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**Scotland's Census 2021  
Human Rights  
Impact Assessment  
v1.0**

**January 2020**

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## 1. Executive Summary

Scotland's Census 2021 is the official count of every person and household in Scotland. It is a unique survey in that it affects the whole of Scotland's population and there is a legal requirement to participate. This Human Rights Impact Assessment (HRIA) presents evidence on the most significant potential impacts of the plans for Scotland's Census 2021 on the rights of individuals in Scotland.

Scotland is a diverse nation and stakeholders representing a range of interests have been fundamental to shaping Scotland's Census 2021. In preparing this assessment we have gathered evidence from a wide range of sources including those stakeholders as well as our own and others' experience of previous censuses. NRS held a series of stakeholder feedback sessions and conducted an online stakeholder survey to obtain feedback on the draft assessments. A report on the outcome of this period of consultation has been published on the [Scotland's Census website](#).

This document is one of 8 impact assessments prepared for Scotland's Census 2021. Others include:

- Equality Impact Assessment
- Children's Rights and Wellbeing Impact Assessment
- Data Protection Impact Assessment
- Island Communities Impact Assessment
- Fairer Scotland Duty Impact Assessment
- Strategic Environmental Assessment
- Business Regulatory Impact Assessment.

Assessment of the impacts of Scotland's Census 2021 is an ongoing process which will continue up to Census day on 21st March 2021 and beyond.

## 2. Background

### What is the census?

The census is the official count of every person and household in Scotland. It is held every ten years and provides the most complete statistical picture of the nation available. It also provides information that central and local government need to develop policies and to plan and run public services.

Scotland's census is taken by the [National Records of Scotland](#) (NRS) on behalf of the Registrar General for Scotland. The NRS is a non-ministerial department of the Scottish Administration, established on 1 April 2011, following the merger of the General Register Office for Scotland (GROS) and the National Archives of Scotland (NAS).

NRS's main purpose is to collect, preserve and produce information about Scotland's people and history and make it available to inform current and future generations. It holds records of the census of the population of Scotland from 1841 and every 10 years after that. The one exception was the wartime year of 1941 when no census was taken. Census records are closed for 100 years under the Freedom of Information (Scotland) Act 2002.

The plan for Census 2021 is that it will take place on Sunday 21 March, subject to Scottish Parliament approval, and will be conducted predominantly online. The last census was conducted mainly on paper (80%), and 20% online.

### The Census Act 1920

The Census Act 1920 ("the 1920 Act") provides for a census to be taken not less than five years after the previous census. The 1920 Act applies to England, Wales and Scotland. In Scotland it is the duty of the Registrar General to undertake the census, in accordance with the 1920 Act and any Order in Council or regulations made in terms of the 1920 Act, under the direction of Scottish Ministers. In England and Wales, the responsibility for the census rests with the UK Statistics Authority and it is conducted by the Office for National Statistics (ONS). In Northern Ireland it is conducted by the Northern Ireland Statistics and Research Agency (NISRA).

Section 1 of the 1920 Act provides the enabling power which underpins the taking of the census. It allows the making of an Order in Council ("the Census Order") which directs that the census be taken; the date on which it is to be taken; the persons by, and in respect of whom, returns are to be made; and the particulars which are to be stated in the returns. The form (or forms) used in the census are prescribed in regulations ("the Census Regulations") under section 3 of the 1920 Act. This is where the census questions, as they will be seen by individuals completing the forms, are legally set out. The questions must, of course, solicit the particulars set out in the Census Order. A similar process will be followed in England, Wales and Northern Ireland, reflecting the importance of harmonisation and of carrying out the Census on the same day across the UK.

If a person refuses to answer a census question, or gives a false answer, they are liable to a fine not exceeding £1,000. Currently, the only exceptions to this are the voluntary questions on religion and on sexual orientation and transgender status and history, which were added by the Census (Amendment) (Scotland) Act 2000 and Census (Amendment) (Scotland) Act 2019 respectively. Together, both Acts specifically exclude penalising non-response to these questions.

### Why have a census?

For over 200 years, Scotland has relied on the census to underpin local and national decision making. Around 200 countries worldwide now undertake a regular census under the [UN census programme](#). The census is the only survey to ask everyone in Scotland the same questions at the same time. It is unique in the provision of comprehensive population statistics. It is used by central and local government, health boards, the education sector, the private sector, and the voluntary sector to plan and distribute resources that match people's needs. The information collected must be "authoritative, accurate and comparable" for all parts of Scotland, and down to very small levels of geography. Only the census can consistently provide such information.

Basic information on population size, age, sex and location are crucial to work on pensions, migration, economic growth and labour supply. Other information gathered helps governments to:

- identify housing demand and create housing supply including information on household size and family make-up. which are crucial to policies on local housing demand and planning, and poor housing and overcrowding.
- identify areas of deprivation, enabling them to target services
- gather data on equality groups, enabling them to tackle discrimination
- gather information on housing,

Census information is also used for a range of social and economic indicators:

- population estimates
- employment and unemployment rates
- birth, death, mortality, and fertility rates
- equalities data, such as age, sex, ethnicity, religion/belief and disability.

Census data is also used by local public services to meet local needs in health, education, transport, planning, and community care services.

NRS calculated the cost to health board funding allocations if the census was not carried out in 2011. If census figures from 2001 had been used to make population estimates and allocate funding to health boards, in 2014/15 there would have been misallocations of between £30m and £40m. Some health boards would have received more, some less, than their appropriate share.<sup>1</sup>

Following the 2011 Census, NRS, in conjunction with the other UK Census offices, explored alternative ways to produce population statistics. NRS had an open mind in identifying potential options and examined and compared various approaches to counting the population, both here and overseas, engaged with a diverse group of users, commentators and public bodies, and

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<sup>1</sup>[Scotland's Census 2011 General Report](#)

undertook qualitative and quantitative research into attitudes to the census and population statistics. More information on the work which was done can be found in the [Beyond 2011](#) section of the NRS website.

Having considered all the [evidence](#), in March 2014, NRS recommended that a modernised 'traditional' census was the best way to meet users' needs. Specifically, NRS announced its intention to focus on planning for a census in 2021 which will be primarily online, while offering alternative modes of completion where necessary, and also aiming to make best use of technology and administrative data in its design, building on the online approach used successfully in the 2011 census.

The main objectives of Scotland's Census 2021 are to:

- to produce high-quality results;
- to generate outputs that meet the needs of our users;
- to maximise online response rates for the census;
- to produce timely outputs to maximise benefits;
- to protect, and be seen to protect, confidential information;
- to do so in a cost effective way; and
- to make recommendations for the approach to future censuses in Scotland.

The census is for, and about, everyone in Scotland. In conducting it, an objective is to gather as wide a dataset as possible. It is recognised that people in Scotland have a wide range of needs therefore our designs have to take account of these diverse needs, and these needs may be influenced by them having one or more of the protected characteristics as defined in the Equality Act 2010. NRS is therefore trying to make sure that firstly people are able to access the census in order to fulfil their legal obligation to participate and secondly to enable their access to the anonymised statistical outputs derived from the data collected from them, which in turn enable them to reap the benefits realised.

The census is the only survey to ask everyone in Scotland the same questions at the same time. It is unique in the provision of comprehensive population statistics. It is used by central and local government, health boards, the education sector, the private sector, and the voluntary sector to plan and distribute resources that match people's needs. The information collected must be "authoritative, accurate and comparable" for all parts of Scotland, and down to very small levels of geography. Only the census can consistently provide such information.

The numerous uses made of census data outlined above represent a key benefit and a positive impact of the census which is shared by all.

There are a number of barriers and challenges which can potentially limit or hinder participation in the census. These include lack of awareness, lack of understanding, privacy concerns, language, mistrust in/lack of engagement with officialdom, impairments such as physical or learning disabilities, and known limitations around the 'reachability' of communities and groups. Some relate specifically to digital participation, such as digital access or connectivity issues, lack of digital skills or confidence, data security concerns and mistrust of digital systems. In support of its objectives the programme is taking steps to address and overcome all of these challenges. Significantly, whilst the 2021 census will be predominantly online, paper questionnaires and materials will also be available. This represents a major mitigation against the risk of negative impact through digital exclusion.

### Data Collection

Respondents will be able to complete the census questionnaire online, or can request a paper questionnaire for return by post. Enumeration processes include the use of a robust address list to ensure everyone can have a fair chance of completing a census return. This is complemented by deployment of a large field force who will seek to ensure every household and communal establishment is able to participate in the census. The Census Coverage Survey, which follows up a sample of the main operation, assesses the extent of coverage across the whole population.

### Data Processing and Statistical Outputs

Statistical data processing, and the methodology underpinning it, will seek to ensure that all characteristics captured by the census are processed appropriately and consistently to best meet the identified user needs, and are considered throughout the data lifecycle. Statistical Disclosure Control policies and processes protect individuals, particularly those who hold certain protected characteristics, from being identifiable from census outputs.

### Publicity, Communications and Engagement

The census website will feature the online data collection instrument and a wide range of help and guidance. Specifically, this will include a general content portal, the online census questionnaire engine, and specific questions guidance.

Extensive user research has been conducted to support and inform the development of the online collection instrument, including the following strands of research: -

- Information Needs User Research
- Usability and Accessibility Testing Research
- Online User Testing Research

- Audience Discovery Research

This work has specifically targeted potential users from a wide range of backgrounds and capabilities, providing valuable insights into the needs and motivations of different groups and communities. These include people with skills limitations, low literacy, reading impairments, English language limitations, ethnic minorities and care home residents.

A free-to-use dedicated Contact Centre will be established and promoted to handle all census enquiries, fulfilment requests and complaints. It will be operated by fully-trained staff and will offer translation services, telephone data capture and other support functions.

Publicity, marketing and communications will seek to raise awareness and maximise motivation to participate amongst all groups and communities. Messaging will be tailored to a number of different audiences using a range of platforms, including social media and will seek to educate and reassure whilst highlighting the benefits of the census, and allaying concerns around security of data.

NRS will seek to maximise response amongst those groups who are considered to be at most risk of non-participation, by building relationships through direct engagement with their representative and support organisations, and local authorities. This engagement will seek to identify, explore and maximise our understanding of the motivational, attitudinal and circumstantial barriers of relevance to each group. Community engagement activities will seek to develop knowledge and intelligence at local levels to inform messaging and tactics, including local and regional prevalence of target populations and the communications channels and networks they use.

Work to establish working stakeholder relationships to support this approach is already well underway and will grow and intensify moving forward towards 2021.

#### Digital participation

The public sector in Scotland is committed to respond to the changing expectations of customers by realising the opportunities that technology provides and delivering an increasing proportion of services online. Part of the [Scottish Government's Digital Strategy](#) is to increase digital participation in order to enable social mobility and tackle persistent inequalities. The online delivery of public services will also provide services which are easier, quicker and more convenient for people to use, and at a lower cost than other methods allow. The UK Government's Digital Efficiency Report suggests that transactions online are 20 times cheaper than by phone, 30 times cheaper than by post and as much as 50 times cheaper than face-to-face.



In general terms Scotland can be considered a digital nation. The 2018 Scottish Household Survey (SHS) reports that home internet access has increased steadily over time, reaching an all-time high of 87 per cent of households in 2018<sup>2</sup>. Previously, other sources have shown that 40 per cent of people are reported to have a tablet computer (SCVO, 2015) and 63 per cent use a smartphone (Ofcom, 2015a).

While this information is a useful indicator of internet availability it is not necessarily indicative of potential response to a requirement to use the internet for a specific task such as completing a census form. A report published by the Carnegie UK Trust (Carnegie UK, 2014) highlights this fact noting that the barriers to getting online are multiple, varied and complex. They state that “being digitally connected is not the same as being digitally included”. The same point was also made in a report outlining research looking at links between digital and social disengagement (Helsper, 2008) which notes “simply providing access to these platforms is not enough – digital disengagement is a complex compound problem involving cultural, social and attitudinal factors and in some cases informed ‘digital choice’”.

It is important therefore to have a full understanding of all factors influencing internet use before any assessment of potential digital participation can be made.

Everybody has their own individual set of circumstances and their own reasons for not being online. There are 4 main kinds of challenge people face: access (accessibility, location, cost, technology, infrastructure, language); skills (literacy, digital, security, confidence); motivation (risks, necessity, financial benefits, social benefits, health and wellbeing benefits); trust (identity, security, standards, reputation). The first two, a lack of access or skills result in ‘Digital Exclusion’ while the latter two, lack of motivation or trust may be best grouped with those situations where individuals have access and make use of the internet but will choose not to complete an online census as ‘digital choice’.

Both exclusion and choice could have a significant impact on online response rates therefore it is important that a focus for Scotland’s Census 2021 is on promoting online participation and not just tackling digital exclusion.

We are also keenly aware of the demographics and infrastructural aspects of the digital connectivity landscape in Scotland. Households with higher income are more likely to have internet access. Households with lower incomes and households in Scotland’s most deprived areas were less likely to have home internet access than higher income households and those in less deprived areas, but the gap has narrowed in recent years. Internet access varies by household tenure. Ninety per cent of households who owned their home and

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<sup>2</sup> [Scottish Household Survey 2018: Annual Report](#)

91 per cent of those in private rented housing had home internet access compared to 75 per cent of those in social rented housing. The vast majority of households with internet access at home had a broadband connection in 2018 (99 per cent), and 46 per cent had access via a superfast broadband subscription, an increase from 30 per cent in 2017.<sup>3</sup>

The option of submitting census questionnaires online was introduced for the first time in 2011 to those living in households; those living in communal establishments were only able to complete on paper. Around 20 per cent of all returns were submitted online. The 2021 Census is being designed under the principle of '[Digital First](#)' with a target online completion ratio of 80%. Development of the online collection instrument has incorporated a programme of user research to understand accessibility issues and therefore to inform an online delivery that is accessible. The move to a primarily online census, including a change in enumeration strategy (e.g. post out of contact materials instead of enumerator hand delivery), will reduce the direct contact between householders and field staff. Public assistance channels and services together with publicity and marketing, will have a critical role in compensating for this and encouraging and enabling maximum response. Public assistance services will be designed to encourage and enable those who can use digital self-service to do so, whilst helping those who cannot use self-service. NRS will also provide a range of non-digital access channels but will encourage the public to use our digital channels. NRS will support this channel shift by ensuring quality, ease and efficiency of our digital services and by providing assisted digital support. Online services will be promoted through a number of different routes, such as community engagement activity, publicity initiatives, websites, contact materials and information leaflets. To reflect the steep rise in the use of social media in recent years, there will be a much greater emphasis on the use of social media as part of the programme's marketing and publicity activity, to satisfy increased customer demand and expectation. We are monitoring broadband roll-out initiatives overseen by the Scottish Government and Highlands and Islands Enterprise which have set ambitious targets for broadband coverage across Scotland. We will continue to track progress against such initiatives to develop and maintain knowledge of those localities where digital access presents the biggest challenge, so we can best channel our support and assistance efforts.

### Field Operations and Recruitment

The field force which supported Scotland's Census 2011 was in the region of around 7,500 staff who were responsible for hand-delivery of paper census questionnaires to the vast majority of Scotland's households. In 2021 initial contact with households will be by letter and field force responsibilities will focus on following up non-response. Field force is expected to be around half the size of that in 2011.

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<sup>3</sup> [Scottish Household Survey 2018: Annual Report](#)

Recruitment and employment practices will be strictly in accordance with relevant employment legislation.

### Census Rehearsal

As part of our preparations for Scotland's Census 2021, NRS undertook a public rehearsal in parts of Scotland.

NRS is aiming to make the 2021 Census more digital and accessible, available for completion online, as well as on paper. The rehearsal helped us to test our systems and processes as we get ready for the Census.

The rehearsal took place during October and November 2019. People living in households in parts of Glasgow City, and in Dumfries and Galloway, and Na h-Eileanan Siar were asked to help by taking part, and received a letter in early October with more information about the rehearsal and how to participate.

Unlike the Census itself, participation in the rehearsal is not a legal requirement. Householders in these areas were asked to take part on a purely voluntary basis to help ensure things go smoothly for the main Census in 2021.

Communal establishment enumeration operations were not included in the rehearsal activities.

### **3. Assessment process**

This assessment will consider how the Scotland's Census 2021 may impact on those rights enshrined in the Human Rights Act 1998 and treaties such as the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights.

The assessment reflects the position following the census rehearsal in October 2019 and will be updated and refreshed to take account of feedback from stakeholders as well as the experience and learnings gained from previous censuses.

Going forward the learnings from the census rehearsal will be identified and used to refine our plans for the live census in 2021. The assessment will be revised and updated to take account of any perceived changes to our anticipation of human rights impacts in advance of and beyond the live census.

The most significant changes for the 2021 Census are: -

- The move to a predominantly online Census
- Proposed new voluntary questions on sexual orientation and trans status/history

The Human Rights Impact Assessment (HRIA) for Scotland's Census 2021 sits amongst a suite of other assessments which seek to consider, anticipate and assess the full impact of Scotland's Census on people and things. There are some commonalities across these different assessments and some have strong relevance to others. In particular there is some common ground between this assessment and the Equality Impact Assessment, the Children's Rights and Wellbeing Impact Assessment and the Data Protection Impact Assessment.

NRS undertook a period of consultation throughout September 2019 for each of the Impact Assessments accompanying the Census Order. Impact Assessments have been updated to reflect feedback where appropriate. A report on the outcome of this period of consultation has been published on the [Scotland's Census website](#).

#### 4. 'PANEL' Approach

This section seeks to demonstrate how Scotland's Census supports 'PANEL' principles (Participation, accountability, non-discrimination and equality, empowerment, legality), considered to be of fundamental importance in applying a human rights based approach to policy-making and delivery in practice.

**Participation** - *Everyone has the right to participate in decisions which affect their human rights. Participation must be active, free, meaningful and give attention to issues of accessibility, including access to information in a form and a language which can be understood.*

Every household and communal establishment in Scotland is legally obliged to participate in the census. It is therefore incumbent on NRS Scotland's 2021 Census to ensure that all have the opportunity to do so. Consultation and engagement processes are inclusive and census questionnaires, systems, guidance and materials will use plain language, be accessible and available in a range of community languages (e.g. Scottish Gaelic, Polish, Romanian, Urdu, Hindi, Arabic, Mandarin, Kurdish) where possible. The impact assessment involves stakeholder feedback mechanisms and the views and opinions of stakeholders will influence design and operational considerations where necessary. More detail on the engagement and testing processes employed to take full account of stakeholder input can be found in the following section.

It is essential to ensure that everyone is supported to participate in the Census. Extensive stakeholder engagement has indicated those with certain disabilities or impairments may have specific needs. Those with certain

disabilities and impairments may have difficulty completing a census questionnaire. They may also have challenges in accessing or understanding contact materials and guidance.

Some individuals with certain impairments may be more likely to have poorer digital skills and/or confidence.

Public assistance services will offer a wide range of support products including British Sign Language (BSL) translation, Braille questionnaire guidance and large print. These can be requested by calling our Contact Centre, web chat, eForm and Textphone. Live interpretation for BSL users will also be available. Design of contact materials will give consideration to impairments to ensure that it can be read and understood.

BSL translations of the questions will be available online, on DVD or on a USB stick. They can be used to help fill in the questionnaire online. BSL clips for each question will be accessible online on YouTube. A free video relay service will be available to request any of these products or simply to ask us a question.

When enumerating some types of communal establishments, NRS will make prior contact with the manager of the establishment to identify the specific needs of any residents in advance to ensure that the correct support is in place.

Extensive engagement with stakeholder organisations who represent disabled people has been and will continue to be undertaken to better understand their needs and circumstances and the barriers to participation they may experience. Learnings will influence field force and contact centre staff training and the design of help and guidance.

We aim to make our website as accessible and usable as possible for all abilities and disabilities, including older audiences and those with visual, hearing, cognitive or motor impairments. This includes the use of various assistive technologies by allowing navigation using a keyboard only, by using easier-to-read colours, larger fonts and plain English.

The overall objective for content, such as question help, web and printed content, website navigation and user help and assistance is to support the user journey and user experience of Scotland's Census 2021 to be as seamless, efficient and quick as possible. It will align with the [Scottish Government's Digital First Service Standards](#). All such written content will have the target reading level of an average nine-year-old's reading ability. This will allow for a wider range of literacy to make use of the service. We will strive to ensure that the tone of our content is accessible, authoritative, friendly and helpful.

**Accountability** - *Accountability requires effective monitoring of human rights standards as well as effective remedies for human rights breaches. For accountability to be effective there must be appropriate laws, policies, institutions, administrative procedures and mechanisms of redress in order to secure human rights.*

The full range of impact assessments for Scotland's 2021 Census have sought to assess and demonstrate compliance with a range of legislative and policy requirements. The nature of these assessments requires continuous monitoring of anticipated impacts as planning and delivery develop. The programme to deliver Scotland's Census has a lengthy lifecycle which extends over a number of years and different phases, and future iterations will reflect the nature of this progressive process. There is little evidence which provides a clear link from proposals for the 2011 Census to compatibility with EHCR and other international rights. Possible measures can be taken from perceived overall public confidence in the Census which has traditionally resulted in high levels of participation and low levels of non-response. The legal obligations in play may be a significant factor in this. NRS will thoroughly evaluate its experience during the census rehearsal and will take full account of audience research and stakeholder feedback in defining plans for the live event in 2021.

**Non-discrimination and equality** - *A human rights based approach means that all forms of discrimination in the realisation of rights must be prohibited, prevented and eliminated. It also requires the prioritisation of those in the most marginalised situations who face the biggest barriers to realising their rights.*

The Equality Impact Assessment seeks to identify and mitigate any negative impacts in support of the NRS's Public Sector Equality Duty to eliminate discrimination and advance equality of opportunity. The equality of opportunity for all to fulfil their legal obligation to participate in the Census, by having the opportunity to complete a questionnaire, is vital in meeting compliance with human rights requirements. Extensive user research has been undertaken to identify and address any accessibility issues and barriers to completion experienced by different groups, particularly in the context of a predominantly online census. Groups such as disabled people and those for whom English is not a first language perhaps need the greatest support in terms of adjustments to accommodate their participation and NRS has been working to provide appropriate support. In addition, the impact of all questions on people must be considered as must the effect of limiting some questions by age. (for example, it is proposed that the question on sexual orientation is only asked of those 16 and over and therefore statistical output will not be produced for under 16s and will limit the development of policy and provision of services for LGB young people).

**Empowerment** - *A human rights based approach means that individuals and communities should know their rights. It also means that they should be fully*

*supported to participate in the development of policy and practices which affect their lives, and to claim rights where necessary.*

A purpose of this, and other impact assessments, is to raise the awareness of census respondents and other audiences to the existence of their rights, whilst highlighting how the NRS will support them. In addition, the NRS privacy notices and guidance to support the questions asked in the census are clear on how Scotland's 2021 Census impacts on certain rights, such as Article 8 of HRA – “the right to private and family life”. . This assessment process will feature a firm focus on stakeholder feedback.

**Legality of rights** - *A human rights based approach requires the recognition of rights as legally enforceable entitlements and is linked in to national and international human rights law.*

As a major data collection exercise the census must demonstrate its compliance with legislation which upholds certain rights such as the General Data Protection Regulation, Data Protection Act 2018 and Human Rights Act 1998. All questions asked by the census must be in accordance with civil liberties and human rights legislation and principles.

Analysis of how the proposals for Scotland's Census 2021 may affect certain rights is drawn out in the remainder of this assessment.

## **5. Analysis of Rights and Anticipated Impacts**

There are a number of rights on which the census has little or no direct impact. However, many are indirectly supported by the principal output and benefit of the census, which is the production of a rich source of high-quality demographic statistics which describe the number, characteristics and condition of Scotland's population.

As noted above, there are numerous uses made of census data across many sectors, not least the allocation of funding and resources to national and local services, equalities and diversity monitoring and environmental development. The third sector, commerce and academia are also major users of census data.

The census can therefore be considered as having a general significant positive impact on those rights which pertain to education, health, minority rights and equalities.

Those rights which are more directly impacted are considered below.

**Article 8 of the ECHR** states:

*Right to respect for private and family life:*

*1. Everyone has the right to respect for his private and family life, his home and his correspondence.*

*2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.*

The matter of privacy is relevant across the whole range of census questions, given the range of data collected. In particular, questions such as country of birth, date of entry, passport held, language, religion and ethnic group may not give rise to concerns individually but collectively, and in conjunction with other data held by government, they could be perceived as intrusive by some respondents. The same issue could be true of proposed new questions on sexual orientation and trans status/history.

Section 2 of the 1920 Act states that “It shall be the duty of...the Registrar General for Scotland in relation to Scotland to make such arrangements and do all such things as are necessary for the taking of a census.”

The provisions of Article 8 as incorporated in the Human Rights Act 1998 allow public authorities to enquire into a person’s private life where they have a legal authority to do so and where such an enquiry is necessary in a democratic society for one of the aims stated in the Article.

The requirement to comply with the census is therefore entirely in accordance with the Human Rights Act in that the lawful authority is given by the 1920 Act and that it is necessary for the economic well-being of the country and for the purposes of the protection of health and the rights and freedoms of others.

Unauthorised disclosure of census data, which is an offence under the Census Act 1920, is a known risk which, if realised, would constitute a breach of Article 8.

A Data Protection Impact Assessment has been undertaken which seeks to identify and explore risks to privacy and information security.

#### Proposed new voluntary questions

Scotland's 2021 Census proposes to ask two new voluntary questions, around sexual orientation and trans status/history which could potentially be considered sensitive and intrusive, placing further focus on any perceived interference with Article 8. The Census (Amendment) (Scotland) Act 2019 enables these new proposed questions on sexual orientation and trans



status/history to be asked on the same voluntary basis as the religion question.

The 2019 Act itself does not require that questions on sexual orientation, trans status/history be included in the census.. The 2019 Act, in the case of any question in respect of sexual orientation, ensures that there is no penalty applicable for refusing or neglecting to answer the question. In the case of a question, in terms of trans status/history being specified, the 2019 Act will similarly ensure that no such penalty applies. The 2019 Act therefore allows questions on these matters to be asked in a way which should not adversely impact upon the right to a private and family life under Article 8.

### Trans status/history

The Census has never previously asked questions around trans status/history. The 2015 Topic Consultation highlighted a need for information on 'gender identity'. Further consultation and testing refined this data need to being about the size and geography of the trans population – both those who currently identify as trans as well as those who might have a trans history. Given the lack of alternative data sources, and the small populations, this makes Census the only statistical collection likely to gather robust data on the trans population. A key reason for requiring census data on trans status is to be able to fulfil the public sector equality duty.

Following stakeholder engagement to fully understand data needs, NRS tested a trans status or history question, alongside the sex question to replicate responses as they would be perceived in the census itself. Testing found the trans status question was acceptable to members of the trans community and to the general population, and produced good quality data.

Respondents were able to answer the question on trans status with ease on behalf of themselves - around 94 per cent of respondents provided a valid response to the question on trans status. Respondents indicated they were comfortable answering on behalf of another member of their household if they had their permission to do this. Stakeholders had a range of views on potential age limits for asking the trans status or history question. Whilst some stakeholders suggested age limits of 16 or below 16 years (such as 12 or 13 years), others suggested it should be asked of all regardless of age.<sup>4</sup> Respondents in cognitive testing indicated the question should be asked of all regardless of age. Public acceptability testing for the gender identity topic was carried out in January – March 2017, for the three UK census offices. In Scotland, 5,000 households were invited to take part. Public acceptability testing is designed to explore the views of the public on the acceptability of including sensitive questions in the census, thereby identifying particular

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<sup>4</sup>[https://www.scotlandscensus.gov.uk/documents/census2021/Sex\\_and\\_Gender\\_Identity\\_Topical\\_Report.pdf](https://www.scotlandscensus.gov.uk/documents/census2021/Sex_and_Gender_Identity_Topical_Report.pdf)

sensitivities and potential barriers to public confidence and exploring mechanisms for overcoming concerns. This showed, in the context of providing an answer on behalf of another household member aged 15 or under, the proportion who found the question acceptable decreased from 74 per cent to 58 per cent, and the proportion who found the question unacceptable was 16 per cent (compared with 9 per cent for those aged 16 or over). The proportion who were undecided increased from 16 per cent to 26 per cent. The acceptability testing also highlighted the proportion of the public who reported they could not answer accurately for any members of their household increased from 4 per cent when asked of those aged 16 and over, to 9 per cent when asked of those aged 15 and under. The results of public acceptability testing showed that while the general public found the inclusion of a question was acceptable, acceptability decreased if asked of those aged under 16 years. Therefore, whilst some need for data on trans status of under 16 year olds was identified, asking a gender identity question of those aged 15 and under was less acceptable.

Some concerns have been expressed during the question development process about confidentiality in relation to sensitive questions, particularly for young people who may feel unable to answer the question if they still live at home with their families. Missing this group would be an issue as young trans people have specific service needs. To provide complete privacy and confidentiality and freedom of expression for any person responding to Census 2021, the facility to request and receive an individual questionnaire is available for anyone aged 16 years and above, who is capable of completing. Any such individual will therefore be able to complete an individual form without other members of the household being aware.

Given the sensitive nature of this question, it is recognised that this is a sensitive question and no-one should be compelled to answer it. The Census (Amendment)(Scotland) Act 2019, allows a trans status/history question to be asked in the Census on a voluntary basis so long as they are specifically prescribed for that purpose in a Census Order. (The draft Census (Scotland) Order includes provision prescribing the trans status/history particular for that purpose.)

### Sexual orientation

The Census has not previously asked about sexual orientation but it is proposed that a question be included in 2021 .

Scotland's equality evidence strategy 2017-2021 states that data on sexual orientation had improved in recent years. However, gaps persist, and official sources are likely to undercount the proportion of the population who are lesbian, gay or bisexual.

Considerable user demand has been identified from the 2015 Topic Consultation for the collection of information on sexual orientation in the 2021 Census. The main requirement identified is in relation to the monitoring and reporting duties for public bodies, and service planning and provision. The information is also required to inform equality impact assessments, which in turn inform policies and practices. The Equalities and Human Rights Commission require this information to use in a statutory review of equality and human rights, which is carried out every five years.

Research and development carried out across UK census offices found a sexual orientation question (asked of those over 16 years) was generally acceptable to the public and the majority of respondents would provide a valid response. However, acceptability decreased with age: while only 4 per cent of those aged 25-34 years and 11 per cent of 35-44 years indicated the inclusion of a sexual orientation question in census was unacceptable, 27 per cent of those aged 65-74 and 30 per cent of those aged 75 or over indicated that a question of this nature was unacceptable.<sup>5</sup>

Overall, 14 per cent of the public said they would not answer a sexual orientation question if it was included in the 2021 Census. The majority of these (13 per cent) said they would skip the question and continue completing the rest of the form. Only a very small proportion of participants said that they would request an individual form (less than 1 per cent) or stop completing the census altogether.

Clarification on why information regarding sexual orientation is required and additional reassurances of information security should go some way to addressing reluctance to answer the question.

In the context of completing the census on behalf of another household member, the proportion who found the question not acceptable increased to 20 per cent. Similarly, just over one in five people (21 per cent) indicated that they were not comfortable with providing this information on behalf of others.

Testing of the questions showed almost all participants provided a valid response to the question on sexual orientation. Of those who did not provide a response to the sexual orientation question, the majority were aged 65 or over (59 per cent). Less than 1 per cent of participants provided an invalid response to the question. The question was voluntary and, as such, 9 per cent of participants chose not to provide an answer.

On this basis, it is proposed that a sexual orientation question be asked in the 2021 Census on a **voluntary** basis and the Census (Amendment) (Scotland)

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<sup>5</sup>[https://www.scotlandscensus.gov.uk/documents/census2021/Sex\\_and\\_Gender\\_Identity\\_Topical\\_Report.pdf](https://www.scotlandscensus.gov.uk/documents/census2021/Sex_and_Gender_Identity_Topical_Report.pdf)

Act 2019, now allows this. The current proposal is that this question would only be asked of those aged 16 years and older.

As with trans status/history, some concerns have been expressed during the question development process about confidentiality in relation to sensitive questions, particularly for young people who may feel unable to answer the question if they still live at home with their families. Missing this group would be an issue as young people have specific service needs. To provide complete privacy and confidentiality for any person responding to the 2021 Census, the facility to request and receive an individual questionnaire for completion in confidence will be available to all people over the age of 16 who are capable of completing a return. Any such individual will be able to complete an individual form without other members of the household being aware.

**Article 9 of the ECHR** states:

*Freedom of thought, conscience and religion:*

*1. Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief and freedom, either alone or in community with others and in public or private, to manifest his religion or belief, in worship, teaching, practice and observance.*

*2. Freedom to manifest one's religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others.*

The right to religious freedom and privacy is also protected and preserved under Article 18 of the International Covenant on Civil and Political Rights.

The Census Act 1920 requires responses to all census questions to be mandatory, with the exception of those in respect of religion, sexual orientation and specified particulars regarding trans status/history. The census religion question is voluntary because it can be a sensitive and personal issue.

The question on religion was introduced in the 2001 census, and its inclusion was allowed on the basis that answering it was voluntary. Consultation with users has shown that public bodies use the census information on religion to assist with monitoring discrimination, linked to the introduction of the public sector equality duty. The data has also been used to inform service provision for health, social care and education.

NRS proposes that the religion question is again asked on a voluntary basis for 2021. This reduces the impact of any lawful interference with the right to

respect for private and family life under Article 8 of EHCR, and positively supports article 9 on the right to freedom of thought, conscience and religion, as well as article 18 of the ICCPR.

National Records of Scotland considered a limited number of requests for the response options to be reviewed and/or additional information to be collected through the ethnic group and religion questions. The following changes for the ethnic group question are proposed:

- inclusion of a tick box for “Roma”
- a tick box for “Showman / Showwoman”
- a design change to the “African” category to improve data quality
- a design change to the “Caribbean or Black” category to improve data quality

NRS will continue to work with data users to consider how ethnic group outputs can be created to best meet user need.

The following changes for the religion question will be recommended to the Scottish Parliament:

- a tick box for “Pagan”
- a prompt to write in for Muslim to provide more data to meet identified user need.

**Article 14 of EHCR** states:

*Prohibition of discrimination*

*The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.*

There is no differential impact on the enjoyment of another convention right on the basis of Article 14 ground.

The Scotland's Census 2021 Equality Impact Assessment discusses in detail how NRS is discharging its Public Sector Equality Duty under the Equality Act 2010 to eliminate discrimination, advance equality of opportunity and foster good relations in relation to protected equality characteristics including sex, race, disability and religion. The duty in turn supports the UN Convention on the Elimination of All Forms of Racial Discrimination, ratified by the UK in 1969, and the UN Convention on the Elimination of all forms of Discrimination Against Women, ratified by the UK in 1986. Its focus on people with disabilities helps to demonstrate how Scotland's 2021 Census programme aligns to the UN Convention on the Rights of Persons with Disabilities, which was ratified by the UK in 2009.

The rights of children in the context of Scotland's Census are specifically examined in the Children's Rights and Wellbeing Impact Assessment.

**Article 27 of ICCPR** states:

*In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language.*

A wide range of community languages will be supported by Scotland's Census 2021 services. Support will centre around translated questionnaire guidance, language support sheets, household and communal establishment information leaflets and live translations available through our Contact Centre. Field force staff will also carry language ID cards to help them establish which language the householder speaks if their first language is not English. This will be translated into the top 24 community languages signposting where respondents can get assistance. The Contact Centre will have a live interpretation service covering over 200 languages. Translated questionnaire guidance will be available in the top 15 community languages, providing approximately 90% coverage.

Both British Sign Language and Scottish Gaelic will be supported by the provision of an online translated questionnaire and associated content.

It should be noted, however, that, in common with previous censuses, Scotland's 2021 Census can only be completed in English and Gaelic.

## **6. Conclusion**

The census is the official count of every person and household in Scotland. It is held every ten years and provides the most complete statistical picture of the nation available. It also provides information that central and local government need to develop policies and to plan and run public services. Statistical data processing, and the methodology underpinning it, will seek to ensure that all characteristics captured by the census are processed appropriately and consistently to best meet the identified user needs, and are considered throughout the data lifecycle.

It is also important to note that all of the published statistical outputs will be anonymised. This is achieved using Statistical Disclosure Control which is a process that manipulates record-level data to ensure that no individual can be identified from census outputs with any degree of confidence.

Scotland's Census 2021 is anticipated to indirectly support many human and civil rights through the principal output and benefit of the census, which is the production of a rich source of high-quality statistical population estimates

which describe the number, characteristics and condition of Scotland's population.

Any interference with Articles 8 and 9 of the Human Rights Act 1998 is lawful because there is legal authority under the Census Act 1920 and is a proportionate means of pursuing one or more of the aims stated in the Article.

This is also balanced by the positive impact on Article 14.

The over-arching view is that Scotland's Census 2021 is compatible with the European Convention on Human Rights and other international rights laws and frameworks.

NRS will continuously monitor the human right impacts and update this assessment on a regular basis throughout the Census 2021 process to take account of any perceived changes in advance of and beyond the live census.