

The Rt Hon Peter Kyle MP  
Secretary of State for Science, Innovation and Technology  
Department for Science, Innovation and Technology  
London  
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11th April 2025

Dear Secretary of State

Thank you so much for taking the time to meet Sex Matters and Lord Arbuthnot on 9th April. We found it an informative and productive discussion. We wanted to pick up on a few points.

### The intention of the amendments

Firstly, we take your point regarding the precise wording of the amendments introduced in the House of Lords. We are not wedded to the wording but to the intention: **to ensure data labelled as reliable can be trusted by relying parties** (including when meeting their own data-protection obligations and other legal obligations, such as to record sex accurately when that is required by statute).

**This means that when the question that a relying party is asking is “What is this person’s sex?” the answer that comes back must be the true answer to that question.** If the question is “What is this person’s gender identity?” then that is a different question that cannot be answered with authoritative data via the information gateway, because this is not information that can be verified. The question “What is their sex as recorded on a birth certificate or GRC?” (as asked by the census in England and Wales in 2021) is different again. This is a fact that can be verified, but the user would need to define an operational purpose for wanting it (one example would be for conducting a marriage).

If the policy intent is that the digital verification system enables people to prove facts about themselves accurately and to ensure that it does not provide a stamp of false veracity to unreliable sources, then we hope that your officials will be able to develop wording to ensure this. If the issue is not addressed on the face of the bill, it might be addressed within the code of practice provided for in clause 49.

### Purpose and data protection

As the Sullivan Review demonstrated, public authorities have not maintained clear categories and labels for their data but have drifted into mixed categories that combine sex and gender identity in the same field. These can return an “F” or an “M” to a query from a relying party, but they cannot say whether this relates to the concept of sex or gender identity, or an undefined mixture of the two.

The legal advice produced for the Sullivan Review concluded that this ambiguous situation is likely to result in breaches of data-protection law in relation to accuracy, lawful processing and articles 13 and 14

**Sex Matters is a human-rights charity promoting clarity about sex in law, policy and language**  
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of the GDPR (information provided to data subjects). It notes that the review's recommendations in the Sullivan Review:

*"reflect the importance of: (a) being clear in every case about what data is being sought, and why it is being sought; and (b) being careful, when devising questions, to ensure that those questions appropriately target the data that is being sought. Leaving aside their obvious practical importance, these are key considerations when ensuring compliance with data protection law and with the other legal regimes."*

Relying parties may seek to record a person's sex for a wide range of reasons, some statutory and others related to lawful everyday rules or people's desire to share personal information. To give five examples:

- **Education** – Education (Pupil Registration) (England) Regulations 2006 and Education (Pupil Information) (England) Regulations 2005 (and similar regulations in other parts of the UK) require that each child's sex is registered when they start school and is then part of the information that is passed from one school to another. This information is needed for admissions (for example to single-sex schools) and for schools to fulfil their duty of care to children while at school.
- **Healthcare** – Section 251B of the Health and Social Care Act 2012 establishes a duty on commissioners and providers of health and adult social care in England to share personal information where it is "likely to facilitate the provision to the individual of health services or adult social care" and if doing so is in the individual's best interests. When providing a person with health and social care, that person's sex is salient and important information.
- **Employment** – Under Schedule 9 of the Equality Act, an employer is allowed to specify that it is an "occupational requirement" of a particular job to be a woman (or a man). This includes roles such as counsellor in a rape-crisis centre or women's refuge. The employer would advertise that the job is only for women and ask applicants' sex in their application.
- **Sports** – Section 195 of the Equality Act allows sports to be organised separately for women. In recent years most sports governing bodies in the UK have clarified that the women's category is based on (biological) sex and not gender identity. These include athletics, cycling, fencing, hockey (England), ice-hockey, rowing, rugby league and rugby union, swimming and triathlon.
- **Dating and consent** – An online service that matches people for the purpose of dating provides verified profiles that rely on registration using a digital identity service. Sex is one of the pieces of information it provides, and is salient for individuals seeking matches. This information is processed and shared on the basis of consent.

As all those attending the meeting agreed, in none of these situations is sex on a passport, driving licence, NHS core demographic record or paper birth certificate reliable, since each of these records can be changed (in different ways) to reflect a person's asserted gender identity rather than their sex.

As currently designed, the information gateway will allow these unreliable records held by HMPO, the DVLA, NHS and other public authorities to be converted into an apparently robust reusable attribute. This attribute will then be treated as authoritative by relying parties (based on the rules set out in the trust framework) even though it is known not to be reliable by the system's designers. **This is likely to lead to breaches of data protection and decisions that may be illegal, procedurally unfair or irrational.**

### Your concerns about unlawful exclusion

You raised concerns that a system that enables questions about sex to be asked and accurately answered might lead to unlawful exclusion or excessive disclosure of personal information relating to



individuals with gender dysphoria. This is not the case. **Our concern is to avoid unreliable data sources (such as records held by HMPO, DVLA and NHS Personal Demographic) being treated as reliable sources, not to mark the individual digital records of people who identify as transgender.**

The DVS system will share an attribute of personal information only with a person's consent. If sex data is needed to access a service such as healthcare or a sporting competition, then someone who prefers not to share that data may not be able to access that particular service. **Such a service is asking for and recording sex data for a lawful, justified purpose, not for the purpose of unlawful discrimination.**

The aim of ensuring that data is accurate whenever it is lawfully processed is not to "out" trans people in situations where they prefer not to share their sex data and there is no need for it to be recorded (such as when hiring a car or proving the right to rent). As the Sullivan Review legal advice explains, unless relying parties know whether the *categories* of information they hold relate to sex (verifiable) or gender identity (self-declared), they risk sharing excessive information about a person, since they will not be clear which information the person has consented to share and whether they hold that information.

You raised a concern that we propose a new national database that stores everyone's sex. This is not the case. The DVS system does not create a database; it simply identifies existing trustworthy sources. For example, the sex of people born in the UK could be verified by passing data from the digitised birth register through the information gateway, and excluding unreliable sources such as "passport sex".

### Could this problem be solved elsewhere?

We understand that there is a larger programme of work to harmonise what is recorded in the matter of sex and gender identity across government and to ensure it is in line with data-protection law. We welcome this and look forward to supporting the government in this crucial work.

But the Data Bill is progressing through Parliament right now, and it will establish a new information gateway and trustmark. Either the system is designed to let only reliable data sources through the information gateway, or it is designed to mark unreliable data as "verified". **In the latter case it will not be fit for purpose.** It will fail to win trust and will expose parties to operational risks, compliance failures and liabilities. It will also fail to unlock the promised efficiency savings, economic growth and innovation.

Ensuring the information gateway and trustmark system are robustly designed cannot wait for the data problem to be solved across government, and does not need to. The DVS system needs *only* to ensure that when a question is clearly asked of the system with consent, the data returned is accurate and from a robust data source.

Thank you again for meeting us. We are glad to have opened a dialogue that includes us and parliamentarians in both houses. We will also be writing about specific use cases to colleagues in health and education. Please can you let us know with which officials (both in DSIT and leading the cross-government processes) we need to continue this dialogue?

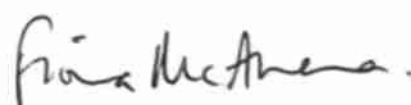
Yours sincerely



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## Redaction Summary

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