

**CULTURE, TOURISM, EUROPE AND EXTERNAL AFFAIRS COMMITTEE**

**CENSUS (AMENDMENT) (SCOTLAND) BILL**

**SUBMISSION FROM: SUPPLEMENTARY NOTE FROM LUCY HUNTER BLACKBURN**

Legal rights to privacy

- Although in the Policy Memorandum the issue of Article 8 rights is raised only in relation to the new voluntary matters, and not specifically in relation to the question on sex, any conflict between those rights and the census question on sex would be a substantial point. The issue deserves further scrutiny.
- This seems most likely to be relevant to those people with a Gender Recognition Certificate, as the GRA provides this group with specific privacy safeguards. If such rights are engaged, it is less clear that they would apply more widely.

Impact on census respondents

- Researchers are properly expected to minimise any negative impact on those providing data.
- The established census categories for sex are male/female rather than man/woman: the issue is therefore the impact on respondents of responding on the first pairing rather than the second.
- The government's proposed response to the specific concerns put to it is to cease to collect data on legal/biological sex, and to reclassify sex as a matter of self-identification, with a third sex category. It is not clear why it has rejected other approaches compatible with retaining the binary legal/biological category of sex.
- If seeking a statement of sex at birth was regarded as unreasonable, respondents could be asked to give sex as shown on their current birth certificate. This would only vary from biological sex for a very small and known number of GRC holders. The impact on the data could therefore be accurately predicted as insignificant. This might also address any conflict with legal rights to privacy.
- If requiring a statement of current birth certificate content was felt to be unreasonable, a "prefer not to say" option could be used instead of "other". Unlike current birth certificate sex, that would have an unpredictable and probably larger impact on the quality of the data returned. However, having self-identification within the male/female response, plus an "other" option, raises at first sight the same sort of issues on a similar scale.

### Consistency

- The impact on the 2011 data of including a guidance note on self-identification appears unknown (the 2001 guidance used here does not appear readily available).
- The critical issue for consistency is the nature of the data returned. The number identifying as trans has risen considerably since 2011<sup>1</sup> and that seems likely to continue. Moving explicitly to self-identification in 2021 would be expected therefore to cause a larger departure from legal/biological sex than in the previous census, probably particularly in younger age groups. An “other” category would of course of itself be a departure from previous censuses.
- Consistency with the Equalities Act 2010, acknowledged as the key relevant piece of primary legislation in the Sex and Gender Identity Topic Report (p3), would also argue for using binary legal/biological sex. If other official data collection exercises have replaced legal/biological sex with self-identified gender, that raises issues about their consistency with the requirements of the 2010 Act, but it would not be a reason to alter the census.

### Question decisions and testing

- The specific decision to have a non-binary sex question plus a further gender identity question, rather than any other format, appears to be based on work (by ScotCen) with a very small group. Although there was also previous larger scale technical testing of responses to (a) non-binary sex and separately (b) binary sex plus gender identity (by IPSOS-MORI), and later larger-scale testing of the chosen question structure, the nature of the evidence from testing on which it was decided to move to a non-binary sex question appears particularly important to explore.
- In comparing response rates to different question forms, improving response rates has to be balanced against reducing the usefulness of the data gathered. A marginally lower number of responses can be preferable where the answers are likely to provide substantially more useful and reliable data.

### New information: NRS plans for handling “other” responses to question on sex

- At a roadshow event held in Glasgow on 5 December the NRS representative appeared to say that for some purposes the NRS plans to distribute the responses collected as “other” randomly between the male and female categories. This would introduce a new uncertainty into data provided on sex, especially for any sub-

---

<sup>1</sup> <https://www.theguardian.com/society/2016/jul/10/transgender-clinic-waiting-times-patient-numbers-soar-gender-identity-services> and also <https://www.bbc.co.uk/news/uk-scotland-40716736>

population within which such responses were concentrated (for example, by age). Any assumption made about the M/F proportion in the “other” group could not be tested against any other evidence. This would be worth exploring further with NRS.