



BRIEFING PAPER

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Census (Return Particulars and Removal of Penalties) Bill [HL]

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Summary

The [Census \(Return of Particulars and Removal of Penalties\) Bill \[HL\] 2017-19](#) is a Government Bill that provides for voluntary questions on sexual orientation and gender identity to be included in the census in England, Wales and Northern Ireland.

The Bill was introduced in the House of Lords on 1 May 2019. It received its first reading in the House of Commons on 26 June 2019; Second Reading is scheduled for 17 July 2019.

A census takes place in the UK every decade, with the next census planned for March 2021. The census collects demographic information about all UK residents.

The Office for National Statistics (ONS) is responsible for the census in England and Wales. It recommends adding two new questions to the 2021 census on sexual orientation and gender identity. It recommends that these questions are voluntary to answer, and that they are only asked of people aged 16 or over.

In Northern Ireland, the census is the responsibility of the Northern Ireland Statistics and Research Agency (NISRA). NISRA recommends adding a voluntary question on sexual orientation, limited to people aged 16 and over.

The Bill adds sexual orientation and gender identity to the list of topics that a census may ask about in England and Wales and in Northern Ireland. It also provides that there is no criminal penalty for not responding to these questions. It does not *require* either of these topics to be asked about.

The new questions have been welcomed by organisations representing the LGBT (lesbian, gay, bisexual and transgender) community. The Bill was also generally well-received in the House of Lords. Members of the Lords raised queries about the privacy of respondents' answers to the new questions, and the clarity of guidance for transgender people in answering questions on sex and gender identity. However, the Bill completed its Lords stages without any amendments.

Other changes are recommended for the 2021 census but are not covered by this Bill. The Commons Library briefing [Preparing for the 2021 census \(England and Wales\)](#) (CBP 8531) explains the ONS' proposals in more detail.

1. Background

1.1 About the census

A population census takes place in the UK every 10 years, with the next census planned for 21 March 2021. The census aims to collect demographic information about all residents of households and communal establishments in the UK.

Census data can provide a level of detail that isn't possible from surveys or administrative data – it makes it possible to access detailed breakdowns of data on small population groups and at local level. Data from the census contributes to decisions on policy and service provision, and provides a benchmark for other official statistics.

There is a statutory requirement to complete a census form (census legislation outlines the population to which this requirement applies, see section 3 below) and people who refuse to complete a census form may be liable for a penalty fine. However, voluntary questions on the census do not carry a penalty for non-completion.

The census is a devolved matter. The ONS is responsible for planning and administering the census in England and Wales, while in Northern Ireland it is the responsibility of NISRA. In Scotland, census is carried out by the National Records of Scotland. The Bill seeks to amend census legislation in England and Wales and in Northern Ireland, and so this briefing paper focuses on census policy in these nations.

The ONS outlined its plans for the 2021 census in a White Paper published in December 2018, [Help shape our future: the 2021 census of population and housing in England and Wales](#). The ONS plans for the census to be conducted primarily online for the first time, and proposes several new topics (see section 2.2 below). NISRA published its [proposals for the 2021 census](#) in April 2019. Like the ONS, it proposes conducting a primarily-online census and introducing new topics.

1.2 Proposed new topics

There are two new proposed voluntary questions on sexual orientation (in England, Wales and Northern Ireland) and gender identity (in England and Wales only). Other new questions are also recommended, including a question on Armed Forces veterans, but will not be voluntary and so are not covered by this Bill. Compulsory questions are added to the census via separate mechanism described in section 2.1.

Sexual orientation

Both ONS and NISRA recommend including a voluntary question on sexual orientation, limited to respondents aged 16 and over. There is an identified user need for data on sexual orientation to support organisations in equality monitoring and service delivery.^{1, 2}

¹ HM Government, [Help shape our future: the 2021 census of population and housing in England and Wales](#), (December 2018), p. 39

² NISRA, [2021 census: sexual orientation topic report](#) (April 2019)

2. Census legislation

This section explains the existing census legislation in England and Wales and in Northern Ireland. Section 3.1 explains how the Bill seeks to amend the legislation.

2.1 England and Wales

The statutory authority for taking a census in England and Wales is provided by the *Census Act 1920*. The Schedule to the 1920 Act sets out the topics that the census can ask about:

- (1) Names, sex, age
- (2) Occupation, profession, trade or employment
- (3) Nationality, birthplace, race, language
- (4) Place of abode and character of dwelling
- (5) Condition as to marriage or civil partnership, relation to head of family, issue born in marriage
- (5a) Religion
- (6) 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 population⁸

Section 1 of the 1920 Act permits the laying of a Census Order directing that a census be taken and detailing its contents. The Census Order sets out:

- The date on which the census is to be taken.
- The persons by whom and with respect to whom the census returns are to be made.
- The particulars to be stated in the returns.

The Census Order is a Statutory Instrument (SI) – specifically, an Order in Council. Unusually, some provisions in the Order are subject to the affirmative resolution procedure while others are subject to the negative resolution procedure. Provisions subject to the affirmative resolution procedure must be approved by both Houses before they can become law, whilst provisions subject to the negative resolution procedure become law automatically unless a motion to reject them is agreed by either House within forty days.

Section 3 of the 1920 Act permits the laying of Census Regulations. The Census Regulations are a second SI detailing the procedures for undertaking the census and containing copies of the relevant census forms. The UK Government plans to lay the Census Order before parliament in autumn 2019 and the Census Regulations in 2020.

Paragraph (6) in the Schedule to the Act provides that new questions can be added to the census by specifying them as particulars in the Census Order – additions under paragraph (6) are subject to the

⁸ [Census Act 1920](#) (10 & 11 Geo. 5, ch. 41), Schedule: Matters in respect of which particulars may be required.

affirmative resolution procedure. However, introducing a question in this way would make it compulsory.

Instead, the Bill seeks to remove the non-response penalty for questions on sexual orientation and gender identity by amending Section 8 of the 1920 Act. It also seeks to add sexual orientation and gender identity as items on the Schedule. The 1920 Act was last amended by the *Census (Amendment) Act 2000*, which introduced a voluntary religion question in the same way.

Adding sexual orientation and gender identity as items on the Schedule would make them subject to the negative resolution procedure rather than the affirmative resolution procedure.

2.2 Northern Ireland

The legislative framework for the census in Northern Ireland is similar to that in England and Wales. The statutory authority for the taking of a census is provided by the *Census Act (Northern Ireland) 1969*. The Schedule to the 1969 Act sets out the topics that the census can ask about. The list is similar to that in the Schedule accompanying the 1920 Act in England and Wales, with paragraph (8) specifying that the census can ask about “any other matters with respect to which it is desirable to obtain statistical information with a view to ascertaining the social condition of the population”.⁹

As in England and Wales, the date, population base and contents of the census are set out in a Census Order, while Census Regulations set out further operational details. Unlike in England and Wales, the entirety of the Census Order is subject to the draft affirmative procedure.

The Census Order and Census Regulations are planned to be taken through the Northern Ireland Assembly. NISRA’s proposals document states that “in the event that a NI Executive has not been formed when this legislation needs to be introduced, the Department will write to the Secretary of State for Northern Ireland requesting that she sponsor this legislation at Westminster”.¹⁰

⁹ [Census Act \(Northern Ireland\) 1969](#), Schedule: Matters in respect of which particulars may be required.

¹⁰ NISRA, [2021 census: Northern Ireland proposals document](#) (April 2019)

3. Progress of the Bill

The Bill passed its Lords stages without amendment. This section summarises the provisions of the Bill.

3.1 The Bill as introduced

The Bill as introduced in the House of Lords provides for voluntary questions on sexual orientation and gender identity to be asked on the census in England and Wales and in Northern Ireland.

Clause 1 provides this for England and Wales. It does this by adding sexual orientation and gender identity to the Schedule accompanying the 1920 Act which sets out the particulars that may be required in a census return. It also amends Section 8(1A) of the 1920 Act such that no-one is liable for a criminal penalty for not answering census questions about sexual orientation or gender identity. This is already the case for questions about religion, but all other questions are compulsory.

In England and Wales, adding sexual orientation and gender identity as items on the Schedule means that these particulars will be subject to the draft negative procedure when the Census Order goes through parliament. Only particulars required under paragraph (6) of the Schedule are subject to the draft affirmative procedure.

Clause 2 provides for the same changes in Northern Ireland: it adds sexual orientation and gender identity to the Schedule and amends Section 7(3) of the 1969 Act such that there is no penalty for non-response on these topics. Census legislation falls within the legislative competence of the Northern Ireland Assembly, but the UK Government has decided to extend the Bill's coverage to Northern Ireland in the absence of a sitting Assembly. The explanatory notes to the Bill state:

In relation to Northern Ireland, in the absence of the Executive and a sitting Assembly, it is not possible to seek a Legislative Consent Motion at this time. Given the public interest in ensuring the same level of protection for people in Northern Ireland who do not wish to answer these questions, the Government is satisfied that the circumstances of this Bill come within the exception allowed by the convention [that the UK Government does not legislate on matters that are within the competence of the Northern Ireland Assembly without its consent].¹¹

NISRA recommends that the Northern Ireland census asks about sexual orientation but not about gender identity. While the Bill allows voluntary questions on both topics to be asked in Northern Ireland, it does not require either question to be asked.

Clause 3 specifies the territorial extent and commencement of the Bill. The intention is for the provisions to come into force on the granting of Royal Assent.

¹¹ [Census \(Return Particulars and Removal of Penalties\) Bill \[HL\], Explanatory Notes](#) (1 May 2019) p. 5

3.2 House of Lords stages

The Bill was introduced in the House of Lords on 1 May 2019 by Lord Young of Cookham, the Lords Spokesperson for the Cabinet Office, and received its Second Reading on 13 May 2019. It passed Committee Stage on 4 June 2019; two amendments were moved but both were withdrawn. The Bill reached Report Stage on 18 June 2019 and had its Third Reading on the 26 June 2019.

The first amendment at Committee Stage, moved by Baroness Baker, pertained to guidance to be provided on answering questions on sex and gender identity and was withdrawn following clarification of the ONS' work to develop guidance (see also section 5.4 below).

The second amendment at Committee Stage was moved by Lord Judge and sought to clarify the mechanism by which the questions are made voluntary. This was based on a concern raised by the House of Lords Constitution Committee, that while the Bill would remove the penalty for non-response to the new questions, this alone does not make it clear that non-response is not an offence.¹² The amendment was withdrawn following assurances from Lord Young of Cookham that the current wording of the Bill has been used in other legislative contexts, including the *Census (Amendment) Act 2000*. Further detail is provided in a [letter](#) from Lord Young of Cookham to the Chair of the Constitution Committee dated 31 May 2019.¹³

¹² [Letter from Baroness Taylor of Bolton, Chairman of the Constitution Committee, to Lord Young of Cookham](#), 29 May 2019

¹³ [Letter from Lord Young of Cookham to Baroness Taylor of Bolton, Chairman of the Constitution Committee](#), 31 May 2019

4. Comment and acceptability

4.1 Comment from LGBT organisations

The proposed questions on sexual orientation and gender identity have been broadly welcomed by groups representing the LGBT community. Stonewall issued a press release in 2016 when the proposals were first announced:

Accurate population data on sexual orientation and gender identity allows organisations to develop services and initiatives which are targeted to the needs of their LGBT employees and/or service-users and local communities, and in doing so meet their requirements under the Equality Act 2010 to eliminate unlawful discrimination against, and promote equality of opportunity for, LGBT people. This can include things like LGBT youth groups, specialised mental health support services or specific hate crime reporting services.

Accurate data would have a significant impact on policy development at a national level, equipping government bodies and regulators with the knowledge they need to develop programmes of work which have a positive impact on LGBT people. Census data on age, ethnicity, and a range of other characteristics has been key to evidencing a need for action and we believe the same is true when it comes to tackling the barriers which LGBT people face.

But before we get too excited – simply asking the question is only the first step. We are conscious that there are challenges involved in ensuring that accurate data on sexual identity and gender identity can be collected through a census. The fact that census responses are often completed by one member of a household poses a real barrier to disclosure for those who are not out about their sexual orientation or gender identity to their families. We have also urged the ONS to consult with trans people to ensure they have the best chance of getting the best quality data.¹⁴

Some of the concerns about the limitations of a household form in collecting this information have been addressed by the ONS. Online respondents to the 2021 census will be able to request a separate access code to complete the census form privately, without the rest of the household being able to see their responses.¹⁵ However, the ONS also acknowledges in its [December 2018 research update](#) that there will likely be under-reporting of the lesbian, gay and bisexual population amongst people aged 16-18 years because the householder will be likely to complete the form on behalf of people in this age group.¹⁶

More recently, the LGBT Foundation commented positively on the release of the White Paper:

We're delighted that the Office of National Statistics has recognised the importance of gathering data on people's sexual orientation and trans status and that these questions will be included in the 2021 census.

¹⁴ Stonewall, [Census could become LGBT inclusive](#) (24 May 2016)

¹⁵ HM Government, [Help shape our future: the 2021 census of population and housing in England and Wales](#), (December 2018), p. 78

¹⁶ ONS, [2021 Census topic research update: December 2018](#)

Over the last two decades, lesbian, gay, bisexual and trans (LGBT) people have seen legislative change which has led to greater acceptance. However, there is still a huge lack of evidence about LGBT people and our needs and experiences.

Gathering comprehensive data about LGBT people in the UK through the census is the first step to securing a safe, healthy and equal future for all LGBT people.¹⁷

4.2 ONS research on public acceptability

As part of the development of the new questions, the ONS carried out research into the public acceptability of the questions and whether this will impact on the response rate.

Sexual orientation

The ONS evaluated the sexual orientation question as part of the [2017 Census Test](#), in which 208,000 households received a version of the census questionnaire. The ONS set a threshold such that it would be deemed tolerable for the question to reduce the response rate by no more than two percentage points, and for it to lead to no more than 10% of respondents to skip the question. Both of these criteria were met (the response rate for households that got the question was 0.4 percentage points lower, and 8.4% of respondents skipped the question).¹⁸

A large-scale survey of households also found that most respondents found it acceptable to include this question. 70% of respondents in England and Wales said it was acceptable; 80% said they would provide an accurate answer for themselves and on behalf of other household members; and 1% said they would not complete the census if the question was included. The ONS judges that these findings mean the question is acceptable enough to be included.¹⁹

Gender identity

A survey conducted by ONS found that 80% of people in England and Wales would find a question on gender identity acceptable. When asked if they would skip a question on gender identity, 5% of respondents in England and 10% of respondents in Wales said that they would. 1% of respondents overall said that a gender identity question would cause them to not complete the census.²⁰

4.3 Comment in the Lords

Clarity and scope of sex and gender identity questions

The House of Lords stages of the Bill featured discussion on the clarity of the questions on sex and gender identity, particularly for transgender,

¹⁷ LGBT Foundation, [LGBT Foundation welcomes questions on sexual orientation and trans status in 2021 Census](#) (14 December 2018)

¹⁸ ONS, [2017 Census Test report](#)

¹⁹ HM Government, [Help shape our future: the 2021 census of population and housing in England and Wales](#), (December 2018), pp. 39-40

²⁰ HM Government, [Help shape our future: the 2021 census of population and housing in England and Wales](#), (December 2018), pp. 37-38

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non-binary and intersex people. The sex question on the census offers 'male' and 'female' options only, while the gender identity question will provide a write-in box for respondents (see section 1.2).

Baroness Barker raised a number of concerns at the Bill's Second Reading. The first was about how transgender people should fill in the sex question, and whether the legal process of gender recognition has an impact:

[T]rans people have for many years been filling in the census and have done so in their lived-in identity. Is it anticipated that that will happen from now on and that a trans person will respond in their lived-in identity? We have to bear in mind that the Government are currently consulting on a review of the Gender Recognition Act and these two proposals may come in at the same time. Let us remember that gender recognition is a legal process, not a medical process.²¹

This issue was also raised by Lord Kennedy of Southwark:

In respect of the sex question, where an individual is asked to pick either "male" or "female", can the noble Lord tell the House how trans people should answer that question? Is it their sex at birth, their sex now, or should they respond in a way outlined by the noble Baroness, Lady Barker?²²

Baroness Barker queried how non-binary and intersex people are expected to answer the sex and gender identity questions:

[W]hat do the Government expect non-binary people to do? Whatever the Government expect them to do will have to be written into the guidance that goes along with the question. How are the Government going to consult on that?

The most difficult question, however, is about the smallest group of people: intersex people born with the characteristics of both sexes. As a result of the current way of not legislating properly for intersex people, they are currently assigned a sex at birth to have their birth recorded. Subsequently their sex may be changed. What are those people supposed to do?²³

Lord Young of Cookham wrote to Baroness Barker to address some of these concerns. His letter notes that the ONS has engaged with a range of groups in the development of the new questions:

[E]ngagement has included workshops, focus groups, surveys, cognitive interviews and seminars to share work and findings. In particular:

- ONS has attended and presented work at LGBT events and has published reports and updates on its work and research findings. All of this detail can be found on the ONS gender identity webpage, including the stakeholder organisations who have been involved. These include Stonewall, NON-GENDERED, the LGBT Foundation and the Gender Identity Research and Education Society (GIREs).
- ONS has also engaged with groups representing people who have variations in sex characteristics to ascertain whether a data need exists and to understand how intersex

²¹ [HL Deb 13 May 2019](#) c1433

²² [HL Deb 13 May 2019](#) c1439

²³ [HL Deb 13 May 2019](#) c1433

people might answer the sex and gender identity questions. These groups include: DSD Families; Turner Syndrome Support Society; Educate and Celebrate; Living with CAH and Intersex UK. None objected to the ONS approach and none suggested an alternative.²⁴

The letter also provides more detail on the guidance the ONS expects to provide:

You asked about guidance to accompany the census form, in particular the guidance for how those who are trans, intersex and non-binary should complete the sex and gender identity questions. I hope you will be reassured to hear that ONS are finalising the draft guidance with a view to sharing this with LGBT groups, equality groups, as well as women's groups later this month, and will then undertake cognitive testing with members of the public to ensure that the guidance is clear and works well for everybody [...]

The guidance ONS is currently developing for the binary sex question is intended to be more comprehensive than that provided for 2011 Census, in order to assist those who identify as non-binary, trans, and/or with variations in sex characteristics, to answer the questions. While the 2021 Census guidance will be more expansive, and reflect the inclusion of the new questions, the current underlying aim is to collect comparable data to 2011 and earlier censuses. In 2011, respondents who were unsure how to answer the sex question were advised that they need not answer it according to the sex on their birth certificate, whether or not they had a Gender Recognition Certificate. The current draft guidance is consistent with this. Examples of how people can respond if they are unsure of how to answer will be given: for example, the guidance will suggest that people could use the sex registered on their official documents, such as passports or driving licences.²⁵

And lastly, addresses queries around the interaction with the *Gender Recognition Act 2004*:

The gender identity question in the census is intended to capture all persons whose gender identity is different to their assigned sex at birth. This is a wider category than those who hold a Gender Recognition Certificate [...] As the proposed ONS guidance will simply ask people what their sex is, without requiring the answer to be specifically their sex at birth or legal sex, the development and finalisation of the census guidance is not dependent on the outcome of the Gender Recognition Act reform consultation, on which the Government response is expected before the end of the year.²⁶

Baroness Barker moved an amendment at Committee Stage to highlight the need for guidance. This amendment was subsequently withdrawn following reassurance that the Government was consulting on the

²⁴ [Letter from Lord Young of Cookham to Baroness Barker](#), 21 May 2019 (DEP 2019-0575)

²⁵ [Letter from Lord Young of Cookham to Baroness Barker](#), 21 May 2019 (DEP 2019-0575)

²⁶ [Letter from Lord Young of Cookham to Baroness Barker](#), 21 May 2019 (DEP 2019-0575)

guidance with “over 50” organisations including Stonewall, the Equality and Diversity Forum, and the Equality and Human Rights Commission.²⁷

The issue of the suitability of the male/female sex question for intersex people and other groups was also raised by the House of Commons Women and Equalities Select Committee, which heard oral evidence on preparations for the 2021 census on 6 February 2019. At the time Iain Bell, the Deputy National Statistician for Population and Public Policy said:

[I]n discussions with the intersex community, they were happy with the question as it was. [...] we have to design the census so that everybody wants to fill it in. As we completed the research on gender identity, we started off and we explored a three-box option under the sex question. That provoked a very strong reaction from certain groups, particularly in the feminist community, who were very against this being included [...]

Our work had to come through and navigate a path that enabled the LGBT community to identify and feel included in the census, without having other groups feel as though they could not take part in the census because of it.²⁸

In a letter to the Committee following the evidence session, Iain Bell explained further:

Testing found that, overall, the addition of a third option [to the sex question] meant individuals were unclear how to answer and the quality of male and female data was reduced. Our stakeholder engagement activity also uncovered some very strong views around the acceptability of adding a third response option, and that the sex question should remain as a binary option.²⁹

Homeless respondents

During the Bill’s Second Reading in the Lords, Baroness Hayter of Kentish Town raised concerns about homeless respondents to the census. She noted that specific work is needed to ensure that homeless people are represented in the census, and that LGBT people can be at particular risk of homelessness.

[The census] needs to count those who are homeless as well as those who are housed [...] but, as we know, this group is currently underrepresented on the returns. Last year Shelter met the relevant ONS team and made suggestions to improve the situation. In particular, it argued that the key to achieving an accurate count by including homeless people is really just trying harder to reach them. That might mean providing extra reassurance to the homeless about dealing with officials and stressing to every local authority the importance of that. Without accurate numbers, there is little chance that services to help those experiencing homelessness will be fairly and adequately delivered. This issue is particularly important and relevant to the debate today, given that the Bill is about groups that we know have a higher propensity to homelessness.³⁰

²⁷ [HL Deb 4 June 2019](#) c4GC

²⁸ Women and Equalities Committee, [Oral Evidence: Preparations for the 2021 Census](#), HC 1909, 6 February 2019

²⁹ [Letter from Iain Bell, Deputy National Statistician, to Maria Miller MP, Chair, Women and Equalities Select Committee](#), 12 March 2019

³⁰ [HL Deb 13 May 2019](#) c1431

Lord Young of Cookham responded:

Since 2011, further research and engagement with charities have been undertaken to understand how people without a fixed place of abode can make a census response, so the ONS is planning to make forms available in night shelters and day centres, with practical help for filling them in. The ONS continues to work with these centres and other groups to ensure that people who may attend them only on a given day will also be able to take part.³¹

Privacy of responses and impact on statistics

At Second Reading, Baroness Barker highlighted the fact that the figures generated by the 2021 census will be likely to undercount the LGBT population, as people may not disclose their sexual orientation and gender identity for privacy and other reasons:

[T]his will only ever give us a minimum number because there will be all sorts of reasons why people do not respond to the question. When the statistics are released and show that there are far fewer people than we thought, let us not be surprised about that and let us not base public service provision on what will inevitably be a small number.³²

She raised concerns about the long-term privacy of responses:

I understand from the briefing the other day that the data will not be released for up to 100 years. As the Minister will know from our meeting, there is a fear, particularly among the trans community, that while at the moment our society is broadly well disposed towards its members, it may not always be. We are in the middle of a very vicious anti-trans campaign, orchestrated by one or two of our main media outlets. It may be that in 100 years' time, people may not wish this information about their family to be released.³³

Lord Young of Cookham responded:

On the 100-year rule, there is such a rule but of course Parliament could always change that if it wanted to. It has 100 years in which to come to that decision if some of the concerns voiced by the noble Baroness, Lady Barker, took place.³⁴

4.4 Gender identity in the Scottish census

The census is a devolved matter for Scotland – it is administered by the National Records of Scotland (NRS) and legislation is considered by the Scottish Parliament. The NRS also recommends introducing voluntary questions on gender identity and sexual orientation, but the means of asking about gender identity has developed differently and attracted more attention in Scotland than in the rest of the UK.

The NRS initially suggested modifying the sex question to include an 'other' option (i.e. offering the options 'male', 'female' and 'other, please write in') as well as including another question asking

³¹ [HL Deb 13 May 2019](#) c1440

³² [HL Deb 13 May 2019](#) c1433-4

³³ [HL Deb 13 May 2019](#) c1433

³⁴ [HL Deb 13 May 2019](#) c1441

respondents whether they consider themselves “to be trans, or have a trans history”.³⁵

The *Census (Amendment) (Scotland) Bill* was introduced in the Scottish Parliament in October 2018. The Bill sought to amend the Schedule of topics such that sexual orientation would be added to the list, and the list item specifying the census can ask about sex to refer to “sex (including gender identity)”.³⁶

The Bill was scrutinised by the Scottish Parliament’s Culture, Tourism, Europe and External Affairs Committee. The Committee was critical of the Bill’s drafting; specifically, it raised concerns that biological sex and gender identity were conflated. It recommended that the Bill should include transgender status in the Schedule, rather than amend the reference to sex.³⁷ The Committee also recommended the sex question remain binary rather than having an ‘other’ option “in order to maximise response rates and longitudinal consistency with previous censuses”.³⁸

The *Census (Amendment) (Scotland) Bill* passed Stage 3 on 12 June 2019, amended in line with the Committee’s recommendation. It is now awaiting Royal Assent. The phrasing of the sex, transgender status and sexual orientation questions is not specified in the Bill. The NRS will develop the questions and these will be specified in the Census Order, which will need to be approved by the Scottish Parliament before becoming law.

³⁵ National Records of Scotland, [Scotland’s census 2021: Sex and gender identity topic report](#)

³⁶ SP Bill 40 [Census \(Amendment\) \(Scotland\) Bill](#) [as introduced] Session 5 (2018)

³⁷ Culture, Tourism, Europe and External Affairs Committee, [Stage 1 report on the Census \(Amendment\) \(Scotland\) Bill](#), SP Paper 471, 7 February 2019, Paragraph 9

³⁸ *Ibid.*, Paragraph 78

5. Further reading

The following documents provide further background on the development of the 2021 census:

- House of Commons Library, Briefing Paper CBP-8531 (May 2019), [Preparing for the 2021 census \(England and Wales\)](#)
- House of Lords Library, Briefing Paper LLN-2019-0054 (May 2019), [Census \(Return Particulars and Removal of Penalties\) Bill \[HL\]: Briefing for Lords Stages](#)
- ONS (December 2018), [Help shape our future: the 2021 census of population and housing in England and Wales](#)
- ONS (December 2018), [2021 census topic research update](#)
- ONS, [Sexual orientation question development page](#)
- ONS, [Gender identity question development page](#)
- ONS (May 2016), [Sexual identity topic report](#)
- ONS (May 2016), [Gender identity topic report](#)
- NISRA (April 2019), [2021 census – proposals document](#)
- NISRA (April 2019), [Topic report on sexual orientation](#)
- Scottish Parliament Information Centre (SPICe) (June 2019) [Census \(Amendment\) \(Scotland\) Bill briefing](#)
- SPICe (June 2019) [The Census Bill – what’s happened in the Parliament so far?](#)

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