." In *The Changing Experience of Women*, edited by Elizabeth Whitelegg. Open University.

¹⁰ Abbott, Pamela. 1991. "Feminist Perspectives in Sociology: The Challenge to 'Mainstream' Orthodoxy." In *Out of the Margins: Women's Studies in the Nineties*, edited by Jane Aaron and Sylvia Walby. London; New York: Falmer Press Ltd.

administrative data around rape and sexual assault¹¹. However, the Beijing Platform for Action triggered the creation of significant programmes by states to develop gender-sensitive data both regionally and globally, and increased the commitment of supranational institutions to this project. This has led to the production of tools by institutions such as OECD¹², UN Statistics Division¹³, and the World Bank¹⁴ on gender-sensitive statistics.

Programmes to gender statistical data were also responsive to the UN Convention on the Elimination of all forms of Discrimination Against Women (CEDAW), which mandates states party, including the UK, to gather gender-sensitive data by ensuring:

“that their national statistical services responsible for planning national censuses and other social and economic surveys formulate their questionnaires in such a way that data can be disaggregated according to gender, with regard to both absolute numbers and percentages, so that interested users can easily obtain information on the situation of women in the particular sector in which they are interested.”¹⁵

The work done since 1995 has created some international consensus among and between agencies and gender justice advocates about the features of gender-sensitive statistics. These align both with the Beijing Platform for Action itself and also with the objectives of regional mainstreaming programmes.

These features, lightly composited here from lists produced by the UN Gender Statistics Manual¹⁶ and the European Institute of Gender Equality Gender Statistics Database¹⁷ are:

- a) Data are collected and presented by sex as a primary and overall classification;
- b) Data reflect gender issues, such as childcare spending and provision;
- c) Data are based on concepts and definitions that adequately reflect the diversity of women and men and capture all aspects of their lives; and

¹¹ Lees, Sue. 1997. *Carnal Knowledge: Rape On Trial*. London: Penguin.

¹² OECD. 2019. “Gender-Disaggregated Data - Organisation for Economic Co-Operation and Development.” Accessed July 19. <http://www.oecd.org/gender/governance/toolkit/government/assessment-of-gender-impact/disaggregated-data/>.

¹³ UN Statistic Division. 2020. “UN Gender Statistics Manual.” Accessed February 17. <https://unstats.un.org/unsd/genderstatmanual/Default.aspx>.

¹⁴ World Bank. 2020. “Gender Data Portal.” Accessed February 17. <https://datatopics.worldbank.org/gender/>.

¹⁵ UN Committee on the Elimination of Discrimination against Women. 1989. “CEDAW General Recommendation No. 9: Statistical Data Concerning the Situation of Women, Adopted at the Eighth Session, 1989.” United Nations. https://tbiinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/1_Global/A_44_38_3724_E.pdf.

¹⁶ UN Statistics Division. 2020. “UN Gender Statistics Manual.” Accessed February 17. <https://unstats.un.org/unsd/genderstatmanual/Default.aspx>.

¹⁷ European Institute of Gender Equality. 2020. “Gender Statistics Database.” European Institute for Gender Equality. Accessed February 17. <https://eige.europa.eu/gender-statistics/dgs>.

- d) Data collection methods take into account stereotypes and social and cultural factors that may induce gender bias in the data.

Producing gender statistics requires statisticians and analysts to move beyond simply counting women, and to fundamentally reconsider some of their assumptions about the world. In doing so, those responsible for the production of these data must acquire sufficient gender competence to wrestle with these considerations. In an evaluation of EU member state production of gender-sensitive labour market statistics, Nicot and Houtman write:

“The shift from sex-disaggregated data collection to genuine gender statistics requires a profound evolution in some of the concepts used in the field concerned by the study or survey, along with a questioning of the pertinent boundaries of investigation. For instance, the assessment of the actual contribution of women to society systematically stumbles over the concept of work as defined by economists, which only includes remunerated work. Questioning this definition challenges the bases of modern economics for which market value and solvable demand are core concepts. As this definition is used for the calculation of gross domestic product (GDP) - which plays a central role in national policies - it can be easily understood why unremunerated work becomes a blind spot in decision making most if not all of the time.”¹⁸

3. IS SCOTLAND MEETING ITS OBLIGATIONS TO GATHER AND USE GENDER-SENSITIVE DATA?

3.1 Obligations to gather and use gender-sensitive data about men and women

There is limited evidence that much gender-sensitive data is gathered and published in Scotland. Failure to do this means that Scottish Government and other public bodies are in breach of their obligations under the UN Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW). The UN’s CEDAW Committee expressed its concern in 2019, during its examination of the UK:

“regarding the lack of systematic collection of data, disaggregated by sex, gender, ethnicity, disability and age, in particular with regard to intersecting forms of discrimination, to identify areas in which women lack substantive equality with men, **inform policymaking** and assess the impact of measures taken.”¹⁹ [our emphasis]

¹⁸ Nicot, Anne-Marie, and Irene Houtman. 2007. “Gender Mainstreaming in Surveys.” Eurofound. <https://www.eurofound.europa.eu/publications/report/2006/gender-mainstreaming-in-surveys>.

¹⁹ UN Committee on the Elimination of Discrimination against Women. 2019. “Concluding Observations on the Eighth Periodic Report of the United Kingdom of Great Britain and Northern Ireland.” United Nations. https://tbiinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CEDAW/C/GBR/CO/8&Lang=En.

Public bodies that fail to gather and use gender-sensitive data may also be in breach of the public sector equality, which mandates the collection and publication of employment data by listed public authorities and necessitates that all public authorities use equality evidence when making decisions.²⁰

Sex-disaggregated data is more frequently gathered, although it is often not published. Of significant concern is that even this sex-disaggregated data is not analysed and used in policy formulation. There is an example of this in section 3.4.

3.2 A lack of evidence of gender-sensitive data collection and publication

The reviews of data-collection, analysis, and use by public bodies in response to the public sector equality duty describe fundamental weaknesses in creating and using gender-sensitive data across the public sector.

Close the Gap's assessment of the publication of employee data finds 'significant issues with the quality and format' of data and notes that a quarter of public bodies that they assessed have either provided no employment data at all or failed to sex-disaggregate it²¹.

The Equality and Human Rights Commission (EHRC) describes the 'collection and use of employee data' as an 'area of weakness' for public bodies²². Work by the Coalition for Racial Equality and Rights for the EHRC describes 'substantial gaps, irregularities and inconsistencies in the data available' in the publications by public authorities²³.

Information on how to gather equality data is produced by a range of third-sector organisations. Public bodies take advice from a range of sources, including sharing approaches with one another informally and in semi-formal networks of equality practitioners. Monitoring forms and tools are refreshed sporadically and unevenly, so significant divergence can develop in the fine detail of equality data gathered by public bodies (or units within public bodies) delivering similar services or operating within the same broad system.

²⁰ EHRC Scotland. 2016. "Technical Guidance on the Public Sector Equality Duty: Scotland." https://www.equalityhumanrights.com/sites/default/files/redraft_of_psd_tech_guidance_-_v6sc.pdf.

²¹ Close the Gap. 2015. Making Progress? An Assessment of Public Sector Employers' Compliance with the Public Sector Equality Duty.

²² EHRC Scotland. 2017. Measuring Up? Report 7: Public Authorities' Performance in Meeting the Scottish Specific Equality Duties 2017. Equality and Human Rights Commission.

²³ Coalition for Racial Equality and Rights. 2018. Effectiveness of the PSED Specific Duties in Scotland. Equality and Human Rights Commission. <https://www.equalityhumanrights.com/en/publication-download/effectiveness-psed-specific-duties-scotland>.

Other ideas, some wildly inaccurate, also inform public bodies' thinking about how to gather and use equality data. Over the last few years, Engender and other women's organisations have been told that the EU General Data Protection Regulation (GDPR) would stop bodies asking service users their sex, which is untrue. We regularly hear that it is a breach of the Equality Act 2010 for public bodies to ask service users if they are men or women, which is also not the case. We are now increasingly hearing concerns from public bodies that suggests that the existence of non-binary people would render it 'offensive' to ask individuals their sex, which is discouraging them from asking service-users and employees for their sex in contexts where it would otherwise be routine. A contentious public debate about sex and gender has also increased public bodies' sensitivities about asking questions in this space.

3.3 Strategic use of gender-sensitive data

At the most strategic and overarching policymaking level in Scotland, there is very little evidence of gender-sensitive data informing the content of priorities or even their measurement.

National Performance Framework

Only two of the 81 indicators in the National Performance Framework²⁴ (NPF) relate specifically to women²⁵, and to view sex-disaggregated data about individual indicators requires a visit to the separate Equality Evidence Finder website²⁶.

Although there is supposed to be a link between the NPF to the global Sustainable Development Goals (SDGs), there is no direct read across from SDG5 on gender equality and women and girls' empowerment²⁷. As a result, it is Engender's view that the NPF is not well-gendered. It is possible, and indeed likely, that progress will be made towards NPF outcomes in a way that entrenches and deepens women's inequality.²⁸

²⁴ Scottish Government. 2019. "National Indicator Performance." Accessed August 10.

<https://nationalperformance.gov.scot/index.php/measuring-progress/national-indicator-performance>.

²⁵ These are the gender pay gap and the difference between women's and men's labour market participation rates (called 'organisational gender balance').

²⁶ Scottish Government. 2019. "Equality National Performance Framework Dashboard." Accessed August 10.

<https://scotland.shinyapps.io/sg-equality-evidence-finder/#equality-npf-top>.

²⁷ This position is shared in the analysis of Dr Graham Long, who notes that the NPF's alignment with the UN Sustainable Development Goals is weak when it comes to gender equality and its indicators. Accordingly, Scotland currently appears unlikely to meet SDG 5; Dr Graham Long. 2019. The SDGs and Scotland: a discussion paper and initial analysis

²⁸ For example, the indicator on 'skill profile of the population' is the proportion of adults aged 16-64 with low or no qualifications at SCQF level 4 or below. Modern Apprenticeships are an intermediate skills programme that acts as a key entry point to the labour market but spend on this programme is currently widening the gender pay gap because of the starkly different experiences for women and men. If efforts to reduce the proportion of adults with low or no qualifications involve expansion of existing skills programmes, then these may intensify the gender segregation that is a feature of the Scottish labour market.

Scottish Budget

Since devolution, Scotland has made some progress towards gender-responsive budgeting, primarily in the form of the Equality and Budget Advisory Group and Equality Budget Statement (EBS)²⁹, which is now the Equality and Fairer Scotland Statement. Published in parallel to the Draft Budget, the EBS assesses the Ministerial Portfolios' proposed spending plans for their impact on equality and socioeconomic inequality. It is currently the only process of its kind in the UK.

However, at present, the EBS is a list of gender and equalities-inflected spend, describing spending decisions that have already been made. It has limited impact on the budget process itself. In Engender's 2017 Gender Matters Roadmap³⁰, we called for the Scottish Government to extend the Equality and Fairer Scotland statement process into a full gender analysis of the Scottish Budget, where the cumulative impact of spending decisions on women's equality is considered. GBA should become embedded within the Scottish Government's normal annual routines of budgeting and of policy-making, rather than be used only as an extrinsic form of analysis, and Government should be able to demonstrate how GBA has informed resource re-prioritisation and re-allocation decisions across spending portfolios³¹.

In our submission to the Budget Process Review Group we identified the need for more gender-disaggregated data³² to be available to the revised Budget process. This was reflected in Recommendation 43 in the Budget Process Review Group's final report, which proposed that "additional equalities information" be published "prior to the summer recess" as part of work towards "a cycle of ex-ante, concurrent, and ex-post equalities scrutiny of the budget process as recommended by the OECD"³³.

Gender budget analysis of the Scottish Budget process is a key example of the need for gender-sensitive data production to be combined with gender mainstreaming approaches.

²⁹ Scottish Government. 2018. "Scottish Budget 2019-2020: Equality and Fairer Scotland Statement." <https://www.gov.scot/publications/equality-fairer-scotland-budget-statement-scottish-budget-2019-20/>.

³⁰ Engender. 2017. "Gender Matters Roadmap: Towards Women's Equality in Scotland."

³¹ Downes, Ronnie, Lisa von Trapp, and Scherie Nicol. 2017. "Gender Budgeting in OECD Countries." *OECD Journal on Budgeting* 16 (3): 71–107. doi:10.1787/budget-16-5jfq80dq1zbn.

³² Engender. 2017. "Engender Submission to the Budget Process Review Group Consultation."

³³ Budget Process Review Group. 2017. "Budget Process Review Group: Final Report."

3.4 Data gaps in specific policy domains

Engender works both on gender mainstreaming as a specific policy issue, and on multiple policy issues across the broad themes of women's economic, social and cultural, and economic equality.

In every policy area we work across, without exception, a lack of gender-sensitive data undermines the capacity of policy and legislation to meet women's needs, to treat women fairly, and to bring about women's equality and rights. It is rare for calls for gender-sensitive data to be produced to be missing from any given research report, parliamentary briefing, or consultation response that we publish. As an indicator, recommendations for substantive programmes of gender-sensitive data development can be found in our reports on such diverse topics as hate crime³⁴, disabled women's health³⁵, employability³⁶, and social security³⁷ and in all of the advocacy with policymakers and parliamentarians that has followed. These are not wish-lists peripheral to the central issue: it is clear to us that a failure to gather, analyse, and use gender-sensitive data has been a serious impediment to gender mainstreaming within policy and programme development.

For example, as we observe in our report *Unblocking the Pipeline*, data on employability in Scotland is not gender-disaggregated³⁸ at either the programme or national level. This is linked to the failure of the employability sector to engage with gender by appreciating, in the design of its initiatives and projects, that women's starkly different experience of the labour market, care, and men's violence may necessitate different services. In turn, this has a profound impact on women's employment and pay. The lifetime effect of reduced employment at lower rates of pay then aggregates up to become a drag on Scottish Government's ambitions for economic growth.

³⁴ Engender. 2019. Making Women Safer in Scotland: The Case for a Standalone Misogyny Offence. <https://www.engender.org.uk/content/publications/Making-Women-Safer-in-Scotland--the-case-for-a-standalone-misogyny-offence.pdf>.

³⁵ Engender. 2018. Our Bodies, Our Rights: Identifying and Removing Barriers to Disabled Women's Reproductive Rights in Scotland. <https://www.engender.org.uk/content/publications/Our-bodies-our-rights--Identifying-and-removing-barriers-to-disabled-womens-reproductive-rights-in-Scotland.pdf>.

³⁶ Engender. 2016. "Unblocking the Pipeline: Gender and Employability in Scotland."

³⁷ Engender. 2016. Securing Women's Futures: Using Scotland's New Social Security Powers to Close the Gender Equality Gap.

³⁸ This is an internationally-used (if somewhat inaccurate) shorthand for "gender-sensitive sex-disaggregated data". See: OECD. 2019. "Gender-Disaggregated Data - Organisation for Economic Co-Operation and Development." Accessed July 19. <http://www.oecd.org/gender/governance/toolkit/government/assessment-of-gender-impact/disaggregated-data/>; UN Stats. 2019. "What Are Gender Statistics." Gender Statistics Manual. Accessed July 19. <https://unstats.un.org/unsd/genderstatmanual/What-are-gender-stats.ashx>.

We provide a more detailed case study of gender-sensitive data gaps and the way this is currently undermining development of transport policy and infrastructure programmes below.

CASE STUDY: TRANSPORT

Women use public transport differently from men, in ways that are inflected by, among other things:

- the fact that women do more of the domestic and reproductive labour and provide the majority of care for children, disabled people, and older people;
- women's experience of men's violence;
- women's experience of poverty;
- women's different experience of the labour market; and
- women's access to different modes of public transport.

One element of women's different transport use is that women are much more likely to string multiple journeys together in order to meet the need to drop children off at nursery en route to work, or to stop off at a supermarket to buy dinner on the way home. Making multiple stops in this way is called 'trip-chaining' and women's propensity to do it constrains the geographical radius within which they can do paid work, affecting their lifetime incomes. This is invisibilised within the design of survey instruments and in the use of the data generated by these. Clara Greed writes that "there used to be local planning authorities that only asked the head of the household about his journeys when undertaking traffic surveys"³⁹. Things have moved on, although not as far as women need.

Scottish Government now asks citizens who complete the travel diary associated with the Scottish Household Survey⁴⁰ to provide details of all of the travel that they have undertaken in a day, and whether or not they had taken someone else on each individual journey. It is not clear whether this captures the spatio-temporal dimension of trip-chaining⁴¹ sufficiently. For example, within the Travel Diary, in

³⁹ Greed, Clara H. 1994. *Women and Planning: Creating Gendered Realities*. London ; New York: Routledge.

⁴⁰ Scottish Government. 2019. *Scottish Household Survey 2019 Questionnaire*.
<https://www2.gov.scot/Resource/0054/00548028.pdf>.

⁴¹ See: Valiquette, François, and Catherine Morency. 2010. "Trip Chaining and Its Impact on Travel Behaviour." In , 21. Lisbon, Portugal.; Sicotte, Gabriel, Catherine Morency, and Bilal Farooq. 2017. *Comparison Between Trip and Trip Chain Models: Evidence from Montreal Commuter Train Corridor*. CIRRELT.
<https://www.cirrelt.ca/DocumentsTravail/CIRRELT-2017-35.pdf>; and Scheiner, Joachim, and Christian Holz-

response to the question “why did you use a car for this particular {part of the} journey?”:

- The option “Drop off children on the way” has been removed from the responses;
- “No public transport/public transport unsuitable” is condensed into one answer. This would not be able to get at respondents who, for example, would otherwise prefer to take the bus but are unable to do so because of an inadequate provision of buggy space; and
- The response “Safest method” will collapse concerns about personal safety on public transport, road safety, and personal safety on any journeys by foot from public transport stations or stops to the destination.

There are further questions within the Travel Diary about congestion and its impact on work and personal life, but no further questions on safety. Given the prevalence of sexual harassment on public transport, this seems like a startling omission.⁴²

However, in terms of the use of the data generated by the Travel Diary, there are more pressing challenges for women’s equality. The data tables published by Transport Scotland as the ‘results’ of this survey are not even sex-disaggregated⁴³. In contrast, using data from a similar survey, the UK Department for Transport has a whole publication on trip-chaining that draws out some of the gendered implications⁴⁴, including making the links with low-paid part-time work.

Public transport has been predominantly designed to serve commuters who work core business hours on weekdays, with routes running between suburbs and urban centres in a radial fashion. These services benefit men more than women, who are more likely to need a range of orbital transport routes, and timetables that fit with unpaid care work and part time employment⁴⁵.

Rau. 2017. “Women’s Complex Daily Lives: A Gendered Look at Trip Chaining and Activity Pattern Entropy in Germany.” *Transportation* 44 (1): 117–138. doi:10.1007/s11116-015-9627-9.

⁴² ActionAid UK. 2016. “Nearly Three in Four Women Were Harassed in Past Month.” ActionAid UK. <https://www.actionaid.org.uk/latest-news/three-in-four-women-uk-world-harassed-in-last-month>.

⁴³ Transport Scotland. 2019. “Transport and Travel in Scotland 2018 - Scottish Household Survey Travel Diary Results.”

⁴⁴ Department for Transport. 2015. *National Travel Survey: Trip Chaining: 2002-2014*. Department for Transport.

⁴⁵ Greed, Clara. 2019. “Are We Still Not There Yet? Moving Further Along the Gender Highway.” In *Integrating Gender into Transport Planning: From One to Many Tracks*, edited by Christina Lindkvist Scholten and Tanja Joelsson, 25–42. Cham: Springer International Publishing. doi:10.1007/978-3-030-05042-9_2.

Scotland is currently developing a second national transport strategy (NTS2) that will drive investment, policy focus, and service delivery. In our consultation response on the strategy, Engender described the evidence that was set out in the equality impact assessment as “exceptionally poor”.⁴⁶ We observe that “Scottish Government’s own statistics on gender and travel are not quoted, nor any information from the body of research, evidence and analysis of women’s experiences of transport systems, from the UK and more widely.”⁴⁷

From our assessment of the draft strategy, NTS2 represents a missed opportunity to meet women’s stated needs and preferences for public transport provision. The apparent lack of consideration of relevant gender-sensitive data is not the only factor underpinning this androcentric strategy, but it has contributed to a systemic failure to gender mainstream.

3.5 Are current Scottish Government plans sufficient to improve gender-sensitive data and other equality data?

Scotland’s Equality Evidence Strategy 2017-2021 is intended to reflect Scottish Government’s priorities for improving gender-sensitive data (in addition to other equality data). It is a welcome first step to engaging strategically with the question of equality data, but certainly falls far short of what is needed. An overarching weakness is that it does not include any resources for delivery or any timescales against which further development in gender-sensitive data might be measured.

It is also relatively untethered from broader Scottish Government ambitions for women’s equality and rights, and from the project of gender mainstreaming itself.

Key concerns are:

- **The strategy will not create gender competence.** Although the strategy plans to develop additional gender-sensitive statistics, it does not address the critical question of how to make gender-sensitivity the default in data gathering and production.

⁴⁶ Engender. 2019. Engender Response to the Scottish Government Consultation on Scotland’s National Transport Strategy. <https://www.engender.org.uk/content/publications/Engender-response-to-the-Scottish-Government-consultation-on-Scotlands-National-Transport-Strategy.pdf>.

⁴⁷ Engender. 2019. Engender Response to the Scottish Government Consultation on Scotland’s National Transport Strategy. <https://www.engender.org.uk/content/publications/Engender-response-to-the-Scottish-Government-consultation-on-Scotlands-National-Transport-Strategy.pdf>.

- **The strategy does very limited forward planning.** The strategy mainly includes data projects that have been generated from past policy work and does not take on the task of forward planning in response to the Programme for Government, manifesto commitments, or the National Performance Framework.
- **There is a disconnection between the data strategy and gender mainstreaming.** There is one reference to plans to develop ‘measures that inform [Scottish Government’s Equality] outcomes’, but no mention of equality impact assessment. This is the key gender mainstreaming methodology in use in Scotland, which requires by law that gender is considered as part of policy development by public bodies. Effective gender mainstreaming requires qualitative and quantitative gender-sensitive data.⁴⁸

4. DEFINING ‘SEX’ AND ‘GENDER’: CHALLENGES AND SOLUTIONS

As we noted in the introduction to the terminology section in the introduction, the nomenclature around sex and gender is currently experiencing a moment of considerable contestation within the public discourse. Some of this conversation is a reflection of work, spanning many decades, within a whole range of feminist academic disciplines and activist spaces that has explored the question of how we should define ‘woman’.

Other parts of this conversation reflect the differences of meaning that have been attached to the word ‘gender’ in different contexts. A detailed history of these differences is beyond the scope of this submission, but it has been used to mean:

- The social imposed division of the sexes (in use from the 1940s);
- An internal sense of whether you are a man or a woman (in use from the 1940s);
- A synonym for sex (in use from the 1500s).⁴⁹

⁴⁸ EHRC Scotland. 2016. “Technical Guidance on the Public Sector Equality Duty: Scotland.” https://www.equalityhumanrights.com/sites/default/files/redraft_of_psd_tech_guidance_-_v6sc.pdf.

⁴⁹ Cameron, Deborah. 2016. “A Brief History of ‘Gender.’” *Language: A Feminist Guide*. <https://debut.wordpress.com/2016/12/15/a-brief-history-of-gender/>.

Engender's work within the context of these debates

Engender recognises that the definition of 'woman' is context-specific⁵⁰. We work against sexism and misogyny; advancing women's equality and rights. Women's experience of the biological in menstruation, pregnancy, contraception, menopause, and childbirth has featured prominently in our work. Women's experience of entirely socially constructed phenomena such as occupational segregation, and the presumption of provided unpaid care forms also forms a considerable proportion of our work. Of course, these are not discrete categories; period poverty and the discussion about provision of period products in public lavatories as a matter of routine has highlighted the way that (most) women's biology overlaps with social stigmatisation of women's bodies, and invisibility and deprioritisation of women's needs.

Engender has an intersectional feminist analysis, which emerged from legal scholarship and activism during the 1980s and engages very practically with the way that discrimination and exclusion of women is intensified and charged by racism, ableism, homophobia, transphobia, and ageism. For example, Muslim women are more likely to experience sexualised street harassment and diagnosis rates are poorer for some conditions in menopausal women as symptoms are attributed to unrelated hormonal changes.

Gender-sensitive data and the gender/sex question

In our view it is optimal to produce gender-sensitive statistics that are disaggregated by ethnicity, disability, age, sexual orientation, religion and belief, trans status and other characteristics. This will provide the richest evidence on the experiences of different groups of women and men, girls and boys. This type of analysis may generate data that is disclosive, though, and individuals' right to privacy is paramount.

Sex is one of several characteristics that most instruments ask about. The list of these characteristics varies, but they usually map roughly on to those enumerated as protected in the Equality Act 2010⁵¹. There is inconsistency in the way that questions are asked about sex and gender identity within surveys and forms that are in use in

⁵⁰ For example, within the context of the Equality Act the word 'woman' also refers to girl babies; within the context of Rape Crisis services the word 'woman' is analogous to 'service user' or 'victim-survivor'; within the context of our paper on disabled women's reproductive health and rights the word 'woman' means 'disabled woman'.

⁵¹ These are sex, age, 'race' or ethnicity, disability, pregnancy and maternity, marital or civil partnership status, religion or belief, sexual orientation, gender reassignment (or trans status).

Scotland. A plurality of data collection instruments within public bodies in Scotland, in our experience, ask one question about sex and one question about gender identity or trans status. These are sometimes collapsed together, conflating gender identity (often mislabelled – in our view – as ‘gender’) and sex. Only in rare instances are multiple questions asked that may allow a more finely-grained analysis.

In common with questions about disability, ethnicity, and sexual orientation, individuals completing surveys are generally asked to decide what ‘sex’ or ‘gender identity’ means for themselves.

In most instances where trans women answer a ‘sex’ question with ‘woman’, this will accurately reflect how the public body or provider of goods, facilities, and services will understand and treat them. Individual agencies have developed ways of managing exceptions. It is self-evidently the case that trans women may have a range of different experiences that non-trans women do not have. However, women are not a homogenous group, and women who share another protected characteristic(s) such as young women, BME women, disabled women, and lesbian and bisexual women, will all experience sexism and oppressive social structures in different ways. So too will women whose life experiences are inflected with caring roles, who are experiencing the menopause, or those who live in remote and rural areas.

Data can usefully highlight women’s common experiences across other protected groups, as well as surfacing differences. For example, 19% of women born in 1973 did not have children at their 45th birthday.⁵² Over the same period, the number of same-sex headed households with children has increased, reaching 212,000 by 2019.⁵³ The presence of these childless or child-free women in surveys, along with same-sex couple households with children, has not compromised the production of gender-sensitive statistics that clearly describe childcare as unequally distributed between men and women.⁵⁴

Although the first trans status question will be asked in the Scottish Census in 2021, a US meta-analysis estimates that approximately 0.6% of the US adult population is

⁵² ONS. 2019. “Childbearing for Women Born in Different Years, England and Wales: 2018.” <https://www.ons.gov.uk/peoplepopulationandcommunity/birthsdeathsandmarriages/conceptionandfertilityrates/bulletins/childbearingforwomenbornindifferentyearsenglandandwales/2018>.

⁵³ ONS. 2020. “Families and Households in the UK: 2019.” November 2019. Accessed February 24. <https://www.ons.gov.uk/peoplepopulationandcommunity/birthsdeathsandmarriages/families/bulletins/familiesandhouseholds/2019#same-sex-married-couples-are-the-fastest-growing-type-of-same-sex-family.>>

⁵⁴ ONS. 2016. “Women Shoulder the Responsibility of ‘Unpaid Work’.” <https://www.ons.gov.uk/employmentandlabourmarket/peopleinwork/earningsandworkinghours/articles/womenshouldertheresponsibilityofunpaidwork/2016-11-10>.

trans⁵⁵. The Conference of European Statisticians guidance on national census collection notes that “a small proportional error occurs in reporting or coding large response categories (such as ‘male’ or ‘female’) but that these can nevertheless be larger than the number of correctly captured responses for a rare category (such as a ‘third’ sex).”⁵⁶ The presence of this small population in the data will not undermine the production of sex-disaggregated or gender-sensitive statistics. If we are to know more about the different experiences of trans women and non-trans women, though, careful analysis will be required.

Adopting a general principle of asking individuals to describe their sex based on questions asking for their lived sex, or on the basis of individuals interpreting what is being asked by sex, will support the production of gender-sensitive sex-disaggregated data because:

- **It will help to ensure data quality.** ScotCen testing of different models of ‘sex’ question for the 2021 Census identified that trans people respond in a variety of ways to being asked for their ‘sex at birth’, including providing their lived sex instead⁵⁷. This means that comparing data about sex with data about trans history or status will produce more reliable, accurate results if questions ask about, or enable the assumption that they are asking about, lived sex. This will have a particularly positive impact on longitudinal studies and in multivariate analyses of sub-groups. In the case of some instruments, this will enhance or sustain the quality of gender-sensitive statistics.
- **It creates consistency between instruments and data sources.** Given that trans people are recorded on a variety of administrative systems with their lived sex, rather than their sex at birth, asking for ‘lived sex’ or not specifying what is means when asking for an individual’s sex seems likely to ensure that different data sources can be linked and connected. This harmonisation will enable richer gender-sensitive data to be produced and best ensure that we have accurate, specific data on the prevalence of trans people within any given population.

⁵⁵ Flores, Andrew R, Jody L Herman, Gary J Gates, and Taylor NT Brown. 2016. How Many Adults Identify as Transgender in the United States? The Williams Institute.

⁵⁶ Conference of European Statisticians. 2015. “Recommendations for the 2020 Censuses of Population and Housing.” UN Economic Commission for Europe.

http://www.unece.org/fileadmin/DAM/stats/publications/2015/ECECES41_EN.pdf.

⁵⁷ ScotCen. 2019. Testing Guidance for the Sex Question: Scotland’s Census 2021.

<https://www.scotlandscensus.gov.uk/documents/ScotCen%20-%20Testing%20guidance%20for%20the%20sex%20question%20-%20December%202019.pdf>.

- **It avoids potential human rights violations.** Section 22 of the Gender Recognition Act 2004 makes it a criminal offence to disclose a person's gender reassignment history. In addition, compelling people to provide information about their sex at birth may breach their right to privacy under article 8 of the European Convention on Human Rights (ECHR).
- **It avoids discouraging public bodies from gathering data by sex.** Public bodies that lack clarity around whether 'sex at birth' questions are appropriate, their data security is sufficient to avoid breaching s.22 of the current GRA, and privacy claims under article 8 may be actionable are less likely to gather, analyse, and produce sex-disaggregated data should 'sex at birth' questions become the norm. This will have a chilling effect on organisations' production of sex-disaggregated data

We think that the fourth of these issues will be most harmful to women's equality and rights. Sex-disaggregated data provides the building blocks for gender-sensitive data. If public bodies stop asking service users about their sex because of a fear of getting things wrong, or a concern about their own liability, then we will have fewer gender-sensitive statistics with which to support policy, legislative, and service delivery change that benefits women and women's rights.

5. WHAT NEEDS TO CHANGE

If we refer back to the list of features of gender-sensitive data found in section two, then this requires that, in Scotland:

- a) Data are collected and presented by sex as a primary and overall classification;
- b) Data reflect gender issues, such as childcare spending and provision;
- c) Data are based on concepts and definitions that adequately reflect the diversity of women and men and capture all aspects of their lives; and
- d) Data collection methods take into account stereotypes and social and cultural factors that may induce gender bias in the data.

There is some evidence that even (a) is still an ambition rather than a reality, and that this is having an impact on the development of policy, programmes, and services.

We call on the working group to emphasise the following principles in gender-sensitive data collection. Public bodies, including Scottish Government, should:

- Always gather and accessibly publish information by sex;
- Produce gender-sensitive statistics that enable analysis of socially constituted norms, roles, and phenomena that are both cause and consequence of women's inequality and demand a policy or legislative response;
- Develop gender competence within those functions responsible for designing data collection instruments, recognising that gender analysis requires specific knowledge and skills;
- Ensure data users within public bodies have sufficient knowledge and understanding of the available data to perform further analysis for policymaking; and
- Integrate gender-sensitive data analysis with gender mainstreaming approaches to policymaking and programme and service design.

Our view is that the most accurate gender-sensitive statistics are likely to be produced when survey instruments enable trans individuals to answer demographic questions with their lived sex and also their trans history, so that researchers and analysts can tease out the different experiences of trans and non-trans women as needed.

Our recommendation for the guidance being produced by the working group is that public bodies are encouraged to ask separate questions on:

- Sex; and
- trans status.

These and other data will support the production of gender-sensitive statistics.

We think that there is a role for the regulator of the public sector equality duty, the Equality and Human Rights Commission, to expand its work to enable and encourage better collection and use of gender-sensitive data.

FOR FURTHER INFORMATION

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ABOUT US

Engender is a membership organisation working on feminist agendas in Scotland and Europe, to increase women's power and influence and to make visible the impact of sexism on women, men and society. We provide support to individuals, organisations and institutions who seek to achieve gender equality and justice.