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Date: 24 September 2024

Our Ref:



**POLICE
SCOTLAND**
Keeping people safe

POILEAS ALBA

Alan Speirs
Deputy Chief Constable
People and Professionalism

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By e-mail:

Audrey Nichol, Convener
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Dear Convener,

Gender self – identification

I refer to your letter to the Chief Constable dated 17th September with reference to gender self-identification. This has been passed to me, as lead for People and Professionalism to assist the Committee in gaining the information sought.

Police Scotland recognises that gender self-identification is a sensitive area of public policy. The Scottish and UK Parliaments have not yet set out a clear position around the legal status of the concept of gender recognition in a way that reconciles with the Equality Act 2010. The absence of direction has left Police Scotland and other public bodies to determine policy and practice in a way that achieves a legal and appropriate balance of rights and duties.

Police Scotland's procedures on the identification and recording of sex and gender is evidence-led, aligns to legislative and operational requirements and is in keeping with our values of policing with integrity, fairness and respect, and upholding human rights.

The purpose of policing in Scotland is to improve safety and wellbeing, Police Scotland take a victim centred approach to investigating crime. Improving the experiences of victims is at the heart of everything we do.

We are committed to tackling violence against woman and girls and we have a critical role to play in preventing violence and safeguarding women and girls. Our vision is to create a

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society and culture where women and girls live free from all forms of violence, abuse, exploitation and harassment.

A point was raised during First Ministers Questions on 12th September which suggests a *male rapist can demand to be called a woman and further traumatise his victim* – this would not happen. The Committee should be absolutely assured that a man who commits rape or serious sexual assaults will be recorded as a male.

There is no instance or record on police systems of a male having been arrested and charged with rape whose gender has been recorded as female. This has not happened.

By way of further reassurance, as it relates to *individuals charged with, or convicted of serious sexual assaults*, Police Scotland obtain DNA samples from individuals accused of serious sexual assaults and from this sample a DNA profile will be obtained that will determine the person's biological sex. This profile, and biological sex, is retained on the Scottish DNA Database and is available to be searched against crime scene samples to aid historic and future investigations.

In the absence of direction, in 2019 Police Scotland established an operational policing position, this remains unchanged.

*“Police Scotland requires no evidence or certification as proof of biological sex or gender identity other than a person's self-declaration, **unless it is pertinent to any investigation with which they are linked as a victim, witness or accused and it is evidentially critical that we legally require this proof, or there is reason for further enquiry based on risk.** We would look for the most sensitive way to acquire this information.”*

The frequency with which officers and staff are likely to encounter circumstances requiring consideration of this policy are rare. It is of note that in 2022, Scotland's Census found that 19,990 people were trans or had a trans history. This is 0.44% of people aged 16 and over, illustrating the rarity of these particular circumstances.

It is recognised that the recording of gender identity is not relevant in the investigation of the majority of crimes, acquisitive crime would be such an example.

To your additional question concerning the *wellbeing and safeguarding of others*, I would re-iterate that the core purpose of policing is to improve safety and well-being and therefore all our polices, processes and practice emanate from this fundamental purpose.

The gender self-identification of an individual does not supersede these wider policing principles.

The substantive issue that Police Scotland is working hard, with partners and communities, to address is the scale, prevalence and impact of sexual violence and whilst the matter raised around our procedures for gender self-identification is important, this is not the issue impacting on the safety of woman and girls.

It is important to also convey that, whilst the debate around this complex issue can be polarising, Police Scotland's primary function of safety and well-being is not mutually exclusive to our ability to do so in a way that ensures the rights and equality interests of individuals.

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I trust this information is of assistance to you.

Yours sincerely,

A handwritten signature in black ink, consisting of a stylized 'A' followed by a long, sweeping horizontal stroke that ends in a small hook.

Alan Speirs
Deputy Chief Constable