



## CENSUS (AMENDMENT) (SCOTLAND) BILL

# SCOTTISH WOMEN'S SECTOR NOTE, DECEMBER 2018

### SECTION ONE: INTRODUCTION

1. As a coalition of national women's equality and violence against women organisations, we welcome the opportunity to submit information to the Culture, Tourism, Europe and External Affairs Committee in respect of the Census (Amendment) (Scotland) Bill. We are grateful to the Clerks and the Convener for permitting this note to be submitted after the close of the consultation.
2. Our organisations have over a century of combined experience of advocating for better quality gender-disaggregated<sup>1</sup> data to support the development of policy and services to meet the needs of women's and girls. We also have a long history of deliberation on the interrelationship between trans equality and rights and women's equality and rights.
3. Our note is based on our substantial experience of engaging with equality law, data, and policy, and in service delivery at national<sup>2</sup> and local<sup>3</sup> level. In pursuit of our individual organisational goals we have worked alongside national and local

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<sup>1</sup> 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.

<sup>2</sup> Rape Crisis Scotland manages a national helpline for victim-survivors of sexual violence from all genders, as well as a national prevention programme in schools, and advocacy programme for victim-survivors who wish to make a complaint to Police Scotland. Scottish Women's Aid manages a national helpline around domestic abuse and forced marriage. Equate Scotland delivers a wide range of services to employers and individual women working or studying in STEM occupations. Close the Gap provides services to employers and trade unions. All of our organisations work in the policy advocacy space.

<sup>3</sup> Scottish Women's Aid and Rape Crisis Scotland support their networks of local centres and groups to provide support and advocacy services. This includes setting up local services, developing and implementing national service standards, and advocating for funding models and enabling policy and budget-setting.

public authorities, and have endeavoured to enable and encourage better compliance with the public sector equality duty.

4. Despite decades of scholarship, work has only just begun to theorise sex, gender, gender identity and how they interrelate. These theoretical discussions are important to feminist analysis, and the gender lens that our collective work applies to policymaking in Scotland. They are also important to the work of LGBTI organisations, and their advocacy for the human rights of trans, non-binary, and intersex people.
5. That those important theoretical conversations are ongoing and unresolved does not affect our ambitions for girls and women's equality and rights; for trans equality, rights and safety; or for providing services that meet the needs of trans women who have experienced sex discrimination or men's violence.
6. Although it is outwith the scope of the Census, the Committee may find interest in our shared response to the Scottish Government Consultation on reform to the Gender Recognition Act.<sup>4</sup> In it, we supported the broad proposals put forward by Scottish Government, with some important caveats and areas for future and ongoing discussion.
7. In parallel to some of the theoretical considerations around sex and gender that women's and LGBTI organisations are engaged with, public bodies are grappling with questions about how to design and develop services that meet the needs of protected and minority groups of citizens. Data gathering and analysis forms part of that work.

## **SECTION TWO: ON THIS NOTE**

8. This note does not aim to be a comprehensive response to the consultation, but speaks to some of the issues raised in submissions and oral evidence to the Committee about sex, gender, and the Census. While we are each engaged with the Census process in our work, our view was and remains that the proposals as consulted upon will have little impact on gendered-data gathering and analysis.

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<sup>4</sup> <https://www.engender.org.uk/content/publications/Scottish-Womens-Sector-response-to-the-consultation-on-proposed-changes-to-the-Gender-Recognition-Act.pdf>

### SECTION THREE: DATA, GENDER, AND SEX IN SCOTLAND

9. Gender-disaggregated data<sup>5</sup> is a vital component of work to advance women's equality and to tackle violence against women. All of our organisations advocate for increasing gender-disaggregation. This is so that we can track indicators of women's inequality over time, and so that policymakers and public bodies can use this data in assessing the impact of their policymaking and service design on men and women and on equality between men and women. Across every policy domain that we work around, we find data gaps that lead directly to analytical gaps and consequential failure to mainstream gender in decision-making. Consequentially, policymakers and public bodies often miss opportunities to meet the needs of women and girls, and unwittingly perpetuate and entrench gender inequality.<sup>6</sup>
10. In theory, the public sector equality duty is a driver of data-gathering at national and local levels. The Scotland-specific regulations<sup>7</sup> that set out requirements for listed public authorities in Scotland say that, 'in preparing a set of equality outcomes' a listed public body must 'consider relevant evidence relating to persons who share a relevant protected characteristic [including sex]'. The public sector equality duty Scotland-specific regulations<sup>8</sup> also mandate more exacting data collection and analysis requirements about the employees of listed public authorities. Public bodies must gather and analyse employee information on the composition of employees and the recruitment, development and retention of employees in relation to their relevant protected characteristics, including sex. A listed authority's mainstreaming report must include an annual breakdown of this information, as well as a description of progress in gathering and using the information to better perform the general equality duty.<sup>9</sup>

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<sup>5</sup> 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.

<sup>6</sup> At the national policy level there are some key projects that will contribute towards improving the quality and scale of gender-disaggregated data: *Scottish Government's Equality Evidence Strategy 2017-2021* includes substantial actions on improving the scope of data broken down by sex. Large policy frameworks, including *Equally Safe*, Scotland's violence against women strategy, and the forthcoming gender pay gap strategy also engage with the necessity to gather, analyse, and use gender-disaggregated data. Scottish Government is currently working with many of our organisations to produce a gender index, that will enable indicators of women's inequality to be tracked over time.

<sup>7</sup> The Equality Act 2010 (Specific Duties) (Scotland) Regulations 2012

<sup>8</sup> The Equality Act 2010 (Specific Duties) (Scotland) Regulations 2012

<sup>9</sup> This has three elements: ending discrimination, increasing equality, and advancing good relations.

11. The reviews of data-collection, analysis, and use by public bodies in response to the public sector equality duty describe fundamental weaknesses in creating and using gender-disaggregated data across the public sector. Close the Gap's 2015 assessment of the publication of employee data finds 'significant issues with the quality and format' of data and notes that a quarter of public bodies that they assessed have either provided no employment data at all or failed to gender-disaggregate it.<sup>10</sup> The Equality and Human Rights Commission (EHRC) describes the 'collection and use of employee data' as an 'area of weakness' for public bodies.<sup>11</sup> Work by the Coalition for Racial Equality and Rights for the EHRC describes 'substantial gaps, irregularities and inconsistencies in the data available' in the publications by public authorities.<sup>12</sup>
12. As national women's organisations we participate in equality advisory groups that steer the work of specific national agencies and delivery bodies. We also chair and take part in a range of national thematic committees, advisory groups, councils, and working groups. This experience, along with our experience of policy advocacy, tells us that is extremely rare for public bodies or policymakers to produce, analyse, and use gender-disaggregated data in their work. There are huge gaps in gendered data that undermine the quality of equality impact assessments, which are mandated by the public sector equality duty. Data gaps lead directly to reduced opportunities to advance women's and men's equality, and to inadequate consideration of women's lives, experiences, and socially constructed gender roles in the development of policy and services. It is in girls and women's interests for the quality of gender-disaggregated data to be improved.

#### **SECTION FOUR: DATA, GENDER, AND SEX IN THE CENSUS**

13. Although the Census doubtless provides useful data on broad demographic shifts, it is not used by any of our organisations in our policy and advocacy work specifically around the protected characteristic of sex, because the distribution of men and women is fairly static and not particularly relevant in and of itself. We do use Census data around other protected groups as a baseline for our intersectional work engaging with the needs of specific groups of women.

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<sup>10</sup> Close the Gap (November 2015) *Making Progress? An assessment of public sector employers' compliance with the public sector equality duty*

<sup>11</sup> Equality and Human Rights Commission (December 2017) *Measuring Up? Report 7: Public authorities' performance in meeting the Scottish Specific Equality Duties 2017*

<sup>12</sup> Equality and Human Rights Commission (August 2018) *Effectiveness of the PSED Specific Duties in Scotland*

14. For the purpose of clarity, Census data is not used:

- a) To generate information on the gender pay gap. Although an income question is being discussed for inclusion in the 2021 Census, this has a number of attributes that mean it is inappropriate for this purpose.<sup>13</sup> The Office of National Statistics pay gap data is produced from analysis of the Annual Survey for Hours and Earnings, which requires a substantial range of data from employers about the pay of their employees.
- b) 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'<sup>14</sup> and Scottish Government statistics bulletins around recorded crime.<sup>15</sup>

15. The Census plays a role in contributing to norms about equality data-gathering and use. For example, the categories used in the Census to capture some elements of an individual's identity are widely replicated in equality monitoring forms by public bodies, and their publication often uses the Census data as a baseline. However, this does not hold true for all protected characteristics, and most public bodies are asking different questions than the 2011 Census around disability and long-term conditions. Others use (for example) definitions of ethnicity that have some sub-categories in common with those in the Census, but that do not completely map on to one another.

16. Information on how to gather equality data is produced by a range of third-sector organisations. Public bodies take advice from a range of sources, including sharing approaches with one another informally and in semi-formal networks of equality practitioners. Monitoring forms and tools are refreshed sporadically and unevenly, so significant divergence can develop in the fine detail of equality data

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<sup>13</sup> These are: the question measures income and not pay; the proposed question asks for household income and not individual income; the question will not ask sufficient detail about working patterns, overtime, pensions and other deferred earnings; self-reported data on pay and/or income is less accurate than employee-reported data; women in opposite-sex households often downplay their income and/or pay levels due to the gendered assumptions around breadwinning and the relationship between income and masculine roles.

<sup>14</sup> <https://womensaid.scot/wp-content/uploads/2017/12/SWA-Census-Leaflet-2017.pdf>

<sup>15</sup> <https://www.gov.scot/binaries/content/documents/govscot/publications/statistics-publication/2018/09/recorded-crime-scotland-2017-18/documents/recorded-crime-scotland-2017-18/recorded-crime-scotland-2017-18/govscot%3Adocument?inline=true>

gathered by public bodies (or units within public bodies) delivering similar services or operating within the same broad system.

17. Other ideas, some wildly inaccurate, also inform public bodies' thinking about how to gather and use equality data. Over the last year, our organisations have been told that the EU General Data Protection Regulation (GDPR) would stop bodies asking service users their sex, which is untrue. We regularly hear that it is a breach of the Equality Act 2010 for public bodies to ask service users if they are men or women, which is also not the case. We are now increasingly hearing concerns from public bodies that suggests that the existence of non-binary people would render it 'offensive' to ask individuals their sex.
18. Within this slightly confused context, we were concerned to hear calls to the Committee to reverse the practice of the Census 2011 and Census 2001, and mandate respondents to describe their 'sex at birth'. We are not aware of any evidence that the Census data has become more 'noisy' and less able to be used for any specific purpose as a result of trans individuals responding to the question on sex with details of their lived identity. In most instances, this will accurately reflect how a broad range of public bodies and providers of goods, facilities, and services will understand and treat them. Individual agencies have developed ways of managing exceptions. For example, the NHS records details of an individual's identity in such a way as to ensure that trans women are not called for cervical screening.
19. Conversely, 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. This is because section 22 of the Gender Recognition Act 2004 makes it a criminal offence to disclose a person's gender reassignment history. Equality and Human Rights Commission guidance on asking questions about 'sex at birth', as part of a suite of four questions designed to produce rich information about an individual's trans identity and history, provides stark warnings about the need for keeping all such information strictly confidential.<sup>16</sup> The Commission also notes issues around inaccuracy in this approach, in that some people with a Gender Recognition Certificate (and indeed, some without) may answer the question by providing their lived identity.

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<sup>16</sup> [https://www.equalityhumanrights.com/sites/default/files/collecting\\_info\\_gender\\_id.pdf](https://www.equalityhumanrights.com/sites/default/files/collecting_info_gender_id.pdf)

20. All of these difficulties suggest that implementation of this 'sex at birth' approach within the Census would create divergence between Census data and data gathered by other public bodies. Furthermore, reversing the recent practice of the Census 2011 and Census 2001 may undermine the consistency of the Census' sex data where it is used, and particularly its usefulness for establishing trends. If this approach was adopted more widely then we think it would have a chilling effect on already patchy gender-disaggregated data collection, analysis, and use. This would represent a step backwards in terms of the quality of data about girls and women available to public bodies and to our organisations.
21. Effective advocacy by LGBTI organisations in Scotland means that a wide range of public bodies are sensitive to calls for targeted service delivery, including to people who identify as non-binary. We are supportive of all groups of people having their specific needs met, including groups of marginalised and stigmatised individuals that are very small in size. However, the relative dearth of data around the number of non-binary people means that it can be difficult to accurately determine the scale of their needs. This can have unintended consequences when coupled with weak gender analysis. For example, creating blanket provision of poorly-designed gender-neutral toilets inside a space for young people may exceed the requirements of non-binary young people and undermine the safety and dignity of girls and young women by exposing them to the risk of sexual harassment by boys and young men.
22. Beginning a process to determine the number of non-binary people in Scotland, both in the Census 2021 and in employee and other data, will enable better equality analysis. It is our view that this will lead to better outcomes for non-binary people as well as for women and girls.
23. 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.

**For further information please contact Emma Ritch, Executive Director, Engender ([emma.ritch@engender.org](mailto:emma.ritch@engender.org) 0131 558 9596)**

## **ABOUT US**

### **Close the Gap**

Close the Gap works in Scotland on women's labour market participation. We work strategically with policymakers, employers and employees to influence and enable action that will address the causes of women's inequality at work.

### **Engender**

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.

### **Equate Scotland**

Equate Scotland is the national expert on gender equality in science, engineering, technology and the built environment, we work with academia, industry and women working in and studying these sectors, to improve their recruitment, retention and progression. We focus on challenging and changing cultures across STEM.

### **Rape Crisis Scotland**

Rape Crisis Scotland works to improve support for survivors of sexual violence and campaigns to change attitudes. We run a daily helpline from 6pm-Midnight for anyone affected by sexual violence, and we support 16 locally-based rape crisis services across Scotland.

### **Scottish Women's Aid**

Scottish Women's Aid (SWA) is the lead organisation in Scotland working towards the prevention of domestic abuse and plays a vital role in campaigning and lobbying for effective responses to domestic abuse. SWA is the umbrella organisation for 36 local Women's Aid organisations across Scotland; they provide practical and emotional support to women, children and young people who experience domestic abuse. The services offered by our members include crisis intervention, advocacy, counselling, outreach and follow-on support and temporary refuge accommodation