

Convener  
Culture, Tourism, Europe and External Affairs Committee  
The Scottish Parliament  
Edinburgh, EH99 1SP

18 December 2019

Dear Convener,

I am writing to update you on progress with the Census Order. This follows on from the draft Order NRS shared with you on 5 September in advance of the Culture, Tourism, Europe and External Affairs Committee's meeting on 12 September at which officials from NRS and SGLD gave evidence.

As you are aware, we are currently in a period of informal scrutiny of the draft Census Order with the Committee, which was designed to help alleviate some of the problems that happened with the laying of the 2011 Census Order. This is an unusual process for these legislative matters, which has involved the Committee early in the process as active participants as the first engagement would usually be when the Order is formally laid in draft. This new approach came from a recommendation of the previous lead committee to seriously consider the process, such as including a pre-legislative scrutiny element for the lead committee. I hope this new period of informal scrutiny will support the successful passage of the formal draft Order through Parliament early next year.

As you are aware, the Scottish Parliament is able to agree modifications to specific provisions in the draft Census Order. These are the provisions which would be made in reliance on paragraph 6 of the schedule to the 1920 Census Act and can be seen in the italics text of the draft Census Order shared in September. I would welcome early confirmation of whether the Committee recommends any changes to the italic text of the draft Order, so that consideration can be given to incorporating those recommendations in the draft Census Order when it is to be laid. This is to avoid the need to delay the Order's progress at a later stage if it must be withdrawn and laid again to take into account any proposed modifications.

The NRS letter of 5 September made reference to some additional but relatively minor changes to policy and operations that may need to be reflected in the formal draft Order. I am pleased to say that policy development has been completed and the main changes are shown below. These will be reflected in the Draft Order when it is laid.

- NRS are proposing a question in the Communal Establishment Managers questionnaire on the breakdown of the age profile and sex of residents in Communal Establishments. This will replace the question about which groups the establishment caters for.
- Additional clarity will be provided on which individuals are to be counted and where they are to be enumerated for Scotland's Census 2021.

- NRS have now confirmed all the age limitations for questions in the census questionnaire.
- Further clarity will be provided on where returns are to be made for dwellings and where they are to be made for Communal Establishments.
- Those responsible for providing a return for those prisoners who are incapable of providing a return themselves are to have additional flexibility to make arrangements for those returns.
- For unoccupied dwellings, the owner will be responsible for completing the household questionnaire.

My letter of 25 October responded to the points in your letters of 18 and 24 September, which followed the evidence session on 12 September and the demonstration of the Online Collection Instrument that you received on 18 September. I would welcome any feedback on these matters.

The current sex question testing, which NRS commissioned ScotCen Social Research to carry out, is progressing well. I will share the results of that work with the Committee as soon as possible. I understand a session has been set with the Committee for 9 January 2020 to consider this work and other Census matters pertinent to the Census Order.

Please note that engagement with stakeholders continues to take place. You may be interested to note that NRS met with Professor Nick Bailey and Dr Jo Ferrie (University of Glasgow), and Professor Susan McVie (University of Edinburgh) on 7 October, and with representatives of Sikhs in Scotland on 25 October. Both of these meetings linked to matters contained within correspondence received by the Committee, which was helpful for us to receive, and both meetings were very constructive. With the agreement of all attendees, I have attached details of the meeting with Professor Bailey, Dr Ferrie and Professor McVie. We are awaiting confirmation from Sikhs in Scotland that they are content with the note of our meeting with them and for us to share with the Committee.

Please do continue to share any contacts or correspondence from individuals or groups that are interested in census matters. Whilst NRS has an extensive list of stakeholders, I very much welcome the opportunity to engage with more and to have them added to our network.

I am aware of your interest in the proposed questions with predictive text responses, which you highlighted in the Online Collection Instrument demonstration on 18 September and in further comments to the media on 30 October. To further inform discussions on this issue I would like to set out the proposed approach to predictive text for the Census in 2021.

NRS is looking at using three types of predictive type responses to help the efficient and effective collection, analysis and production of the evidence required by Census users. These are:

1. Factual question responses where there is a finite number of possibilities. In this case text responses are limited to the list and users must select one of the options from the list. Predictive text lists are drawn from international standard lists and conform to mygov and industry standards. NRS is currently considering:

- Country of birth (*282 Options*)
- Passports held (*216 Options*)
- Address one year ago (*Country - 282 Options*)

2. Factual questions where there are a very large number of possible response options. In this case text responses are prompted by a predictive text, but are not limited to the predictive text list. Examples are standard industry and occupation codes, main language and health conditions. Where there are standard classification lists available, these are used as the basis of predictive text lists. Lists are also informed by responses in the 2011 census and where the questions are used in other data collections. NRS is currently considering the following within the 'other' write in box:

- Main language, if not English (*545 suggestions*)
- Long term health conditions (*1159 suggestions*)
- Main activity of employer or business (Industry) (*8699 suggestions*)
- Job title (*9823 suggestions*)

3. Questions about how people identify. For many questions with a text box there may not be standard classification lists used by statistical organisations. These questions, and the format of the response options, are designed to gather a wealth of detail in an efficient way, which enables everyone to respond, and minimises the space needed by the question and response options both on paper and online. Predictive text lists are based on classification indexes, 2011 responses, other research undertaken as part of census question development and through consultation with stakeholders. NRS is currently considering the following within the 'other' write in box:

- Sexual orientation (*21 suggestions*)
- Religion (*Christian – 49 suggestions, Muslim – 2 suggestions, Other – 65 suggestions*)
- National identity (*274 suggestions*)
- Ethnic group (*241 suggestions*)

Please note that the current proposed predictive text options are a work in progress; no lists have been finalised. They have been drawn from a range of sources, as appropriate, which includes previous censuses, other surveys, statistical desk based research and engagement with stakeholders. These are draft proposals and continue to go through a process of review, which includes evaluation of the recent Census rehearsal. As you can see from the above, there are a substantial number of options and suggestions being proposed. However, please let me know if you wish to see any in particular.

Given the interest highlighted by the Committee on matters related to ethnicity, I would also like to make you aware of the judicial review heard on 12 and 13 November related to the Census in England and Wales. The Sikh Federation launched a legal challenge to the UK Government's proposal not to include the option of a Sikh tick box in the ethnic group question. The decision of the judicial review was announced last week and was in favour of the UK Government position. In summary, the claimant's claim for judicial review was dismissed and permission to appeal was refused. The proposed approach in Scotland for ethnicity is the same as in England and Wales. Sikh respondents continue to be able to identify as Sikh within the religion question. Those who

do not identify as Sikh within the religion question, continue to be able to write in Sikh in the ethnic group question, as was the case in 2011.

Please contact me if you have any comments on this letter. I look forward to attending Committee on 9 January.

I trust you will find this letter helpful.

Yours sincerely

Peter Whitehouse

**Director of Statistical Services**  
National Records of Scotland

**Meeting with stakeholders: Census 2021 sex question on 7<sup>th</sup> October at 13:00 in 1/G/8  
LWH**

**[Record of discussion as set down by NRS]**

Attendees: Peter Whitehouse NRS  
Jill Morton NRS  
Anneli Lyon NRS  
Professor Nick Bailey – University of Glasgow  
Dr Jo Ferrie – University of Glasgow  
Professor Susan McVie – University of Edinburgh  
NRS Official – minute taker

Introductions were made round the table with an explanation that the purpose was to hear from stakeholders, Susan, Jo and Nick.

1. Susan, Jo and Nick felt that a self-identified sex question would produce inaccurate sex data. Their rationale for this was that
  - they considered that the current approach for responding on the sex question (self-identification), which in their view meant that respondents could answer as they wish is no longer a reasonable and accurate count of sex. [NRS consider the current approach of responding to the sex question balances the needs of all Census data users by enabling all people across Scotland to complete the Census].
  - they felt that the inaccuracy in the data from such self-identification guidance has a materially different impact on users ability to analyse the data than the impact of incomplete and missing census returns, disclosure control, item non response and other gaps in Census data that are subject to estimation and other statistical solutions. [NRS consider that Census outputs are subject to a range of estimation and item completion work]
  - whilst Stonewall estimate that 1% of the population are trans this is not evenly spread across age or location. Nick therefore felt that in some areas this could be as high as 3%. Nick concluded that if this was the case the impact on sex differentials for some age groups could be as high as 6%. [NRS agree that it is likely that the trans population is unlikely to be evenly spread across Scotland, but sees this as an important reason for ensuring that all people are able to fully engage with the Census]
  - the approach recommended by NRS was leading to data on biological sex being lost. [NRS believe that the current approach by NRS of self-identification provides the best opportunity to allow all people across Scotland to engage with the Census. The self-completion approach to the Census has always allowed respondents to answer questions as they so wish]
2. Susan, Jo and Nick raised the question as to whether a 'biological' sex question is unacceptable to the trans population? Susan, Jo and Nick expressed the view that many trans people say that they would answer a question on 'biological' sex, and that rather than it being

'unacceptable' there are a wide variety of views and it is more likely they find it 'unpleasant'. [NRS's view from testing of questions is that a biological sex question would stop some members of the trans population from completing the Census].

3. Susan, Jo and Nick spoke about the need for biological sex data. They spoke about

- Social analysis – inequality
- Resource distribution – health e.g. maternity services
- Analysis of care and ageing population in local authorities
- Sex based biases in criminal justice system

Susan, Jo and Nick agreed to send NRS examples of research/ data linkage where the sex data must be biological/legal.

4. Susan, Jo and Nick discussed the impact of imperfections in the data.

- All acknowledged that there is a respondent need for a sex question as recommended by NRS, but Susan, Jo and Nick felt that this is an issue that if we cannot be accurate about what we are measuring then it can't be used for the Equalities Act. [NRS : The Census collects information relevant to a number of the protected characteristics of the Equalities Act. NRS believe that the Census Outputs provide high quality evidence to help support authorities fulfil their duties under the Act].
- Susan, Jo and Nick felt that if the guidance is self-identified, then it is a gender identity question and gender identity is not a protected characteristic in the Equalities Act 2010. [NRS see the combination of a binary sex question and a trans question as the balanced approach for meeting the needs of respondents and users, and that the Equality Act 2010 does not, as a matter of law, restrict the questions which can be asked in the census to questions which are framed in terms of the protected characteristics described in the Act]
- The census has an obligation to produce data that allows people to carry out duties in accordance with the Equality Act [NRS agree. NRS is fully committed to the Act and wish to ensure Scotland's Census 2021 is exemplar in this area.]

5. On the question of Guidance/ No guidance, Susan, Jo and Nick made the following points / questions.

- How do non-binary people complete the self-identified sex question followed by the trans questions. There would be more clarity for the non-binary population if there was a biological sex question followed by the trans question. [NRS's testing indicates that a self-identified sex question followed by a trans questions enables all people across Scotland to engage with the Census].
- Susan, Jo and Nick felt 'legal basis' is the best solution, but that if there is no guidance, then guidance will emerge which will lead to even less clarity. They felt that it is better to have certainty with guidance rather than no guidance. [NRS agree that guidance provides an important mechanism for supporting the collection of high quality data. NRS has appointed ScotCen to test alternative guidance. To date NRS's testing indicates that a self-identified sex question followed by a trans questions enables all people across Scotland to engage with the Census]

NRS agreed to send the most recent version of the guidance.

6. UK Harmonisation was also discussed. The following points were made
- NRS confirmed that the proposed sex question for 2021 is binary and will be asked on a self-identified basis across the UK
  - NRS noted that harmonisation is on outputs but not on all questions.

*On behalf of*

Pete Whitehouse  
Director of Statistical Services  
National Records of Scotland

---

**From:** Nick Bailey  
**Sent:** 08 October 2019 10:12  
**To:** NRS Official; Jo Ferrie; Susan McVie  
**Cc:** NRS Official; Whitehouse P (Peter)  
**Subject:** RE: Census 2021: Invitation to meet

\*\*\* and colleagues

Hi and thanks for meeting with us yesterday. We'll get back to you on some of the points raised soon.

On the specific issues about the guidance for each question, I felt that this is done on a rather inconsistent basis at the moment. I doubt any change of wording here will make a difference to response rates directly but it could be something which you find it useful to point to when trying to get as broad a consensus as possible behind the final form of words for the guidance. For example:

- Q5 on Marital Status explains that this status is “protected by the Equality Act 2010” (a slightly unclear form of words?). This leaves it implicit that the question is asked for the purpose of monitoring equalities under the Act though the following examples of how SG and others will use the information is helpful.
- Q23 on Ethnicity explains that this “supports efforts to make sure people are treated fairly and promote a more equal society” but avoids mention of equalities monitoring or the 2010 Act although this is a protected characteristic.
- Q2 on Date of Birth just says “Answers to this question are used to calculate age.” But it doesn't say anything about why you need age. It makes no mention of equalities monitoring or the Act although age is a protected characteristic, nor of service planning or resource allocation.

- Q3 on Sex states that the data will be used for 'equality monitoring' but doesn't make explicit reference to the Equality Act 2010 nor does it note that sex is a protected characteristic. It makes general reference to information on the importance of sex for population statistics but doesn't mention the role of sex in relation to service planning or resource allocation.
- Q4 on Trans Identity makes reference to planning and design of services, and equalities monitoring.

It would be clearer if the guidance stated clearly that one reason for asking each of the questions which are protected characteristics is, in part, the requirement for monitoring equalities under the Equality Act 2010. For the sex question, this would reinforce the justification for asking about legally-recognised sex. It would also be helpful to be clearer that sex and age play crucial roles in allocation of resources for major services, as well as planning specific services.

Hope this is helpful.

Regards

Nick

Follow-up comments from NRS (28<sup>th</sup> November 2019) – annotated to this document

- NRS acknowledges Nick's point about consistency and will take this feedback into consideration as part of the guidance review

---

**From:** MCVIE Susan  
**Sent:** 27 November 2019 11:51  
**To:** NRS Official; Nick Bailey; Joanna Ferrie  
**Cc:** Whitehouse P (Peter); NRS Official; McEwen SG (Scott)  
**Subject:** RE: Note of Meeting on 7th October 2019: Census 2021 sex question  
**Importance:** High

Dear \*\*\*

Apologies for not getting back to you sooner. It has been difficult for us to discuss this together since the meeting, and as you know there is currently a period of industrial action taking place. That being the case, you should take the response below to be mine as I cannot speak for Nick and Jo on all of the points made.

Many thanks for giving us the opportunity to respond to the minute of our meeting. I would like to point out some points in the minute that I do not agree with, which I feel misrepresents what we said and which we discussed at the meeting but have been omitted from the minute.



1. Under point 1, I note that you refer to the ‘current approach’ rather than ‘the proposed approach’, which suggests that we are trying to change the status quo. I would argue that the current approach in all previous censuses (until 2011) was for the sex question to be answered according to biological sex and that this is our preferred option for the 2021 Census. In 2011, there was guidance (although it is not clear where this guidance came from or who made the decision to issue it) that people could answer the question using self-identification, but this guidance was not widely issued and for the most part it is widely understood that the prior assumption was for the question to be answered according to biological sex. I attended the meeting under the impression that we were there to discuss the ‘proposed approach’ from NRS and that the decision had not yet been made as to the final approach to be taken for the 2021 Census.
2. You have repeatedly justified your preference for self-identification by stating that it “enables all people across Scotland to complete the Census” or “to engage with the Census”. I am unclear what this means and do not believe that you put forward evidence at the meeting to support this. I am also unclear how our proposal to answer according to biological sex would stop people completing or engaging in the census.
3. You have not minuted the point made by Professor Bailey about the incoherence and inconsistency in the wording of the guidance in relation to equalities legislation. I would argue that the question and guidance (as currently drafted) introduces considerable ambiguity as to how to answer the question about sex. It advises how someone ‘could’ answer the question rather than how they ‘should’ answer it. This will introduce an additional degree of bias in the data (in that it might be answered by any individual according to sex or gender identity, so there is no telling which this variable will measure). This form of bias is very different from the issue of missing data and non-response you refer to in the minute. If it is your intention that people use ‘self-identification’, it would be extremely helpful to give a steer as to what this means.
4. You have not minuted the important point made by Dr Ferrie about the issue of sex-based socialisation processes in childhood which will impact on people throughout their life-course, regardless of their gender identity. Losing information about sex will mean that it will be impossible to study such processes in the future, which will close down an important area of sociological and cultural research.
5. I would argue that your contention that “the self-completion approach to the Census has always allowed respondents to answer questions as they so wish” does not address the material point that we made about the loss of valuable data on biological sex. Indeed, it misses the point that we are trying to preserve data on a fundamental human characteristic that has (in recent years) become conflated with another. This is precisely why clear and straightforward guidance is necessary.
6. You have omitted one of the key points which came out of the discussion that the emergence of trans identities is a very recent phenomenon which researchers and statisticians are having to catch up with. We need now to be able to study the behaviours of those born with a particular sex and those adopting a particular identity in a way we didn’t before. By losing the question on sex, there will be no way of studying sex-based discrimination of the trans or non-trans populations. Moreover, losing baseline information

on biological/legal sex in the current and future Censuses will become even more problematic in future if what we end up measuring using the 'sex' question becomes a moveable feast. There has been a tremendous expansion in the number and range of gender identities between the last Census and now. We have no way of knowing how population characteristics specified under gender identity may change and become further re-defined in the future (as it is inherently an ideological and sociological concept). Retaining a question on sex, which is a stable biological characteristic, will enable us to determine how these future gender-based transformations impact on society in a whole range of ways. Otherwise, the data collected under 'sex' will have limited value to users at the time of data collection, and no value in relation to past or future data.

7. On your bullet points under section 3, I would add "social analysis – inequality and discrimination against people on the basis of both sex and gender identity". And I would add Dr Ferrie's point (noted above) about socialisation processes in childhood that are heavily influenced by sex and which impact across the life-course.

We agreed to provide examples of research where it would be important to distinguish sex or important to be able to separate out legal/biological sex from identity. As discussed at the meeting, this would include research on a wide range of social phenomenon where there have long been marked sex differences. For example, not having clear information on sex would not allow us to be confident about the reasons for changes in certain sex-based offending or victimisation patterns (e.g. sexual crimes, domestic violence); we would not be able to be fully understand the reasons behind certain that sex-related changes in the labour market; we would not be able to evaluate the influence of sex-based socialisation processes on employment patterns or unpaid caring roles in society; and we would have far less clarity about the impact of sex on certain health conditions. There are likely to be many other examples of how sex-related information is important now, and will continue to be important in the future.

As stated at the meeting, my position is that measuring both sex and gender identity separately is the best and most reliable way to measure the dynamic nature of the population and how it is changing, both now and in the future. Self-identification without clear guidance is the worst of all worlds, as it ultimately does not provide a reliable or clear measure of either sex or gender identity.

You are welcome to share your minute of the meeting on the 7<sup>th</sup> of October with the CTEEA Committee, but I would appreciate it if you also shared my views.

Best wishes  
Susan

Follow-up comments from NRS (28<sup>th</sup> November 2019) – annotated to this document

Point 1 : NRS position is that as the census is self-completion, to that extent the question has always been a self-identified one and it can be assumed that without explicit guidance, people answered the question in the way that they felt best reflected their sex. For most people their self-identified sex equates to their biological and legal sex and they do not require guidance to answer this question.

The guidance provided in 2011 was specifically for the trans population and can be seen to confirm that self-id was the broad approach taken.

Point 2 : The advice received from groups representing and advocating for trans population across Scotland, was that they would find it less acceptable to answer the question without self-id guidance. Testing of the sex question did not throw up any problems for other population groups Scotland.

Advice received by NRS set out that trans population would find it less acceptable because:

- Census should reflect how they live in society
- Forcing trans people to disclose their sex as registered at birth would be a potential violation of their human rights, particularly their right to privacy and dignity under Article 8 of the Human Rights Act
- It may cause humiliation and distress, people may not answer which would lead to less accurate data
- It would be a step back to the view that only GRC holders are entitled to dignity and respect of their lived sex and out of step with long established trans equality practices in Scotland.
- Trans people would be content to answer a self-identified sex question and then identify as trans in the trans status question

Importantly, cognitive and quantitative testing also showed that the general population are able to answer a binary sex question

Point 3 : The response to the Equalities Act is contained in para 4 of the minute, and data in para 1.

Point 4 : Thank you for adding this. The point is linked to those made above.

Point 5 : Agree that guidance is important. Point on biological sex is linked to those made above.

Point 6 : These points are broadly covered through the discussion and the different in view about previous collections, the analysis of Census data, and the use of other data.

Second last para :

Whilst some stakeholders may prefer a gender identity question, questions are included in the census on the basis they are tested and demonstrate they meet the aims of the census. Findings for Scotland showed when the gender identity question set was included, the level of item non-response significantly increased compared to both the binary sex question alone and the non-binary sex question (with a 'other' write in option) alone. In order to produce good quality data which meets user needs, the census is designed to maximise response to the Census overall, and to maximise response to individual questions. As the gender identity question set results in greater item nonresponse (this was more likely to occur at the second step [gender identity question] than at the first step [binary sex question]), it does not meet these aims and was not taken for further development. The trans status question, combined with a sex question or on its own, produces better quality data on the size and location of the trans population, measured by item non-response, in Scotland and this was therefore taken forward for development. It also

directly gather the data users expressed a need for – the size and location of the trans population in Scotland.

---

**From:** Nick Bailey  
**Sent:** 27 November 2019 16:32  
**To:** MCVIE Susan; NRS Official; Jo Ferrie  
**Cc:** Whitehouse P (Peter); NRS Official; McEwen SG (Scott)  
**Subject:** RE: Note of Meeting on 7th October 2019: Census 2021 sex question

My thanks to Susan for pulling these notes together. As she says, we haven't had the chance to discuss these but I am in full agreement with the points she raises.

As a minor clarification, on pt 3, Susan is referring to the general point I raised about inconsistent reference to equalities legislation across the guidance on a number of questions. As requested, I sent details of that after the meeting and you are welcome to include that material in your note. Susan then goes on to make a point about the guidance specifically in relation to the proposed guidance on the sex question.

Like Susan, I am happy for you to make your note of the meeting available to the CTEEA committee but, given the number of points of concern we have raised, I would be grateful if it was clear that this is your account of the meeting and not something that I have agreed to.

Regards

Nick