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The Convener  
Culture, Tourism, Europe and External Affairs  
Committee  
Scottish Parliament

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Dear Convener,

Thank you for the Committee's thorough consideration of the Census (Amendment) (Scotland) Bill and the Stage 1 report published on 7 February 2019. I welcome your support on the general principles of the Bill and have set out my initial response below on the other matters highlighted within the report.

### **Evidence Gathering**

I too wish to thank all those who provided oral and written evidence during the Stage 1 process. The Bill recognises the importance and sensitivity of asking questions on sexual orientation and transgender status/history, and that was also apparent through the discussions that the Committee has had during Stage 1. I fully agree that on-going consideration of the Bill must be conducted in a respectful manner.

I accept your recommendation to give consideration to the evidence you received with regard to the language question for the 2021 Census. This will contribute to the on-going iterative process of user consultation, evaluation and question testing to inform the recommendations for all questions for 2021. However, please note that while some need was identified for multilingualism, the aim of the main language question is to identify people for whom English is not their main language, and their level of proficiency in English to support service provision.

### **Voluntary Questions: Gender Identity and Sexual Orientation**

I welcome your recognition that it is appropriate to ask these questions on a voluntary basis. It is important to mitigate concerns about intrusion into private life by placing these questions on a voluntary basis, as was done with religion when it was included for the first time in the 2001 Census. Nobody should feel in any way compelled to answer these important but sensitive questions.

## **Sex Question: Binary or Non-Binary**

I am aware that you have received evidence from organisations and individuals supporting the National Records of Scotland (NRS) proposal for a self-identified sex question with a non-binary response option. There has also clearly been evidence stating that the question should remain binary with no third response option. Whilst the report states that having a binary response option leads to higher response rates, please be aware that this is not what NRS testing found. However, I note that the Committee has considered all the evidence provided and recommends that the mandatory sex question should remain binary. The wording of the questions will be agreed as part of the subordinate legislation process. However, I note the clear direction from the Committee at this time on what they consider appropriate for the sex question. This will now be taken into account in the next steps of developing the potential mandatory question as NRS work towards preparation of the subordinate legislation and its consideration by the Committee and Parliament in due course.

As you noted, the particulars to be sought and the text of the questions are considered as part of the Census Order and Census Regulations procedure as set out in the Census Act 1920. NRS are committed to an ongoing programme of testing around this question and are engaging with stakeholders to understand their needs and concerns. NRS will work closely with the Committee over the coming months, sharing the response rate to different formulations of the sex question and proposed question set for your consideration, including any additional evidence and stakeholder views, before the formal Census Order and Regulations are submitted in late 2019/early 2020.

## **Sex and Gender Identity**

I note that the Committee has highlighted that the current drafting of the Bill, and in particular the way the term “gender identity” has been used, may give the impression that sex and gender identity are being conflated. I wish to be very clear that the intention behind the Census Bill has never been to conflate sex and gender identity. I note that you support a proposal by the Equality Network to amend the draft Bill to address this issue. I agree that an amendment is required to deal with this issue and I will bring forward an amendment at Stage 2. As NRS and I made clear to the Committee, we will listen to the Committee and work with it, with the Equality Network and with other stakeholders to deliver a solution that commands broad support while providing the degree of flexibility that NRS need to develop the Census questions. Work has already begun on the precise form such an amendment might take and our thinking and the Equality Network’s thinking on this does not seem to be very far apart.

I note that the Committee recognises that testing of questions on trans-status is ongoing and that Parliament will have the opportunity to scrutinise the draft questions, and the evidence behind the question development, during the subordinate legislation process.

## **Sexual Orientation**

I welcome the Committee’s acceptance of the inclusion of a sexual orientation question in the Census and the support for sexual orientation to be added as a matter to the Schedule of the Census Act 1920.

Please note that a sexual orientation question is asked in most Scottish household surveys and it is proposed that the question for the 2021 Census would mirror the question already used in these other surveys in Scotland and elsewhere in the UK. However, I support your recommendation to consider the privacy rights when the form is being completed by the head

of the household and will ensure NRS does take into consideration the Committee's direction on consulting with organisations representing young people, including LGBT Youth Scotland, on this matter. Please be aware that NRS is developing a system of completion of an individual form, in privacy, where no one else in the household will be aware that it has been requested, to allow individuals to respond in a private and confidential way. Issues of privacy were raised during NRS consultation, and this method of allowing individuals to reply in private directly addresses those concerns.

## **Intersex**

As I stated in evidence, it was unfortunate that the policy memorandum incorrectly included intersex people under the umbrella term trans. It is recognised that the needs of trans people and intersex people are different. In response to your recommendation that all guidance for 2021 should make it clear that intersex does not fall within the term trans, NRS will develop guidance and consult with stakeholders to ensure that the language and terminology are acceptable.

The Scottish Government has noted the written evidence by the organisation dsdfamilies and accepts the recommendation in paragraph 119 of the Committee's report. The Scottish Government intends to carry out a consultation later this year (which is separate from Census work). This will cover a range of issues, including how to improve information and services for intersex children/children who have variations in sex characteristics and their families. The Scottish Government has met with dsdfamilies and other organisations to discuss what this consultation could cover and will continue to have discussions with dsdfamilies and other organisations.

The UK Government has recently issued a call for evidence in this area: <https://www.gov.uk/government/consultations/variations-in-sex-characteristics-call-for-evidence>.

## **Consultation**

The Committee's views on engagement with groups and individuals is noted. I wish to clarify that NRS carried out a public consultation between 8 October 2015 and 15 January 2016 in order to understand what information users needed from the Census in 2021. No women's groups responded to the public consultation and some were not established at this early consultation stage. However, NRS is now actively engaging with women's groups who responded to the Committee's call for evidence including several meetings which took place in January. It is of critical importance that NRS continue to engage with individuals and groups with an interest in the Census and the Committee work has been very useful to highlight the Census to those that have not been engaged with so far. Work with stakeholders, including these women's groups, will continue as part of question development.

NRS are committed to an ongoing programme of engagement on the Census including on development of the questions for Census 2021. This includes working directly with a wide range of stakeholders, which has involved thousands of people in Scotland from across society. The Committee will be fully updated on the consultation NRS has carried out, including progress made with the women's groups, prior to any consideration of a draft Census Order.

Please note that NRS did not meet with organisations representing intersex people prior to 5 December 2018 but were aware of meetings that other teams within the Scottish Government were having especially in relation to the GRA consultation and ensured they kept informed of

that engagement. However, NRS did have a helpful meeting with dsdfamilies in January and are committed to engaging with them, other intersex organisations and experts going forward so that their views are taken into account. It should be noted that NRS has never intended to have a question or response option identifying intersex people.

NRS welcome the Committee's recommendation to engage with the widest possible constituency and will consider all the evidence gathered by the Committee.

### **Conclusion**

I welcome the Committee's support of the general principles of the Bill and hope this response sufficiently covers the matters raised in the Stage 1 report ahead of the debate on 28 February.

Kind regards  
Fiona Hyslop

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