

CULTURE, TOURISM, EUROPE AND EXTERNAL AFFAIRS COMMITTEE

CENSUS (AMENDMENT) (SCOTLAND) BILL

SUBMISSION FROM WOMAN'S PLACE UK

Woman's Place UK welcomes the opportunity to submit evidence as part of the Stage 1 considerations of the Census (Amendment) (Scotland) Bill.

About Woman's Place UK

Woman's Place UK is a grassroots feminist organisation established in September 2017 by a group of women in the labour and trade union movement. We have five key demands:

1. Respectful and evidence-based discussion about the impact of the proposed changes to the Gender Recognition Act to be allowed to take place and for women's voices to be heard.
2. The principle of women-only spaces to be upheld – and, where necessary, extended.
3. A review of how the exemptions in the Equality Act (which allow for single sex services, or requirements that only a woman can apply for a job such as in a domestic violence refuge) are being applied in practice.
4. Government to consult with women's organisations on how self-declaration would impact on women-only services and spaces.
5. Government to consult on how self-declaration will impact upon data gathering – such as crime, employment, pay and health statistics – and monitoring of sex-based discrimination such as the gender pay gap.

Over the last 14 months, over 2,500 people have registered to attend 18 public meetings organised by Woman's Place UK in different towns and cities across the UK to discuss the potential impact of proposed reforms to the Gender Recognition Act on women.

Capturing data on 'sex' in the 2021 Census

As set out above, Woman's Place UK campaigns to retain sex-based protections for women and girls. In order to maintain sex-based protections, there must be a clear definition of 'sex'. Therefore, the way in which the question on sex is presented in the 2021 Census is vitally important.

We note from the National Records of Scotland's paper *Scotland's Census 2021 Sex and Gender Topic Identity Report*¹ that consideration is being given to the framing of the question on sex in the 2021 Census. Specifically, consideration is being given to the possibility of adding a third option, so that the questionnaire enables respondents to state their sex as 'male', 'female' or 'other'.

¹ https://www.scotlandscensus.gov.uk/documents/census2021/Sex_and_Gender_Identity_Topic_Report.pdf

Whilst we realise that a finalised proposal has yet to be presented by the Scottish Government, we wish to state for the record that we do not support the inclusion of a third option under the question on sex. Our reasons for this position are set out below:

1. The question is concerned specifically with 'sex'. Sexually dimorphic species exhibit phenotypic distinctions between one sex and another. An individual's biological sex is an immutable characteristic. The inclusion of a third option to the question on sex would indicate a departure from the scientifically-grounded theory of human sexual dimorphism and an alternative understanding that some human beings cannot be categorised as belonging biologically to one of the two sexes.

If the Scottish Government believes that human beings are not sexually dimorphic, then Ministers and the Chief Scientific and Medical Officers must provide evidence to support that claim.

2. The National Records of Scotland (NRS) state that "*There is respondent need for a non-binary sex question.*" It would appear that the shift to consider adding a third option to the sex question has been driven by the outcome of two rounds of cognitive testing. Both phases of testing involved very small numbers of people and the stakeholder groups with whom the questions were tested were drawn exclusively from the LGBT community (see section below).
3. As with all longitudinal data, the ability to compare data over time is vital. The question relating to sex has been constant since the Census was introduced. It is right that answering this question should remain compulsory and that it should be framed consistently over time. That is, individuals should continue to be asked if they are either male or female.
4. The rationale for gathering data via the Census is to enable efficient and effective planning of healthcare and other public services. Knowing how many male and female citizens there are in the community is of obvious importance. It is not clear what purpose will be served by adding a third option to the question on sex. Indeed, if significant numbers of individuals state their biological sex to be 'other', it will be difficult for public servants to plan and deliver services in ways that adequately meet the healthcare and other needs of either male or female citizens.
5. Census data provides the baseline for other official statistics, such as health, education and criminal justice statistics. The inclusion of a third option under the sex question will distort these baseline data, making it harder to link and compare other official data. All of these data underpin the ability of local and national governments to plan and deliver services.

We also wish to see the wording of the question on sex revert to the wording prior to the 2011 Census. Respondents should not be asked how they identify their sex. They should simply be asked whether they are 'male' or 'female'.

Other concerns

Conflation of 'sex' and 'gender'

We are concerned about the widespread conflation of the concepts of 'sex' and 'gender'. As feminists, we regard an individual's sex to be an immutable characteristic rooted in biology. We regard gender as a social construct or a set of cultural norms attached to each sex. We note that cognitive testing of sample questions on sex and gender revealed confusion amongst respondents:

*"Respondents had different understandings of the term sex when answering. Some respondents assumed sex referred to 'biological sex' or 'assigned sex at birth' whereas others saw the term to have the same meaning as gender, and could refer to the sex they 'self-identified' as."*²

The Scottish Government's own guidance³ on collecting equality information wrongly states that *"The Equality Act 2010 protects people from discrimination because of gender."* A recent Freedom of Information request⁴ revealed that LGBT campaign groups lobbied Scottish Government officials to blur this distinction in the run-up to the publication of the consultation document on reform of the Gender Recognition Act 2004.

We hope that one outcome of the UK Parliament Women and Equalities Committee's current inquiry into the enforcement of the Equality Act will be a move to a clearer articulation of the differences between these two concepts both in law and in practice.

Absence of women's voices

No women's groups were represented as part of the cognitive testing phases of the questions on sex and gender identity undertaken by NRS. Again, all of those who participated were recruited by LGBT groups.

Given that the Scottish Government failed to consult with women's groups prior to publication of the consultation document on reform of the Gender Recognition Act, we are concerned that women's voices are being overlooked once more. Any discussion about census questions which relate to sex and therefore relate to or impact upon women must include women's groups.

Concluding remarks

The Census question on 'sex' must continue to ask individuals to select either 'male' or 'female' as their response. The wording of the question should revert to the wording used up until the 2011 Census. This question must remain compulsory. Any ongoing discussions about census questions as they relate to or impact upon women must include women's groups and representatives.

² https://www.scotlandscensus.gov.uk/documents/census2021/Sex_and_Gender_Identity_Topic_Report.pdf

³ <https://www2.gov.scot/Resource/0039/00393543.pdf>

⁴ https://www.whatdotheyknow.com/request/review_of_gender_recognition_act