

**CULTURE, TOURISM, EUROPE AND EXTERNAL AFFAIRS COMMITTEE**

**CENSUS (AMENDMENT) (SCOTLAND) BILL**

**SUBMISSION FROM SUSAN SINCLAIR**

NB: This submission was previously marked as CTEEA/S5/18/IB/A3.

I welcome the proposal to amend the 2021 Census to enable data to be collected on Sexual Orientation and Trans, however clarity and further public consultation is required before the term 'Gender Identity' is written into any legislation.

The Explanatory Notes accompanying the Bill state -

*"Sex already includes the gender with which a person identifies .... The term gender identity refers to the internal sense of who we are, and how we see ourselves in gender terms, being male, female, or somewhere in between/beyond these identities."*

These definitions of sex, gender and gender identity are contentious.

Sex is universal accepted as biologically female or male, with no reference being made to gender. World Health Organisation (WHO) defines Gender as "*the socially constructed characteristics of women and men – such as norms, roles and relationships of and between groups of women and men. Gender norms lead to inequality if they reinforce: a) mistreatment of one group or sex over the other; b) differences in power and opportunities.*"[3]

There is no agreed definition of the term 'gender identity' anywhere but the WHO report 'Sexual health, human rights and the law' (2015)[4] "*uses the terms "transgender" and "gender variant" to refer to people who identify themselves with a different sex/gender from that assigned to them at birth. Around the world there have always been people whose gender identity and expression differ from cultural expectations associated with the sex/gender they were assigned at birth.*"

At least three of the key stakeholders represented at the Census 2021 Gender Identity Stakeholder meeting [1] have previously submitted evidence to the UK Women & Equalities Committee requesting that the protected characteristic Gender Reassignment, within the Equality Act 2010, be amended or replaced with Gender Identity [2]. The UK Govt have since announced there will be no amendments to the Act. Yet here in Scotland the LGBT groups have been successful in influencing changes to policies and legislation eg the Gender Representation on Public Boards (Scotland) Act 2018 was a UK first to redefine 'Woman' to include Self Identifying transwomen who remain legally male as a Gender Recognition Certificate is not a requirement. Equality & Diversity training delivered across all sectors in Scotland routinely replaces the protected characteristic Sex with Gender/Gender Identity which in turn then influences local guidance and policies.

It is very concerning that no women's groups were included in these discussions of sex, gender and gender identity at the Census 2021 stakeholder meeting.

The Policy Memorandum accompanying this Census Bill states *“The Scottish Government regards gender identity as already being covered by the reference to sex”* and *“The issues of sex and of gender identity are linked”*. Is it the aim of the Scottish Govt to redefine the protected characteristic, and indeed the word, ‘sex’ to now be inclusive of ‘gender identity’, the key stakeholders proposed amended term for ‘gender reassignment’? Are these two separate protected characteristics within the Equality Act 2010, Sex and Gender Reassignment, now being conflated into one?

The Policy Memorandum goes on to state *“The sex question will remain compulsory”*. If ‘sex’ is indeed being redefined to now include ‘gender identity’ then it is inaccurate to then state the primary purpose of the Bill is to make answering questions of gender identity **voluntary**. In its current form the new question will in fact be a **compulsory** question on gender identity, as the original meaning of the question ‘what is your sex?’ i.e. biology, will no longer apply.

The Policy Memorandum continues *“The 2011 Census recognised that society’s understanding of sex has changed and guidance provided explained that the question was being asked in terms of self-identified sex.”*. I do not recall receiving any accompanying guidance to the 2011 Census explaining that the definition of ‘Sex’ no longer refers to biological (or legal) sex. Indeed, the findings within *“Scotland’s Census 2021 Sex and Gender Identity Topic Report”*[5], describing the extensive research carried out for the rewording of the question ‘What is your Sex? Female or male’ reveal that participants from both the trans and general population groups overwhelmingly interpreted Sex as being biological and not ‘self-identified sex’.

*“Some trans respondents objected to providing their biological sex or assigned sex at birth (although this was not the intended meaning of the question).”*

*“From earlier testing it was apparent that trans and non-binary respondents were unaware that the sex question allowed them to answer with their self-identified sex instead of their biological sex “*

The standard Female/Male Sex question was then excluded from further testing with the key stakeholders preferred option of a ‘Non-binary sex question, female, male or Other’ being pursued. However, the participants continued to interpret sex as being biological with confusion over the option of ‘Other’ as a sex.

*“it was difficult to decide how to interpret what the question was asking. Specifically, whether the question is asking about biological sex, gender identity or gender expression.”*

*“respondents interpreted the word ‘sex’ as biological sex. As a result, non-binary respondents interpreted the question asking about biological sex and did not respond as ‘Other’ as they assumed this option was for intersex.”*

*“The majority of the respondents interpreted the word ‘sex’ .... as biological sex. A few respondents commented that the use of word ‘identify’ in version B was not appropriate or misleading when asking about biological sex, as it implies gender identity rather than sex.”*

*“Some respondents provided comments on their understanding of the differences between sex and gender (or gender identity) as separate concepts, and that the use of word ‘identify’ suggests that the question on sex is asking about gender.”*

It is no surprise when you consider the research findings that years later there has still not been an agreement on what the wording of the Gender Identity questions will be. What is surprising though is why this amount of confusion and resistance exists when there was apparently public support for these questions to be included.

The public acceptability testing that had been carried out regarding Gender Identity was initially on the basis that any question would be an optional addition and in no way was to be a replacement for ‘What is your sex?’ question. Initial results from a small Ipsos Mori sample survey were positive, however, the results varied significantly when the wider population were tested. Three versions of the questionnaire were distributed, with different versions of the sex/gender identity question, and there was a statistically significantly higher amount of unanswered ‘sex’ questions when gender identity was included.

*“However, when the gender identity question set is included, the level of item non-response is significantly increased compared to both the binary sex question alone and the non-binary sex question alone.”*

*“the likelihood of the household to make contact in another way (e.g. by opting out of the research, returning the mail to sender, or abandoning the online survey partway) was increased for the non-binary sex question.”*

If the Scottish Government remain satisfied that there is public acceptance for questions on gender identity to be included, then they should be very wary not to then interpret, and extend, this acceptance to replace or redefine the basic question of ‘Sex’.

Women in Scotland are disproportionately affected by unemployment, poverty, pay gap, and lack of public representation. It is important that in order to provide equal opportunities accurate data is needed, but changing the definition of the word ‘Sex’ in the Census will render those statistics meaningless.

It is worrying that this Bill has been proposed at this early stage when there remains a great deal of public uncertainty of the terms being used, and most crucially the universal lack of an agreed definition of Gender Identity. A wider public debate is needed as to whether we should as a society be regressing to categorise people using gender stereotypes rather than material sex. This is not to deny the gender variance of some people but we cannot ignore that it is the reinforcement of gender norms that have created these inequalities within our society.

**Susan Sinclair** - Campaigner for Women's Rights and author of the blog 'Scottish Women'

Links

1 <https://www.scotlandscensus.gov.uk/documents/get-involved/sexual-orientation-and-gender-identity-stakeholder-meeting-minutes.pdf>

2 <https://www.parliament.uk/business/committees/committees-a-z/commons-select/women-and-equalities-committee/inquiries/parliament-2015/transgender-equality/publications/>

3 <http://www.who.int/gender-equity-rights/understanding/gender-definition/en/hi>

4

[http://apps.who.int/iris/bitstream/handle/10665/175556/9789241564984\\_eng.pdf;jsessionid=265282BC7DA0950FF4DBB0847A0C96AB?sequence=1](http://apps.who.int/iris/bitstream/handle/10665/175556/9789241564984_eng.pdf;jsessionid=265282BC7DA0950FF4DBB0847A0C96AB?sequence=1)

5 [https://www.scotlandscensus.gov.uk/documents/census2021/Sex\\_and\\_Gender\\_Identity\\_Topic\\_Report.pdf](https://www.scotlandscensus.gov.uk/documents/census2021/Sex_and_Gender_Identity_Topic_Report.pdf)