

CULTURE, TOURISM, EUROPE AND EXTERNAL AFFAIRS COMMITTEE

CENSUS (AMENDMENT) (SCOTLAND) BILL

SUBMISSION FROM DR DEBORAH HAYTON

I am writing to you as clerk to the Culture, Tourism, Europe and External Affairs Committee. I watched with great interest the recent session where Rosa Freedman, Susan Smith, Vic Valentine and Tim Hopkins gave evidence.

My name is Debbie Hayton, and I am a transgender person. I am a National Executive Member of NASWUT, The Teachers' Union and I represent NASUWT on the TUC LGBT+ Committee. I am writing to you today in a personal capacity because I would like to contribute my ideas and experience to your committee.

My view is that the census should record raw data that can then be used to inform the government about the needs of the population now and in the future. Ideally the questions would be:

- (a) what is your biological sex as recorded at birth? (male / female);
- (b) what is your legal sex as shown on certified copies of your birth certificate? (male / female);
- (c) what is your self-identified gender identity? (man / woman / non-binary / non-gendered / bi-gendered / pan-gendered / gender fluid) - optional question.

Those questions would collect all the information that government needs, in order to consider the experience and needs of transgender people.

However, the first question above would be problematic because (i) the census is completed by household, so holders of Gender Recognition Certificates may need to disclose the fact to the reporting individual, and (ii) in the 2011 census, holders of Gender Recognition Certificates indicated their target gender so this question appears to be regressive. Tim Hopkins made that argument on Thursday 6th December.

I would therefore propose just two questions:

- (a) what is your sex? (as shown on copies of your birth certificate – male / female);
- (b) what is your self-identified gender identity? (man / woman / non-binary / non-gendered / bi-gendered / pan-gendered / gender fluid) - optional question.

That would collect the same information with the exception of a small number of GRC holders. I assume their number is known to the government separately so the information is available, it just can't be cross checked with other questions on the census.

I do not think that self-identified gender identity can be used in place of sex and it is unhelpful to conflate gender identity with sex. Sex is a protected characteristic under the 2010 Equality Act, and the Scottish Government must be able to investigate the census according to sex. Sex is also binary and while some individuals do not identify with the gendered constructs that apply to their sex, they still have a sex. As Rosa Freedman indicated on Thursday, sex is biology and that was established in law by *Corbett v Corbett* (1970).

When asking about sex, allowing alternative responses to male-female conflates it with gender. While sex may be difficult to identify in a very small number of intersex people, everyone is male or female. Intersex confirms the binary because individual intersex conditions apply to either males or females, never both. For example MRKH is exclusive to females while Klinefelter syndrome only applies to males. Biological sex is binary and – currently – legal sex is also binary.

I do think it is then helpful to ask a further (optional) question to collect data on gender identity. We need to be able to compare gender identity with sex in order to identify the prevalence of transgender people, and then cross check this information with the rest of the census to gauge the experience of transgender people in society. Only by asking the questions separately can this information be gathered to assess the current situation and plan for future needs, to the benefit of transgender people.

I am cautious about restricting the gender identity question to non-binary. As our understanding of the transgender experience develops, and language changes, people use different terms to identify themselves. Non-binary is a very broad category that covers people who identify with neither gender (non-gendered), both genders concurrently (bi-gendered), all genders (pan-gendered), and those whose identities change with time (gender fluid). By 2021 it may be important to distinguish them.

The fluidity of the situation provides further reason for my concern about conflating the questions on sex and gender identity. Sex is observable reality, and is the basis of the procreation of our species. Gender identity is not properly understood and it cannot be defined without recourse to circular reasoning or sexist stereotypes. Rosa Freedman in her evidence cited the State of Massachusetts. They defined it as, *a person's gender-related identity, appearance or behavior, whether or not that gender-related identity or behavior is different from that traditionally associated with the person's physiology or assigned sex at birth.*

If a third option were included in the compulsory question on sex, it would also create an opportunity for public disobedience. If gender is a spectrum then we are all a unique mixture of masculine and feminine qualities, and we could all legitimately identify as non-binary should we wish. If large numbers of people checked the "non-binary" box out of mischief, the integrity of the census would be compromised.

In summary, the purpose of the census is not to validate identities or protect feelings; it is to collect data to inform present and future needs, including those applicable to transgender people such as myself. It is vital therefore to collect information on gender identity separately from information on sex, and sex remains a binary in terms of biology and law.

I would be pleased to offer further evidence to the committee either in writing or in person.

A copy of this email is attached as a Word Document for your convenience.

Yours sincerely,

Debbie Hayton (Dr)