

CULTURE, TOURISM, EUROPE AND EXTERNAL AFFAIRS COMMITTEE CENSUS (AMENDMENT) (SCOTLAND) BILL SUBMISSION FROM STONEWALL SCOTLAND

1. Introduction

- 1.1. Stonewall Scotland was established in 2000. Since then, we have been campaigning for equality and justice for lesbian, gay, bi, and trans (LGBT) people living in Scotland.
- 1.2. Stonewall Scotland welcomes the introduction of the Census (Amendment) (Scotland) Bill and the opportunity to submit written evidence to the Culture, Tourism, Europe and External Affairs Committee on the proposals in this Bill.
- 1.3. We broadly support the principles of this Bill and believe that enabling information on sexual orientation and aspects of gender identity to be gathered in Scotland's Census would be effective in advancing LGBT equality.
- 1.4. This submission will outline our arguments in favour of including questions on sexual orientation and trans status in Scotland's Census, address any potential concerns relating to privacy, and advise on the most effective and sensitive way to include all LGBT identities within the Census.

2. Public Acceptance of LGBT Identities

- 2.1. Stonewall Scotland had supported calls to include a question on sexual orientation in the 2011 Census. As highlighted in the Policy Memorandum for this Bill, this was rejected on the grounds of low public acceptance¹. Public acceptance of LGBT people has progressed significantly within the last decade, as have equalities protections, with the passage of the Equality Act 2010 and the Marriage and Civil Partnership (Scotland) Act 2014.
- 2.2. Inclusion of sexual orientation in the Census would reflect the progress on LGBT equality that has been made in the last decade and send a strong message about the Scottish Government's commitment to inclusion and equality. The inclusion of questions on aspects of gender identity, including trans status, could be effective in raising awareness and broadening understanding of trans identities amongst the general population, so long as such questions accurately outline what is being asked of respondents.
- 2.3. As highlighted by the National Records of Scotland, the public acceptability testing that has been carried out for questions on sexual orientation thus far has shown a broad acceptance, with 63 per cent considering it to be acceptable for sexual orientation to be included in the Census, and 78 per cent reporting that they would accurately

¹ www.parliament.scot/S5_Bills/CensusScotlandBill/SPBill40PMS052018.pdf.

answer the question². Therefore, the public acceptability arguments used against the inclusion of sexual orientation in the 2011 Census are no longer applicable.

3. Use and Effectiveness of Census Data on Sexual Orientation and Trans Status

3.1. Stonewall Scotland believes the inclusion of questions on sexual orientation and trans status in Scotland's Census would enable the Scottish Government and the National Records of Scotland to demonstrate a more accurate and authoritative measure of the numbers of LGBT people residing within Scotland.

3.2. Currently, there is a lack of clarity concerning the number of lesbian, gay or bi (LGB) people residing within Scotland. Estimates from the Office for National Statistics suggest that 2 per cent of adults across the UK identify as LGB³, while the Scottish Household Survey found that 1.6 per cent of people surveyed identified as LGB.

3.3. However, these figures are likely to underrepresent the LGB population. In the case of the Scottish Household Survey³, LGB people may be unwilling to disclose their sexual orientation to a person they do not know or trust, while potential interviewees might also decline to take part at all for this reason. As LGB people are a small and diverse population group, it is unlikely that a sample of this size would represent them accurately. The Census, as a comprehensive measure of the entire population, would arguably give the most accurate portrayal of the lives of LGB people in Scotland.

3.4. Furthermore, there is no robust data on the numbers of trans people residing within Scotland. International estimates suggest that this would be around 0.6 per cent of the population,⁴ approximately 32,000 people in Scotland⁵. Considering the small size of the community, the inclusion of questions on trans status are particularly essential, as only Census data could be stratified and analysed to accurately identify the needs and inequalities of the trans community across Scotland.

3.5. The landscape on equalities has shifted drastically since Census questions were last considered prior to 2011, with monitoring of sexual orientation, gender identity and trans status now much more commonplace. Stonewall Scotland actively encourages both public and private sector organisations to collect equalities information.

3.6. With the introduction of the Equality Act 2010, public authorities in Scotland now have a duty to gather and use equalities information about their employees, to help them

² https://www.scotlandscensus.gov.uk/documents/census2021/Sexual_Orientation_Topic_Report.pdf ³

Source: Office for National Statistics, *Sexual Identity, UK: 2016* (2017).

³ Source: National Statistics, *Scottish Household Survey 2017: Annual Report* (2018).

⁴ <https://williamsinstitute.law.ucla.edu/wp-content/uploads/How-Many-Adults-Identify-as-Transgender-in-the-United-States.pdf>

⁵ <https://www.ngicns.scot.nhs.uk/wp-content/uploads/2018/06/For-Professionals-GP-FAQs.pdf>

understand the diversity of their workforce and reduce the inequalities they face in the workplace. Equalities monitoring data is valuable for developing specific and measurable equality outcomes, which are required to be set by public authorities under the Public-Sector Equality Duty. This data can be used to build an evidence base and measure progress and can also be useful when carrying out Equality Impact Assessments⁶.

- 3.7. The Scottish Government undertook a comprehensive “equality analysis” of 2011 Census data on ethnicity, religion and disability. This analysis provided evidence which was used to inform policy, inform Equality Impact Assessments, and provide useful context for reporting on progress made against the Scottish Specific Equality Duties. The 2015 report on the Scottish Minister’s Equality Duty recognised that similar evidence gaps needed to be filled for the other protected characteristics⁷, with equality analysis for sexual orientation currently relying upon Scottish Surveys Core Questions (SSCQ) data⁸.
- 3.8. According to the Topic Consultation Report, Census data on race and ethnic group is widely used for “*recourse allocation, to inform policy development and make service planning decisions*” and it “*helps organisations meet and monitor their statutory obligations.*”⁹ The 2011 Census included questions on age, disability, marriage or civil partnership status, race, religion or belief, and sex, thereby measuring all protected characteristic groups apart from gender reassignment and sexual orientation, in addition to pregnancy or maternity¹⁰.
- 3.9. There is a lack of authoritative information to help public bodies accurately develop policies to reduce inequalities and fulfil their duties under the Equality Act and PublicSector Equality Duty in relation to sexual orientation and gender reassignment. Considering Census data has been useful for other protected characteristics, arguably the inclusion of questions on sexual orientation and trans status would be effective in helping organisations meet and monitor these statutory obligations.
- 3.10. Additionally, there is now a well-established need for public bodies to have access to more information on sexual orientation and trans status for the development of public policy and planning of public services. The collection of such Census data would

⁶ Source: Stonewall Scotland and Scottish Trans, *Getting Equalities Monitoring Right* (2017).

⁷ <http://www.gov.scot/binaries/content/documents/govscot/publications/report/2015/12/making-progress-scottish-ministers-equality-duty/documents/00491640-pdf/00491640-pdf/govscot%3Adocument>

⁸ www.gov.scot/publications/equality-outcomes-mainstreaming-report-2017/pages/8/

⁹ www.scotlandscensus.gov.uk/documents/census2021/Scotlands_Census_2021_Topic_Consultation_Report_August_2016.pdf

¹⁰ www.scotlandscensus.gov.uk/documents/Householdpre-addressed27_05_10specimen.pdf.

arguably be beneficial in assisting policy makers and service providers to reduce inequalities experienced by LGBT people.

- 3.11. Research suggests that LGBT people have poor experiences of public services and commonly experience discrimination and ill-treatment. A third (33 per cent) of LGBT people would be uncomfortable being open about their sexual orientation or gender identity with adult social care staff, more than a quarter (27 per cent) would expect to face discrimination from a housing officer were they to apply for social housing, and one in six (16 per cent) would feel uncomfortable being open about their sexual orientation or gender identity in a college environment¹¹.
- 3.12. The Census uniquely gathers data on enough different variables to provide a useful insight in to the lives of LGBT people and the inequalities that they experience. Census data which could determine the health, education, employment or housing status of LGBT people could help public bodies to reduce these inequalities and improve the services they provide to LGBT people. Other existing sources do not and cannot provide the necessary level of detailed information.
- 3.13. Robust and reliable information on the trans community is critical in order to inform and justify policy developments that will reduce inequalities experienced by trans people, particularly in terms of healthcare. Many trans people will seek medical support and access gender identity services as part of their transition. Demand for gender identity services has been increasing, with rising referrals to Gender Identity Clinics (GICs) and patients having to wait up to 407 days for a first appointment following initial referral¹².
- 3.14. The Scottish Public Health Network (ScotPHN) Health Care Needs Assessment of Gender Identity Services recognised that future demand for services would be unpredictable. Without firm estimates of the number of trans people in Scotland, it is difficult for NHS Scotland to plan for changes in demand for gender identity services.
- 3.15. Census information would give a more reliable estimate of future demand and identify the geographical spread of trans people in Scotland. This would more accurately establish how much resource will need to be invested in to specialist support, and where in Scotland these resources should be prioritised.

4. Privacy Concerns

- 4.1. Many LGBT people will have faced discrimination and abuse throughout their lifetime and will be reluctant to disclose their sexual orientation or trans status. Considering this, it may take time for people to feel comfortable responding. We would therefore

¹¹ Source: Stonewall Scotland, *Your Services, Your Say: LGBT People's Experiences of Public Services in Scotland* (2014)

¹² www.scotphn.net/wp-content/uploads/2017/04/2018_05_16-HCNA-of-Gender-Identity-Services-1.pdf

urge caution that the Census would provide entirely accurate figures of the number of LGBT people in Scotland.

- 4.2. Considering this, Stonewall Scotland believes it is appropriate for questions on sexual orientation and trans status to be voluntary. We recommend in our guidance on equalities monitoring that questions on sexual orientation and trans status should include a 'prefer not to say' option. We believe that the measure outlined in the Bill to make these questions voluntary would adequately respond to any privacy concerns.
- 4.3. Additionally, including an option which allows individuals to respond accurately but choose to keep their sexual orientation or trans status private would respect people's right to privacy without compromising the quality of the data.
- 4.4. The 2011 Census included a question on marital or civil partnership status, recording that 27,537 adults in Scotland were in a registered same-sex civil partnership or were cohabiting with a same-sex partner¹³. As civil partnerships are at present only available to same-sex couples, questions on marital or civil partnership status already reveal the LGB status of some individuals in the Census, and we are unaware of privacy concerns in this case.
- 4.5. Non-LGBT people may have similar privacy concerns, if they do not understand why there is a need to gather this information. As highlighted in the Sexual Orientation Topic Report, the findings of the public acceptability testing infer that there may need to be clarification given on why monitoring is required¹⁵. Stonewall Scotland encourages employers who collect data on equalities to explicitly state why this information is being gathered and how it is used. From our experience of advising on equalities monitoring, this encourages higher rates of disclosure¹⁶.

5. Questions on Sex, Gender Identity and Trans Status

- 5.1. It is crucial that the framing of questions on sex, gender identity, and trans status in the Census is easily understood by both the LGBT community and the broader public.
- 5.2. Stonewall Scotland welcomes the extensive public acceptability testing that has already been undertaken, and the Scottish Government's financial contribution to this. Particularly with regards to questions on sex and gender identity, the National Records of Scotland must continue to work alongside LGBT third sector organisations, and must consult with the trans community, to ensure questions are effective, useful, and sensitive.

¹³ Source: National Records of Scotland, *2011 Census* (Table QS108SC - Living arrangements).

¹⁵ www.scotlandscensus.gov.uk/documents/census2021/Sexual_Orientation_Topic_Report.pdf

¹⁶ Source: Stonewall Scotland and Scottish Trans, *Getting Equalities Monitoring Right* (2017).

5.3. The mandatory 'sex' question in the Census currently enables trans men and trans women to record their self-identified sex (i.e. gender identity). Guidance from the National Records of Scotland for the 2011 Census read:

"I am transgender or transsexual. Which option should I select?"

If you are transgender or transsexual, please select the option for the sex that you identify yourself as. You can select either 'male' or 'female', whichever you believe is correct, irrespective of the details recorded on your birth certificate. You do not need to have a Gender Recognition Certificate.

If you are answering for someone who is transgender or transsexual then where possible you should ask them how they want to be identified. If they are away, you should select the sex you think they would wish to be identified as. You can select either 'male' or 'female', irrespective of the details recorded on their birth certificate. You do not need to know if they have a Gender Recognition Certificate."¹⁴

5.4. We welcome that the Scottish Government will continue to recognise the existing question on 'sex' to reflect gender identity¹⁵, rather than legal sex or sex assigned at birth. However, Stonewall Scotland believes that the sex question must include a third option to enable those with non-binary identities to respond in a way which reflects their lived experience, and improve the accuracy of the data. This is particularly important if the question is to remain mandatory, as without a third option, non-binary people will be forced to respond in a way which does not reflect their lived identity.

5.5. In the Scottish Government's recent consultation on reforming the Gender Recognition Act 2004, most respondents (62 per cent) thought that Scotland should take action to recognise non-binary people, including 66 per cent of Scottish residents¹⁶. If legislation is to be brought forward to legally recognise non-binary identities, this may involve changes to birth certificates, administrative forms and documents, and amendments to the Equality Act. Including a third option for the Census question on sex would be in line with monitoring best practise and reflect proposals for legal gender recognition of non-binary identities.

5.6. As the public acceptability testing found, one single question which measures sex/gender identity and is inclusive of non-binary identities would be more palatable than a binary sex question followed by a gender identity question¹⁷. Stonewall

¹⁴ This was the guidance on the help section of the 2011 Census website. Archived versions of the website can be provided by NRS.

¹⁵ www.parliament.scot/S5_Bills/CensusScotlandBill/SPBill40PMS052018.pdf

¹⁶ <https://www2.gov.scot/Resource/0054/00540424.pdf>

¹⁷ www.scotlandscensus.gov.uk/documents/census2021/Sex_and_Gender_Identity_Topic_Report.pdf

Scotland supports this view, as asking separate questions on sex and gender identity would likely sit uncomfortably with trans respondents, and further conflate matters.

- 5.7. Stonewall Scotland welcomes that this Bill will enable data on aspects of gender identity, including trans identity and trans history, to be gathered voluntarily. We recommend, with the Scottish Trans Alliance, that this information on trans identity and trans history is gathered through a question on 'trans status' which asks whether or not a person is, or has ever considered themselves to be, transgender. To provide the greatest clarity for respondents, this question should not ask about gender identity, which will be addressed through the sex question, but whether they are trans or have a trans history.

6. Conclusion

- 6.1. In conclusion, Stonewall Scotland strongly welcomes the introduction of the Census (Amendment) (Scotland) Bill.
- 6.2. We believe that enabling questions on sexual orientation and aspects of gender identity, including trans status, to be included in the Census will contribute to the advancement of LGBT equality, assist public authorities in meeting their statutory requirements, and inform public policy and the planning of service provisions.
- 6.3. We recommend that the mandatory question on 'sex' includes a third option, as this would enable those with non-binary identities to accurately respond to the Census. We support the view of the Scottish Trans Alliance regarding potential questions on sex/gender identity and trans status.
- 6.4. We look forward to working alongside the National Records of Scotland and the Scottish Trans Alliance to develop questions for the 2021 Census which are effective and accurately portray the lives of the LGBT community in Scotland.