

## **Census (Return Particulars and Removal of Penalties) Bill [HL] HL Bill 175 of 2017–19**

### **Summary**

The [Census \(Return Particulars and Removal of Penalties\) Bill \[HL\]](#) is a government bill that provides for questions on sexual orientation and gender identity to be included in censuses in England, Wales and Northern Ireland. It also provides that completion of these questions should, in effect, be voluntary.

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. It is due to have its second reading on 13 May 2019.

### **Provisions of the Bill**

Censuses in England and Wales are governed by the Census Act 1920. In Scotland and Northern Ireland, the census is a devolved matter. In Scotland, the Census Act 1920 applies separately. In Northern Ireland, the relevant legislation is the Census Act (Northern Ireland) 1969.

Clause 1 would amend the Census Act 1920, as it applies to England and Wales, to add two further categories to the list of areas in which the census can ask questions. These are:

- Sexual orientation; and
- Gender identity.

Clause 1 would also provide that there would be no penalty for respondents if they do not complete these questions.

Clause 2 would amend the Census Act (Northern Ireland) 1969 to the same effect.

Clause 3 would provide for the bill's territorial extent, its commencement—the act would come into force on royal assent—and short title.

### **Background**

#### ***About the Census***

The census is “the most complete source of information about our population [...] and provides an incredibly detailed picture of our society”.<sup>1</sup> It is a unique survey in that it aims to cover every person usually resident in the UK.<sup>2</sup>

Census data is useful for organisations including government and local authorities, businesses, voluntary organisations, academics and the general public.<sup>3</sup> Its uses include developing policies, for example on housing, planning public services and allocating money to local authorities.<sup>4</sup>

The census is held every ten years and the next survey is expected to take place on 21 March 2021.<sup>5</sup>

### **Questions Included in the Census**

The schedule to the Census Act 1920 (as amended) sets out the topics about which the census can ask questions. At present, these are as follows. The numbers are references to the paragraph in the schedule to the Act.

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; and
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 population.<sup>6</sup>

New questions in areas not covered by the categories in paragraphs 1 to 5A may be added to the census either under the general power in paragraph 6, or by amending the 1920 Act to add further categories.<sup>7</sup>

For a census to take place, further secondary legislation is required. This would approve its full contents and various administrative procedures, such as the date of the census. Any such legislation is subject to the draft negative resolution procedure except for subjects introduced under paragraph 6 above. These would need to be approved by the affirmative resolution procedure.<sup>8</sup> The Government has said that the regulations to permit the 2021 census are expected to be laid before Parliament in early 2020.<sup>9</sup>

### **Census in Devolved Administrations**

For England and Wales, the bodies responsible for carrying out the survey are the UK Statistics Authority and its executive office, the Office for National Statistics (ONS).<sup>10</sup> As described above, the census would take place under general powers in the Census Act 1920 and specific secondary legislation for each survey. Separate regulations are also required to be laid in the Welsh Assembly.<sup>11</sup>

In Scotland, the Registrar General for Scotland is the relevant authority. The Scottish Parliament is responsible for approving separate subordinate legislation for each census, again under the Census Act 1920, and for funding the census in Scotland.<sup>12</sup>

In Northern Ireland, the census takes place under the Census (Northern Ireland) Act 1969. The explanatory notes to Census (Return Particulars and Removal of Penalties) Bill state that “the only relevant difference of this legislation from the 1920 Act is that its census order is subject to the draft affirmative procedure in its entirety”.<sup>13</sup> The responsible body is the Registrar General for Northern

Ireland.<sup>14</sup> The Northern Ireland Assembly would ordinarily be responsible for approving separate subordinate legislation, and for funding the census in Northern Ireland. However, in the absence of an executive and sitting Assembly, the Government has decided to bring forward the legislation in the UK Parliament.<sup>15</sup>

The relevant bodies from each region of the UK work closely together in preparing the census. In October 2015, they issued a 'statement of agreement' about the 2021 survey.<sup>16</sup> It includes, for example, an intention to hold the census on the same date throughout the UK, and a commitment to use the same topics and questions whenever possible.<sup>17</sup>

### **Consultation on the 2021 Census**

In December 2018, the Government published a white paper containing the UK Statistics Authority's proposals for the 2021 census.<sup>18</sup> These proposals included the topics to be covered, as well as other information including practical arrangements for the census and how the results will be processed. The white paper noted that the ONS had "already consulted extensively with community groups, charities, governmental bodies and business" to begin preparing the census.<sup>19</sup> The white paper concluded that there was a continuing demand for the census. It also recommended a move to a predominantly online format for 2021.<sup>20</sup>

The white paper also discussed the results of consultations on possible new topics for census questions. It stated that topics are included in the survey if they have:

A strong and clearly defined user need and where questions have been devised that can be expected to produce reliable and accurate data. Moreover, in each case there is no other comparable and accessible source of the information able to meet the need.<sup>21</sup>

Following the consultation, the Government proposed that three new topic areas should be covered: sexual orientation, gender identity and information on past service in the armed forces. The first two are the subject of this bill and are considered further below. The white paper gave no information on how the armed forces question would be introduced. If no further amendments were made to the Census Act 1920, it would need to be included under the general power in paragraph 6 of the schedule to the Act. In that case, it could not be voluntary in the way that the sexual orientation and gender identity questions are proposed to be.<sup>22</sup>

The Government also considered a range of other topics for possible consideration. These included, for example, income, volunteering, mental health and pet ownership. They were rejected either because of lower user needs or because of concerns about data quality and/or the impact on overall response rates.<sup>23</sup>

The Government proposed to exclude two questions which were asked in the 2011 census.<sup>24</sup> The first was the number of rooms in the household, where the ONS stated that other sources of information are available. The second was the year in which the person last worked, which the ONS has changed to ask whether the person worked in the last year, which, it stated, better meets users' needs.

Finally, the ONS considered the need for additional categories in response to existing questions. For example, it considered a further 55 options for addition to the question on the respondent's ethnic

group.<sup>25</sup> It recommended adding Roma as a tick-box option, and enhancing the “search-as-you-type” free text response field to recognise, for example, Somali, Sikh and Jewish.<sup>26</sup>

## **Sexual Orientation and Gender Identity**

As mentioned above, the Government reported that it intended to collect data on sexual orientation and gender identity in the 2021 census.<sup>27</sup> This would “meet the needs for better quality information” on these subjects. In its ‘topic reports’ following the consultation, the ONS explained that data in these areas was important for developing policy, planning public services—for example, health services—and helping public authorities to meet their obligations under the Equality Act 2010.<sup>28</sup>

### ***Gender Identity***

On gender identity, the Government noted that there was currently no official data on the size of the transgender population.<sup>29</sup> The ONS stated that the census was an appropriate means of collecting such data, because the small size of the population means that it is “hard to identify through sample surveys”.<sup>30</sup> However, the ONS noted “complex issues” in designing a suitable question, particularly around the separate but related issues of gender reassignment and gender identity. It had previously also outlined issues related to public acceptability, the burden on respondents and the quality of the resulting data.<sup>31</sup>

In February 2019, in oral evidence to the House of Commons Women and Equalities Committee, Iain Bell, Deputy National Statistician, stated that the proposed question on the census would be “Do you consider your gender to be different from that at birth?”. A free text box would be included, for example for intersex respondents.<sup>32</sup> Following research and testing, the ONS concluded that the gender identity question would be in addition to the current question on the respondent’s sex. However, a caveat in the question on sex would note that a gender question will follow later in the questionnaire.<sup>33</sup>

### ***Sexual Orientation***

On sexual orientation, the ONS had previously noted possible negative impacts of including a question. For example, it stated that “requesting an individual questionnaire, or choosing not to answer the question could lead to other household members making assumptions about a respondent’s sexual identity”.<sup>34</sup> However, it then tested various question formats and concluded that it could phrase a question which would “work, is acceptable to the public and would not damage the overall quality of the census”.<sup>35</sup> At the hearing of the House of Commons Women and Equalities Committee, Iain Bell said that the proposed question on sexual orientation would be “What do you consider your sexual orientation?”, with three possible answers:

- Heterosexual or straight;
- Lesbian or gay male; and
- Bisexual or other.<sup>36</sup>

The ONS recommended that the questions on sexual orientation and gender identity would only be asked of respondents aged 16 or over.<sup>37</sup>

## Voluntary Questions

Households must complete the census.<sup>38</sup> The Census Act 1920 provides for a fine for anyone not doing so.<sup>39</sup> However, when a question on religion was introduced into the 2001 survey, a provision was added to the act to exempt anyone not completing this question from the penalty. This, in effect, made the question voluntary.

The bill would also exempt the new questions on sexual orientation and gender identity from penalties for non-completion, making them voluntary in the same way.

## Legislative Process

The Government has said it would be possible to add the questions on sexual orientation and gender identity to the census via the provision in paragraph 6 of the schedule to the Census Act 1920. This allows questions on “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”.<sup>40</sup> If this course had been taken, there would have been no need to amend the Act. However, the Government decided that primary legislation was preferred, “in the interests of clarity, accessibility and legal certainty”.<sup>41</sup> Further, an amendment would have been needed to remove the penalty for non-response to these questions. The Government stated that explicit inclusion of the topics in the schedule allowed a clear link between the subjects which can be asked and those to which penalties for non-response do not apply.<sup>42</sup>

The inclusion of categories of question in the Census Act 1920 does not mean that they must be asked in any particular census.<sup>43</sup> As explained above, the exact contents of each survey are determined by the secondary legislation passed to permit it.

## Scotland

The Registrar General has proposed that the 2021 census in Scotland will also include voluntary questions on sexual orientation and gender identity.<sup>44</sup> A bill to enable this is currently going through the Scottish Parliament.<sup>45</sup> An order in council will be laid in late 2019 to enable the census in Scotland, followed by further regulations to make detailed provision for its conduct.<sup>46</sup>

## Press Articles and Comment

- *Economist* (£), '[The Next Census Will Count LGBT Britons for the First Time; Sex and Statistics](#)', 22 December 2018
- Matthew Weaver and Helen Pidd, '[Proportion of People in UK Identifying as Heterosexual Falls Again](#)', *Guardian*, 21 January 2019
- Christopher Hope, '[Census Sex Life Questions Will Not Be Compulsory, Government Says](#)', *Telegraph*, 13 December 2018

## Further Information

- House of Commons Library, '[Preparing for the 2021 Census \(England and Wales\)](#)', 9 April 2019

- House of Commons Women and Equalities Committee, [Oral Evidence: Preparations for the 2021 Census, HC 1909](#), 6 February 2019
- House of Lords, '[Written Statement: UK Statistics Authority Update](#)', 14 December 2018, HLWS1152
- Government Equalities Office, [LGBT Action Plan: Improving the Lives of Lesbian, Gay, Bisexual and Transgender People](#), July 2018, pp 23–4
- Office for National Statistics, '[Gender Identity](#)', accessed 7 May 2019
- House of Commons Library, [The Public Sector Equality Duty and Equality Impact Assessments](#), 11 March 2019

<sup>1</sup> Office for National Statistics, '[About the Census](#)', accessed 3 May 2019.

<sup>2</sup> House of Commons Library, [Preparing for the 2021 Census \(England and Wales\)](#), 9 April 2019, p 7.

<sup>3</sup> Office for National Statistics, '[About the Census](#)', accessed 3 May 2019.

<sup>4</sup> Office for National Statistics, '[Why We Have a Census](#)', accessed 7 May 2019.

<sup>5</sup> HM Government, [Help Shape Our Future: The 2021 Census of Population and Housing in England and Wales](#), December 2018, Cm 9745, p 7.

<sup>6</sup> Census Act 1920, schedule 1.

<sup>7</sup> [Explanatory Notes](#), p 2.

<sup>8</sup> HM Government, [Help Shape Our Future: The 2021 Census of Population and Housing in England and Wales](#), December 2018, Cm 9745, p 113. The affirmative procedure means that both the House of Commons and the House of Lords must approve the regulations before they can come into force. The negative procedure means that they can come into force immediately they are made, but can then be annulled on a motion of either House.

<sup>9</sup> *ibid.*

<sup>10</sup> *ibid.*, p 6.

<sup>11</sup> *ibid.*, p 113.

<sup>12</sup> *ibid.*, p 114.

<sup>13</sup> [Explanatory Notes](#), p 5.

<sup>14</sup> *ibid.*

<sup>15</sup> *ibid.*

<sup>16</sup> National Statistician and Registrars General for Scotland and Northern Ireland, [The Conduct of the 2021 Censuses in the UK: A Statement of Agreement between the National Statistician and the Registrars General for Scotland and Northern Ireland](#), October 2015.

<sup>17</sup> *ibid.*, p 1.

<sup>18</sup> HM Government, [Help Shape our Future: The 2021 Census of Population and Housing in England and Wales](#), December 2018, Cm 9745.

<sup>19</sup> *ibid.*, p v.

<sup>20</sup> *ibid.*, p 14.

<sup>21</sup> *ibid.*, p 27.

<sup>22</sup> [Explanatory Notes](#), p 5.

<sup>23</sup> HM Government, [Help Shape our Future: The 2021 Census of Population and Housing in England and Wales](#), December 2018, Cm 9745, pp 63–5.

<sup>24</sup> *ibid.*, p 65.

<sup>25</sup> *ibid.*, pp 48–52.

<sup>26</sup> *ibid.* For a further explanation of the collection of information on Sikhs, for example, see UK Statistics Authority, '[Letter to Preet Gill MP](#)', 8 April 2019.

<sup>27</sup> HM Government, [Help Shape our Future: The 2021 Census of Population and Housing in England and Wales](#), December 2018, Cm 9745, p 34.

<sup>28</sup> Office for National Statistics, [The 2021 Census: Assessment of Initial User Requirements on Content for England and Wales: Gender Identity Topic Report](#), May 2016, pp 8–9; and [Sexual Identity Topic Report](#), May 2016, p 3. For more information on the public sector's duties resulting from the Equalities Act 2010, see House of Commons Library, [The Public Sector Equality Duty and Equality Impact Assessments](#), 11 March 2019.

<sup>29</sup> HM Government, [Help Shape our Future: The 2021 Census of Population and Housing in England and Wales](#), December 2018, Cm 9745, p 36.

<sup>30</sup> *ibid.*

<sup>31</sup> Office for National Statistics, [The 2021 Census: Assessment of Initial User Requirements on Content for England and Wales:](#)

[Gender Identity Topic Report](#), May 2016, pp 4–5.

<sup>32</sup> House of Commons Women and Equalities Committee, [Oral Evidence: Preparations for the 2021 Census, HC 1909](#), 6 February 2019, Q26 and 29.

<sup>33</sup> HM Government, [Help Shape our Future: The 2021 Census of Population and Housing in England and Wales](#), December 2018, Cm 9745, pp 38–9.

<sup>34</sup> Office for National Statistics, [The 2021 Census: Assessment of Initial User Requirements on Content for England and Wales: Sexual Identity Topic Report](#), May 2016, p 15.

<sup>35</sup> HM Government, [Help Shape our Future: The 2021 Census of Population and Housing in England and Wales](#), December 2018, Cm 9745, p 41.

<sup>36</sup> House of Commons Women and Equalities Committee, [Oral Evidence: Preparations for the 2021 Census, HC 1909](#), 6 February 2019, Q26.

<sup>37</sup> HM Government, [Help Shape Our Future: The 2021 Census of Population and Housing in England and Wales](#), December 2018, Cm 9745, pp 38 and 41.

<sup>38</sup> *ibid*, p 83.

<sup>39</sup> Census Act 1920, section 8.

<sup>40</sup> [Explanatory Notes](#), p 5. Note, however, that the ONS stated the opposite (Office for National Statistics, [The 2021 Census: Assessment of Initial User Requirements on Content for England and Wales: Sexual Identity Topic Report](#), May 2016, p 5).

<sup>41</sup> [Explanatory Notes](#), p 2.

<sup>42</sup> *ibid*, p 6; and, in respect of Northern Ireland, pp 3–4.

<sup>43</sup> [Explanatory Notes](#), p 2.

<sup>44</sup> Scotland's Census, [Plans for Scotland's Census 2021](#), September 2018, p 21.

<sup>45</sup> Scottish Parliament, '[Census \(Amendment\) \(Scotland\) Bill](#)', accessed 8 May 2019.

<sup>46</sup> Scotland's Census, [Plans for Scotland's Census 2021](#), September 2018, p 66.

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