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To: Members of the Culture, Tourism,  
Europe and External Affairs Committee  
Scottish Parliament  
By email

1<sup>st</sup> October 2019

Dear Members of the CTEEA Committee,

### **Census 2021 sexual orientation question**

We are writing, as national LGBTI organisations, about the design of the sexual orientation question in the Census 2021.

We saw that the Committee has recently written to NRS about the detailed design of the question, and, as organisations working on sexual orientation equality across Scotland, we would ask the Committee to please consider the following points.

As previously noted, we very much welcome the passing of the Census (Amendment) (Scotland) Act 2019, and we thank the Committee for your strong support for the addition of voluntary questions on sexual orientation and on trans status and history.

The specific question that NRS proposes to use for sexual orientation was developed around a decade ago, with extensive consultation and testing, across the UK. The question wording has been in use by the Scottish Government in the core question set for national surveys since 2011. The same wording has been publicly recommended by the Scottish Government, since 2012, for other organisations to use for their equality monitoring on sexual orientation.

The same question is also used by ONS in England and Wales for national survey work, and ONS intend to use it in the 2021 Census there. In short, it is widely used across Scotland and the UK, and it



works well. Using a consistent wording in the 2021 Census will of course make for better baseline and comparative data for other data users.

The Committee's letter to NRS specifically asked about the inclusion of the "other sexual orientation" option, with a write-in box, and how this relates to the definition of the sexual orientation protected characteristic in the Equality Act 2010.

In our view, the "other" option, with a write-in box, is vital. In our own equality monitoring of people who engage with us, we provide a similar write-in option. We find that it is used by a minority of people – between 10% and 20% of the number who answer by selecting the lesbian, gay or bisexual options. Write-in responses include, for example, "pansexual", "homosexual", and "asexual". The key point here is that not everyone uses the words "lesbian", "gay" or "bisexual" to describe themselves, and people's preferences in this tend to be strongly held, not least because these are terms used to describe a very personal characteristic. Not providing the "other" option in the question would be likely to mean that many people who use different terms for their sexual orientation would not answer the question at all, and the data quality would be seriously affected.

When we explore what people mean by these "other" terms, most of them clearly fall within the Equality Act definition of the protected characteristic of sexual orientation, including for example, "homosexual" and "pansexual". People are protected by the Equality Act whether or not they use any specific term to describe themselves.

In the case of "asexual", we find that some people write "asexual lesbian" for example, while others just write "asexual". In the latter case, it could be argued that the person is indicating that they do not have a sexual orientation in the sense of the protected characteristic defined in the Equality Act (although that has not been tested in court). If that is the case, however, it is still important that the person is able to state that when they answer the Census question, rather than being unable to answer the question at all.

Other Census questions that relate to Equality Act protected characteristics are similar. There are "other" write-in options in questions



18 (related to disability), 21 (related to religion), and 22 and 23 (related to nationality and ethnicity).

People may use those options to write in something that is not covered by the Equality Act protected characteristic. For example someone may write “high blood pressure” in the “other condition” box in question 18, although that (on its own) is not a disability as defined in the Equality Act.

A number of the “protected characteristic” questions in the Census do not exactly match the definitions of the protected characteristics in the Equality Act. In question 19, the first option (“limited a lot”) corresponds fairly closely, although not exactly, to the disability protected characteristic, while the second option (“limited a little”) falls outwith the protected characteristic.

The religion question (question 21) is narrower than the Equality Act protected characteristic, because the latter covers both religion and philosophical belief, while the Census question only covers religion.

In summary, there is no requirement for the Census questions that relate to protected characteristics to exactly follow the definitions of the protected characteristics given in the Equality Act, and, generally, they do not.

Census questions are asking people to describe aspects of their own identity in terms that they use and understand. The Equality Act requires legally worded definitions relating to how and why people discriminate against or harass others. Those are two different things.

Census questions must use language that, as far as possible, people understand, underpinned by testing to confirm that the wording works. This includes, where appropriate, people having the opportunity to enter their own details via an “other” write-in box, so that everyone has the opportunity to answer the question.

In our view, the sexual orientation question proposed by NRS satisfies those criteria. We strongly support the inclusion of the “other” option in this question. We think that, without it, the amount and value of data



collected would be significantly reduced, the data would be less consistent with that obtained elsewhere, and the new question would be much less acceptable to a significant number of people. We very much welcome the passing of the Census (Amendment) (Scotland) Act, and we would not want to see the effectiveness of the resulting sexual orientation question reduced in any way.

We would be happy to provide further information if that would be useful.

With best wishes,

A handwritten signature in green ink, appearing to read 'Cara Spence'.

Cara Spence  
Head of Programmes  
LGBT Youth Scotland

A handwritten signature in black ink, appearing to read 'Tim Hopkins'.

Tim Hopkins  
Director  
Equality Network