

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

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

**SUBMISSION FROM MURRAY BLACKBURN MACKENZIE**

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**Introduction**

We are grateful for the opportunity to submit evidence as part of the Committee's Stage 1 considerations of the Census (Amendment) (Scotland) Bill.

The Bill will enable voluntary questions on sexual orientation and gender identity to be added to the 2021 census in a way which will allow the question on sex to be amended to add other options than male or female.

We believe the central issue to keep in mind is the purpose of the census. Questions should only be added or changed when it will improve the quality of the information it provides. For that reason, we hope that the Committee will seek evidence from users of census data, such as local and national government and other public authorities including those which rely on census data to generate other official datasets.

We support the inclusion of the proposed additional voluntary questions. We are however concerned about doing this in a way which would allow changes to the responses available to the question on sex. If implemented, this change will conflate sex and gender identity, *which are entirely separate concepts*. We believe this will undermine the core intellectual principles underpinning the census, and assign to "sex" a new meaning which departs from its conventional legal and scientific use. We also note the changes are inconsistent with understanding of sex set out in the Equality Act 2010.

We also note the Policy Memorandum states that the guidance to the sex question in the 2011 Census was changed, to ask respondents to report self-identified rather than legal/biological sex. We understand the question itself was not changed from previous years. We believe the Scottish Government's decision to change the guidance should be explored further (including the rationale, scope of consultation and decision-making process) although this is not a matter for the face of the Bill.

We are also concerned about the validity of the Equality Impact Assessment (EQIA) on the Census (Amendment) (Scotland) Bill, undertaken by National Records of Scotland (NRS).<sup>1</sup> This considers the two separate protected characteristics of 'sex' and 'gender reassignment' together and makes *no* conclusion about the potential impact of the Bill on those who come under the 'sex' protected characteristic. The EQIA states:

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<sup>1</sup> See: [https://www.scotlandscensus.gov.uk/documents/census2021/Equality\\_Impact\\_Assessment.pdf](https://www.scotlandscensus.gov.uk/documents/census2021/Equality_Impact_Assessment.pdf)

*‘Cognitive testing with communities of interest has been undertaken to understand more around asking a question on sex or gender identity, in conjunction with a transgender question. Evidence from this testing indicates a non-binary sex question and a transgender question are the more acceptable and understandable question pairing.’*

The 'communities of interest' referenced here are two small groups of individuals (23 in total) recruited exclusively via LGBT groups. No participants were recruited via women's groups.

### **Background to the census**

The Economic and Social Research Council (ESRC) states ‘UK census data are fundamental to improving the understanding of life in the UK, enabling informed decisions by providing relevant and independent statistics’<sup>2</sup> The Office of National Statistics (ONS) summarises the purpose of the census as follows:

*“Every ten years the census gives us a complete picture of the nation. It allows us to compare different groups of people across the United Kingdom because the same questions are asked, and the information is recorded, in the same way throughout England, Wales, Scotland and Northern Ireland.*

*The census provides information that government needs to develop policies, plan and run public services, and allocate funding.*

#### ***Develop policies***

*Before central or local government can offer services, policies must be based on high quality evidence*

#### ***Plan and run public services***

*We all use public services such as schools, health services, roads and libraries. These services need to be planned, and in such a way that they keep pace with fast-changing patterns of modern life. We need accurate information on the numbers of people, including the balance of young and old, what jobs people do, where they live and in what type of housing.*

#### ***Allocate money to local authorities***

*An accurate count of the population in each local area helps the Government to calculate the size of grants it allocates each local authority and health authority.*

*The data are also widely used by academics, businesses, voluntary organisations and the public.’<sup>3</sup>*

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<sup>2</sup> See: <https://esrc.ukri.org/news-events-and-publications/impact-case-studies/opening-up-census-data-for-research/> (accessed 30 November 2018)

<sup>3</sup> See: <https://www.ons.gov.uk/census/2011census/whywehaveacensus> (accessed 30 November 2018)

Proposed changes to the sex question

Regarding the question on sex, the Scottish Government's Policy Memorandum states:

*“There has always been a question on sex with a binary response option (male/female) included in the census. The 2011 Census recognised that society's understanding of sex has changed and guidance provided explained that the question was being asked in terms of self identified sex. Looking forward to 2021, consultation has identified the need for a more inclusive approach to measuring sex. The sex question being proposed for the 2021 Census will continue to be one of self-identification and will provide non-binary response options. Importantly, the sex question proposed will not seek a declaration of biological or legal sex.”*

The proposed changes raise a number of questions relating to: the Scottish Government's understanding of sex; the impact on census data users; and engagement with census data users. We hope the Committee will consider addressing the following issues:

### **Understanding of sex**

- Does the Scottish Government believe that a person can have a **sex** other than male or female?
- Is the Scottish Government confident that any third option in the response on sex would be interpreted in a consistent way across the population, as would be needed for it to provide reliable data?
- In cases where people declare themselves other than female or male, does the Scottish Government believe that they cease to require access to any services which are normally provided specifically for people who are either male or female?
- In these cases, does the Scottish Government believe they cease to be a source of relevant data about any health or other phenomena which have a sex-based pattern in the population?
- If the Scottish Government does believe so, what evidence is it drawing on?

### **Impact on census data users**

- Has the Scottish Government undertaken analysis of the possible impact of introducing an additional response to the sex question on the nature of the data available for any official purposes: including but not only health, education, criminal justice and employment?
- Has the Scottish Government undertaken analysis of the possible impact of introducing an additional response to the sex question on the nature of the data available for meeting public sector equality duties under the Equality Act 2010?

### **Engagement with census data users**

- Did the Scottish Government engage with the Chief Statistician's office, Chief Scientific Adviser and Chief Medical Officer regarding the Census (Amendment) (Scotland) Bill prior to its publication?

- Did the Scottish Government engage with other expert users of census data, for example, in the fields of medicine, population health scientists, local government and academia?

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