



The Scottish Parliament
Pàrlamaid na h-Alba

CULTURE, TOURISM, EUROPE AND EXTERNAL AFFAIRS COMMITTEE

AGENDA

34th Meeting, 2018 (Session 5)

Thursday 20 December 2018

The Committee will meet at 9.00 am in the David Livingstone Room (CR6).

1. **Article 50 withdrawal negotiations:** The Committee will take evidence from—

Michael Russell, Cabinet Secretary for Government Business and Constitutional Relations supported by Ellen Leaver, Head of Negotiation Strategy and Delivery, and Alan Johnston, Deputy Director EU Exit Readiness, Scottish Government.

2. **Census (Amendment) (Scotland) Bill:** The Committee will take evidence on the Bill at Stage 1 from—

Fiona Hyslop, Cabinet Secretary for Culture, Tourism and External Affairs, Scottish Government; supported by Amy Wilson, Director of Statistical and Registration Services, and Scott McEwen, Head of Collections and Operations, Scotland's Census 2021, National Records of Scotland; Simon Stockwell, Family Law Unit Head, and Emma Luton, Lawyer, Scottish Government.

3. **Consideration of evidence heard (in private):** The Committee will consider the evidence heard earlier in the meeting.

4. **Work programme (in private):** The Committee will consider its work programme.

Stephen Herbert
Clerk to the Culture, Tourism, Europe and External Affairs Committee
Room T3.40
The Scottish Parliament
Edinburgh
Tel: 0131 348 5234
Email: stephen.herbert@parliament.scot

The papers for this meeting are as follows—

Note by the Clerk

CTEEA/S5/18/34/1

PRIVATE PAPER

CTEEA/S5/18/34/2
(P)

Note by the Clerk

CTEEA/S5/18/34/3

PRIVATE PAPER

CTEEA/S5/18/34/4
(P)

Culture, Tourism, Europe and External Affairs Committee

34th meeting, 2018 (Session 5) Thursday 20 December 2018

Article 50: Withdrawal Negotiations

Note by the Clerk

Purpose

1. At this meeting, the Committee will take evidence on the Article 50: Withdrawal Negotiations from the Cabinet Secretary for Government Business and Constitutional Relations. The Cabinet Secretary will be accompanied by officials as detailed in the agenda.
2. The evidence session is intended to provide an opportunity to ‘take stock’ of the wide range of developments which have taken place, with regard to Article 50, in recent weeks. In particular, the evidence session will provide an opportunity to assess the Scottish Government’s current understanding of the implications of the Article 50 Negotiations for Scotland.

Background

3. The European Union and the UK Government have reached agreement, in principle, on a [‘Withdrawal Agreement’](#) and [‘Political Declaration’](#). The Scottish Government response to these documents, [‘Scotland’s Place in Europe: assessment of the UK Government’s proposed future relationship with the EU’](#), was published on 27 November.
4. The ‘meaningful vote’ in the House of Commons, which was due to take place on 11 December, has been delayed by the UK Government. On 5 December, the Scottish Parliament voted to reject against the Withdrawal Agreement and Political Declaration by 92 votes to 29.
5. On 10 December, the Court of Justice of the European Union ruled that it would be possible for the UK to unilaterally revoke Article 50 and thereby remain in the European Union. On 13 December, the UK Supreme Court published its [judgement](#) on the legislative competence of the UK Withdrawal from the European Union (Legal Continuity) (Scotland) Bill.
6. The Committee issued a call for evidence on ‘Article 50: Preparedness’ which closed on 12 October 2018. A summary of the evidence received is provided at **Annexe A** to this paper.

Stephen Herbert
Clerk
CTEEA Committee
17 December 2018



SPICe The Information Centre
An t-Ionad Fiosrachaidh

Culture, Tourism, Europe and External Affairs Committee

Article 50: Preparedness – Summary of Written Evidence

Background

The Culture, Tourism, Europe and External Affairs Committee issued a call for evidence on preparedness for Brexit as part of its Article 50 inquiry work on 14 September 2018. The closing date for submissions was **12 October 2018**. The Committee [received 32 responses](#).

Respondents were asked to answer the following questions:

- What impact the Article 50 negotiations have had upon your business / organisation to date?
- What preparations, if any, are being made by your business / organisation for the range of scenarios which may result from the Article 50 negotiations?
- What you consider the impact of a no-deal outcome would be for your business / organisation?
- To what extent, the guidance issued by the European Commission and UK Government has been helpful in helping you to prepare for the UK's withdrawal from the EU?
- What further support or guidance you consider the Scottish Government, UK Government and / or European Commission should be providing to enable individuals, businesses and organisations in Scotland to prepare for the UK's withdrawal from the EU?

This paper summarises the responses to each of these questions.

Key Points:

- Nearly all those who responded on the impact of the Article 50 negotiations and the Brexit process suggested it is causing uncertainty for their business or organisation.

- In addition, a number of respondents drew attention to the uncertainty caused for non-UK EU nationals working within their businesses or organisations as a result of the UK Government's decision to end freedom of movement after Brexit.
- The written evidence received by the Committee suggests that planning for Brexit is mixed across different sectors and organisations. Again, the lack of clarity about the future was cited as a reason for difficulties in making actual plans.
- All those who responded indicated that they thought a no-deal Brexit would be the least favourable outcome from the Brexit negotiations.
- Commenting on the guidance notes issued by the UK Government and the European Commission on preparing for a no-deal Brexit scenario, the written submissions were largely negative. A number of respondents suggested that it was difficult to consider the usefulness of the guidance until details of the post-Brexit arrangements were known.
- There was a general view that once the post-Brexit arrangements became clear, it would be easier for the UK Government to provide advice on the consequences and actions needed to prepare for Brexit.
- Whilst it wasn't included as a question within the Committee's call for evidence, a number of respondents set out their views on the priority outcomes for Brexit. These were continued frictionless trade and access to the Single Market along with continued ability to attract and retain EU nationals to work in Scotland.

What impact the Article 50 negotiations have had upon your business / organisation to date?

Nearly all those who responded to the first question wrote that the Article 50 negotiations and the Brexit process is causing uncertainty for their business or organisation. In addition, a number of respondents drew attention to the uncertainty caused for non-UK EU nationals working within their businesses or organisations as a result of the UK Government's decision to end freedom of movement after Brexit.

In its submission, the Scottish Council for Development and Industry (SCDI) wrote that the Article 50 negotiations have had a negative impact on its stakeholders so far with the political uncertainty having affected investment decisions:

“Some of our members report that their businesses or clients have postponed, scaled back or cancelled planned investment because they cannot confidently predict the regulatory landscape and macroeconomic climate of the post-Brexit Scottish economy. There is some evidence that activity in the construction sector has slowed as capital leaves the UK.”

Linked to the issue of investment and long-term planning, NFU Scotland wrote that:

“Agricultural businesses plan over many years and business decisions on animal rearing and planting are being taken now that will have an impact in three or four years’ time.”

A number of Scotland’s local authorities¹ responded to the call for evidence. All the local authorities indicated that they were tracking Brexit related developments and assessing their potential implications. They also drew attention to particular uncertainties regarding the future of non-UK EU citizens (including within their workforces) and the continuity of EU funding. For example, Angus Council wrote:

“We have contributed to work nationally on workforce implications for non-UK staff members. Uncertainty over deadlines of commitment and spend on EU funded projects has meant rescheduling work programmes and uncertainty for funded staff.”

In relation to the futures of non-UK EU citizens, East Renfrewshire Council wrote:

“In terms of workforce challenges, many local authorities rely heavily on EU migrant workers, with the current UK position being that we will no longer be a member of the single market, there will be significant implications for the workforce and the local economy. Councils are already facing acute shortages in a number of key sectors that would only be exacerbated. In particular, teacher recruitment is extremely challenging for many councils, and shortages and gaps in skills in social work and the care sector.

There would also be a significant impact on lower and unskilled sectors such as agriculture, fishing, hospitality, and the food industry.

Similarly, many councils have key businesses that employ significant numbers of migrant workers: local business that have expanded and grown successfully partly facilitated by the availability of an EU workforce. There is real concern that if companies do not have access to this workforce they would move abroad. In addition, there are highly skilled and specialist areas that could also be affected, such as the technology and engineering sectors.”

The impact of, and the uncertainty created by Brexit was also raised by the General Medical Council who wrote that it was causing uncertainty for more than 1,250 doctors in Scotland from the EEA who are currently registered with the GMC to practise medicine.

On the theme of uncertainty, the Law Society of Scotland told the Committee:

“It is difficult to assess the impact which the article 50 negotiations have had upon individuals, businesses and organisations. In common with many organisations, we are aware of work by other bodies which indicates that there is significant uncertainty amongst individuals, businesses and organisations and that it is therefore difficult to plan for all eventualities.”

¹ Aberdeenshire, Angus, City of Edinburgh, East Ayrshire, East Renfrewshire and West Lothian

The Scotch Whisky Association told the Committee that Brexit will have a clear impact on the whisky industry because the EU market represents 30% of all Scotch Whisky exports and also because the nature of food and drink related international trade regulation has been developed by the EU. In addition, the SWA suggested that a Withdrawal Agreement was essential as it would allow a transition period until at least the end of 2020 which will “provide the industry with more certainty about all the rules and procedures it will need to comply with after 29 March 2019.”

Culture Counts wrote that the uncertainty caused by Brexit is affecting the culture and performance sector:

“Most events and festivals are planned at-least two years in advance; though the cultural sector is currently unable to plan-ahead with any certainty. This has an impact on touring performers who have a market in Europe. For example; EU festival organisers may be overlooking UK performers, as if visa’s and work permits are required, this could significantly increase the costs to the organisers. Similarly, cultural programmers based in the UK cannot measure the operational costs of bringing in talent from the EU without knowing what the associated costs will be.”

A similar view to Culture Counts was expressed by the Scottish Contemporary Art Network which wrote that its survey on Brexit which received more than 350 responses, saw two thirds of visual arts respondents reply that they felt that Brexit had a negative impact on their work so far, with 23% noticing no impact and 1% a positive impact.

The submission from the Scottish Council of Independent Schools (SCIS) set out a number of impacts on the school sector resulting from the Brexit process. These included uncertainty for staff, threats to workplace protections after Brexit and implications for school children including limiting the opportunities for EU/EEA nationals to come and undertake their schooling in Scotland after Brexit. On the implications for staffing, the SCIS set out concerns in relation to numbers of EU/EEA national teachers coming to work in Scotland:

“Figures from the General Teaching Council of Scotland (GTCS) for 2018 show a substantial drop in applicants from EU countries. Only 14 EU teachers applied for GTCS registration up until June 30 2018, with 128 in 2015, 159 in 2016 and 186 in 2017. In July 2018, GTCS chief executive Ken Muir told the Scottish Parliament:

“Having maintained numbers pretty high from the EU, they are falling off a cliff, and that’s absolutely down to Brexit.”

There are significantly fewer language teachers in Scotland than in 2008. There were 722 French teachers last year in the state sector, compared with 1070 in 2008. Over the same period the number of German teachers has almost halved, to 100, while the number of Spanish teachers has increased from 64 to 107.”

What preparations, if any, are being made by your business / organisation for the range of scenarios which may result from the Article 50 negotiations?

The written evidence received by the Committee suggests that planning for Brexit is mixed across different sectors and organisations. Again, the lack of clarity about the future was cited as a reason for difficulties in making actual plans.

Dr Kirsty Hughes, Director of the Scottish Centre on European Relations cited economic analysis from both the UK and Scottish Governments which suggested economic growth would be adversely affected by any form of Brexit. Dr Hughes suggested “the challenge for Scotland and the whole UK, for goods and services trade and FDI, is therefore one of damage limitation”.

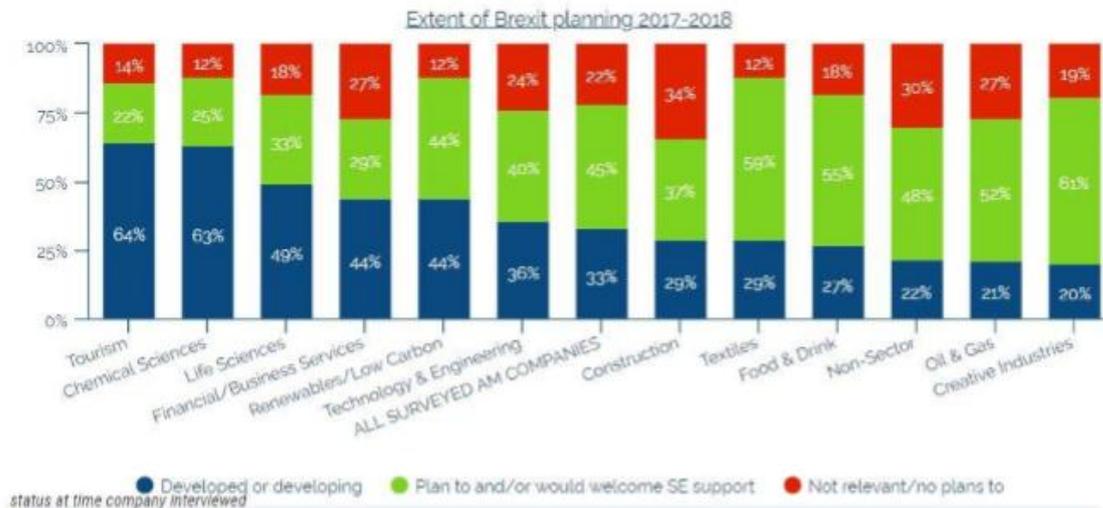
Scottish Enterprise highlighted its survey of Scottish Enterprise account managed businesses in relation to Brexit preparedness. They stated that:

“The headline figures show that at the time of survey, 33% of companies were planning for Brexit, a further 45% intended to do so and 22% had no plans to prepare. This varied considerably by sector, with tourism and chemical sciences, for example, already actively planning while sectors such as creative industries, textiles, food and drink, and oil and gas either intended to plan but hadn’t started or have no plans to prepare. Since April, we have seen a significant upturn in those preparing plans among tourism, life sciences and chemical sciences companies whereas others, (textiles and food and drink in particular), are awaiting further clarity before taking action. See chart below:

We have asked those companies that have not yet started planning when they anticipate starting. Over half replied that they didn’t know when they would start or that they would start in 6-12 months time, with less than 20% saying that they would start in the next 3 months. These companies are most likely to say they do not have enough information yet to plan. These results highlight the lack of information and clarity, however, the variation in results across sectors suggests that some key uncertainties in certain sectors are gradually becoming clearer.

Around 20% of respondents have consistently reported that they do not anticipate planning for Brexit at all, which reduces to 15% when you take out the companies who have identified a need to prepare but have no plans to do so at this time due to insufficient information. This 15% includes companies, across all sectors, who are focused primarily on the UK market or non-EU export markets. It also includes companies, in financial and business services for example, that have corporate headquarters overseas which will be managing any preparations.”

Scottish Enterprise Survey feedback from 1,195 account managed businesses surveyed between November 2017 and September 2018 - Brexit Preparedness by sector:



The Scottish Council for Development and Industry told the Committee that the degree to which businesses and organisations are prepared for Brexit varies considerably and whilst most businesses and organisations have committed time and resources, to Brexit scenario-planning:

“It is clear that a significant minority of businesses have not undertaken any planning to date citing insufficient capacity, insufficient information, uncertainty around the final terms of the UK’s departure or unknown factors such as changes in input and labour costs. This final cohort of businesses and organisations, which SCDI expects to be particularly representative of small- and medium-sized enterprises, is of significant concern.”

On a similar theme, the Freight Transport Association wrote:

“Without clear proposals and examples of the type of future relationship the UK will have with the EU post Brexit, it is very difficult for the Transport Sector to clearly plan and prepare for the UK’s withdrawal from the EU.”

Whilst the Food and Drink Federation Scotland stated that its members are finding it difficult to make any preparations due to lack of clarity in negotiations and general uncertainty, it did provide two examples from its members of preparations that are taking place:

“One food manufacturer has been asked by most of their suppliers to provide 12-month sales forecasts, to enable them to look at manufacturing stock further ahead and putting that volume into the supply chain. The additional stock will need to be paid for by the food manufacturer which will tie up a high proportion of working capital. This is extremely risky in the current economic climate and could threaten the viability of this medium-sized Scottish company.

As mentioned in the previous question, one member has invested around £100k of staff resource to understand the impacts of various scenarios on their business and provided some in depth insights to various scenarios.”

The local authorities who responded all suggested they were undertaking scanning and assessment exercises to gauge the likely impact of different Brexit scenarios with a particular focus being on workforce planning and impact to service delivery.

East Renfrewshire Council outlined the Brexit preparations it is undertaking including promotion of the EU settlement scheme to its employees along with local residents and businesses and also participating in the promotion of the Scottish Government’s “Prepare for Brexit” campaign.

The Royal Town Planning Institute Scotland (RTPIS) indicated it was examining the possible scenarios that regulatory change following Brexit could have on planning systems across the UK. The RTPIS suggested that after Brexit it was important that the UK continued to observe common standards with the EU:

“We believe that the UK has much to gain from pursuing an approach that makes it easier to do business with trading partners new and old. Access to markets in the EU and around the world has transformed the UK construction sector. The mutual recognition of qualifications and the development of common technical standards have reduced the barriers our members face working abroad. Reducing tariffs and harmonising standards have helped UK firms of all sizes expand to Europe and beyond. These common approaches have also meant that UK businesses can support best-practice in environmental and product standards, to address global issues such as climate change. It is imperative that governments in the UK protect and promote the UK’s role as a leader in environmental and consumer protection standards.”

In a similar way, the National Farmers Union Scotland suggested that it is important that post-Brexit, agricultural and food standards are maintained and that imports of food must meet those same standards:

“NFUS has set out its grave concerns to the UK Government that the excellent standards of production adhered to in Scotland must be met by any agricultural and food imports. If this is not written in to any future trade deal with third countries, domestic producers could be undercut by cheaper produce produced to much lower standards. This is a red line for farmers and crofters in Scotland.”

The Scottish Council of Independent Schools told the Committee it was important that a continued system of mutual recognition of qualifications should be in place after Brexit:

“A key issue for teaching staff following withdrawal will be the recognition of teaching and other qualifications from other jurisdictions. The general system of recognition of professional qualifications, including teaching, is provided for within Directive 2005/36/EC, which enables the free movement of professionals within the EU with professional qualifications recognised in another EU country.”

What you consider the impact of a no-deal outcome would be for your business / organisation?

All those who responded to this question indicated they thought a no-deal Brexit would be the least favourable outcome from the Brexit negotiations.

The Law Society of Scotland set out the legal implications of a no-deal Brexit which can be summarised as the EU Treaties and EU law will no longer apply in the UK after 29 March 2019 and the European Union (Withdrawal) Act 2018 would come into effect, repealing the European Communities Act 1972, which transposes existing EU law into domestic UK law.

Dr Tobias Lock from the University of Edinburgh highlighted the uncertainty for EU citizens in the UK in terms of their status and rights in the event of a no-deal Brexit. Dr Lock suggested this could be alleviated by a unilateral approach from the UK Government e.g. an Act of Parliament guaranteeing their rights as they would be under EU law. This could help remove uncertainty.

SCDI wrote that a no-deal outcome would be disastrous for the Scottish economy, particularly in the short to medium term.

The National Farmers Union Scotland (NFUS) wrote that a no-deal Brexit would mean no transition period, an immediate end to freedom of movement and lead to the UK trading under World Trade Organisation (WTO) rules. The NFUS wrote this outcome would run “completely contrary to NFUS’ desire for trade to be as friction-free as possible” and suggested that a no-deal Brexit “may see a knee-jerk reaction from the UK Government that brings in “panic deals” with Third Countries like the US, Mercosur, Canada and the Antipodes”.

Culture Counts wrote that the impact of a no-deal Brexit might include losing talented staff who might not be able to remain in the UK.

The General Medical Council (GMC) wrote that in the event the UK leaves the EU without a Withdrawal Agreement, they foresee three possible scenarios for medical regulation after March 2019:

Option 1 Applications for registration from EEA qualified doctors are considered via the existing routes for International Medical Graduates (IMGs).

Option 2 The UK government invites the UK Parliament to unilaterally maintain the current system of automatic recognition granted by virtue of the mutual recognition of professional qualifications (MRPQ) Directive – but for a time limited period.

Option 3 A bespoke framework is created for EEA qualified doctors

The GMC added:

“There are advantages and disadvantages to all of the above options. What is clear to us is that, with less than six months before a possible ‘no deal’ Brexit, we are now limited as to the viability of certain options. We would not support any option or policy position that would either deliberately or inadvertently deter

the approximately 2,000 EEA qualified doctors who come here each year and contribute to the NHS.

In terms of planning and preparedness, the first two options which provide a clear cut and pre-existing route to registration which would be easier to implement by March 2019. However, they are not without risks.”

Food and Drink Federation Scotland (FDFS) wrote that many of its members are already feeling the impact of Brexit. In addition, as 95% of the industry is made up of SMEs, “many businesses do not have the resource or expertise to plan for a no-deal”. The FDFS added:

“The harsh reality is that in the event of a no deal, some members will lose all EU27 business, one member quantified a loss of around 25% of their total Scottish plant business resulting in potentially closing their Scottish site and losing several hundred jobs.”

The Freight Transport Association wrote that:

“Government has advised that all food and agricultural exports to the Continent and Ireland will be checked at EU ports - but there is nowhere to check them, and the system to check them does not exist. We still don't know if we will be able to employ the 43,000 truck drivers in the UK that are nationals from another member state – that's 13% of our driver workforce. There is no clarification on whether UK drivers' qualifications are to be recognised, so they could well be barred from driving their own vehicles on the Continent.

Another major concern is, under European law, unless an agreement is reached, there will only be 103 international haulage Permits to cover the 300,000 journeys made by British trucks to Europe each year. The logistics industry is being asked to decide who would get a Permit to Drive if there are not enough to go around – in effect, being asked to destroy the businesses of its international haulage members.”

Universities Scotland set out three implications for the university sector of a no-deal Brexit:

- The residency rights of EU nationals already working in HEIs would be unclear. We have received commitments from the Home Secretary (below) but HEIs need details from the UK Government to provide assurances to staff and students about the rights and entitlements
- EU nationals entering the UK could be treated as third country nationals, subject to non-EEA immigration rules and requirements. The consequences of this will be an immediate restriction on the flow and staff and student talent to Scottish HEIs
- The UK's ability to participate in Horizon 2020 and Erasmus+ could cease because there is no legal obligation for the UK to pay any financial settlement on exit.

The Scotch Whisky Association suggested that in the event of a no-deal Brexit, its concerns were also three-fold:

- Disruption to trade with the EU
- Barriers to trade with the EU
- Tariffs with third countries outside the EU.

The City of Edinburgh Council indicated the impact of a no-deal Brexit would be two-fold - impact on workforce, and impact on service demand. In terms of the impact on service demand, City of Edinburgh Council wrote:

“The scale and range of potential impacts on service demand and delivery likely to arise from a “no-deal” scenario remains unclear. However, in the event that a “no-deal” outcome results in adverse economic impacts in the city, services cite potential increases in demand, and changes in the profile of demand for a range of citizen support and welfare services, including advice, access to benefits, housing and tenancy support, amongst others.”

A number of local authorities also indicated that a no-deal Brexit would impact adversely upon businesses based in their area. For example, East Ayrshire Council suggested that in the event of no-deal, local authorities would be expected to provide advice and support:

“This will impact on our business base much more than our organisation but in this regard we must be able to provide support to businesses who face difficulty recruiting non UK staff, difficulty retaining a migrant workforce and those for whom trading with the EU becomes more complex.”

Local Authorities also cited concerns about replacements for EU funds such as the Structural Funds and LEADER.

To what extent, the guidance issued by the European Commission and UK Government has been helpful in helping you to prepare for the UK’s withdrawal from the EU?

Commenting on the guidance notes issued by the UK Government and the European Commission on preparing for a no-deal Brexit scenario, the written submissions were largely negative. A number of respondents suggested that it was difficult to consider the usefulness of the guidance until details of the post-Brexit arrangements were known.

Anthony Salamone, Research Fellow and Strategic Advisor at the Scottish Centre on European Relations summarised his view of the UK Government’s technical notes:

“The UK Government’s no-deal Brexit guidance to date has been largely general in nature and does not provide detailed advice or information for individuals and entities. While the European Commission has made available preparation guidance on Brexit overall and no-deal in particular in respect of EU

law, the prime responsibility for preparing and informing the UK public on Brexit rests with the UK Government.”

The Scottish Council for Development and Industry suggested that the technical notes set out the consequences of ‘no deal’ in various areas and that some of SCDI’s members report having studied this guidance and found it useful in assisting their preparedness. However, it added:

Nevertheless, these notices are not sufficient because they neither cover all sectors of the Scottish economy nor the consequences of other potential outcomes. It is these scenarios, which remain more likely than ‘no deal’, which require more supporting information.”

The National Farmers Union Scotland were similarly sceptical writing:

“Without commenting on every relevant technical notice, in general NFUS wishes to highlight that the technical notices regarding trade with the EU and future support are a reiteration of previous statements from the UK Government rather than substituting any solid plan for businesses. As such, it is very difficult for the agricultural businesses that NFUS represents to plan accordingly.”

The Food and Drink Federation Scotland provided a blunt assessment of the value of the technical notices writing:

“Members were very clear that the guidance issued to date has been of no use to aid contingency or capacity planning and forecasting. In fact, the guidance has caused both business customers and consumers alarm and fear.”

The Freight Transport Association suggested the technical notices had a certain value but that more information was needed on the nature of future arrangements to allow the transport sector to plan for Brexit:

“Advice to date issued by The European Commission and the UK Government has helped the transport industry stress test some proposals such as the FCA however much guidance from both bodies can conflict and contradict.

Without clear proposals and examples of the type of future relationship the UK will have with the EU post Brexit, it is very difficult for the Transport Sector to clearly plan and prepare for the UK’s withdrawal from the EU.”

West Lothian Council suggested the UK Government and European Commission’s guidance had been helpful to a point, but it was pitched at too high a level:

“The ‘no deal’ technical notes published by UK Government and European Commission have helped to identify potential areas that West Lothian Council needs to consider that might impact on council services and operations, and the local economy. However, thus far they have been at a high level and have been of assistance with identifying generic risks they have not been helpful in assisting with understanding specific risks to the operation of the council.”

What further support or guidance you consider the Scottish Government, UK Government and / or European Commission should be providing to enable individuals, businesses and organisations in Scotland to prepare for the UK's withdrawal from the EU?

There was a general view that once the arrangements for after Brexit on 29 March 2019 became clear, it would be easier for the UK Government to provide advice on the consequences and actions needed to prepare for Brexit.

Aberdeenshire Council suggested more guidance was required on the UK Government's settled status scheme, commenting that:

"From the UK Government, there is a need to ensure that the Settled Status scheme is operational as soon as possible and that support is made available to EU/EEA citizens living in the UK to apply for settled status. Resources will be required to provide face-to-face assistance to EU/EEA citizens rather than relying on the completion of online forms. There should also be recognition of the potential impact on Local Authorities and voluntary sector organisations which need to be adequately resourced to provide support to EU/EEA citizens."

The Scotch Whisky Association suggested that the cost of preparing for Brexit for the whisky industry ran to many millions of pounds and could rise further in the event of no-deal. The SWA added:

"This has been incurred through the cost of practical contingency planning and the diversion of existing resources to manage Brexit impacts. We believe further guidance from the UK Government and European Commission will be necessary in the event of a no-deal scenario to minimise the commercial impact on businesses trading between the UK and EU."

Further support and guidance for businesses was also suggested.

Other issues

Whilst it wasn't included as a question within the Committee's call for evidence, a number of respondents set out their views on the priority outcomes for Brexit. These were linked to continued frictionless trade and access to the Single Market along with continued ability to attract and retain EU nationals to work in Scotland.

For example, the Scottish Salmon Producers' Organisation told the Committee:

"Scottish salmon's first priority is to ensure continued frictionless, tariff-free trade with the EU27 after Brexit. This is important for both imports and exports, from and to the EU27, those countries in the wider Customs Union and in the European Economic Area (EEA) and to other Third Countries with whom the EU has preferential trade agreements."

The National Farmers Union wrote that:

“Since the outcome of the EU referendum, NFU Scotland (NFUS) has argued strongly for free and frictionless trade to continue with the EU after Brexit. Without membership of the Single Market, NFUS has also advocated maintained membership of a Customs Union which would protect the UK’s extremely high standards of production, and the delicate balance of trade flows. Maintained movement of people is also a key priority for NFUS, as the agricultural and food processing sectors rely heavily on non-UK nationals coming to work in vacancies in our sector.”

On migration, the General Medical Council referred to the relative high dependency on EEA qualified doctors in certain areas of the UK including in some remote and rural areas of Scotland.

Highlands and Islands Enterprise referred to the difficulties businesses in the area have in recruiting and suggested “that a reduction in the flow of EU migrants will further impact on recruitment challenges “. This point was also referenced by Highlands and Islands Enterprise who wrote that a survey in December 2016 showed that “more than a fifth (23%) of businesses in the Highlands and Islands with staff employ non-UK EU workers” and that:

“Businesses highlighted the difficulties they face in recruiting people with the skills and experience they need, with recognition that a reduction in the flow of EU migrants will further impact on recruitment challenges. This highlights a risk of skills shortages amongst permanent employees if the flow of EU migrants is reduced.”

Universities Scotland told the Committee that agreeing a Withdrawal Agreement with the EU and securing continued participation in Horizon Europe and Erasmus+ from the beginning of 2021 were key priorities. They stated:

“Therefore a settlement is of utmost importance. This is an absolute requisite if Scotland is to remain a world-leader in the higher education sector. The UK Government should be finalising UK-EU accords on Science and Education with the EU Commission as soon as possible. This would allow progress on the UK to gain full association to Horizon Europe and Erasmus+ from the start of their programmes on 1 January 2021.”

Iain McIver
SPICe Research
14 December 2018

Note: Committee briefing papers are provided by SPICe for the use of Scottish Parliament committees and clerking staff. They provide focused information or respond to specific questions or areas of interest to committees and are not intended to offer comprehensive coverage of a subject area.

The Scottish Parliament, Edinburgh, EH99 1SP www.parliament.scot

Culture, Tourism, Europe and External Affairs Committee

34th meeting, 2018 (Session 5) Thursday 20 December 2018

Census (Amendment) (Scotland) Bill

Note by the Clerk

Purpose

1. At this meeting, the Committee will take evidence on the Census (Amendment) (Scotland) Bill from the Cabinet Secretary for Culture, Tourism and External Affairs. The Cabinet Secretary will be accompanied by officials as detailed in the agenda.

About the Bill

2. The Culture, Tourism, Europe and External Affairs Committee has been designated as the lead committee on this Bill.
3. The Committee's role during Stage 1 is to take evidence and gathers views on the general principles of the Bill. This evidence will inform its Stage 1 Report to the Parliament in which it will take a view on whether the general principles of the Bill should be approved and whether the Bill should proceed to Stage 2.
4. The Committee expects to report on the Bill early in the New Year.
5. More information about the Parliament's process for considering bills can be found here: www.parliament.scot/visitandlearn/100529.aspx.

Bill documents and briefings

6. The Bill and its accompanying documents can be found on the Scottish Parliament's website: www.parliament.scot/parliamentarybusiness/Bills/109595.aspx.
7. The Scottish Parliament's Information Centre (SPICe) has also produced a Bill briefing, which can be found here: <https://sp-bpr-en-prod-cdne.azureedge.net/published/2018/12/3/Census--Amendment---Scotland--Bill/SB%2018-81.pdf>.

Written evidence

8. The Committee issued a call for evidence on 11 October 2018. The closing date for submissions was Friday 23 November 2018.
9. SPICe has produced a summary of written evidence, which can be found here: www.parliament.scot/S5_European/Inquiries/CTEEA_CensusBill_SPICeSummaryOfEvidence.pdf.

10. The National Records for Scotland wrote to the Committee regarding the Bill on 5 December 2018. A copy of the letter is provided in the **Annexe**.
11. A copy of all the published written evidence received can be found on the Committee's website:
www.parliament.scot/parliamentarybusiness/CurrentCommittees/109902.aspx

Sigrud Robinson
Assistant Clerk
CTEEA Committee

**CENSUS (AMENDMENT) (SCOTLAND) BILL
LETTER FROM THE NATIONAL RECORDS OF SCOTLAND**

Joan McAlpine, MSP
The Convenor
Culture, Tourism, Europe and External Affairs Committee
Scottish Parliament
5 December 2018

Dear Convenor

Thank you for the helpful discussion we had on 29 November on the Census (Amendment) (Scotland) Bill. As agreed at the meeting, I am following up to confirm matters on the points raised on the purpose of the Bill, the consultation we have carried out and the legislative process.

Aim of the Bill and legislative process

The purpose of the Census (Amendment) (Scotland) Bill is to make answering census questions on sexual orientation, and certain aspects of transgender status and history, voluntary. The Bill does not set the specific questions. The particulars to be sought and the text of the questions are considered as part of the Census Order and Census Regulations procedure set out in the Census Act 1920.

The effect of the Bill, if passed as currently drafted, would be to make a question on sexual orientation voluntary and to give a power to enable transgender status and history questions to be voluntary in each census.

In our view, the power to ask these questions already exists in the Census Act 1920 as transgender status and history would be regarded as being covered by the existing powers to ask questions about sex and other matters. However, in recognition of the sensitive nature of these questions, the Bill proposes to put these questions on a voluntary basis, in the same way that the religion question was placed on a voluntary basis by the Census (Amendment) (Scotland) Act 2000. The census questions are otherwise compulsory.

The Bill currently uses the term “gender identity” to cover transgender status and history to enable an element of future proofing in relation to the legal definitions of transgender status and history. The term “gender identity” was also used to enable the questions about sex and transgender status and history to be clearly separated so that the current question about a person’s sex would continue to be asked on a compulsory basis. However, we recognise that this has raised concerns that the Bill conflates gender identity and sex.

The Census Act 1920 gives the power for (enables) the calling of the census, the census arrangements and the census questions. Each census may have slightly different arrangements and questions, as census research practice develops. The 1920 Act directs that the detail of each census will be made into law by a Census

Order and Census Regulations. These are usually scrutinised by Parliament in the year before the census. As the Bill seeks to amend the enabling powers in the 1920 Act, this requires to be given legal effect before the new powers can be used in the Census Order and the Census Regulations.

The Census Order and Census Regulations are the pieces of secondary legislation which govern the running of each census. The Scottish Government will provide the committee the opportunity to see the Census Order in draft form along with the full text of the census questions in order that it can feed back its views in advance of the formal laying of the Census Order.

The full set of questions will then be set out in the forms set by the Census Regulations. In terms of timing, we expect the informal engagement with the Committee to begin after Stage 3 of the Bill and continue throughout 2019 (so around June to end of 2019). The formal Census Order and Regulations will be taken to the Committee in early 2020.

Please be assured that the Committee will be given the opportunity, both in terms of timing and information, to fully scrutinise our proposed approach and questions for the Census in 2021 – we will shortly agree a timetable for the full legislative process with you.

Recognising some of the discussion we had on 29 November and the responses to the call for evidence on the Bill, I would stress that the intention behind the Census Bill was not to conflate the matters of sex and gender identity. In recognition of the concern expressed by the Committee that the current drafting of the Bill appears to confuse these two matters, we will reconsider this matter (including considering whether omitting reference to gender identity and referring instead to trans status) This would focus the Bill on the policy we would like to achieve, which is making a trans question in the census voluntary. The detailed drafting of this would be a matter for consideration at Stage 2. We would welcome the Committee's views on this as a potential approach to the Bill.

We are currently considering whether or not to have a non-binary response option for the sex question, but it is too early to say if this will be the final proposal as testing and consultation continues. We will keep you informed as this work progresses and we will also want to take the advice of the committee. I would note that the census has never defined what we are measuring in relation to sex in previous censuses and therefore are not changing any definitions used. In 2011 we added guidance online for transgender people to advise that they were not required to have a gender recognition certificate in order to be able to tick a box; they could respond in terms of the sex with which they identified. It is our current intention to continue to seek to ask the sex question on a mandatory basis and as a self-identified question as in 2011.

The rights and duties that flow from the Equality Act 2010 are not affected by the Census Bill. The Census Bill simply seeks to enable the asking of certain voluntary questions in the census. If the Census Bill is passed, sex will remain a protected characteristic in terms of the Equalities Act.

Consultation

The consultation we have already carried out on sex, gender identity and transgender status has directed us on our proposals for the 2021 Census. Whilst this engagement continues, including at consultation events this week, I have attached an overview for you at Annex A.

Please be assured that protecting this confidential information is of the strictest importance to NRS. This includes ensuring that all outputs of data will be carefully anonymised and no personal information is published until after 100 years has passed. Census data is also excluded from release under the Freedom of Information (Scotland) Act until 100 years has passed.

The security and confidentiality arrangements for the census will also be independently reviewed to ensure they are appropriate, and this will be shared with the Scottish Parliament. We will meet our obligations under the Data Protection Act and it is also an offence under the Census Act to disclose any personal information.

I hope you find this response helpful.

Amy Wilson
Director of Scotland's 2021 Census
National Records of Scotland

Scotland's Census 2021 – Consultation for Sex, Gender Identity and Transgender Status

Timeline

Date	Event	
Oct 2015 – Jan 2016	Topic Consultation	NRS invited views on the topics under consideration for collection in the census in 2021.
Aug 2016	Topic Report	Consultation provided evidence for a well-established user need for information on sex – but also highlighted the need for information on gender identity. The report of the consultation notes that it was not clear what specifically was required in relation to gender identity and that more work needed to be carried out to understand the user need.
Jan 2017 – March 2017	Public acceptability testing of a gender identity question in collaboration with Office for National Statistics (ONS) and Northern Ireland Statistics and Research Agency (NISRA).	Public acceptability testing identified that the majority of the general public in Scotland considered it acceptable for a gender identity question to be asked on the next census.
Jan 2017	Sexual Orientation and Gender Identity Stakeholder Event	Attendees noted that the sex question from the 2011 Census does not allow non-binary people to respond accurately. In addition a need for data on transgender population was discussed and stakeholders preferred that this information was collected via a trans status question.
June 2017 – August 2017	Quantitative testing of binary sex, non-binary sex and a sex and gender identity question set in collaboration with	Inclusion of an 'Other, write in' response option did not change the level of item non-response in comparison to the binary sex question. The proportion of people who did not

	ONS and NISRA	respond to the questions was higher when both a sex and gender identity was asked compared to either a binary or a non-binary sex question on its own.
Sept 2017	Meeting with Scottish Trans Alliance (STA) policy group	NRS updated the group on question development and testing. The policy group had no preference as to whether the question was voluntary or included a prefer not to say response option but the question should have an option not to declare.
Aug 2017 – Sept 2017	Cognitive testing of questions on sex, gender identity and trans status in Scotland only	Result of testing supported taking forward a non-binary sex question followed by a trans status question.
Nov 2017 – Dec 2017	Quantitative testing of a non-binary sex question and trans status question in Scotland only	97% of respondents provided a valid response to the non-binary sex question and 94% of respondents provided a valid response to the trans status question. 2% of respondents stated finding the trans status question difficult to answer.
Sept 2018	Further cognitive testing of wording and guidance for non-binary sex and trans status questions	Additional guidance in the non-binary question did not improve respondents understanding of how to answer the question. The trans status question received a positive response and including a definition of the term 'trans' made the question easier to answer.

1. Scotland's Census 2021 – Topic Consultation

National Records of Scotland (NRS) invited views on Scotland's Census 2021 Topic Consultation between 8 October 2015 and 15 January 2016. The consultation was a key step towards understanding what information users needed from the census in 2021, and helped to build strong cases to justify the inclusion of topics. The focus of the consultation was on information required at topic-level, not the detail of the questions that should be asked on the questionnaire.

[Scotland's Census 2021 - Topic Consultation Report - August 2016](#)

The topic consultation provided evidence that there continues to be a well-established user need for the key demographic variable sex. It is a vital input to population estimates and household projections which are used by central and local government to inform resource allocation, target investment, and carry out service planning and delivery. Sex is a protected characteristics in the Equality Act 2010 and

the data are widely used to inform equality impact assessments. They are also essential for analysis and research conducted by a wide range of users, including public bodies and third and private sector organisations.

Some responses in the basic demographics section of the consultation also highlighted gender identity and transgender as topics that the 2021 Census should consider. For example:

“Further information on all the protected characteristics listed under the Equality Act 2010 (e.g. gender reassignment and sexual orientation) would assist in mapping intersectional disadvantage for minority ethnic individuals.”

“To appropriately address the equalities agenda, the Census needs to cover issues such as transgender.”

“Although distinct from sexual identity, we believe provision should be made in the census for people to identify themselves as trans* under Gender Identity or Sex.”

As can be seen, the responses used different terms: gender identity, gender assignment and transgender. Of these, only gender reassignment is a protected characteristic as set out in the Equality Act 2010 and a range of organisations told us that data about those individuals was required in relation to fulfilling the duties specified for public bodies in that legislation. In addition, they told us that a reliable data source on the size and locality of the transgender population in Scotland is required to justify policy developments that will reduce inequalities experienced by trans people, and for designing and enhancing public services to meet specific needs, particularly in relation to the provision of health services.

Given that three different terms were used, it was decided that more work was required to understand the specific user need and what data should be collected to meet that need.

2. Sexual Orientation and Gender Identity stakeholder meeting

Following on from the consultation, NRS held a stakeholder event at New Register House on 24th January 2017. The purpose of the stakeholder event was to provide an opportunity for for users who had expressed a need for data on sexual orientation and users who had expressed a need for data around gender identity/gender reassignment/transgender to explore these needs further with National Records of Scotland (NRS) and the Scottish Government (SG). The event also provided the opportunity for participants to hear about research and testing plans being developed by NRS and the Office for National Statistics (ONS).

This meeting was attended by representatives from NRS, ONS, NISRA, Scottish Government, Equality Network, Stonewall Scotland and LGBT Health.

At this meeting discussions highlighted a preference for a response in the sex question to allow people who do not identify as male or female to be able to answer a mandatory question in the census. User need for information about the

transgender community was also discussed and stakeholders preferred that this information was collected via a trans status question rather than being derived from a combination of questions around sex at birth and current gender.

3. Meeting with Scottish Trans Alliance (STA) policy group

NRS met with representatives of STA, Equality Network and Stonewall Scotland on 6th September 2017 to update them on the question development and testing that NRS had taken forward. At this meeting there was support for the inclusion of both the sexual orientation and trans status questions. There was no strong position on whether these questions should be voluntary or have 'prefer not to say' response options but it was essential to ensure that no-one was compelled to answer these questions.

Question Development

As noted above, following the consultation NRS concluded that further work was required to understand the exact nature of user need and the precise nature of the concepts to be measured. The starting point for development for all questions was the 2011 question. The 2011 Census sex question asked "What is your sex?" with two response options but it did not specify any more details in the question text. The additional guidance provided online for this question in 2011 was:

"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."

It should be stressed that this detailed guidance was only published online and was not part of the instructions on the form. The question 'What is your sex' did not provide any specific definition of what was being measured within the question text itself. There was no opposition in 2011 to the self-identified nature of this question but this may well reflect that fact that many people were not aware of the more detailed guidance. The starting point for 2021 has been that this question will continue to be self-identified.

NRS have consulted with LGBTI groups as further information about the collection of gender status and transgender status was required. No specific consultation with women's groups has been carried out but this is now underway. We would welcome the views from the committee on this and other aspects of the Bill and census process.