



Rt Hon Peter Kyle MP
Secretary of State for Science, Innovation and Technology

By email

27 January 2025

We are writing regarding the passage of two amendments to the Data (Use and Access) Bill during its second reading in the House of Lords, laid by Lords Lucas and Arbuthnot of Edrom and regarding clauses 28 and 132 (amendments 6 and 8).

These amendments, despite their neutral language, were demonstrated by the subsequent debate to be a vehicle for those who wish to erode trans people's rights to privacy, dignity and access to public life. The amendments, if accepted into legislation, will fundamentally breach the privacy rights of individuals as accorded by the European Convention of Human Rights, embedded in the Human Rights Act of 1998, which will lay any resultant Act open to judicial review. In addition, these amendments would in practice redefine legal sex in English law and create a legal sex for all purposes where such a concept does not exist. Furthermore, we believe these amendments to be technically unnecessary, impractical to implement, and harmful to the goals of the bill.

We applaud your efforts to defeat these amendments on their introduction, and strongly encourage you to remove these amendments. Given the inevitable detrimental impact on trans people, as evidenced by the debate in the Lords, it is imperative that we meet with Ministers and senior civil servants urgently to discuss how these amendments can be removed.

False precision and coercive realities

The claims made during the debate that self-identification of sex characteristics threatens the “accuracy” of the data and threatens to “start to corrupt the whole system”¹ and subsequent arguments are incoherent and rely on an ideological objection to gender self-identification.

Firstly, the idea of ‘true biological data’ fails to account for the degree of complexity of human sex characteristics, which defy any simple binary and are more mutable than these amendments assume. The example given by Lord Lucas of the incorrectly completed birth certificate in fact demonstrates the fallibility of relying upon birth certificates which assign sexes based on a medical professional's observations of genitals at birth for ‘accurate’ sex data. In fact this data is already highly inaccurate, both due to its insensitivity to and misclassification of intersex people and its failure of the system to account for the impact of medical transition

¹ Hansard, Column 1612 <https://hansard.parliament.uk/Lords/2025-01-21/debates/78DC6C49-32D7-40B9-B438-2FF3BC801A8D/details>

later in life except through a process of obtaining a gender recognition certificate - a process which the current government has conceded is overly arduous and which is used by a very low percentage of UK trans people.

We are deeply concerned that the call for 'truth in data' is becoming a dog whistle way of saying that trans people are in some way unreal and deceiving - that gender self-identification is an act of dishonesty. One's gender is innately one of self-determination and expression, regardless of whether one is trans or not, in the same way as is one's religion. Framing only one of these as dishonest is not a neutral framing or position to hold, much less to embed into a system of administration.

The implied assertion, that any person regardless of culture, upbringing, complex genetics, hormonal profile, change in secondary sex characteristics or lived experience still retain some kind of inherently masculine or feminine soul as assigned at birth by a physician is effectively a religious belief which is not an appropriate scientific basis for policymaking. It is also contrary to existing English law and, in particular, the protections of the Gender Recognition Act, which were introduced as a direct result of adherence to the European Convention on Human Rights.

The calls for accuracy are in fact calls for what statisticians refer to as 'false precision'² or 'spurious accuracy', which in fact creates more inaccuracy and less functionality of the system. Sex and gender data as used and reported by individuals is the greatest level of accuracy available to such a system.

Beyond being incorrect in its principles, the proposed approach to sex and gender data is impractical. To collect such 'true biological data' would require extraordinary coercion. Trans people have historically and will continue to answer questions relating to their sex in accordance with their lived reality. To collect what Lord Lucas would consider 'truthful' data the law would need to coerce people to answer in a certain way via a question or guidance that doesn't allow the user to make their own judgement based on how they know themselves. To ensure the 'validity' of the data you would need to ensure answers are 'valid' via fines - potentially creating a specifically discriminatory direct cost on self-identification of one's personal characteristics.

Such issues of "accuracy" are not limited to sex/gender data, but to all self-identified categories of data, such as disability, religion and ethnicity. While we are not in a position to speculate in detail on the potential impacts of these amendments on other groups, they will likely raise similar problems.

An attempt to redefine legal sex for all purposes

These amendments contain a novel framing of legal sex, being basically the sex which is defined on one's original birth certificate as opposed to any specific biological reality. This is notably similar to President Trump's recent executive order, which has been celebrated by UK anti-trans campaign groups as progress towards "defeating gender ideology". In doing so, this amounts to an attempt to redefine legal sex and create a new legal sex for all purposes in law. To frame such a far-reaching amendment in neutral language and without mentioning the effect in explanatory notes, when the subsequent debate focused on the exact effect we describe, shows the lack of transparency in the campaign being waged against trans people.

Trans people have long had the right to identification documents reflecting their affirmed gender. Contrary to the claim that this was merely an informal practice introduced in the 1960s, such practices can be traced back much earlier.

Historically, laws imposing a 'legal sex' on trans people were limited in scope, primarily affecting areas such as marriage and pensions. These laws, while restrictive, did not extend their harshness beyond these areas.

² See for example Roberts, W. L. (2017). False precision: The ring of truth. *Canadian Journal of Behavioural Science / Revue canadienne des sciences du comportement*, 49(2), 97–99. <https://doi.org/10.1037/cbs0000070>

The United Kingdom argued this before the European Court of Human Rights in the successive cases of *Rees* (1986), *Cossey* (1990), *X, Y, and Z* (1997), *Goodwin* (2002) and *I* (2002).

In *I* (2002), the United Kingdom submitted that the applicant was able to live a female social role, free from state interference. In other words, the United Kingdom told the Strasbourg court that self-identification was already in place for most purposes, in an effort to avoid being compelled to grant full legal recognition, including recognition for the purpose marriages.

Indeed, the UK's approach to gender recognition has been quite unique within the European context. While most Council of Europe states transitioned from no recognition to full recognition for all purposes, the UK took a different path — progressing from partial recognition for some purposes to full recognition for all purposes.

Lords Lucas and Arbutnot of Edrom's amendments would lead to state interference that the United Kingdom had previously pledged to avoid. The only acceptable 'legal sex for all purposes' is an affirmed gender recognised under the Gender Recognition Act. An attempt to redefine "legal sex for all purposes" regardless of one's identity is just an attempt, and in this case, it may not be successful. Any new legislation based on a misunderstanding of the existing law will only lead to significant legal uncertainty.

Potential for misuse - discrimination on demand

Amendment 6, relating to Clause 28, raises a specific concern regarding its potential to create avenues for legal exclusion and harassment, potentially going far beyond sex and gender. This amendment would mandate the disclosure by public authorities of a person's gender history, or other information, to any Digital Verification Service (DVS), thereby breaching s22 of the Gender Recognition Act 2004. This risks bad actors registering and operating as a DVS for the purposes of providing 'biological sex verification' services with the goal of discrimination against trans people. While this is the example most relevant to us, the breadth of the amendment as worded means it cannot be ruled out that it would enable similar 'services' to be established relating to other characteristics against whom an actor wishes to discriminate.

The amendment also risks being interpreted in such a way as to mandate that public bodies must reject the validity of all identification documents belonging to trans people where they do not match their birth certificates. Given the recognised difficulties of obtaining legal gender recognition, this would include the vast majority of trans people.

Incompatibility with legal rights

We fear that these amendments have the potential to stealthily challenge much of existing English law relating to sex categories and the Gender Recognition Act 2004, as discussed above. However, while those pieces of legislation are threatened by these amendments, the bill as currently written would, for the reasons set out above, likely amount to a breach of the privacy rights of individuals as accorded by the European Convention of Human Rights, embedded in the Human Rights Act of 1998. Given the established legal position is that Article 8 privacy rights apply to trans people, requiring restrictions on disclosure of an individual's gender history, which will lay any resultant Act open to judicial review.

Conclusion

At the core of this debate is the importance of recording how people live now, rather than insisting that how they were born is in some way immutable. This is also the case for many of the other sensitive categories of data involved, such as disability or religion. The dangers of systems of administration imposing static

categories onto people whose lives are inherently fluid have been extensively historically documented.³ Trans people in the UK already have experience of this, which these amendments would exacerbate - for example creating further barriers to trans people receiving health equity such as in the case of being called for appropriate cancer screenings.

We hope we have demonstrated the case that these amendments must be removed in order for the successful passage and implementation of the bill. The consequences of their passage into legislation would be grave, enabling the weaponisation of data and technology against already marginalised groups in society in a time of growing ideological extremism, in direct opposition to the aims of this bill. They would create great legal uncertainty and leave the bill greatly vulnerable to judicial review.

We note the statement from Lord Vallance that the Central Digital and Data office has begun work on "*developing data standards*", in addition to those being commissioned from the ICO. We also note Baroness Jones of Whitchurch's statements in the House of Lords on 3 December, where she says that "*Minister Clark is due to meet Sex Matters this week to discuss digital verification services*". We assume that we will be similarly consulted as part of any consideration of standards or matters that may impact upon trans people, particularly those related to sex and gender.

Yours sincerely,

Helen Belcher OBE, Managing Director, TransActual
Keyne Walker, Strategy Director, TransActual

cc:

Lord Vallance, Minister of State for Science, Research and Innovation
Feryal Clark MP, Parliamentary Under-Secretary of State for AI and Digital Government
Anneliese Dodds MP, Minister of State for Women and Equalities
Dame Nia Griffith MP, Under Secretary of State for Women and Equalities
Sarah Owen MP, Chair of the Women and Equalities Select Committee

Founded in 2017, TransActual is a national organisation led by and for trans people to represent our interests in matters of policy, law and healthcare. For more information on us and our work, see <https://transactual.org.uk/advocacy/>

³ See for example Scott, J. C. (2020). *Seeing like a state*. Yale University Press.