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**Culture, Tourism, Europe and External Affairs
Committee**
**Comataidh Cultar, Turasachd, na h-Eòrpa agus
Gnothaichean a-muigh**

**Stage 1 Report on the Census
(Amendment) (Scotland) Bill**



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Culture, Tourism, Europe and External Affairs Committee

Remit: To consider and report on the following (and any additional matter added under Rule 6.1.5A)—

- (a) proposals for European Union legislation;
- (b) the implementation of European Communities and European Union legislation;
- (c) any European Communities or European Union issue;
- (d) the development and implementation of the Scottish Administration's links with countries and territories outside Scotland, the European Union (and its institutions) and other international organisations; and
- (e) co-ordination of the international activities of the Scottish Administration.
- (f) culture and tourism matters falling within the responsibility of the Cabinet Secretary for Culture, Tourism and External Affairs



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europe@parliament.scot



0131 348 5234

Committee Membership



Convener
Joan McAlpine
Scottish National Party



Deputy Convener
Claire Baker
Scottish Labour



Annabelle Ewing
Scottish National Party



Kenneth Gibson
Scottish National Party



Jamie Greene
Scottish Conservative
and Unionist Party



Ross Greer
Scottish Green Party



Stuart McMillan
Scottish National Party



Tavish Scott
Scottish Liberal
Democrats



Alexander Stewart
Scottish Conservative
and Unionist Party

Recommendations and Conclusions

1. The Culture, Tourism, Europe and External Affairs Committee's recommendations and conclusions in this report are reproduced below.

Evidence Gathering

2. The Committee wishes to thank all those who provided oral and written evidence during the process of Stage 1 scrutiny of the Census (Amendment) (Scotland) Bill. The Committee recognises the significant sensitivities of the issues which the Bill engages with and the strong views which have characterised debate on the issues raised. Given these sensitivities the Committee welcomes the tone of the debate that has taken place to date and considers it imperative that any future debate on these issues continues to be conducted in a rational and respectful manner.
3. The Committee recommends that the Scottish Government gives consideration to the evidence received by the Committee with regard to the language question to be used in the 2021 Census.

Voluntary Questions: Gender Identity and Sexual Orientation

4. The Committee recognises that the Bill deals solely with the issue of whether questions on gender identity and sexual orientation should be included in the Census on a voluntary basis. The Committee recognises the sensitivity of asking questions in the census on these issues. The Committee considers therefore that a voluntary approach to these questions is appropriate.
5. However, the Bill has raised significant issues with regard to how the Census in 2021 will deal with questions regarding sex, gender identity and sexual orientation and the process of consultation which has underpinned policy development on these issues. These are considered further in the remainder of this report.

Sex Question: Binary or Non-Binary

6. The Committee recognises all sincere and strongly held views as to whether the mandatory sex question should remain binary. The Committee also recognises that the Parliament will be invited to take a view on this issue, when the Census Order comes before Parliament, in due course.
7. The Committee recommends that the mandatory sex question should remain binary in order to maximise response rates and longitudinal consistency with previous censuses.ⁱ
8. The Committee has received considerable evidence that there was a lack of clarity and awareness regarding the existence of online guidance concerning the self-identification approach adopted in 2011. The Committee considers that there must be absolute clarity with regard to the approach that is adopted in 2021, taking into account the census's primary purpose of robust data-gathering and the Scottish

ⁱ This recommendation was agreed to by division. For – 6 (Joan McAlpine, Annabelle Ewing, Kenneth Gibson, Stuart McMillan, Tavish Scott and Alexander Stewart); Against – 1 (Ross Greer); Abstain – Claire Baker and Jamie Greene.

Government's duty to act in accordance with the Equality Act 2010, in which sex is a protected characteristic. The Committee recommends that there is a pro-active information campaign to support the approach adopted which must involve all interested parties who which have expressed views on this issue.

Sex and Gender Identity

9. The Committee agrees that the way the term 'gender identity' has been used in the Bill has created confusion and a perception that 'sex' is being conflated with 'gender identity'. The Committee welcomes the proposal from the Equality Network with regard to how the Bill can be amended to address this issue. This would require 'including gender identity' to be removed from the Bill leaving paragraph 1 of the Schedule to the 1920 Act regarding the mandatory sex question unchanged. 'Trans-status' would be added as a category for census questions on the same basis proposed for 'sexual orientation'. The Committee therefore recommends that the Scottish Government brings forward amendments, at Stage 2, to this effect.
10. The Committee supports the inclusion of trans-status as a 'particular' to be added on a voluntary basis to the list of 'particulars' in the Schedule to the Census Act 1920 subject to a commitment from the Scottish Government to bring forward amendments on the basis outlined above. The Committee fully recognises that testing of questions on trans-status is ongoing. The Parliament will have the opportunity to fully scrutinise the draft questions proposed on trans-status when the Census Order comes before the Parliament.

Sexual Orientation

11. The Committee agrees that there has been considerable social change with regard to issues concerning sexual orientation since 2011. The Committee has not received representations to suggest that there is any significant degree of concern regarding the inclusion of questions on sexual orientation, on a voluntary basis, in the census. This leads the Committee to conclude that there is wide acceptance of the inclusion of questions on this topic.
12. In line with the Cabinet Secretary's view that the census should not lead public opinion, the Committee considers that the time is now right for inclusion of questions on this topic. The Committee support sexual orientation being added, as a 'particular' to be asked, on a voluntary basis, to the Schedule of the Census Act 1920.
13. The Committee recommends that the Scottish Government considers the issues raised with regard to privacy rights when the census form is being completed on a head of household basis. The Scottish Government should consult with organisations representing young people, including LGBT Youth Scotland, with regard to this matter.

'Intersex'

14. The Committee welcomes the clarification from the Cabinet Secretary that 'intersex' people will not be included within the term 'trans'. However, the Committee considers it regrettable that 'intersex' was referred to as coming within the term 'trans' in the Policy Memorandum to the Bill and considers that this further amplified the view that the Bill, as introduced, conflated sex and gender identity. In addition, the Committee considers that this has had an impact of legitimising concerns

regarding the consultation process undertaken by the NRS in advance of the Bill's introduction and was too limited in scope. The consultation process undertaken by NRS is considered further later in this report.

15. The Committee received evidence that individuals with 'differences of sex development' are either male or female and do not represent a 'third sex'. The Committee also recognises that there is not unanimity on this issue. The Committee therefore recommends that all guidance surrounding the 2021 census should clearly reflect this position and make clear that 'intersex' does not fall within the term trans.
16. The Committee highlights the issues raised in evidence with regard to public sector support that is available to individuals with DSD. The Committee recommends that the Scottish Government should, with reference to the evidence received by the Committee, further consult with a range of organisations representing 'intersex' people in order to improve the information and specialist services available to support children and families of people who have differences of sex development. The Committee brings the written evidence submitted by DSD Families specifically to the attention of the Scottish Government.

Consultation

17. The Committee considers that the lack of early engagement with a range of groups and individuals, including a broad range of women's groups, to be a serious deficiency in the process of consultation on the sex, gender identity and transgender status topics. The Committee considers that many of the issues that have been raised in relation to the Bill, particularly with regard to the conflation of sex and gender identity, could have been pre-empted if there had been an adequate consultation process. The issues raised with regard to the content of the Policy Memorandum in relation to a binary sex question and 'intersex' issues, the Committee considers, is also symptomatic of this lack of consultation. The Committee welcomes the commitment from the NRS for further consultation, in particular with a broad range of women's groups. The Committee expects the NRS to fully update the Parliament on the consultation process prior to any consideration of a draft Census Order.
18. The Committee notes the concerns raised about the inclusion of 'intersex' people by the NRS within the construct of gender identity. The Committee requests details of any consultation that took place with organisations representing 'intersex' people, as opposed to broader equality organisations, prior to 5 December 2018. The Committee recommends that there should be specific consultation with medical experts and a variety of organisations representing 'intersex' people, including DSD Families, in order that the views of these organisations are fully taken into account.
19. The Committee notes that some women's organisations wrote to the Committee expressing support for the Bill. However, a number of female academics, individual campaigners and newly formed independent female rights organisations have expressed concerns around the conflation of sex and gender and the perceived risk to sex-based protections for women and girls. Given this broadening of public discourse on these issues it is important that future consultation on this topic, by NRS and the Scottish Government, reaches out to the widest possible constituency and carefully considers all the evidence gathered by this Committee.

Conclusion

20. The primary purpose of the Bill is to include the ‘particulars’ of transgender status / history and sexual orientation in the Schedule of the Census Act 1920 on a voluntary basis. The Committee supports the general principle of the Bill.
21. However, the Committee considers that the Bill, as introduced, contains deficiencies. These have been considered in detail in this report and the Committee has suggested means via which these could be rectified through both amendment of the Bill and the process of scrutiny of the Census Order. The Committee recommends that the Scottish Government sets out its position in relation to these issues ahead of the Stage 1 debate on the Bill.

Introduction

22. The Census (Amendment) (Scotland) Bill [hereafter ‘the Bill’] was introduced, on 2 October 2018, in the Scottish Parliament by Fiona Hyslop MSP, Cabinet Secretary for Culture, Tourism and External Affairs. The Committee was designated as the lead Committee on the Bill. The Policy Memorandum to the Bill states that the principal purpose of the Bill is “to make answering census questions about prescribed aspects of gender identity, and about sexual orientation, voluntary”.¹
23. The operation of the census in Scotland is governed by the Census Act 1920 [hereafter ‘the 1920 Act’]. Conducting the census is a devolved matter with the National Records of Scotland [hereafter ‘NRS’] being responsible for delivery of the census. The census is held every ten years with the next census due to take place on Sunday 21 March 2021. The 1920 Act sets out the topics, termed ‘schedule of matters’, on which questions, termed ‘particulars’, can be asked. Currently, these topics are:²
- Names, sex, age
 - Occupation, profession, trade or employment
 - Nationality, birthplace, race, language
 - Place of abode and character of dwelling
 - Condition as to marriage or civil partnership, relation to head of family, issue born in marriage
 - Religion, and
 - Any other matters with respect to which it is desirable to obtain statistical information with a view to ascertaining the social or civil condition of the population.
24. The Bill, which consists of three sections, seeks to add ‘sexual orientation’ and ‘gender identity’ to this list of topics. The actual questions which are asked in the census are not stipulated in the 1920 Act. Instead, these are stipulated in secondary legislation termed the ‘Census Order’. Accordingly, the Bill does not set out the specific questions which are intended to be asked in relation to sexual orientation and gender identity.
25. The 1920 Act also requires that all census questions are compulsory unless it is stated otherwise. Section 8 of the 1920 Act provides that failure, or neglecting, to answer compulsory questions can result in an offence being committed and a person being subject to a fine not exceeding level 3 on the standard scale, currently £1,000. Currently, all questions in the census are compulsory except for questions regarding religion. Questions regarding religion can be answered on a voluntary basis and are therefore not subject to any penalties for non-responses.³ Changes to the questions asked in the census are not uncommon. The Policy Memorandum notes that—

- ” Society can change significantly in the 10 years between censuses and the questions have to keep pace. For example, for the last census in 2011 five new questions were introduced, including for national identity and long term health condition, and five were removed, including for bath / shower and toilet access and religion of upbringing. Revisions were also made to some questions including on ethnic group, marital status, and to include same sex civil partnership options. Special attention was also given to the topic of ethnicity for 2011, to identify the best question not only for the census but also for use in other government surveys.⁴
26. With regard to sexual orientation, the Policy Memorandum notes that a question on sexual orientation was considered for inclusion in the 2011 census. However, a question was not included on the basis that “the level of public acceptance of the question was not considered sufficient to merit its inclusion”. Since then a question on sexual orientation has been included in major Scottish and UK Government surveys.
27. With respect to gender identity, the Policy Memorandum recognises that there is less experience to draw upon. The Policy Memorandum states—
- ” It is widely recognised that there is limited evidence on the experiences of transgender people in Scotland. Currently, there is no fully tested question with which to collect information on gender identity in surveys or other data sources. Therefore, the transgender question is a new development for the census. The question is not asked in any other major surveys and thus population-wide data is simply not available in any form.⁵
28. The Policy Memorandum explains that it is the view of the Scottish Government that primary legislation is not required in order to ask questions on ‘gender identity’ and ‘sexual orientation’. Instead, primary legislation is required if such questions are to be asked on a voluntary basis. The Policy Memorandum states that—
- ” The main policy aim of the Bill is not, therefore, to facilitate the asking of questions about gender identity and sexual orientation but to make answering those questions effectively voluntary. The policy recognises both the importance and sensitivity of the new questions and seeks to mitigate concerns about intrusion into private life by placing the questions on a voluntary basis.⁶
29. As noted above, the actual questions which will be asked in census 2021 will be considered via secondary legislation in the form of a census order. This Order will be scrutinised by this Committee at a later date. Nevertheless, the vast majority of the evidence which the Committee received regarding the Bill dealt with the issue of how questions, and accompanying guidance, will address sex, gender identity and sexual orientation.
30. This report considers, firstly, the purpose of the Bill as set out above. The report then considers wider issues raised in evidence to the Committee, particularly with regard to questions concerning sex and gender identity, during scrutiny of the Bill.

Evidence Gathering

31. Following the Bill’s introduction, the Committee issued a call for evidence on 11 October 2018. The call for evidence closed on 23 November 2018. The Committee continued to receive written submissions during the process of taking oral evidence as a result of issues that were being raised in evidence.
32. The Committee sought to be flexible in its approach to accepting written evidence and continued to accept written submissions, including supplementary written submissions from individuals and organisations that had already provided evidence, until Committee papers had been issued in advance of the final evidence session on the Bill, at Stage 1, on 20 December 2018.⁷ The Convener summarised the approach taken in the following terms—

” The committee received a wide variety of views on the bill, before and well after the formal deadline that was attached to our call for views. I have been happy to receive late submissions—indeed, as late as I can allow—but there comes a time when the committee must take stock of all the evidence that it has received. We are well aware of the wide range of views and strong feelings about the issues that are raised in the bill, and we are grateful to everyone who has shared their view at stage 1.

Source: Culture, Tourism, Europe and External Affairs Committee 20 December 2018 [Draft], The Convener, contrib. 71¹

33. The Committee wishes to thank all those who provided oral and written evidence during the process of Stage 1 scrutiny of the Bill. The Committee recognises the significant sensitivities of the issues which the Bill engages with and the strong views which have characterised debate on the issues raised. Given these sensitivities the Committee welcomes the tone of the debate that has taken place to date and considers it imperative that any future debate on these issues continues to be conducted in a rational and respectful manner.

34. The Delegated Powers and Law Reform (DPLR) Committee considered the one delegated power contained in the Bill. The DPLR Committee reported that “it is content with the delegated powers provision contained in the Bill”.⁸ The Finance and Constitution Committee had no issues to raise with the Financial Memorandum to the Bill.
35. Beyond the issues considered in this report with regard to sex, gender identity and sexual orientation, the Committee also received a small number of submissions regarding questions that are asked on languages. For instance, Reform Scotland stated that Bill—

” provides an excellent opportunity to address problems with the way the Scottish census records data about the languages that are spoken in Scotland.
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36. The Committee recommends that the Scottish Government gives consideration to the evidence received by the Committee with regard to the language question to be used in the 2021 census.

Voluntary Questions: Gender Identity and Sexual Orientation

37. As outlined above, the primary purpose of the Bill is to enable the inclusion within the 2021 census of questions regarding gender identity and sexual orientation which can be answered on a voluntary basis. The Policy Memorandum to the Bill emphasises a number of ‘drivers’ for the inclusion of these questions in the 2021 census. Firstly, research and consultation conducted since 2011 has “clearly identified a user need for data”¹⁰ on these issues. Secondly, this approach would also provide a means of ensuring compliance with the Equality Act 2010 and in particular the Public Sector Equality Duty.¹¹ Lastly, the inclusion of the questions would provide information and data that would be widely used by service providers.
38. On the specific point as to whether these questions should be voluntary, the Committee obtained a wide range of evidence supporting the inclusion of questions on these topics on a voluntary basis. There was support from a range of public bodies, such as local authorities, on the grounds of facilitating improved service delivery as well as ensuring compliance with the Public Sector Equality Duty. Similarly, the Law Society of Scotland considered that the inclusion of questions on a voluntary basis has “the potential to help public sector organisations to comply with the Public Sector Equality Duty”.¹²
39. Equalities organisations, and individuals responding from an equalities perspective, supported the voluntary approach in terms of sending a positive message regarding inclusion whilst also respecting the privacy rights of individuals. For example, Stonewall Scotland stated that the 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”.¹³ For Women Scotland also supported a voluntary approach on the grounds that “an individual’s right to privacy must be upheld and no-one should be forced to respond to these questions unless they choose to”.¹⁴ Tim Hopkins from the Equality Network outlined his support for the voluntary approach in the following terms—

” We are still some way from complete equality for lesbian, gay and bisexual people, and rather further away from complete equality for trans people. For that reason, to force somebody on pain of a £1,000 fine to specify to the Government what their sexual orientation is, for example, would not be appropriate at the current time. That is why we think that the question should be voluntary.

Source: Culture, Tourism, Europe and External Affairs Committee 06 December 2018, Tim Hopkins, contrib. 103²

40. The Committee considered the issue of the validity of data obtained on a voluntary basis. Equalities organisations tended to stress the importance of the ‘sample size’ of the census, which would provide more robust data with regard to sexual orientation than is possible from surveys which ask questions on this issue. In terms of sexual orientation, there was a recognition that there may be under-reporting on this issue, particularly amongst older age cohorts. Nevertheless, equalities

organisations tended to emphasise the benefits of data collected on a voluntary basis. For example, the Equality Network and the Scottish Trans Alliance, in a joint written submission, stated—

” The data will help to identify continuing inequalities for lesbian, gay and bisexual people, as well as those with other non-heterosexual sexual orientations, and will be able to better inform policy development and inclusive service planning. It will also give us information, for example, on the distribution of lesbian, gay and bisexual people, as well as those with other non-heterosexual orientations, across Scotland.

The possibility that some respondents may be uncomfortable or uncertain about disclosing their sexual orientation is why we think that it is appropriate that this is a voluntary question on the census. ¹⁵

41. A similar rationale tended to be made regarding the utility of including a gender identity question on a voluntary basis. However, there was a recognition that whereas questions on sexual orientation are now commonplace in both Scottish and UK Government surveys, that situation does not apply to the concept of gender identity. Accordingly, the Equality Network and Scottish Trans Alliance observed that—

” It is important to acknowledge that there is likely to be under-reporting of trans status. Currently, very few surveys ask questions about whether or not respondents are trans, so it may take time for some trans people to feel comfortable responding. This means it is important to be cautious in assuming that the census will give a completely accurate account of trans people living in Scotland. ¹⁶

42. The current lack of data on the transgender population in Scotland was also emphasised by the Cabinet Secretary in evidence to the Committee. She stated—

” It is widely recognised that there is limited evidence on the experiences of transgender people in Scotland and currently there is no fully tested question for collecting information. In covering that, the census would take a big step forward to ensure that we can develop the evidence that is needed to support and protect Scotland’s transgender population.

Source: Culture, Tourism, Europe and External Affairs Committee 20 December 2018 [Draft], The Cabinet Secretary for Culture, Tourism and External Affairs (Fiona Hyslop), contrib. 72³

43. Data users also tended to emphasise that voluntary questions could still yield beneficial results. The use of data derived from the voluntary question on religion was cited in evidence to the Committee as a means of understanding “the prevalence of religions across Scotland and to use that information to think about discrimination and other important facets of society”. ¹⁷

44. Specifically, with regard to questions regarding sexual orientation and gender identity there was also support for the proposition that useful data can be obtained from voluntary questions. Professor Jackie Cassell, from Brighton and Sussex Medical School, commented that questions on gender identity and sexual orientation are—

” complex questions, and some people will have better understanding of them than others. There is also evidence that there will be reasonably high non-response rates, but there is no doubt, from many studies of many kinds and population samples, that it is possible to get useful data that can inform policy.

Source: Culture, Tourism, Europe and External Affairs Committee 13 December 2018 [Draft], Professor Cassell, contrib. 18⁴

45. Users of census data were also keen to emphasise that there should be a clear understanding that census data was not used to plan or deliver services to individuals. Instead, census data is used by public sector bodies at a macro-level. For instance, Gerry McCartney from NHS Health Scotland explained, in oral evidence to the Committee, that—

” Clearly, we do not use census data to institute or identify services for individuals. ... we would not use the census to identify people for screening or other such purposes; we would use the existing health record data sets such as the community health index data sets and the clinical records associated with those to identify individuals who needed particular services. However, the census is a key data source for resource allocation and planning at a population level.

Source: Culture, Tourism, Europe and External Affairs Committee 13 December 2018 [Draft], Gerry McCartney (NHS Health Scotland), contrib. 7⁵

46. The Cabinet Secretary, in oral evidence, summarised the rationale for adopting a voluntary approach to these questions as follows—

” The approach in the bill seeks to mitigate concerns about intrusion into private life by making the questions voluntary, as was done with questions on religion when they were included for the first time in the 2001 census. It is important that nobody is, or feels, in any way compelled to answer these important but sensitive questions.

Source: Culture, Tourism, Europe and External Affairs Committee 20 December 2018 [Draft], The Cabinet Secretary for Culture, Tourism and External Affairs (Fiona Hyslop), contrib. 72³

47. The Committee recognises that the Bill deals solely with the issue of whether questions on gender identity and sexual orientation should be included in the census on a voluntary basis. The Committee recognises the sensitivity of asking questions in the census on these issues. The Committee considers therefore that a voluntary approach to these questions is appropriate.

48. However, the Bill has raised significant issues with regard to how the census in 2021 will deal with questions regarding sex, gender identity and sexual orientation and the process of consultation which has underpinned policy development on these issues. These are considered further in the remainder of this report.

Sex Question: Binary or Non-Binary

49. In ascertaining the sex of respondents, the census has sought responses to a binary question, namely whether a respondent is male or female, since 1801. NRS produced a 'topic report' which details the evidence that has been gathered by NRS in developing an approach to the questions on 'sex and gender identity' for the 2021 census. The 'topic report' states with regard to the sex question that—

” There is a well-established user need for sex data as:

- It is a vital input to population, household and other demographic statistics 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 characteristic as set out in the Equality Act 2010 and the data are widely used to inform equality impact assessments.¹⁸

50. The Bill proposes that the sex question will continue to be asked in addition to the proposed gender identity question in 2021. For the 2011 census, online guidance was provided by NRS which stated that “trans people could select the option for how they identify, irrespective of the details on their birth certificate”.¹⁹ This approach advised respondents to answer the sex question based on their self-identified sex as opposed to their legal or biological sex. NRS stated, in evidence to the Committee, that the same guidance was also issued by the Office for National Statistics for the 2011 census in England and Wales.

51. The Policy Memorandum comments that the rationale for the provision of the guidance was that “society’s understanding of sex has changed and guidance provided explained that the question was being asked in terms of self-identified sex”. With regard to the 2021 census, the Policy Memorandum states—

” 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.²⁰

52. In later evidence to the Committee, the Cabinet Secretary clarified the Scottish Government position on the mandatory sex question by stating that a non-binary response option “is being considered and tested.”²¹ However, no decisions have been made as to whether the sex question should be binary or non-binary. Regardless of the approach taken, NRS have stated that the data produced from the census will continue to be binary. Amy Wilson, Director of Statistical and Registration Services, at NRS outlined the approach with regard to data outputs in the following terms—

” We do not propose to produce outputs on a non-binary basis. In our conversations with stakeholders, we have always been consistent that it is about allowing people to respond in a way that reflects how they identify but that we will still produce outputs on a male and female basis. We have discussed with stakeholder groups the fact that we would randomly assign people back into the male and female categories because, as the numbers are expected to be very small, that will not affect the statistical distributions.

Source: Culture, Tourism, Europe and External Affairs Committee 20 December 2018 [Draft], Amy Wilson, contrib. 121⁶

53. The Committee has received a substantial amount of evidence expressing concern at the potential for a non-binary question to be used and also regarding the self-identification approach taken in 2011 and proposed again for 2021. For many respondents, sex is biological and not amenable to a third, non-binary, response. For example, Woman’s Place UK stated—

” An individual’s biological sex is an immutable characteristic. The inclusion of a third option to the question on sex would indicate a departure from scientifically-grounded theory of human sexual dimorphism and an alternative understanding that some human beings cannot be categorised as belonging biologically to one of the two sexes.²²

54. In a similar vein, a joint written submission from four clinicians, Professor Bing et al., commented on the use of language with regard to sex that—

” Some people (including medical professionals) have become muddled because of the misuse of language, such as sex being ‘assigned’ at birth, rather than observed. Biological sex is fixed, and is not changed by hormones or surgery, although external appearance changes.

There is little supporting evidence for a genetic or anatomical brain basis for being born in the wrong body, yet this idea now has currency with the public, and it appears they believe it is medically endorsed.²³

55. A range of respondents highlighted that sex is a protected characteristic under the Equality Act 2010 and should not be conflated with categories of gender identity. For instance, Professor Rosa Freedman from the University of Reading stated—

” Bringing the idea of a third category—a non-binary gender—into sex, or bringing together gender identity and sex in one question is bringing together two characteristics protected under the Equality Act 2010 and thus, in essence, undermining them both.

Source: Culture, Tourism, Europe and External Affairs Committee 06 December 2018, Professor Rosa Freedman (University of Reading), contrib. 2⁷

56. That biological sex was increasingly being conflated with gender as a social construct, in particular by public bodies, was frequently highlighted in evidence to the Committee. Murray, Blackburn, MacKenzie (MBM) in a joint written submission, highlighted the findings of a survey they had undertaken investigating how Scottish local authorities represented the provisions of the Equality Act 2010 with regard to whether local authorities are accurately describing the protected characteristic of

'sex'. The survey was based on a review of local authority documentation. MBM summarised their survey findings as follows—

” Seven of the 32 local authorities consistently list 'sex' as the protected characteristic in the documents reviewed. The remainder list 'sex', 'gender' and other variations as the protected characteristic. ²⁴

57. Dr Kath Murray commented on the impact of this trend in public policy upon women's rights that—

” This blurring, which has the effect of changing what it means to be female, has implications for the protection of women's rights. ²⁵

58. Lastly Professor Kathleen Stock considered the term 'gender identity' to be contested and stated in relation to sex that—

” 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. ²⁶

59. The importance of asking a binary sex question as a means of protecting non-binary women was also emphasised. For instance, Susan Smith from For Women Scotland noted that—

” It is really important that, even though women might identify as non-binary, they are still protected on the basis that they will face discrimination and they may well face abuse because they are women.

Source: Culture, Tourism, Europe and External Affairs Committee 06 December 2018, Susan Smith, contrib. 20⁸

60. In addition, the self-identification approach adopted for the sex question in the 2011 census was also questioned by some data experts. For example, Professor Susan McVie, of Edinburgh University and Co-Director of the Administrative Data Research Centre in Scotland, said that the change in 2011 to self-identification was a mistake and remarked—

” It is a fundamental property of research that, in designing a questionnaire, you need to be extremely clear about what you are measuring. Possibly controversially, I think that the General Register Office for Scotland got it wrong when it redesigned the census in 2011 and conflated sex and gender identity into one question. We are now trying to disentangle those things. Arguably, the measure of sex in the 2011 census data is not accurate.

Source: Culture, Tourism, Europe and External Affairs Committee 13 December 2018 [Draft], Professor Susan McVie (University of Edinburgh), contrib. 11⁹

61. From this perspective, exactly what was being measured by the sex question is unclear and respondents to the question may not have been aware that the

question was to be answered on a self-identification basis. In correspondence with the Committee, NRS provided further detail on the approach taken in the 2011 guidance. NRS stated that the 2011 guidance on self-identification 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.²⁷

62. Proponents of a non-binary question tended to be drawn from equality groups and individuals with a non-binary sexual identity although it is important to note that the Committee also received a response from an individual with a trans-gender identity who supported a binary sex question. For example Deborah Hayton, who in written evidence described herself as a transgender woman who represents the NASUWT on the Trades Union Congress LGBT+ Committee, stated in a personal capacity—

” 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.²⁸

63. The Committee received a range of evidence emphasising the need for a non-binary sex question in order that respondents can answer the sex question in line with their lived experience. Vic Valentine, from Scottish Trans Alliance, stated that a binary sex question would result in—

” forcing people to reveal quite private and personal information about their biology that ... would not necessarily be relevant to health planning and so on. The principle of trans equality and the movement towards such equality in politics have been about ensuring that how people live and identify is respected and is more important than reducing them to their biological characteristics at birth.

Source: Culture, Tourism, Europe and External Affairs Committee 06 December 2018, Vic Valentine, contrib. 126¹⁰

64. The complications presented for individuals with a non-binary sexual identity in honestly answering a binary sex question was a common theme in evidence provided to the Committee by proponents of a non-binary sex question. For example, LGBT Youth Scotland stated—

” We believe transgender people should be able to choose the gender they identify with. However, the binary option of male and female would leave people who identify as non-binary as unable to honestly answer the question. Given that this is an obligatory question, with an associated fine for non-completion, it puts non-binary people in an unfair position. In order to ensure non-binary people receive the same recognition as transgender people it would be appropriate to add a third option.²⁹

65. The impact upon, and potential distress that may be caused, to transgender people arising from a change to the self-identification approach taken in the 2011 census was also emphasised in some of the evidence received by the Committee.

66. Tim Hopkins, from the Equality Network, also emphasised the importance of ensuring privacy. He suggested that judgements by the European Court of Human Rights (ECHR) determined that to ask about biological sex characteristics would be an invasion of privacy. Mr Hopkins considered that, as a minimum, the sex question should be based on legal sex in order to ensure privacy rights. He emphasised, however, that having a question based on self-identification would be consistent with practice in the previous census. He summarised the rationale for a non-binary sex question in the 2021 census in the following terms—

” the only reason for putting in the third option is not to ensure that trans people can be counted but to give non-binary people an option that they can truly answer so that they do not have to be dishonest by ticking either the male or the female box. That is the only reason for a change in the compulsory question from 2011—it is not about counting people.

Source: Culture, Tourism, Europe and External Affairs Committee 06 December 2018, Tim Hopkins, contrib. 167¹¹

67. In a similar vein, a joint submission from Close the Gap, Engender, Equate Scotland, Rape Crisis Scotland and Scottish Women’s Aid, raised privacy issues if the 2011 approach to the binary sex question was changed. They stated that—

” The proposal to require ‘sex at birth’ seems freighted with practical difficulty. Firstly, it seems likely to breach individuals’ right to privacy. Secondly, if the approach was emulated more broadly by public bodies it may expose them to risk of prosecution if their data-collection and storage did not maintain scrupulous confidentiality.³⁰

68. The Scottish Trans Alliance stated that such a change to the self-identification approach taken in the 2011 census—

” would be viewed by many trans people as a harmful roll-back of their existing rights so many will either answer with their lived identity anyway, or will leave the sex question blank in protest or, at worst, may refuse to complete the census at all.³¹

69. Professor Sharon Cowan, of Edinburgh University’s Law School, stated³² that there is no single, legal definition of sex and that, in practice, sex has meant different things depending upon the context in which the term is used. She considered that this allowed the Scottish Government to be free to interpret the term ‘sex’ as it considered appropriate to a given context without having to define ‘sex’.

70. However, Professor Rosa Freedman, from Reading University’s School of Law, took a different view and stated in evidence to the Committee that the legal definition of sex can be found in the judgement of the Corbett v Corbett case in 1970.³³ She considered that—

” The law clearly sets out in that case that sex is biological, and that transsexualism (what we would now term transgender) is psychological. As a result, when we use the word ‘sex’ in law, we are referring to biological sex.³⁴

71. In the same written submission, Professor Freedman stated that the ECHR ruling to which Tim Hopkins had referred to was *Goodwin v the UK*.³⁵ She considered that this ruling did not challenge the UK definition of biological sex but found that a transsexual's right to a private and family life was violated if she could not change her birth certificate. This, Professor Freedman noted, led to the Gender Recognition Act (2004) which gave such protections to those individuals who met with the strict criteria required to gain a Gender Recognition Certificate.

72. Other respondents emphasised that the inclusion of a third option would not impact upon the integrity of the data collected. For example, a joint submission, from Close the Gap, Engender, Equate Scotland, Rape Crisis Scotland and Scottish Women's Aid, noted that—

” Testing by the National Records of Scotland team identified that the inclusion of a question on sex that included a write-in box for those who did not wish to tick ‘male’ or ‘female’ did not reduce the response rate. Given that other data sources suggest that the population of non-binary people is very small, we do not think that inclusion will have any negative impact on gender-disaggregation of data.³⁶

73. In contrast, Woman's Place UK stated—

” If the Scottish Government believes that human beings are not sexually dimorphic, then Ministers and the Chief Scientific and Medical Officers must provide evidence to support that claim.³⁷

74. During the Committee's scrutiny of the Bill, the Office for National Statistics (ONS), which has responsibility for the census in England and Wales, published its ‘Equality Impact Assessment for the 2021 Census’. In terms of the sex question, ONS proposes that it remains unchanged i.e. binary. However, ONS also propose that a caveat be included in the sex question, subject to successful testing, that a gender question will follow later. ONS consider that this approach “has been found to increase acceptability amongst the transgender and non-binary population”. ONS do not stipulate whether the sex question will continue to be based on self-identification or legal or biological sex. However, they do state that maintaining the current binary question is important in order to preserve continuity of data with regard to the protected characteristic of sex. ONS observed that—

” This binary concept of sex is, in turn, fundamental to the Equality Act 2010 definition of sexual orientation and of gender re-assignment and to the law on marriage and civil partnership and many other matters. ...

Amending the basic question to include other options, while of benefit to those individuals who reject the binary view, would threaten continuity of data, though that impact could be reduced by good design. There is a risk that redesign could increase the number of mischievous answers and generate uncertainty, as well as causing difficulty with third party completion.³⁸

75. The Cabinet Secretary, in oral evidence to the Committee, recognised the “strong and often very opposing views”³⁹ concerning whether the mandatory sex question should be binary or non-binary. Ms Hyslop also said that ‘sex’ had not been defined in previous censuses and suggested that in 2011 “the self-identified gender issue was perhaps not as politically controversial as it currently is.”⁴⁰ The Cabinet Secretary summarised her view on the mandatory sex question in the following terms—

” The census does not lead public opinion; the census has to reflect society as it is just now and ask questions that maximise the response rate so that the data can be used. ...

I appreciate the points that have been made and I think that we will have to get to the nub of those—what are the issues that different organisations, and women’s groups in particular, want to get at and how much concern it there about self-identification and what it means? However, the bill is not the place to resolve those issues—they should be resolved somewhere else.

Source: Culture, Tourism, Europe and External Affairs Committee 20 December 2018 [Draft], Fiona Hyslop, contrib. 126¹²

76. The Committee notes that the approach in England and Wales in 2021 will be to continue with a binary sex question and that the ONS Equality Impact Assessment underlined the importance of the protected characteristic of ‘sex’ to ensure robust data-gathering. This view was also expressed by data users in evidence to this committee. The Committee also notes that the equality impact assessment published by ONS treated sex and gender identity separately in contrast to the approach taken by NRS. The Committee agrees with the Cabinet Secretary that it is not for the census to lead public opinion and notes that separate proposals to allow gender self-identification, including non-binary identification, are not yet clear or complete. The Committee further notes that individuals with a non-binary identity will have the opportunity to state that identity in the proposed new ‘gender identity’ question in the 2021 census.

77. The Committee recognises all sincere and strongly held views as to whether the mandatory sex question should remain binary. The Committee also recognises that the Parliament will be invited to take a view on this issue, when the Census Order comes before Parliament, in due course.

78. The Committee recommends that the mandatory sex question should remain binary in order to maximise response rates and longitudinal consistency with previous censuses.ⁱⁱ

79. The Committee has received considerable evidence that there was a lack of clarity and awareness regarding the existence of online guidance concerning the self-identification approach adopted in 2011. The Committee considers that there must be absolute clarity with regard to the approach

ii This recommendation was agreed to by division. For – 6 (Joan McAlpine, Annabelle Ewing, Kenneth Gibson, Stuart McMillan, Tavish Scott and Alexander Stewart); Against – 1 (Ross Greer); Abstain – Claire Baker and Jamie Greene.

that is adopted in 2021, taking into account the census's primary purpose of robust data-gathering and the Scottish Government's duty to act in accordance with the Equality Act 2010, in which sex is a protected characteristic. The Committee recommends that there is a pro-active information campaign to support the approach adopted which must involve all interested parties who which have expressed views on this issue.

Sex and Gender Identity

80. The approach taken in the Bill to include questions on ‘gender identity’ also elicited a range of responses to the Committee’s call for evidence particularly regarding the extent to which the Bill would conflate gender identity with sex and noting that while sex is a protected characteristic in the Equality Act 2010, ‘gender identity’ is not. As discussed earlier, the Schedule to the Census Act 1920 sets out the ‘particulars’ or topics which questions can be asked about in the census. Paragraph one of the Schedule provides for questions to be asked regarding ‘names, sex and age’. The Bill, at Section 1(2)(a), seeks to amend the Schedule to the 1920 Act to—

After “sex” insert “(including gender identity)”

81. Accordingly, the effect of the Bill would be to amend Paragraph one of the Schedule to the 1920 Act to read—

‘Names, sex (including gender identity), age.

82. The approach taken in the Bill to ask voluntary questions on ‘gender identity’ differs from that proposed for sexual orientation. The Bill proposes that sexual orientation questions are placed in a separate category, not linked to any other existing ‘particular’ or topic within the Schedule to the 1920 Act. The Policy Memorandum states that the Scottish Government regards ‘gender identity’ as already being covered by the term ‘sex’ within the Schedule to the 1920 Act. The Policy Memorandum explains the rationale for the approach taken with regard to gender identity in the following terms—

” The issues of sex and gender identity are linked, especially if the sex question asked is a non-binary sex question (for example ‘Are you male, female, other?’). ... The ‘sex’ question will remain compulsory. For that reason, the Bill does not hard-wire provision that would make answering questions about gender identity voluntary (that might catch the sex question) and, instead, provides a power to prescribe aspects of gender identity (such as trans / trans history) for the purpose of making questions about those aspects voluntary.⁴¹

83. In oral evidence to the Committee, the Cabinet Secretary elaborated on the approach taken with gender identity as follows—

” To enable an element of future proofing on the legal definition of transgender, the bill uses the term “gender identity” to cover transgender status and history. That also assists in clearly separating questions about sex and transgender, so the question on sex can continue to be mandatory.

Source: Culture, Tourism, Europe and External Affairs Committee 20 December 2018 [Draft], The Cabinet Secretary for Culture, Tourism and External Affairs (Fiona Hyslop), contrib. 72³

84. The Committee received a substantial amount of evidence, both oral and written, expressing concern that the Bill conflated sex with the concept of ‘gender identity’. As discussed earlier, in relation to the sex question, combining gender identity into the sex question was considered to undermine the protected characteristic of sex in relation to the Equality Act 2010. For instance, Professor Rosa Freedman stated that the main issue with the Bill is that “it will conflate sex and gender identity, which

will have far-reaching impacts both on the data collected and on the precedent for how sex and gender identity are treated in law.”⁴² Lucy Hunter Blackburn raised similar issues when stating that—

” you need to avoid using the census legislation to set a precedent on the statute book that conflates sex with gender identity. Those are distinct things, conceptually, and we do not feel that the census legislation is the right place to introduce new ideas about how to conceptualise sex in law. That debate could be had, but not in this context.

Source: Culture, Tourism, Europe and External Affairs Committee 13 December 2018 [Draft], Lucy Hunter Blackburn (Murray Blackburn Mackenzie), contrib. 2¹³

85. Woman's Place UK expressed concerns raised by a number of respondents regarding this issue in the following terms—

” We are concerned about the widespread conflation of ‘sex’ and ‘gender’. As feminists, we regard an individual’s sex to be an immutable characteristic rooted in biology. We regard gender as a social construct or a set of cultural norms attached to each sex.⁴³

86. The Committee heard evidence expressing concern at the impact of this conflation of sex and gender identity upon the erosion of biological women’s rights, as enshrined in the Equality Act 2010. The Act allows for proportionate measures to protect the privacy, dignity and safety of biological women in relation to a variety of sex-segregated spaces and intimate services, such as medical and personal support services, shared accommodation, prisons and rape crisis centres.

87. The impact of conflating sex and gender upon the utility and robustness of the census data was also a frequently cited concern. The census was frequently perceived as a model or benchmark for other surveys and equality monitoring processes. The Committee received a range of evidence stressing that robustness of census data on sex should not be undermined and become “an expensive exercise in self-validation”.⁴⁴ Accordingly, the importance of ensuring that the mandatory sex question was kept separate due to its function as a key indicator in relation to a wide range of public policy areas was also a commonly cited concern.

88. For example, Professor Cassell of Brighton and Sussex Medical School, commented in relation to health data that—

” There are many areas of health in which biological data and biological risk are very important. Those interact with gender identity, which is very important in some areas. We know that, for many conditions and treatments, sex is a big differentiator of outcomes. It is important that the data is robust in order that we can meet our duties, which are many and are often not well met, in the fair provision of effective treatment to men and women, which may not always look the same.

Source: Culture, Tourism, Europe and External Affairs Committee 13 December 2018 [Draft], Professor Cassell, contrib. 6¹⁴

89. Professor Susan McVie, of Edinburgh University and co-Director of the Administrative Data Research Centre in Scotland, considered the use of census data from a research perspective in evidence to the Committee. She stated that—

” From a research point of view, we know that certain conditions—medical conditions, for example—are sex related. Regardless of a person’s gender identity, there are certain medical conditions that they will be more likely to face depending on whether they were born a man or a woman. We also know—this is probably more to do with my area—that certain social processes are differentiated for men and women. There are sex-related biases, discriminations and forms of inequality that do not necessarily go away if a person changes their gender identity.

Source: Culture, Tourism, Europe and External Affairs Committee 13 December 2018, Professor Susan McVie (University of Edinburgh), contrib. 11¹⁵

90. As discussed above, the term ‘gender identity’ is untested in terms of survey data whilst the Cabinet Secretary considered that the use of term in the Bill was intended to enable an element of future proofing on the legal definition of transgender. The Committee heard evidence highlighting that there is no legal definition of ‘gender identity’ at either international, European, UK or Scottish levels. Professor Freedman commented in this regard that—

” no one has defined gender identity properly—neither the United Nations nor the European Court of Human Rights has done so. If it is to be included in a census, it needs to be defined so that the people who answer the question can answer it correctly and to the best of their ability.

Source: Culture, Tourism, Europe and External Affairs Committee 06 December 2018, Professor Freedman, contrib. 11¹⁶

91. Critics of the Bill contrasted the lack of a definition of gender identity with the definition of sex in case law and as a protected characteristic in the Equality Act 2010 along with gender reassignment which is narrower than trans status / history or the legally undefined concept of gender identity.

92. In initial evidence to the Committee, equality groups were supportive of the approach taken in the Bill with regard to gender identity. Specifically, the gender identity question when asked in conjunction with a non-binary sex question was seen as providing an effective means of obtaining data on the size of the trans population in Scotland. The absence of such data was widely recognised in the evidence the Committee received. The absence of a question on ‘trans status / history’ in the census, despite gender reassignment being a protected characteristic in the Equality Act 2010, was considered by the Equality Network as contributing “to the continued stigma around transgender people.”⁴⁵ Moreover, the small size of the trans population was considered to make—

” including a question in the census particularly important, as the population is so small that it is only in very large surveys that meaningful analysis of trans respondents will be possible.⁴⁶

93. Generally, there was also broad support amongst those concerned by the approach taken in the Bill for the collection of data on the transgender population on a voluntary basis. For example, Professor McVie of Edinburgh University commented that—

” The main thing to consider is what the different dimensions of gender identity are. There needs to be a series of questions that allow people to adequately express how they feel about themselves, keeping sex separate from that and being very clear about what we mean by sex...

Source: Culture, Tourism, Europe and External Affairs Committee 13 December 2018 [Draft], Professor McVie, contrib. 15¹⁷

94. However, equality groups tended to emphasise that the actual question used in the census should be a ‘trans status’ question rather than using term ‘gender identity’. Vic Valentine, from Scottish Trans Alliance, commented on their understanding of the approach taken in the Bill in the following terms—

” “Gender identity” is broadly used to refer to the strand of equality work that focuses on transgender people, and I believe that that is why there was a decision to use the term. As data needs change, the questions that NRS might want to ask trans people within a census might change and it would not have to revisit Parliament every time in order to request that those questions were voluntary. It is my understanding that the idea was that there will be a question that pertains to transgender equality and it will be called the gender identity question, but the actual question in the 2021 census will be a trans status, trans history question.

Source: Culture, Tourism, Europe and External Affairs Committee 06 December 2018, Vic Valentine, contrib. 107¹⁸

95. The Cabinet Secretary confirmed this understanding of the rationale for the use of the term ‘gender identity’ in the Bill. She considered ‘gender identity’ to be an “umbrella term”⁴⁷ intended to “allow flexibility”⁴⁸ with regard to the specific questions asked on transgender status and history given that this was a new area of question development and the testing of questions was ongoing. In terms of question testing, Amy Wilson from NRS observed that—

” In our testing so far, a broad question on gender identity has not necessarily tested well; it has been less understood. Again, that probably reflects the issues to do with terminology and definition.

Source: Culture, Tourism, Europe and External Affairs Committee 20 December 2018 [Draft], Amy Wilson, contrib. 108¹⁹

96. In correspondence with the Committee, during the Committee’s scrutiny of the Bill, NRS said there was no intention to conflate sex and gender identity. However, NRS also stated that—

” 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.⁴⁹

97. In a supplementary written submission, the Equality Network agreed with NRS that the way in which the term ‘gender identity’ has been used in the Bill has caused confusion. The Equality Network then proposed a specific approach, involving amendment of the Bill, in order to address concerns that had been raised in evidence to the Committee. It is worth reproducing the full text of the Equality Network proposal which stated—

” We would recommend using the term ‘trans status’ to identify the new, voluntary, question which enables trans people to identify themselves. We would suggest adding this to section 1(2)(b) of the bill, so that ‘trans status’ is added as a new paragraph 5C to the schedule to the Census Act 1920. ‘Trans status’ could then be listed in the substituted section 8(1A)(a) of the 1920 Act (set out in section 1(3) of the bill, below ‘sexual orientation’, to make the question voluntary. ‘Trans status’ is a sufficiently wide term that there is scope to ensure a suitable question wording over the next year.

We would suggest removing section 1(2)(a) of the Bill, so that the existing inclusion of a mandatory question on sex is unchanged from 2011. It would be important however to be clear that this would allow the flexibility to make the question about lived sex (as it was in 2011), with or without an ‘other’ option, or to make it something different, following further consultation and, if needed, question testing.⁵⁰

98. The effect of the Equality Network's proposal would be to remove the term gender identity from the Bill. Instead the Bill would provide for questions on ‘trans status’ to be asked in the census on a voluntary basis. The Cabinet Secretary was asked for her view on this proposal and stated that the Scottish Government would “certainly consider the suggestion”⁵¹ and also the Committee’s view on the proposal. Later in the evidence session, Ms Hyslop added that she did not think that limiting the questions asked in the census to transgender status and history “would unnecessarily restrict us, unless our lawyers tell me otherwise”.⁵² Regarding the use of the term gender identity in the Bill, the Cabinet Secretary stated—

” I think it is about using the term “including”, which is what can be perceived to conflate the terms “sex” and “gender identity”. It is a very serious point that we will certainly look at; we appreciate the committee’s attention to it, and that people have brought the matter to our attention.

Source: Culture, Tourism, Europe and External Affairs Committee 20 December 2018 [Draft], Fiona Hyslop, contrib. 74²⁰

99. The Committee agrees that the way the term ‘gender identity’ has been used in the Bill has created confusion and a perception that ‘sex’ is being conflated with ‘gender identity’. The Committee welcomes the proposal from the Equality Network with regard to how the Bill can be amended to address this issue. This would require ‘including gender identity’ to be removed from the Bill leaving paragraph 1 of the Schedule to the 1920 Act regarding the mandatory sex question unchanged. ‘Trans-status’ would be added as a category for census questions on the same basis proposed for ‘sexual orientation’. The Committee therefore recommends that the Scottish Government brings forward amendments, at Stage 2, to this effect.

100. **The Committee supports the inclusion of trans-status as a ‘particular’ to be added on a voluntary basis to the list of ‘particulars’ in the Schedule to the Census Act 1920 subject to a commitment from the Scottish Government to bring forward amendments on the basis outlined above. The Committee fully recognises that testing of questions on trans-status is ongoing. The Parliament will have the opportunity to fully scrutinise the draft questions proposed on trans-status when the Census Order comes before the Parliament.**

Sexual Orientation

101. The Committee has outlined earlier in this report the approach proposed within the Bill to include sexual orientation as a ‘particular’ on which questions can be asked in the census. The Policy Memorandum notes that including a question on sexual orientation was considered for inclusion in the 2011 census but rejected on the grounds of insufficient public acceptance.

102. Since 2011, questions have been asked in major Scottish Government and UK Government surveys regarding sexual orientation. Accordingly, there is a more developed evidence base upon which to ask such questions than is the case with ‘gender identity’. The Policy Memorandum states that “the proposed sexual orientation question in the 2021 census will mirror the question already used in surveys in Scotland and elsewhere in the UK”.⁵³ The Equality Network and Scottish Trans Alliance emphasised the importance of the inclusion of a question on sexual orientation due to the limited sample size of government surveys. They commented that—

” Although Scottish Government household surveys have been asking about sexual orientation for several years, increasing as well as demonstrating public acceptability of such questions, because of the sample size in these surveys it becomes difficult to analyse the differences in the population by sexual orientation with any degree of statistical significance. Asking the question within the census will provide a large enough sample size to allow for analysis and outputs based on responses to this question.⁵⁴

103. The inclusion of sexual orientation as a topic for questions, on a voluntary basis, elicited a very limited response as compared to that generated by the inclusion of ‘gender identity’. Generally, there was broad support for data-gathering on this issue. The Committee considers earlier in the report issues that were raised in relation to potential under-reporting due to the voluntary nature of the question proposed. However, issues of this kind were not considered as being a reason for not following the approach proposed in the Bill. Equality groups tended to support the Bill’s approach. For instance, Stonewall Scotland considered—

” 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.⁵⁵

104. The Cabinet Secretary made a similar point when discussing the inclusion of sexual orientation as topic within the census. Ms Hyslop observed, in evidence to the Committee, that—

” Society will have changed significantly and rapidly in the 10 years since the previous census, so the 2021 census must reflect that.

Source: Culture, Tourism, Europe and External Affairs Committee 20 December 2018 [Draft], The Cabinet Secretary for Culture, Tourism and External Affairs (Fiona Hyslop), contrib. 72³

105. The Committee did receive evidence expressing concern that completion of the census on a head of household basis could raise issues with regard to privacy

rights when answering questions on sexual orientation. For example, LGBT Youth Scotland stated—

” We wish to raise concerns that this process may lead to a young person either involuntary or accidentally being ‘outed’. This could happen because they are questioned by someone else completing the Household Questionnaire on their behalf, or because they do not fully understand the process. When an adult is completing the form on behalf of a young person, we would recommend an option for ‘unsure’ or ‘don’t know’ regarding a young person’s sexual orientation.⁵⁶

106. **The Committee agrees that there has been considerable social change with regard to issues concerning sexual orientation since 2011. The Committee has not received representations to suggest that there is any significant degree of concern regarding the inclusion of questions on sexual orientation, on a voluntary basis, in the census. This leads the Committee to conclude that there is wide acceptance of the inclusion of questions on this topic.**
107. **In line with the Cabinet Secretary’s view, that the census should not lead public opinion, the Committee considers that the time is now right for inclusion of questions on this topic. The Committee support sexual orientation being added, as a ‘particular’ to be asked on a voluntary basis, to the Schedule of the Census Act 1920.**
108. **The Committee recommends that the Scottish Government considers the issues raised with regard to privacy rights when the census form is being completed on a head of household basis. The Scottish Government should consult with organisations representing young people, including LGBT Youth Scotland, with regard to this matter.**

'Intersex'

109. The term 'intersex', or 'differences in sex development' (DSD), is an umbrella term "for some 40 different conditions that affect the development of the reproductive organs and of the genitals".⁵⁷ The Committee recognises that the term 'intersex' is a contested term and that 'differences in sex development' is an alternative preferred by some groups that represent the interests of individuals with DSD. The Committee's use of the term 'intersex', in this report, does not represent an endorsement of the term but rather is used as most respondents who discussed this issue used the term 'intersex'. The Policy Memorandum to the Bill in discussing trans status / history, within the context of development of a gender identity question, states that—
- ” trans can include trans women, trans men, non-binary gender people, people who cross-dress and intersex people.⁵⁸
110. Evidence the Committee received emphasised that 'intersex' should not be viewed within the prism of gender identity but instead is a medical condition which affects individuals who are either male or female. Again, respondents tended to express concern that the Bill was conflating gender identity with a biological condition.
111. DSD Families, which is an information and support charity that promotes the rights and wellbeing of children with a difference in sex development, stated that 'intersex' "is not a 'third biological sex, it is a series of different biological pathways which produce anatomical characteristics among people who are female or male".⁵⁹
112. In evidence to the Committee, the Cabinet Secretary stated that the Policy Memorandum had incorrectly included 'intersex' people within the umbrella term 'trans'. The Cabinet Secretary explained—
- ” That was an unfortunate action during drafting in relation to an area that is constantly developing. We recognise that the needs of trans people and of intersex people are different. We will ensure that any future documentation does not include intersex people under the trans umbrella.
- Source: Culture, Tourism, Europe and External Affairs Committee 20 December 2018 [Draft], The Cabinet Secretary for Culture, Tourism and External Affairs (Fiona Hyslop), contrib. 72³
113. DSD Families, whilst recognising this was an error, commented on the inclusion of 'intersex' within the term 'trans' that—
- ” we are rightly concerned about further conflation between physical characteristics and sexual / gender identity and the inappropriate use of 'intersex' in the debate surrounding Census 2021.⁶⁰
114. The Committee heard evidence that the conflation of 'intersex' within gender identity could also be perceived as part of a trend that sought to develop a narrative that sex is non-binary. In particular, it was suggested that such an approach sought to co-opt 'intersex' people as part of a wider debate which seeks to conflate sex with gender. Professor Freedman commented on this issue that—

” over the past few years, organisations and individuals who are seeking to advance the fundamental rights of trans individuals have started to say that there is no such thing as two sexes, because intersex people are neither male nor female. That is not true, and it is deeply offensive to intersex people, who are male or female. Intersex people can have children and can father children. They have to be male or female to do that—there is not some third space. There has been quite a big push-back on that, with intersex people saying, “We’re not trans.”

Source: Culture, Tourism, Europe and External Affairs Committee 06 December 2018, Professor Freedman, contrib. 79²¹

115. Specifically with regard to the census, DSD Families did not support the inclusion of a question in the census on ‘intersex status’. Similarly, Tim Hopkins from the Equality Network, whilst stating that the Equality Network did not represent the ‘intersex’ community, noted that Intersex UK was not seeking the inclusion of a question in the census on ‘intersex’ status.⁶¹

116. The Committee also received evidence that there was a need for improved support and awareness of the needs of people with an ‘intersex’ condition across the public sector in Scotland. DSD Families raised “concerns about the need for improvements in services including consent to all interventions and focus on the entire support and care infrastructure for people with DSD conditions”.⁶²

117. The Committee welcomes the clarification from the Cabinet Secretary that ‘intersex’ people will not be included within the term ‘trans’. However, the Committee considers it regrettable that ‘intersex’ was referred to as coming within the term ‘trans’ in the Policy Memorandum to the Bill and considers that this further amplified the view that the Bill, as introduced, conflated sex and gender identity. In addition, the Committee considers that this has had an impact of legitimising concerns regarding the consultation process undertaken by NRS in advance of the Bill’s introduction and was too limited in scope. The consultation process undertaken by NRS is considered further later in this report.

118. The Committee received evidence that individuals with ‘differences of sex development’ are either male or female and do not represent a ‘third sex’. The Committee also recognises that there is not unanimity on this issue. The Committee therefore recommends that all guidance surrounding the 2021 census should clearly reflect this position and make clear that ‘intersex’ does not fall within the term trans.

119. The Committee highlights the issues raised in evidence with regard to public sector support that is available to individuals with DSD. The Committee recommends that the Scottish Government should, with reference to the evidence received by the Committee, further consult with a range of organisations representing ‘intersex’ people in order to improve the information and specialist services available to support children and families of people who have differences of sex development. The

Committee brings the written evidence submitted by DSD Families specifically to the attention of the Scottish Government.

Consultation

120. During the Committee’s scrutiny of the Bill a range of evidence was received suggesting that there had been no involvement with women’s groups during the testing of potential questions for the 2021 census. For example, Woman’s Place UK noted that—

” No women’s groups were represented as part of the cognitive testing phases of the questions on sex and gender identity undertaken by NRS. Again, all of those who participated were recruited by LGBT groups.⁶³

121. NRS wrote to the Committee providing details of the consultation undertaken in relation to the sex, gender identity and transgender status topics that are being considered for inclusion in the 2021 census. NRS confirmed in this correspondence that no consultation with women’s groups had been undertaken during this process. NRS stated that—

” 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.⁶⁴

122. Some respondents were critical of the entire NRS consultation process and suggested that its narrow focus had resulted in certain assumptions, such as the conflation of sex and gender, not being challenged earlier. For example, Lucy Hunter Blackburn questioned the lack of a rationale for the approach NRS proposed. Commenting on the topic report on sex and gender identity, produced by NRS, she observed that—

” On the current process, the topic report is a fascinating read and has lots of great information about the cognitive and quantitative testing of questions. However, it left me, as a reader, with a lot of questions about how, at the decision stage, one decision was taken and another was not. On page 3 of the topic report, there is a strong statement about the importance of sex as a marker in the Equality Act 2010 and elsewhere, but, almost immediately, it says that NRS wants to interpret sex as self-identification. There is a jump from one to the other that is not explained in the document or the policy memorandum.

Source: Culture, Tourism, Europe and External Affairs Committee 13 December 2018 [Draft], Lucy Hunter Blackburn, contrib. 104²²

123. Woman’s Place UK questioned the apparent ‘user need’ identified by NRS for a non-binary sex question. Specifically, they considered the evidence base for this decision to be too limited in scope. They stated—

” It would appear that the shift to consider adding a third option to the sex question has been driven by the outcome of two rounds of cognitive testing. Both phases of testing involved very small numbers of people and the stakeholder groups with whom the questions were tested were drawn exclusively from the LGBT community.⁶⁵

124. Some respondents raised concerns about the Equality Impact Assessment (EQIA) carried out by NRS on the Bill which considers the two separate protected characteristics of 'sex' and 'gender reassignment' together under one heading and makes no conclusion about the potential impact of the Bill on those who come under the 'sex' protected characteristic. This was contrasted, by some respondents, with the EQIA undertaken by ONS for the census in England and Wales, which considered 'sex' as a protected characteristic separately from the protected characteristic of 'gender reassignment'. The EQIA, published by the Scottish Government, states with regard to proposed questions on sex and gender identity that—

” 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.⁶⁶

125. Murray Blackburn Mackenzie observed specifically in relation to this statement in the EQIA that—

” 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.⁶⁷

126. The Cabinet Secretary also commented on the lack of consultation with women's groups. Ms Hyslop stated—

” NRS has recognised that more consultation is required—for example, of women's groups—as the questions are developed. The NRS has communicated that to the committee. That consultation is under way as part of the further stakeholder work that is required to ensure that all users' data needs can be understood and considered.

Source: Culture, Tourism, Europe and External Affairs Committee 20 December 2018 [Draft], The Cabinet Secretary for Culture, Tourism and External Affairs (Fiona Hyslop), contrib. 72³

127. The Committee considers that the lack of early engagement with a range of groups and individuals, including a broad range of women's groups, to be a serious deficiency in the process of consultation on the sex, gender identity and transgender status topics. The Committee considers that many of the issues that have been raised in relation to the Bill, particularly with regard to the conflation of sex and gender identity, could have been pre-empted if there had been an adequate consultation process. The issues raised with regard to the content of the Policy Memorandum in relation to a binary sex question and 'intersex' issues, the Committee considers, is also symptomatic of this lack of consultation. The Committee welcomes the commitment from the NRS for further consultation, in particular with a broad range of women's groups. The Committee expects the NRS to fully update the Parliament on the consultation process prior to any consideration of a draft census order.

128. **The Committee notes the concerns raised about the inclusion of ‘intersex’ people by the NRS within the construct of gender identity. The Committee requests details of any consultation that took place with organisations representing ‘intersex’ people, as opposed to broader equality organisations, prior to 5 December 2018. The Committee recommends that there should be specific consultation with medical experts and a variety of organisations representing ‘intersex’ people, including DSD Families, in order that the views of these organisations are fully taken into account.**
129. **The Committee notes that some women’s organisations wrote to the Committee expressing support for the Bill. However, a number of female academics, individual campaigners and newly formed independent female rights organisations have expressed concerns around the conflation of sex and gender and the perceived risk to sex-based protections for women and girls. Given this broadening of public discourse on these issues it is important that future consultation on this topic, by NRS and the Scottish Government, reaches out to the widest possible constituency and carefully considers all the evidence gathered by this Committee.**

Conclusion

130. **The primary purpose of the Bill is to include the ‘particulars’ of transgender status / history and sexual orientation in the Schedule of the Census Act 1920 on a voluntary basis. The Committee supports the general principle of the Bill.**
131. **However, the Committee considers that the Bill, as introduced, contains deficiencies. These have been considered in detail in this report and the Committee has suggested means via which these could be rectified through both amendment of the Bill and the process of scrutiny of the Census Order. The Committee recommends that the Scottish Government sets out its position in relation to these issues ahead of the Stage 1 debate on the Bill.**

Annexe A: Extract of Meeting Minutes

32nd Meeting, 2018 (Session 5) Thursday 6 December 2018 —

1. **Census (Amendment) (Scotland) Bill:** The Committee took evidence on the Bill at Stage 1 from— Rosa Freedman, Professor of Law Conflict and Global Development, Reading University; Susan Smith, For Women Scotland; Vic Valentine, Scottish Trans Policy Officer, Scottish Trans Alliance; Tim Hopkins, Director, Equality Network.

2. **Consideration of evidence heard (in private):** The Committee considered the evidence heard earlier in the meeting.

33rd Meeting, 2018 (Session 5) Thursday 13 December 2018 —

1. **Census (Amendment) (Scotland) Bill:** The Committee took evidence on the Bill at Stage 1 from— Lucy Hunter Blackburn, Murray Blackburn Mackenzie; Professor Jackie Cassell, Head of the Department of Primary Care and Public Health and Director of Research and Knowledge Exchange, Brighton and Sussex Medical School; Gerry McCartney, Head of Public Health Observatory Division, NHS Health Scotland; Professor Susan McVie, Professor of Quantitative Criminology, University of Edinburgh.

2. **Consideration of evidence heard (in private):** The Committee considered the evidence heard earlier in the meeting.

34th Meeting, 2018 (Session 5) Thursday 20 December 2018 —

3. **Census (Amendment) (Scotland) Bill:** The Committee took evidence on the Bill at Stage 1 from— Fiona Hyslop, Cabinet Secretary for Culture, Tourism and External Affairs, Scottish Government; 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.

4. **Consideration of evidence heard (in private):** The Committee considered the evidence heard earlier in the meeting.

1st Meeting, 2019 (Session 5) Thursday 10 January 2019 —

1. **Decisions on taking business in private:** The Committee agreed to take item 4, and any consideration of its draft report on the Census (Amendment) (Scotland) Bill at future meetings, in private.

4. **Census (Amendment) (Scotland) Bill (in private):** The Committee considered a draft Stage 1 report. Various changes were proposed and decided upon (one by division).

Paragraph 78. The Committee recommends that the mandatory sex question should remain binary in order to maximise response rates and longitudinal consistency with previous censuses.

This was agreed to by division. For – 6 (Joan McAlpine, Stuart McMillan, Annabelle Ewing, Kenneth Gibson, Alexander Stewart and Tavish Scott); Against – 1 (Ross Greer); Abstentions – 2 (Claire Baker and Jamie Greene).

3rd Meeting, 2019 (Session 5) Thursday 24 January 2019 —

3. Census (Amendment) (Scotland) Bill (in private): The Committee considered and agreed a Stage 1 report.

Annexe B: Written Evidence

The Committee received the following written submissions —

- [Aberdeenshire Council \(86KB pdf\)](#)
- [Advance HE \(70KB pdf\)](#)
- [Dr Sophie Allen \(67KB pdf\)](#)
- [Anonymous A1 \(66KB pdf\)](#)
- [Anonymous A2 \(62KB pdf\)](#)
- [Anonymous A4 \(215KB pdf\)](#)
- [Anonymous A5 \(214KB pdf\)](#)
- [Anonymous A7 \(58KB pdf\)](#)
- [Anonymous A9 \(59KB pdf\)](#)
- [Anonymous A10 \(8KB pdf\)](#)
- [Prof. Rosemary Auchmunty and Prof. Rosa Freedman \(75KB pdf\)](#)
- [Dr Thomas Bak \(123KB pdf\)](#)
- [Dougie Blackwood \(8KB pdf\)](#)
- [Prof. Richard Byng \(79KB pdf\)](#)
- [Prof. Sharon Cowan \(126KB pdf\)](#)
- [Marion Cromb \(7KB pdf\)](#)
- [DSDFamilies \(288KB pdf\)](#)
- [East Ayrshire Council \(7KB pdf\)](#)
- [Engender, Rape Crisis Scotland, Scottish Women's Aid, Close the Gap, Equate Scotland \(205KB pdf\)](#)
- [The Equality Network and Scottish Trans Alliance \(150KB pdf\)](#)
- [Falkirk Council \(6KB pdf\)](#)
- [For Women Scotland \(80KB pdf\)](#)
- [Glasgow City Council \(8KB pdf\)](#)
- [Dr Deborah Hayton \(113KB pdf\)](#)
- [Jennie Kermod \(10KB pdf\)](#)

- [Leeze Lawrence \(62KB pdf\)](#)
- [Law Society of Scotland \(66KB pdf\)](#)
- [LGBT Youth Scotland \(142KB pdf\)](#)
- [Louise MacLennan \(87KB pdf\)](#)
- [Fiona Martin \(7KB pdf\)](#)
- [Elizabeth McClure \(546KB pdf\)](#)
- [Prof. Surya Monro \(7KB pdf\)](#)
- [Dr Kath Murray \(128KB pdf\)](#)
- [Murray Blackburn Mackenzie \(226KB pdf\)](#)
- [Reform Scotland \(68KB pdf\)](#)
- [Susan Sinclair \(135KB pdf\)](#)
- [Shetland LGBTQ \(7KB pdf\)](#)
- [Stirling Council \(162KB pdf\)](#)
- [Prof. Kathleen Stock \(75KB pdf\)](#)
- [Stonewall Scotland \(187KB pdf\)](#)
- [Charlotte Wagner \(68KB pdf\)](#)
- [Mathew Wilkie \(141KB pdf\)](#)
- [Woman's Place UK \(181KB pdf\)](#)

The Committee received the following supplementary written submissions —

- [Lucy Hunter Blackburn \(172KB pdf\)](#)
- [Equality Network \(90KB pdf\)](#)
- [Equality Network further supplementary submission \(162KB pdf\)](#)
- [Prof. Rosa Freedman \(81KB pdf\)](#)
- [Murray Blackburn Mackenzie \(209KB pdf\)](#)
- [Scottish Trans Alliance \(72KB pdf\)](#)
- [Scottish Trans Alliance further supplementary submission \(239KB pdf\)](#)

Annexe C: Oral Evidence

The Committee took evidence on the Bill at Stage 1 as follows:

Thursday, 6 December 2018 —

- Rosa Freedman, Professor of Law Conflict and Global Development, Reading University;
 - Susan Smith, For Women Scotland;
- and then from—
- Vic Valentine, Scottish Trans Policy Officer, Scottish Trans Alliance;
 - Hannah Pearson, Policy Coordinator, Equality Network.

[Official Report of meeting.](#)

Thursday, 13 December 2018 —

- Lucy Hunter Blackburn, Murray Blackburn Mackenzie;
- Professor Jackie Cassell, Head of the Department of Primary Care and Public Health and Director of Research and Knowledge Exchange, Brighton and Sussex Medical School;
- Gerry McCartney, Head of Public Health Observatory Division, NHS Health Scotland;
- Professor Susan McVie, Professor of Quantitative Criminology, University of Edinburgh.

[Official report of meeting.](#)

Thursday, 20 December 2018 —

- 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.

[Official report of meeting.](#)

- [1] Culture, Tourism, Europe and External Affairs Committee 20 December 2018 [Draft], The Convener, contrib. 71, <http://www.scottish.parliament.uk/parliamentarybusiness/report.aspx?r=11864&c=2141206>
- [2] Culture, Tourism, Europe and External Affairs Committee 06 December 2018, Tim Hopkins, contrib. 103, <http://www.scottish.parliament.uk/parliamentarybusiness/report.aspx?r=11836&c=2137185>
- [3] Culture, Tourism, Europe and External Affairs Committee 20 December 2018 [Draft], The Cabinet Secretary for Culture, Tourism and External Affairs (Fiona Hyslop), contrib. 72, <http://www.scottish.parliament.uk/parliamentarybusiness/report.aspx?r=11864&c=2141207>
- [4] Culture, Tourism, Europe and External Affairs Committee 13 December 2018 [Draft], Professor Cassell, contrib. 18, <http://www.scottish.parliament.uk/parliamentarybusiness/report.aspx?r=11847&c=2138723>
- [5] Culture, Tourism, Europe and External Affairs Committee 13 December 2018 [Draft], Gerry McCartney (NHS Health Scotland), contrib. 7, <http://www.scottish.parliament.uk/parliamentarybusiness/report.aspx?r=11847&c=2138712>
- [6] Culture, Tourism, Europe and External Affairs Committee 20 December 2018 [Draft], Amy Wilson, contrib. 121, <http://www.scottish.parliament.uk/parliamentarybusiness/report.aspx?r=11864&c=2141256>
- [7] Culture, Tourism, Europe and External Affairs Committee 06 December 2018, Professor Rosa Freedman (University of Reading), contrib. 2, <http://www.scottish.parliament.uk/parliamentarybusiness/report.aspx?r=11836&c=2137084>
- [8] Culture, Tourism, Europe and External Affairs Committee 06 December 2018, Susan Smith, contrib. 20, <http://www.scottish.parliament.uk/parliamentarybusiness/report.aspx?r=11836&c=2137102>
- [9] Culture, Tourism, Europe and External Affairs Committee 13 December 2018 [Draft], Professor Susan McVie (University of Edinburgh), contrib. 11, <http://www.scottish.parliament.uk/parliamentarybusiness/report.aspx?r=11847&c=2138716>
- [10] Culture, Tourism, Europe and External Affairs Committee 06 December 2018, Vic Valentine, contrib. 126, <http://www.scottish.parliament.uk/parliamentarybusiness/report.aspx?r=11836&c=2137208>
- [11] Culture, Tourism, Europe and External Affairs Committee 06 December 2018, Tim Hopkins, contrib. 167, <http://www.scottish.parliament.uk/parliamentarybusiness/report.aspx?r=11836&c=2137249>
- [12] Culture, Tourism, Europe and External Affairs Committee 20 December 2018 [Draft], Fiona Hyslop, contrib. 126, <http://www.scottish.parliament.uk/parliamentarybusiness/report.aspx?r=11864&c=2141261>
- [13] Culture, Tourism, Europe and External Affairs Committee 13 December 2018 [Draft], Lucy Hunter Blackburn (Murray Blackburn Mackenzie), contrib. 2, <http://www.scottish.parliament.uk/parliamentarybusiness/report.aspx?r=11847&c=2138707>

- [14] Culture, Tourism, Europe and External Affairs Committee 13 December 2018 [Draft], Professor Cassell, contrib. 6, <http://www.scottish.parliament.uk/parliamentarybusiness/report.aspx?r=11847&c=2138711>
- [15] Culture, Tourism, Europe and External Affairs Committee 13 December 2018, Professor Susan McVie (University of Edinburgh), contrib. 11, <http://www.scottish.parliament.uk/parliamentarybusiness/report.aspx?r=11847&c=2138716>
- [16] Culture, Tourism, Europe and External Affairs Committee 06 December 2018, Professor Freedman, contrib. 11, <http://www.scottish.parliament.uk/parliamentarybusiness/report.aspx?r=11836&c=2137093>
- [17] Culture, Tourism, Europe and External Affairs Committee 13 December 2018 [Draft], Professor McVie, contrib. 15, <http://www.scottish.parliament.uk/parliamentarybusiness/report.aspx?r=11847&c=2138720>
- [18] Culture, Tourism, Europe and External Affairs Committee 06 December 2018, Vic Valentine, contrib. 107, <http://www.scottish.parliament.uk/parliamentarybusiness/report.aspx?r=11836&c=2137189>
- [19] Culture, Tourism, Europe and External Affairs Committee 20 December 2018 [Draft], Amy Wilson, contrib. 108, <http://www.scottish.parliament.uk/parliamentarybusiness/report.aspx?r=11864&c=2141243>
- [20] Culture, Tourism, Europe and External Affairs Committee 20 December 2018 [Draft], Fiona Hyslop, contrib. 74, <http://www.scottish.parliament.uk/parliamentarybusiness/report.aspx?r=11864&c=2141209>
- [21] Culture, Tourism, Europe and External Affairs Committee 06 December 2018, Professor Freedman, contrib. 79, <http://www.scottish.parliament.uk/parliamentarybusiness/report.aspx?r=11836&c=2137161>
- [22] Culture, Tourism, Europe and External Affairs Committee 13 December 2018 [Draft], Lucy Hunter Blackburn, contrib. 104, <http://www.scottish.parliament.uk/parliamentarybusiness/report.aspx?r=11847&c=2138809>

- 1 Policy Memorandum, p. 1
- 2 Schedule to the Census Act 1920.
- 3 Section 8(1A) Census Act 1920.
- 4 Policy Memorandum, p. 2.
- 5 Policy Memorandum, p. 4.
- 6 Policy Memorandum, p. 2.
- 7 The written submissions received by the Committee can be accessed at:
<http://www.scottish.parliament.uk/parliamentarybusiness/CurrentCommittees/109902.aspx>
- 8 Delegated Powers and Law Reform Committee, Census (Amendment) (Scotland) Bill: Stage 1, 31 October 2018, p.3. Report accessible at:<https://sp-bpr-en-prod-cdnep.azureedge.net/published/DPLR/2018/10/31/Census--Amendment---Scotland--Bill--Stage-1/DPLRS052018R50.pdf>
- 9 Reform Scotland, Written Submission, p. 1.
- 10 Policy Memorandum, p. 3.
- 11 Further information on the operation of the Public Sector Equality Duty in Scotland can be accessed at:<https://www.equalityhumanrights.com/en/commission-scotland/public-sector-equality-duty-scotland>
- 12 Law Society of Scotland, Written Submission, p. 2.
- 13 Stonewall Scotland, Written Submission, p. 1.
- 14 For Women Scotland, Written Submission, p. 1.
- 15 Equality Network and Scottish Trans Alliance, Written Submission, p. 2.
- 16 Ibid, p. 3.
- 17 Gerry McCartney, NHS Health Scotland, Official Report, 13 December 2017, Col. 7.
- 18 National Records of Scotland (2018) 'Scotland's Census 2021: 'Sex and Gender Identity Topic Report', p.3. Report accessible at:https://www.scotlandscensus.gov.uk/documents/census2021/Sex_and_Gender_Identity_Topic_Report.pdf
- 19 SPICe Briefing, Census (Amendment) (Scotland) Bill, SB 18-81, p. 19.
- 20 Policy Memorandum, p. 3.
- 21 Official Report, 20 December 2018, Col. 28.
- 22 Woman's Place UK, Written Submission, p. 2.
- 23 Professor Richard Byng, Professor Susan Bewley, Dr Damian Clifford and Dr Margaret McCartney, Written Submission, pp. 2-3.

- 24 Murray, Blackburn, MacKenzie, Supplementary Written Submission, p.1.
- 25 Dr Kath Murray, Written Submission, p. 1.
- 26 Professor Kathleen Stock, Written Submission, p. 1.
- 27 National Records of Scotland, Letter to the Convener, 5 December 2018, p. 7.
- 28 Deborah Hayton, Written Submission, p. 1.
- 29 LGBT Youth Scotland, Written Submission, p. 3.
- 30 Joint submission from Close the Gap, Engender, Equate Scotland, Rape Crisis Scotland and Scottish Women's Aid, Written Submission, p. 6.
- 31 Scottish Trans Alliance, Written Submission, p. 1.
- 32 Professor Sharon Cowan, Written Submission.
- 33 The judgement in the Corbett v Corbett case can be accessed at:
<http://www.pfc.org.uk/caselaw/Corbett%20v%20Corbett.pdf>
- 34 Professor Rosa Freedman, Supplementary Written Submission, p. 1.
- 35 Official Report, 6 December 2018, Col. 25.
- 36 Joint submission from Close the Gap, Engender, Equate Scotland, Rape Crisis Scotland and Scottish Women's Aid, Written Submission, p. 7.
- 37 Woman's Place UK, Written Submission, p. 2.
- 38 UK Statistics Authority / Office for National Statistics, Equality Impact Assessment for the 2021 Census, December 2018, p. 17.
- 39 Official Report, 20 December 2018, Col. 27.
- 40 Ibid, Col. 33.
- 41 Policy Memorandum, p. 2.
- 42 Professors Auchmuty and Freedman, written submission, p. 1.
- 43 Woman's Place UK, Written Submission, p. 3.
- 44 Official Report, 6 December 2018, Col. 13.
- 45 Equality Network and Scottish Trans Alliance, Written Submission, p. 3.
- 46 Equality Network and Scottish Trans Alliance, Written Submission, p. 3.
- 47 Official Report, 20 December 2018, Col. 29
- 48 Official Report, 20 December 2018, Col. 29.
- 49 National Records of Scotland, Letter to the Convener, 5 December 2018, p. 2.

- 50 Equality Network, Supplementary Written Submission, 17 December 2018, p. 4.
- 51 Official Report, 20 December 2018, Col. 29.
- 52 Official Report, 20 December 2018, Col. 47.
- 53 Policy Memorandum, p. 4.
- 54 Equality Network and Scottish Trans Alliance, Written Submission, p. 1.
- 55 Stonewall Scotland, Written Submission, p. 1.
- 56 LGBT Scotland, Written submission, p. 2.
- 57 DSD Families, Written Submission, p. 1.
- 58 Policy Memorandum, p. 4.
- 59 DSD Families, Written Submission, p. 4.
- 60 DSD Families, Written Submission, p. 4.
- 61 Official Report, 6 December 2018, Col. 36
- 62 DSD Families, Written Submission, p. 3.
- 63 Woman's Place UK, Written Submission, p. 3.
- 64 National Records of Scotland, Letter to the Convener, 5 December 2018, p. 8
- 65 Woman's Place UK, Written Submission, p. 2.
- 66 National Records of Scotland, Census (Amendment) (Scotland) Bill: Equality Impact Assessment, p.11. Accessible at: https://www.scotlandscensus.gov.uk/documents/census2021/Equality_Impact_Assessment.pdf
- 67 Murray, Blackburn and MacKenzie, Written Submission, p. 2.

