



**WFD**

# **Case Study 1: Gender-sensitive Post-Legislative Scrutiny of general legislation**

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Lecturer in Law, Institute of Advanced Legal Studies, University of London  
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London, July 2020

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## Executive summary

The case study titled: 'Gender-sensitive post-legislative scrutiny of general legislation' examines how post-legislative scrutiny of general (non-gender-specific) legislation can integrate a gender-informed approach.

The purpose of the case study is to assist parliamentarians, parliamentary staff, policy makers, parliamentary development practitioners and civil society activists to design processes that identify gender-based consequences in the implementation of legislation.

The case study is part of a broader project of the Westminster Foundation for Democracy on Gender analysis and post-legislative scrutiny. The project includes several deliverables that are complementary to the present document and address different aspects of the topic. These are: a policy brief on Gender-sensitive post legislative scrutiny; a case study on post-legislative scrutiny of gender-specific legislation and a case study on the key role of data in gender-sensitive post-legislative scrutiny.

The present document starts by identifying the links between legislation and gender and the impact of legislation on women, men and non-binary people. It highlights the importance of gender-sensitive laws as a vehicle to gender equality and identifies the role and contribution of gender-sensitive post-legislative scrutiny to this purpose. It then proposes concrete steps on how to make the entire post-legislative scrutiny process gender-sensitive.

### Acknowledgements and Disclaimer

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The views expressed in the paper, as well as errors and mistakes, are of the author alone.

## 1. Legislation and gender: the impact of legislation on men and women

Legislatures all over the world adopt a staggering number of laws affecting many aspects of the life of their citizens. And while the presumption is that laws benefit women and men equally, this is not always true. Even general laws that appear neutral might affect women, men, and non-binary people differently.

Gender is a factor that accounts for differences in all areas of life<sup>1</sup>, from mobility and travel behaviour, to migration, governance, justice, even agriculture, climate change and the environment. Even procedural rules can have profoundly gendered effects in encouraging or discouraging men and women to perform work-related roles, allowing them to be influenced by the priorities and behavioural styles of the dominant group and ultimately undermining their ability to achieve work related results<sup>2</sup>.

There are several examples of how legislation can interfere with the distinct realities and lifestyles of women and men to create or perpetuate disadvantage. It is no news that the position of women and men in the labour market is different in terms of occupational segregation (for example more nurses or school teachers are women but more mechanics, police officers or university professors are men), wages (men earn more than women) and working conditions (women work more hours than men but are remunerated for less or take more breaks in their careers).<sup>3</sup> Legislative measures that ignore these differences and intervene blindly are almost certain to disadvantage one gender and broaden rather than reduce existing gender differences. Canadian legislative measures to address women's segregation in terms of occupation, wages and working conditions, despite their success, are criticised for remaining insensitive to other factors that make the situation of working women precarious, such as 'non-standard' work<sup>4</sup>.

## 2. Gender-blind versus gender-sensitive laws - what difference do they make?

*Gender-blind laws* ignore the distinct realities of men and women and might be subject to gender bias. *Gender-sensitive laws*<sup>5</sup> on the other hand integrate the concerns of women and men into the legislative process to ensure fair results and a positive impact on equality. 'Traditional' welfare legislation that 'protects' women from the loss of a 'breadwinner' through survivor benefits based on their spouses' earned rights or supplements to old age pensions relies heavily on stereotypical gender roles (man as the breadwinner and woman as a dependent family member). This legislation does not reflect the reality of working women and might even disincentivise them from being active members of the labour force. Parental benefits that discriminate against fathers and single-parent households, reproduce gendered stereotypes and do little to acknowledge and encourage shared roles in the family. On the opposite side of the spectrum, gender-sensitive legislation that links parental benefits to the provider of parental care (rather than their gender) treats both parents and single parent households on an equal basis and promotes an equal sharing of responsibility for cash and care in the family. In addition, legislated quotas of paid work leave for each parent on a use-it-or-lose-it basis take a (brave) step forward by actively challenging stereotypical gender roles and encouraging the active involvement of both parents in the rearing of children. There is also compelling evidence that this approach helps reduce the gender pay gap<sup>6</sup>.

Gender-sensitive laws make a difference and have important implications for the lives of women and men (and non-binary people). A gender-blind definition of homicide in intimate relationships (designed around the experience of men who kill their partners without premeditation but ignoring the fact that most women plan the act to defend themselves

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1. For an overview of the links between gender and different policy areas see EIGE, [Gender Mainstreaming in Policy Areas](#), and BRIDGE, [Cutting Edge Packs](#).

2. Susan Franceschet, The Gendered Dimensions of Rituals, Rules and Norms in the Chilean Congress (2010) 16:3 The Journal of Legislative Studies, 394-407.

3. OECD, [Gender Wage Gap](#); see also UNDP, [Sustainable Development Goals, Goal 5: Gender Equality](#); see also World Bank, '[Gender Differences in Employment and Why They Matter](#)', in World Development Report 2012: Gender Equality and Development, 2011, ch. 5.

4. Stephanie Bernstein, Marie-Josée Dupuis, Guylaine Valee, Beyond Formal Equality: Closing the Gender Gap in a Changing Labour Market - A Study of Legislative Solutions Adopted in Canada (2009) 15: 4 The Journal of Legislative Studies 481-501.

5. OSCE, [Making Laws Work for Women and Men: A Practical Guide to Gender Sensitive Legislation](#), 2017.

6. J. Druedahl, M. Ejrnæs and T H Jørgensen 'Earmarked Paternity Leave and the Relative Income within Couples' (2019) Economics Letters 180: 85-88; A. Dunatchik & B. Özcan, [Reducing Mommy Penalties with Daddy Quotas](#), Social Policy Working Paper 07-19, London: LSE Department of Social Policy, 2019; H. Kleven, C. Landais & J. Egholt Sjøgaard, [Children and Gender Inequality: Evidence from Denmark](#), NBER Working Paper No. 24219, 2018.

against violence) would result in women who killed their partners being convicted of heavier crimes (premeditated murder as opposed to murder) and might end up them receiving longer sentences.<sup>7</sup> A gender-sensitive definition that would integrate the experience of women victims of violence with the concept of self-defence would result in men and women being tried for their crimes on an equal basis and in accordance with their distinct realities.

Gender-blind laws (the first two examples) not only run a high risk of not achieving their objectives but are most likely to exacerbate - rather than reduce - existing gender inequalities in their field. **Gender-sensitive laws make a big difference to the lives of women and men and are the only effective legislative vehicle for gender equality.**

### **3. What can gender-sensitive post-legislative scrutiny (PLS) reveal? And why is it important?**

Post-legislative scrutiny is a broad concept whose scope can range from a technical assessment of the enactment of the law to a broader assessment of its impact.<sup>8</sup> **A gender-sensitive post-legislative scrutiny<sup>9</sup> adds a gender perspective to the scrutiny by assessing whether legislation has produced (positive or negative, unintended or unexpected) impacts on gender results and outcomes.**

Post-legislative scrutiny has the advantage of hindsight - and offers the possibility to look at cross cutting impacts and identify positive and negative change at a larger scale. In other words, post-legislative scrutiny can show what worked, what did not work and why, and what needs to be changed. Gender-sensitive post-legislative scrutiny adds one complementary layer of analysis: how the law worked for women and men, whether there were achievements and unwanted impacts from a gender equality perspective and how to 'correct' them.

Gender-sensitive post-legislative scrutiny can reveal very important facts about legislation. For example, the [Report on Hearings Relating to the Uptake of Apprenticeships and Traineeships](#) from the Joint Committee on Education and Skills of the Houses of the Oireachtas in 2019 (Ireland) revealed the highly gendered uptake of the existing apprenticeship scheme in Ireland. Apprenticeships were taken up by 85 per cent men and only 2 per cent women in the age group under 25 years. This was due to occupational segregation, as apprenticeships were in 'male dominated' areas of work, and the quality and affordability of available childcare. Additional barriers were caused by take-up criteria (requirement to be unemployed for a certain period before commencing) and compatibility with family commitments. The Committee formulated a recommendation for 'a national and persistent promotional campaign' that would 'encourage more women to consider the opportunity' in order to reverse this outcome in the future implementation of the scheme.

In an entirely different area, the [Review of Security and Counter Terrorism Legislation](#) by the Parliamentary Joint Committee on Intelligence and Security in 2006 in Australia identified the negative impact of legislation on Arab and Muslim Australians and specifically on Muslim women, which might be an unintended consequence of the legislation. It identified how the law generated within the Australian Muslim communities an increase in fear and insecurity, alienation of some members of the community and a growing distrust of authority. The report noted that:

*the problem is worse for people who appear to be readily identifiable as Muslim. Muslim women, who wear traditional Islamic dress (hijab), were found to be 'especially afraid of being abused or attacked'. It is also concerning that: Arab and Muslim youth felt that they were particularly at risk of harassment which has led to feelings of frustration, alienation and a loss of confidence in themselves and trust in authority*

7. EIGE, Gender Mainstreaming, Policy area: Justice, [Issues of gender inequalities in the policy area](#), accessed 29 May 2020; United Nations Office on Drugs and Crime, [Global Study on Homicide. Gender-related killing of women and girls](#), 2018; UNODC, [Homicide and Gender](#), 2015.

8. Franklin De Vrieze, [Post-Legislative Scrutiny. Guide for Parliaments](#), Westminster Foundation for Democracy, 2017.

9. See Policy Paper: Gender-sensitive Post-Legislative Scrutiny

The impact of legislation on men and women can be nuanced and ‘hidden’ under apparently neutral or ‘technical’ requirements. The table below compares primary and secondary legislation on skilled migration schemes in Australia<sup>10</sup> and Canada<sup>11</sup>. This is an interesting example of how apparently neutral requirements raise distinct concerns with regard to their impact on women and men and how ex-ante and ex-post analysis can spot and ‘correct’ these concerns. The table below presents the different requirements (columns one and two), presents the gender-related concerns they raise (column three) and identifies the potential focus of gender-sensitive post-legislative scrutiny (column four).

**Table 1: Review of requirements of skilled migration schemes in Australia and Canada from a gender perspective<sup>12</sup>**

Australia	Canada	Gender-related concerns	What a gender-sensitive PLS can examine
<b>Work experience</b>			
Work experience.	Work experience over a 10-year period. One year minimum required.	If work experience does not include unpaid domestic work or child care, it might disadvantage women. Taking into account work experience over a longer period does not disadvantage women who have taken breaks in their careers.	If ex-ante gender analysis has taken place, PLS can examine if and how this requirement has affected women and men and whether it has had an exclusionary effect. If ex ante scrutiny has been conducted, the PLS would revisit the concerns to verify that the ‘real’ effects on men and women have not been disproportionate.
<b>Language</b>			
Proficiency in English. Test administered by the private English examiner, IELTS.	Proficiency in one of Canada’s two official languages. IELTS examined.	High levels of language proficiency combined with the requirement of young age can pose disproportionate challenges for women who had children early in life who may take longer to complete education and training– including the acquisition of a second language, men and women from different ethnic origins and from socioeconomic backgrounds.	PLS can establish the real impact of these requirements on men and women - is there a disproportionate impact on women or men? It can also examine interrelations with age, ethnic origin, disability etc. How can it be corrected?
<b>Age</b>			
No migrants over 45 years old can apply.	Maximum points for those between 21 and 49 years old. Those between 49 and 53 years old can apply, but points decrease per year for those over 49.	Both schemes favour young migrants over older ones.	Real impact on men and women of different age groups - is there a disproportionate impact on women or men? How can it be corrected?

10. Requirements as in the Australian Migration Act 1958 (Cwlth) and its regulations

11. Requirements as in the Canadian Immigration and Refugee Protection Act 2002 (IRPA) and its regulations

12. Information is drawn from Anna Boucher, Skill, Migration and Gender in Australia and Canada: The Case of Gender-based Analysis (2007) 42:3 Australian Journal of Political Science, 383-401. Own comments added.

**Table 1 cont'd:**

<b>Skill</b>			
Skill assessed by professional assessment organisations. Points depend on qualifications in certain industries and professions on the skills list. 'Recent work experience' cannot be part-time and must be gained immediately prior to the application. 'Specific work experience' requires work over at least three of the four years in the area of assessed skill immediately prior to application.	No points for particular skills. 10 points for 'adaptability', which can include work experience in Canada or a job offer. 'Work experience' includes 'equivalent part-time employment in one or more occupations' gained during one - three years over a 10-year span.	<p>The specific skill model (Australia) and the listed professions might exclude professions taken up predominantly by women, such as nurses. Qualifications linked to listed professions might exclude women if they are mainly 'male' professions. Exclusion of part time work might disadvantage women, who have a higher presence in part time work. The limited time of the experience might exclude women who have taken breaks in their careers.</p> <p>The general skill model (Canada) includes a larger number of occupations and may have gender-positive outcomes. Including part-time work over a longer period of time is advantageous from a gender perspective as it does not exclude women who have higher rates of involvement in part-time employment.</p>	If ex-ante gender analysis has taken place, PLS can examine if and how these requirements have affected women and men and whether they have had an exclusionary effect. If ex-ante scrutiny has been conducted, the PLS can examine the real effect on men and women - is there a disproportionate impact on women or men? How can it be corrected?
<b>Education</b>			
Australian qualifications needed.	Points depend on availability of secondary, tertiary or postgraduate education. International degrees recognised.	N/A	How has this impacted women and men?
<b>Job offer</b>			
Points for job offer in an occupation in demand or 15 points for skills in an area in demand.	Maximum of 10 points for a job offer.	Comments above on the restrictive list of occupations and the concept of skill apply and might impact women.	Have women been impacted? How? Can this be corrected?
<b>Family link</b>			
15 points for Australian or permanent resident relative. Five points for basic skills of accompanying spouse.	10 points for skills of spouse or common-law partners.	N/A	How has this impacted women and men? Has the impact been disproportionate for either sex?

This example shows the value of an ex-ante and ex-post gender analysis and their complementarity. It also shows how gender concerns that have not been addressed earlier in the legislative cycle can be addressed by post-legislative scrutiny. When potential adverse impacts are identified early on through gender analysis (as in the case of Canada, which applies [Gender Based Analysis Plus](#), GBA+, to all policies) the legislative requirements can be made gender-friendly and



their gender-impact can be followed up through post-legislative scrutiny to verify that no adverse effects have taken place. When gender concerns have not been spotted early on (as in the case of Australia) it is through ex-post scrutiny that they can be identified and addressed.

**The added value of gender-sensitive post-legislative scrutiny is its potential to assess whether legislation has produced (positive or negative) unintended or unexpected impacts on gender results and outcomes and correct eventual imbalances.**

#### 4. What forms can gender-sensitive scrutiny take?

Gender-informed reviews of legislation can take different forms: a) horizontal reviews of policy or legislation from a gender perspective; b) scrutiny of gender-specific legislation; and c) gender-sensitive post-legislative scrutiny of general (non-gender-specific) legislation.

Horizontal reviews of legislation from a gender perspective are usually conducted by women and equalities committees or their equivalents or other parliamentary bodies with gender-related mandates. These reviews differ from post-legislative scrutiny in that they tend to focus on broader 'gender' issues, have a policy-oriented perspective and might not always be directly linked to the implementation and impact of legislation. Examples include the House of Commons Women and Equalities Committee work on [Sexual harassment and sexual violence in schools](#), the work of the [Délégation aux droits des femmes at a l'égalité des chances entre les hommes et les femmes](#) at the French National Assembly on women in the [armed forces or the seniority of women](#), among many others, and the work of the Committee on the Status of Women on [violence against young women and girls in Canada](#), among many other examples around the world.

A different form of review is a post-legislative scrutiny that integrates a gender perspective because of the type of legislation it focuses on. Indicative examples include the [scrutiny](#) on the Violence against Women, Domestic Abuse and Sexual Violence (Wales) Act 2015 in 2016 by the Equality, Local Government and Communities Committee of the Welsh Parliament, the scrutiny of Cabo Verde's Law Against Gender-Based Violence in 2014<sup>13</sup>, the scrutiny of Uganda's Prohibition of Female Genital Mutilation (FGM) Act 2010,<sup>14</sup> the work of the Standing Committee on Legal and Constitutional Affairs of the Australian Senate in 2008 on the [Effectiveness of the Sex Discrimination Act 1984 in eliminating discrimination and promoting gender equality](#).

A third type of scrutiny concerns 'general' (non-gender-specific) legislation that is assumed to benefit men and women equally, for example the [Post legislative scrutiny of the Higher Education \(Wales\) Act 2015](#) by the Children, Young People and Education Committee of the National Assembly for Wales in 2019 or the [National Fraud Initiative](#) by the Scottish Parliament in 2017. This form of scrutiny, which is the focus of this paper, examines legislation of a general nature and might ignore or overlook gender-related concerns. However, because the assumption that legislation benefits men and women equally can be flawed, as already demonstrated, the question is how to make the scrutiny of general legislation sensitive to gender concerns.

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13. Elisabete Azevedo-Harman & Ricardo Godinho Gomes, Post-Legislative Scrutiny of the Law against Gender-Based Violence. The Successful Story of the Cabo Verde Parliament (2019) 21: 2 European Journal of Law Reform 175-180.

14. Gitta Zacharia, Post-Legislative Scrutiny and Its Impact on Legislative Oversight in Uganda Parliament. Experiences from an Emerging Democracy (2019) 21:2 European Journal of Law Reform 185-189

## 5. Is gender-sensitive scrutiny of general legislation standard practice?

While examples of broader gender-informed reviews of policy and legislation and scrutiny of gender-specific legislation appear to have marked their space in parliamentary practice around the world, gender-sensitive scrutiny of general legislation is more difficult to trace. Micro-research<sup>15</sup> in a sample of 10 post-legislative scrutiny reports produced in the period from 2013-2018 by different committees of the UK Parliament gave the following picture:

### Gender-relevant findings

Gender-related references in post-legislative scrutiny reports (2013-2018) in the UK Parliament:

a) Seven reports<sup>16</sup> make no reference to sex or gender.

It is not clear whether this is because the competent Committee found no significant impacts to report or because it did not examine the issue at all;

b) Two reports<sup>17</sup> include some reference to the different behaviours of men and women in the evidence collected or included specialised sub-reports on gender issues<sup>18</sup>.

c) One report<sup>19</sup> integrated a gender lens by raising a question on potential gender-related impacts in the call for evidence.

None of the reports examined integrated references to gender-related findings in conclusions and recommendations.

Although there is insufficient evidence to draw broader conclusions, these micro-findings seem to confirm that post-legislative scrutiny of general legislation conducted in the UK in the last five to six years tends to overlook gender concerns.

At this point, one might argue that **not all laws have disparate impacts on women and men, so there is no reason to examine all of them from a gender perspective**. This is possibly true. It is also true, as the examples presented above have clearly showed, **that laws *might* have a disparate impact on men and women, and this might not be immediately evident. It is for this reason that post-legislative scrutiny of general legislation should examine -among other questions- the gender dimension and report on it, even if to show that no significant disparate impact on men and women was found.**

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15. The micro-research was conducted by the author in May 2020. The reports were searched using the keywords sex, gender, men, women, mothers, fathers.

16. [Post-legislative scrutiny of the Freedom of Information Act 2000](#), [Public Trust in Government Statistics A review of the operation of the Statistics and Registration Service Act 2007](#), [The role of the Charity Commission and "public benefit": Post legislative scrutiny of the Charities Act 2006](#), [Post-legislative scrutiny of the Mental Health Act 2007](#), [Post-Legislative Scrutiny: Terrorism Prevention and Investigation Measures Act 2011](#), [Post-legislative scrutiny: Flood and Water Management Act 2010](#); [Adoption: Post-Legislative Scrutiny in 2013](#).

17. [The Gambling Act 2005: A bet worth taking?](#)

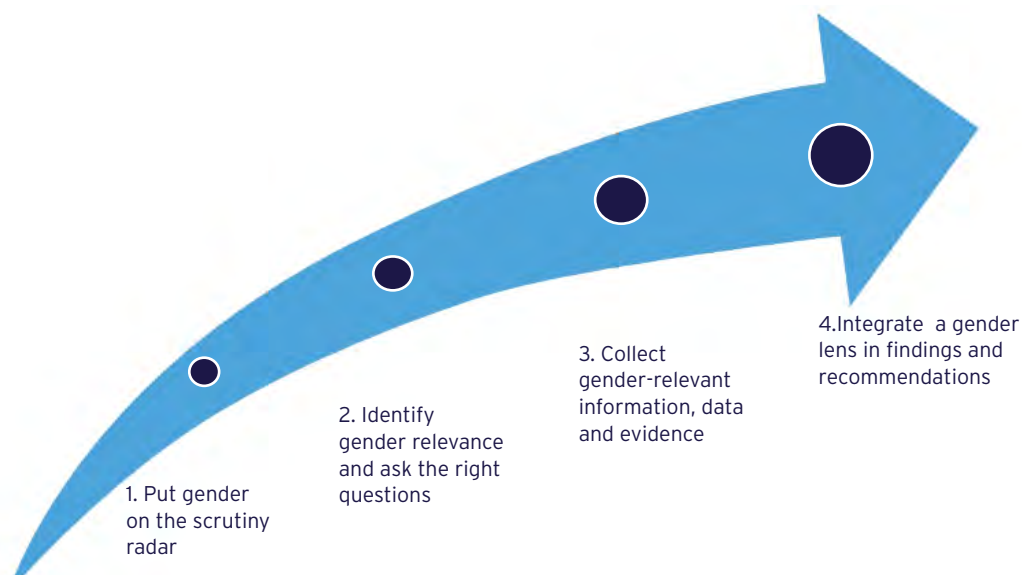
18. [Post-legislative scrutiny of Part 2 \(Encouraging or assisting crime\) of the Serious Crime Act 2007](#); see the [report on women offenders](#). However, the [Transforming Legal Aid: evidence taken by the Committee](#) included no gender perspective, despite the well-established links between gender and access to justice.

19. [Mental Capacity Act 2005: post-legislative scrutiny](#)

## 6. How to make post-legislative scrutiny gender-sensitive

Post-legislative scrutiny is a systematic process of planning, implementation and follow up.<sup>20</sup> Mainstreaming gender in post-legislative scrutiny requires a consistent integration of gender concerns in the preparation, planning, implementation and follow up of the scrutiny. The main steps for a gender-sensitive post-legislative scrutiny are presented in the diagram below:

**Diagram 1: Main steps for gender-sensitive post-legislative scrutiny**



### 6.1 Put gender in the scrutiny radar

An early step in post-legislative scrutiny involves determining the scope and focus of the exercise. In practice, several committees make their mandate explicit in Terms of Reference where they specify the main questions that the scrutiny seeks to address. It is important to integrate a gender lens in these questions, where relevant.

**Table 2: Gender-blind vs Gender-sensitive scrutiny Terms of Reference**

Gender-blind scrutiny questions	Gender-sensitive scrutiny questions
<ul style="list-style-type: none"> <li>• is the Act is achieving its aims, and if not why not</li> <li>• are costings achieved, and if not why not?</li> <li>• has the Act achieved overall value for money?</li> <li>• how well the Act has been implemented and is working in practice, including any unintended consequences?</li> </ul>	<ul style="list-style-type: none"> <li>• is the Act is achieving its aims, and if not why not;</li> <li>• <i>did the Act affect men and women differently? What impacts can be identified in terms of rights, resources, representation, opportunities, outcomes and participation? Did the Act contribute to gender equality in the specific sector/area?</i></li> <li>• are costings achieved, and if not why not;</li> <li>• <i>how are costings distributed between men and women? Is one gender disproportionately affected?</i></li> <li>• has the Act achieved overall value for money; how well the Act has been implemented and is working in practice, including any unintended consequences;</li> <li>• <i>Did implementation have any wanted or unwanted impacts on men and women? How can they be corrected or improved?</i></li> </ul>

20. Franklin De Vrieze, [Post-Legislative Scrutiny. Guide for Parliaments](#), Westminster Foundation for Democracy, 2017.

**Table 3: Gender-blind vs gender-sensitive scrutiny of terrorism legislation**

Gender-blind scrutiny questions	Gender-sensitive scrutiny questions
<p>The review committee will examine relevant laws and made recommendations on whether the laws:</p> <ul style="list-style-type: none"> <li>• are necessary and proportionate</li> <li>• are effective against terrorism—that is, they provide law enforcement agencies with adequate tools to prevent, detect and respond to acts of terrorism</li> <li>• are being exercised in a way that is evidence-based, intelligence-led and proportionate, containing appropriate safeguards against abuse.</li> </ul>	<p>The review committee will examine relevant laws and made recommendations on whether the laws:</p> <ul style="list-style-type: none"> <li>• are necessary and proportionate</li> <li>• <i>have wanted, unwanted or disparate impacts in relation to sex or gender, race, ethnic origin, age, and minority groups, and if so how can these be minimised?</i></li> <li>• are effective against terrorism—that is, they provide law enforcement agencies with adequate tools to prevent, detect and respond to acts of terrorism</li> <li>• are being exercised in a way that is evidence-based, intelligence-led and proportionate</li> <li>• <i>Whether their exercise has wanted, unwanted or disparate impacts related to sex or gender, race, ethnic origin, age, and minority groups, and if so how can these be minimised?</i></li> <li>• contain appropriate safeguards against abuse.</li> </ul>

Depending on the scope and the focus of the review, the Terms of Reference of the post-legislative scrutiny might not be the place to include gender-sensitive questions. Even if this is the case, it is important to include relevant questions in the call for evidence that usually follows.

**Table 4: Example of a gender-sensitive call for evidence**

Gender-blind call for evidence	Gender-sensitive call for evidence
<p>You are invited to submit written views on the following questions:</p> <ol style="list-style-type: none"> <li>1. In your view, what effects has the Freedom of Information (Scotland) Act 2002 (FOISA) had, both positive and negative?</li> <li>2. Have the policy intentions of FOISA been met and are they being delivered? If not, please give reasons for your response.</li> <li>3. Are there any issues in relation to the implementation of and practice in relation to FOISA? If so, how should they be addressed?</li> <li>4. Could the legislation be strengthened or otherwise improved in any way? Please specify why and in what way.</li> <li>5. Are there any other issues you would like to raise in connection with the operation of FOISA</li> </ol>	<p>You are invited to submit written views on the following questions:</p> <ol style="list-style-type: none"> <li>1. In your view, what effects has the Freedom of Information (Scotland) Act 2002 (FOISA) had, both positive and negative? <i>Is there any evidence that its provisions affect some groups disproportionately? If so, what data exists to compare effects across different socio-economic groups, Black and Minority Ethnic groups, people with disabilities, men and women?</i></li> <li>2. Have the policy intentions of FOISA been met and are they being delivered? If not, please give reasons for your response.</li> <li>3. Are there any issues in relation to the implementation of and practice in relation to FOISA? If so, how should they be addressed? <i>Is there any evidence that implementation has affected the following differently: men and women, different socio-economic groups, Black and Minority Ethnic groups or people with disabilities?</i></li> <li>4. Could the legislation be strengthened or otherwise improved in any way? Please specify why and in what way.</li> <li>5. Are there any other issues you would like to raise in connection with the operation of FOISA?</li> </ol>

## 6.2 Identify gender relevance and ask the right questions

A gender-sensitive post-legislative scrutiny does not ask everything that potentially could be asked about gender equality. It asks only relevant questions. To do that, it is important to identify the gender relevance of legislation by conducting some form of gender analysis. If gender analysis has been conducted during pre-legislative scrutiny, the relevant questions have already been identified and post-legislative scrutiny would need to revisit them and provide answers. If not, it is important to identify the questions that need to be asked.

The starting point for any form of gender analysis<sup>21</sup> is the existing situation of men and women in the sector or area and existing differences in terms of rights, position in society, distribution of resources, access to power and representation. Some basic gender-sensitive questions are presented below:

### **Gender-sensitive questions for post-legislative scrutiny<sup>22</sup>**

- How did the law affect the existing situation of men and women?
- How did the law influence men and women in terms of rights and obligations?
- How did the law influence men and women in terms of access to or distribution of resources?
- How did the law influence men and women in terms of access to power and representation?

For example, inequality in education is expressed through gender-based different choices across study fields, the feminisation of the teaching profession versus the masculinisation of teaching in tertiary education, gender stereotypes, gender and low achievement in school, gender and early school leaving, gender and training and gender-based violence at school.<sup>23</sup> Depending on the instruments scrutinised, a scrutiny of educational legislation would have to assess the legislative interventions against this reality.

For example, relevant questions for a scrutiny of higher education legislation could be the following: did the law promote equal participation of male and female candidates in higher education? In scholarships? How did it affect gender-based segregation in the choice of study areas? How did it affect the existing gap between male and female students in science, technology, engineering and mathematics (STEM) or humanities subjects? Based on these questions it will be possible to establish the specific positive, negative or neutral impacts of legislation on gender-relevant issues.

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21. There are a number of different frameworks for undertaking gender analysis. The most well known are the Harvard Analytical Framework or Gender Roles Framework, the Moser conceptual framework, the Levy framework, the capacities and vulnerabilities approach, the social relations approach, the gender analysis matrix framework and the 4R method).

22. Examples of gender sensitive evaluation criteria can be found at: <https://eige.europa.eu/gender-mainstreaming/methods-tools/gender-evaluation> and at [Integrating Gender-Based Analysis Plus into Evaluation: A Primer 2019](#).

23. Source: <https://eige.europa.eu/gender-mainstreaming/policy-areas/education>

## 6.3 Collect gender-relevant information, data and evidence

Data is important for any form of gender-sensitive scrutiny. It is important to ask the questions, but it is equally important to collect the right information and data. Many issues might remain invisible if not specifically asked or without sex-disaggregated or gender-relevant data. Data and information that is relevant for gender-sensitive post-legislative scrutiny is presented in the box below:

### Data and information relevant for post-legislative scrutiny

- Available gender disaggregated data on the issues scrutinised (for example, statistics)
- Available implementation data (on the results of the law or beneficiaries, for example)
- Available research (quantitative and qualitative)
- Actors and stakeholders with experience and knowledge in the topic

In practice, inquiries in parliamentary committees are often evidence-led and focus on points drawn to their attention by witnesses and evidence. For this reason, it is important to **a) to include gender-relevant questions in the call for evidence and to the invited witnesses and b) to specifically invite organisations or institutions with a mandate or expertise in gender equality to contribute a gendered perspective to the scrutiny.**

Specialised experts or organisations can include public officials with a mandate on gender equality (specialised ministries, equality committees) as well as research institutes, think tanks, experts, activists and NGOs. Many gender concerns might remain hidden unless revealed by those affected by them. Gender-balance in the witnesses heard is also another way to take into account the experiences of men and women in a balanced way.

The Committee on the Mental Capacity Act 2005 (UK) included in its call for evidence a question particularly referring to potential impact on gender. This allowed the collection of some relevant evidence. The evidence indicated that neither Black and Minority Ethnic groups nor men or women were under-represented in capacity assessments or among those assessed as lacking capacity and have not been disproportionately affected by the Act. It was noted however, that the implementation of the Act would need to take account of gender differences in acknowledging and facilitating capacity to ensure that the decision-making rights of women with dementia are upheld.

The Committee held 15 public evidence hearings, questioned 61 witnesses, received 216 written submissions, met adults with learning disabilities, attended a special meeting of a peer support and advocacy group for people with dementia and visited the Court of Protection. *It is noteworthy however, that the list of witnesses does not specifically include organisations or experts providing a gendered perspective on the topic scrutinised.*

## 6.4 Integrate a gender lens in findings and recommendations

Gender-sensitive post-legislative scrutiny can reveal important information in relation to the effectiveness and efficacy of legislation from a gender perspective. It can also show that no major impacts on men and women are occurring.

It is recommended to include a gender lens in the conclusions and the recommendations of the scrutiny, even if it is to say that no alarming gender-relevant findings were found. And if gender-related findings are identified, it is important to include related recommendations.

## 7. Conclusion: learning points

- Gender accounts for differences in all areas of life. Laws can have disparate impacts on women and men and these might not be immediately evident. It is for this reason that post-legislative scrutiny of general legislation needs to examine and report on the impact of legislation on men and women.
- Gender-sensitive post-legislative scrutiny adds a gender perspective to the general scrutiny. Its added value is its potential to assess whether legislation has produced (positive or negative) unintended or unexpected impacts on gender outcomes and results and correct eventual imbalances.
- Gender-sensitive scrutiny of general legislation is far from standard practice. In fact, scrutiny of general legislation tends to overlook gender issues.
- Mainstreaming gender in post-legislative scrutiny requires an integration of gender concerns in the preparation, planning, implementation and follow up of the scrutiny.

### **The main steps for a gender-sensitive post-legislative scrutiny are to:**

- Put gender in the scrutiny radar
- Identify gender relevance and ask the right questions
- Collect gender-relevant information, data and evidence
- Integrate a gender lens in the scrutiny findings and recommendations

## Resources

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- [Post-legislative scrutiny of the Freedom of Information Act 2000](#), House of Commons Justice Committee, 2012
- [Public Trust in Government Statistics A review of the operation of the Statistics and Registration Service Act 2007](#), House of Commons Public Administration Select Committee, 2013
- [The role of the Charity Commission and "public benefit": Post legislative scrutiny of the Charities Act 2006](#), House of Commons Public Administration Select Committee, 2013
- [Post-legislative scrutiny of the Mental Health Act 2007](#), House of Commons Health Committee, 2013
- [Post-Legislative Scrutiny: Terrorism Prevention and Investigation Measures Act 2011](#), House of Lords House of Commons Joint Committee on Human Rights, 2014
- [Post-legislative scrutiny: Flood and Water Management Act 2010](#), House of Commons Environment, Food and Rural Affairs Committee, 2017
- [Adoption: Post-Legislative Scrutiny](#), House of Lords, Select Committee on Adoption Legislation, 2013
- [The Gambling Act 2005: A bet worth taking?](#), House of Commons Culture, Media and Sport Committee, 2012
- [Post-legislative scrutiny of Part 2 \(Encouraging or assisting crime\) of the Serious Crime Act 2007](#), House of Commons Justice Committee, 2013
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At the IALS, she teaches at the [LLM in Drafting Legislation, Regulation, and Policy](#) at the Legislative Drafting Course and other specialised short courses offered to students and practitioners. She has been actively involved in the design and delivery of several professional courses on post-legislative scrutiny offered by the IALS in cooperation with the Westminster Foundation for Democracy. She coordinates the work of the [Sir William Dale Legislative Drafting Clinic](#) and is in charge of the [Urban Law Initiative](#), a research cooperation between the Sir William Dale Centre for Legislative Studies at IALS and the United Nations Human Settlement Programme (UN-Habitat) that promotes innovative research, generates knowledge and improves the quality of urban legislation in countries around the world.

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## About Westminster Foundation for Democracy

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