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21st May 2019

Dear Liz

I write further to your contribution and comments during the Second Reading of the Census (Return Particulars and Removal of Penalties) Bill on 13 May 2019. You raised a number of points regarding the development of the proposed gender identity question and its guidance, on which I committed to write with further detail. In particular, these points related to the consultation on the gender identity question, the guidance for completion of the binary sex question, and the interrelation with the Gender Recognition Act. I shall take these points in turn

Public consultation and stakeholder engagement carried out by ONS

Firstly, you asked whether there has been any consultation on the gender identity question and expressed the hope that there would be extensive consultation with people to whom the question matters the most. I can confirm that the Office for National Statistics (ONS) has engaged widely on the sex and gender identity questions for the next census, actively including those wishing to answer proposed new questions on sexual orientation and gender identity. I set out below the background and extensive engagement, consultation and testing to which it has been subject.

In 2015, the ONS held a public consultation asking census users for their views on the topics that the 2021 Census questionnaire in England and Wales might cover[1].

This public consultation showed a clear need for data on both sexual orientation and gender identity at a national and local level. It also showed a clear demand to retain a binary sex question, in order to ensure continuity of this important data series. ONS has published a series of reports on the findings of the public consultation, including specific reports on sexual orientation[2] and gender identity[3], which indicate the need and interest in

[1] 2021 Census Topic Consultation:
[https://www.ons.gov.uk/census/censustransformationprogramme/consultations/the2021censusinitialviewoncontentforenglandandwales]

[2] https://www.ons.gov.uk/file?uri=/census/censustransformationprogramme/consultations/the2021censusinitialviewoncontentforenglandandwales/topicreport02sexualidentitypostreleaseversion.pdf

[3] https://www.ons.gov.uk/file?uri=/census/censustransformationprogramme/consultations/the2021censusinitialview

the questions being asked.

ONS's active engagement with key groups interested in the new questions has included dedicated LGBT events and involved key organisations including Stonewall, NON-GENDERED, the LGBT Foundation and the Gender Identity Research and Education Society (GIRES)

This public consultation was followed by a programme of research and engagement by ONS with stakeholder groups, and with the wider public, to test different question design options.[4] As gender identity is not a question currently asked in any existing ONS surveys, this research and engagement programme has been particularly important in order to arrive at a question which is worded in a way that is easy to understand, will achieve the best quality data for the purposes for which it is needed, and which is acceptable to all those who will answer it.

More detail on the engagement and research which ONS has carried out is publicly available on the ONS website. Their engagement has included workshops, focus groups, surveys, cognitive interviews, roadshows 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[5], 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 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 IntersexUK. None objected to the ONS approach and none suggested an alternative.

Most recently, in December 2018, ONS published a topic report updating on the research and testing that had occurred with respect to the questions.[6] This set out in detail the extensive consultation, research and testing underpinning the proposals and the proposed question for sexual orientation. It also set out the two options that ONS would subject to further testing with respect to gender identity. As a result of this testing, ONS has recommended the questions attached to this letter.

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oncontentforenglandandwales/topicreport03genderidentity.pdf

[4]See https://www.ons.gov.uk/census/censustransformationprogramme/questiondevelopment/sexualorientation and https://www.ons.gov.uk/census/censustransformationprogramme/questiondevelopment/genderidentity

[5]https://www.ons.gov.uk/methodology/classificationsandstandards/measuringequality/genderidentity

[6]https://www.ons.gov.uk/census/censustransformationprogramme/questiondevelopment/2021censustopicresearchupdatedecember2018

Census guidance

Secondly, 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. ONS will be happy to share this with you at the time and meet again to discuss. I summarise below what that draft currently says in respect of the sex question.

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 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 licenses.

Notably, for the 2011 Census, the non-response rate to the sex question was extremely low (0.4 per cent). This was the lowest non-response rate of any Census question.

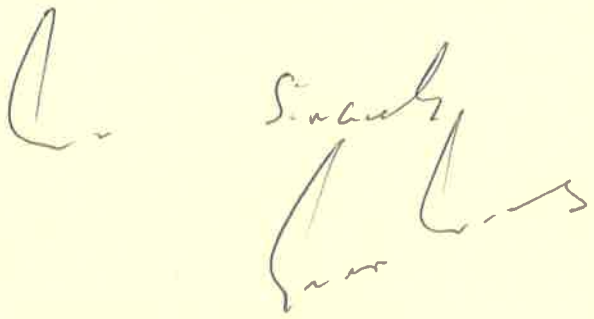
Interrelation with the Gender Recognition Act

Thirdly, you asked about the relationship between this Bill and the Gender Recognition Act 2004. That Act sets out the process by which a person can change their legal gender through obtaining a gender recognition certificate. 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.

Government ran a public consultation last year on how the existing process under the Gender Recognition Act might be reformed to make the process less bureaucratic and intrusive for the people that use it. The consultation covered a wide range of issues associated with legal gender recognition. As the proposed ONS guidance will simply ask people to say 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.

ONS will publish the questions and guidance in advance of the Census Order and Regulations being laid before Parliament.

I have copied this letter to All Peers who spoke in the debate and will place a copy in the Libraries of both Houses.



LORD YOUNG OF COOKHAM CH

ONS proposed design for binary sex question

3 What is your sex?

➲ A question about gender will follow if you are aged 16 or over

- ☐ Female
- ☐ Male

ONS proposed design for gender identity question

27 Is your gender the same as the sex you were registered at birth?

➲ This question is voluntary

- ☐ Yes
- ☐ No, write in gender

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