



The Scottish Parliament
Pàrlamaid na h-Alba

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BY E-MAIL

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Dear Professor Paterson and Professor McVie,

GUIDANCE ON SEX AND GENDER QUESTIONS IN THE 2021 CENSUS

Thank you for your correspondence of 4 August 2020.

The Culture, Tourism, Europe and External Affairs Committee was designated as the lead committee to scrutinise the legislation that underpins the 2021 Census, including the Census (Amendment) (Scotland) Bill; the draft Census Order; and the Census (Scotland) Regulations 2020 ('the Regulations').

The Committee recommended that the Parliament agree to the general principles of the Census (Amendment) (Scotland) Bill in its Stage 1 report dated [7 February 2019](#). The Committee also recommended that the Scottish Parliament approve the draft Census Order in its report dated [4 March 2020](#) and the Committee had no points to raise in relation to the [Regulations](#), which were subject to the negative procedure and came into force on 16 June 2020.

Alongside the above-noted legislative scrutiny process, the Committee was involved in a process of informal engagement on the development of the guidance that will assist the Scottish population to complete the next census. This guidance is not a legal document and the Committee therefore does not have the authority to approve it. The Cabinet Secretary noted this in her oral evidence on the draft Census Order on 30 January 2020, when she informed the Committee—

“The guidance is completely separate from the legal processes that we are considering.”¹

¹ Culture, Tourism, Europe and External Affairs Committee. *Official Report*, 30 January 2020, Col 21.

The Cabinet Secretary also noted in relation to the Committee’s formal scrutiny role that—

“The Committee’s legal responsibilities relate to the Order, which sets out the subjects to be included, and then the Regulations, which will set out the questions... I know that the Committee has become heavily involved in the guidance issue, but its legal responsibility relates to the Order.”²

During the informal engagement process, the Committee specifically sought clarification from the Scottish Government on the legal status of the guidance. In particular, the Committee requested that additional text is “...added to the guidance on the sex question to clarify that the guidance has no legal status.”³

The Cabinet Secretary noted in her written response of 26 February that the guidance development was ongoing and that this work would not conclude before the Committee formally considered the Scottish Government’s motion to approve the draft Census Order at its meeting on 27 February, stating—

“...it is appropriate to continue to look at the guidance required for a successful Census in 2021 and I have asked officials at National Records of Scotland to consider adding additional text so that there is clarity on the purpose of the Census and the data being gathered. This is to ensure it is clear that responses do not affect the legal rights, obligations or status of individuals and respondents have confidence that credible data is being collected through the Census operation. I will update Committee members further once this work is concluded, which will, however, be after the committee meeting on 27 February.”⁴

The Cabinet Secretary updated the Committee on the work being done at an official level to clarify the legal status of the guidance in her letter dated [28 April 2020](#). This correspondence has been published on the Committee’s website.

A final version of the complete set of guidance that will accompany the next census has not been shared with the Committee. I would therefore refer you to the National Records of Scotland and the Scottish Government for the latest information on its development.

I hope this clarifies the matters raised in your correspondence.

Yours sincerely,

² Culture, Tourism, Europe and External Affairs Committee. *Official Report*, 30 January 2020, Col 35.

³ Letter from the Convener of the Culture, Tourism, Europe and External Affairs Committee to the Cabinet Secretary for Culture, Tourism and External Affairs dated 6 February 2020, p. 2.

⁴ Letter from the Cabinet Secretary for Economy, Fair Work and Culture to the Convener of the Culture, Tourism, Europe and External Affairs Committee dated 26 February, p. 1.

Joan McAlpine MSP

Convener

Culture, Tourism, Europe and External Affairs Committee