

CULTURE, TOURISM, EUROPE AND EXTERNAL AFFAIRS COMMITTEE

CENSUS (AMENDMENT) (SCOTLAND) BILL

SUBMISSION FROM PROFESSOR KATHLEEN STOCK

Thank you for providing me with this opportunity to provide my views on the proposed changes to the Scottish Census.

My comments are as follows.

On the Census (Amendment) (Scotland) Bill Policy Memorandum

Section 5 says: “The Scottish Government regards gender identity as already being covered by the reference to questions about sex in paragraph 1 of the schedule to the 1920 Act and a census could ask questions about gender identity without the amendment of that paragraph being made.’

This, in my view, is false. Paragraph 1 of the 1920 Act schedule specifies that the particulars ‘name, sex, age’ may be required. The notion of sex was then, and should be now, a reference to biological sex which is distinct from gender identity.

Gender identity is a contested term, with no well-established meaning (I note it is not defined by the census either). It is best understood as either a) one’s strong sense of how ‘masculine’ or ‘feminine’ one is; or b) one’s strong belief about whether one is a man or woman or non-binary. Neither a) nor b) are reducible to biological sex. A masculine female is still a female. A feminine man is still a man. A transwoman who strongly believes she is a woman is still biologically male; a non-binary person is still either male or female, depending on the case.

The authority to ask questions about gender identity seems instead to derive from paragraph 6 of the Act schedule.

Section 6 says: “There is an additional reason for amending paragraph 1 of the schedule to add reference to gender identity. The issues of sex and of gender identity are linked, especially if the sex question asked is a non-binary sex question (for example —Are you male, female, other?||).”

This is confused. See my argument above. If gender identity is understood as either a) one’s strong sense of how ‘masculine’ or ‘feminine’ one is; or b) one’s strong beliefs about whether one is a man or woman or non-binary; then this hardly shows that gender identity and biological sex are importantly linked, such that they should be linked in the census questions. There are white people that believe they are black; this doesn’t show that this *belief* that one is black is linked to race, in a way which means we should ask people about both in a related way.

Section 15 says: “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.”

This makes clear that the terms of the original question about sex are to be completely changed, and what is being asked about is ‘self-identified’ sex, not biological sex. If it goes through, this will be a profoundly misplaced move. Sex (biological sex, not self-identified sex) continues to be a protected characteristic under the Equality Act. This is so in virtue of a recognition that sex-based discrimination and sex-based violence still occurs, to females.. It is implausible to think that this discrimination and violence is exhibited towards females on the basis of their ‘self-identified sex’. Late transitioning trans women, socialised as males, do not become subject to sex-based discrimination; what discrimination they receive has another cause. Transitioning female transmen do not opt out of sex-based discrimination because they identify as men. Having accurate information about actual sex class is extremely important for tracking all sorts of related statistics to do with discrimination, which will be lost if this move goes ahead.

Relatedly: this section suggests that sex is non-binary. If this is drafted on the basis of confused ideas about intersex, this is also a mistaken implication. Due to our best understanding of the categories, intersex females are still female; intersex males are still male. Being female involves being on a developmental path to produce larger gametes; this is consistent with that path being disrupted through biologically induced variation. I urge the drafters of this bill to consult with the trustees charity ‘DSD families’ <https://www.dsdfamilies.org/charity/our-trustees> who have much relevant expertise.

Section 16 says: “Sexual orientation is a combination of emotional, romantic, sexual or affectionate attraction or feelings towards another person. How a person determines their sexual orientation can be based on any combination of the above attractions, feelings or behaviours.”

This in my view is a useless definition which misses out the only important fact in characterizing whether an orientation is heterosexual, homosexual, or bisexual – whether the attraction is to the same (biological) sex, opposite (biological) sex) or both. If this is not specified, then it will leave room for e.g. late transitioning male trans women, who are heterosexual and have penises, to self-describe as ‘lesbians’ (and on present evidence many will). This will leave the data not fit for purpose. Same-sex orientation is a meaningful category, and those in same-sex relationships often suffer discrimination as a result; again this discrimination is different in kind from that suffered by heterosexual trans people. We need to preserve these differences or else the census becomes a pointless exercise.

Section 18 says “The umbrella term —trans - can include trans women, trans men, non-binary gender people, people who cross-dress and intersex people.”

The inclusion here of intersex people is inappropriate. Intersex people, who have a complex and traumatic medical history, should not be categorized with people who are straightforwardly biologically male or female and who self-identify as trans, for (as far as we can tell) socially induced reasons. To put these together will offend many in the intersex community as well as further invalidate the data produced.

In addition, the inclusion of ‘people who cross-dress’ is inappropriate. Many transvestite males would not consider themselves ‘women’ and are happy to think of themselves as ‘men’.