

Engender Parliamentary Briefing: Stage 1 Report on the Census (Amendment) (Scotland) Bill

BACKGROUND

Engender has over 25 years of experience in policy and advocacy for women's political economic and social equality and of engaging with equality law, data, and policy, and in service delivery at national and local level. We have worked in coalition with sister national women's equality and violence against women organisations to develop policy which is cognisant of the relationship between trans equality and rights and women's equality and rights.

Based on this experience, we are of the broad opinion that the changes proposed in the Bill will have no negative impact on gender-disaggregated data gathering and analysis. We therefore **support the General Principles of the Bill at Stage one** whilst believing that the wording of Census questions should continue to be tested rigorously with the general public and key stakeholders in advance of the Census Order.

SPECIFIC CONSIDERATIONS

1. How does the Census (Amendment) (Scotland) Bill affect women?

The Bill would give the Scottish Government powers to introduce a question on trans-status/history as well as sexual orientation on a voluntary basis. It proposes to amend the Census Act 1920 'schedule of matters' on which 'particulars' (questions) can be asked by adding 'sexual orientation' and 'gender identity'. This would enable the census to gather population-wide data for lesbian, gay, bisexual, and transgender (LGBT) people, which is currently is not available from other major surveys.

While **the Census Bill concerns the technical changes necessary to allow for the voluntary questions to be included**, the Culture, Tourism, Europe and External Affairs Committee and the evidence received in its call for evidence has explored the issue very broadly, including some discussion as to the framing of the mandatory sex question. This briefing reflects on these further concerns, but we reiterate that the conversations which continue surrounding the wording will and should be scrutinised at a future opportunity, once consultation on the questions has concluded.

Engender recognises that the term 'gender identity' was selected by officials in an attempt to draw a clear line between the mandatory sex question and the voluntary

trans question, as well as to leave space for further social deliberation ahead of future exercises of the census.¹ Despite decades of scholarship, work has only just begun to theorise sex, gender and gender identity. We are very clear that the census and specifically this technical bill cannot possibly resolve these theoretical discussions, which are important to feminist analysis and a gendered approach to policymaking in Scotland. **We are persuaded by Scottish Trans Alliance’s suggestion that the term ‘gender identity’ be replaced with ‘trans status,’** which more precisely reflects the data need that the additional census question is attempting to respond to. We are pleased that this change is also supported by the Committee.

2. **Should the sex question be changed?**

We are disappointed that the Committee has prematurely recommended that the mandatory sex question should remain binary. National Records of Scotland is still working on its options testing, and we are of the view that the Committee should reconsider the results of that process when the Census Order is laid before parliament.

Engender and other national women’s organisations are further of the view that a sex question that gathered accurate data on non-binary people would actually benefit analysis of women’s needs. NRS testing to date, as well as international experience, suggests that the numbers of non-binary people recorded by the census are likely to be exceptionally small (<1%) and that providing a write-in option within the sex question did not reduce the response rate overall. Without accurate data on the numbers of people who are non-binary, there is a risk of over-estimation of this population, which may prevent accurate gender analysis that considers the needs of women and girls.

3. **How will the census affect data collection?**

Engender is not aware of any ways in which we, nor our sisters in other women’s sector organisations who undertake detailed gender-analysis of policy, use the data from the census to do so.² Some of the concerns considered by the committee reflected the poor experience of data gathering and **gender disaggregation**³ which is necessary for gendered policymaking and monitoring. In theory, the public sector equality duty is a driver of data-gathering at national and local level, and the Scotland-specific

¹ Census (Amendment) (Scotland) Bill Policy Memorandum (October 2018)

² E.g. Census data is not used to plan domestic abuse, rape crisis, or other specialist violence against women services. Advocacy for increased service provision uses data around needs gaps collected by services, including Scottish Women’s Aid’s own ‘Census Day’ (<https://womensaid.scot/wp-content/uploads/2017/12/SWA-Census-Leaflet-2017.pdf>) and Scottish Government statistics bulletins around recorded crime (<https://www.gov.scot/binaries/content/documents/govscot/publications/statisticspublication/2018/09/recorded-crime-scotland-2017-18/documents/recorded-crime-scotland-2017-18/recorded-crime-scotland-2017-18/govscot%3Adocument?inline=true>)

³ **Gender-disaggregated data** is data that is disaggregated by sex and is produced using concepts, definitions and methods that reflect gender roles, relations, and inequalities in society.

regulations⁴ which require listed public bodies to “consider relevant evidence relating to persons who share a relevant protected characteristic [including sex and gender reassignment]” where they are preparing a set of equality outcomes.

The public sector equality duty does not require public bodies to collect comprehensive sex-disaggregated data across their services, and public authorities are increasingly sharing their confusion with us around how to gather service user data around sex and gender. Because of its scale, the census plays an important normative role in shaping how information is gathered in other more frequent or localised data gathering. Without strong and consistent norms, we are of the view that data quality and coverage will decrease, to the detriment of women and girls.

The census provides a ten-year snap-shot and therefore where public services do use census data, the most important feature of that demographic snapshot will be its consistency for high-level observational uses. We can find no benefits for women in undermining the privacy of transwomen and transmen by requiring them to disclose their birth sex and would not support any revision of policy in this regard.

CONCLUSION

Engender reiterates that our experience and expertise around women’s equality and feminist policy leads us to believe that the Census Amendment (Scotland) Bill poses no threat to gendered data gathering and analysis. We support the general principles of the Bill at Stage One as well as the emerging consensus around amending the language of ‘gender identity’.

We believe that the consultation process and options testing currently being undertaken by NRS should continue in an open, transparent way and with as broad consultation as possible. We would hope that this process can listen to and respond to evidence about sex-disaggregated data gathering and analysis, and ensuring that the data needs identified by NRS are met.

FOR FURTHER INFORMATION

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ABOUT US

Engender is a membership organisation working on feminist agendas in Scotland and Europe, to increase women’s power and influence and to make visible the impact of sexism on women, men and society. We provide support to individuals, organisations and institutions who seek to achieve gender equality and justice.

⁴ The Equality Act 2010 (Specific Duties) (Scotland) Regulations 2012