

**CULTURE, TOURISM, EUROPE AND EXTERNAL AFFAIRS COMMITTEE**

**CENSUS (AMENDMENT) (SCOTLAND) BILL**

**SUBMISSION FROM DR. KATH MURRAY**

**Data collection on sex.**

- The policy memorandum states the Scottish Government is considering introducing an additional ‘other’ category for sex, and notes that ‘*society’s understanding of sex has changed*’.
- While societal understanding of gender (which is a social construct) is subject to change, there is no robust evidence to suggest that scientific understanding of sex (i.e. that human beings are sexually dimorphic) has changed (see end-note).
- The policy memorandum appears to confuse sex and gender. Contrary to para. 5, the current question on sex does *not* cover gender identity:  
*5. The Scottish Government regards gender identity as already being covered by the reference to “sex” in paragraph 1 of the schedule to the 1920 Act and a census could ask questions about gender identity without the amendment of that paragraph being made.*
- It should also be noted that sex and gender are increasingly confused across a range of policies. For example, many Local Authorities incorrectly refer to gender as a protected characteristic, rather than sex. This blurring, which has the effect of changing what it means to be female, has implications for the protection of women’s rights.
- As a vehicle for public policy, the census needs to be unequivocal on the difference between sex and gender. Any questions pertaining to gender identity should be voluntary and asked separately.
- Biological sex is a protected characteristic under the Equality Act 2010. If ‘other’ (or similar) is introduced as a response category to the sex question, the Scottish Government may lack the robust data required to support its public sector equality duties.
- The question on sex has been constant since the introduction of the census, allowing robust longitudinal analysis. This may be undermined by changes to the sex response categories.
- Finally, any further question development on sex and gender should include input from women’s groups, who appear to be have excluded from the process to date.

Note: Reilly-Cooper, R. [Sex and Gender: A beginner’s guide](#):

*Humans, like the majority of species and like all mammals, are sexually dimorphic. This means that female and male organisms of the same species are distinguishable from one another, due to differences in their anatomy and physiology... While the language we use to describe these biological facts and the values we attach to them will vary with culture, the facts themselves exist independently of culture or our social understandings of them...*

*in normal cases, the child that is born as a result of human reproduction is unambiguously female or male and easily recognised as such, as a result of the visible sex organs that develop in utero. In a small percentage of cases, the child is intersex. This means that the sexual characteristics the child displays are such that it is not possible to make a simple classification of female or male. While it is difficult to make a clear determination on the prevalence of intersex conditions, due to the range of *different biological factors* that may cause it, it is estimated that around *one in 2,000 children* will be born visibly intersex. The fact that some humans are intersex in no way diminishes the truth of sexual dimorphism, any more than the fact that some humans are born missing lower limbs diminishes the truth of the statement that humans are bipedal (2018 paras. 3-4).*