

CENSUS (RETURN PARTICULARS AND REMOVAL OF PENALTIES) ACT 2019

EXPLANATORY NOTES

What these notes do

These Explanatory Notes relate to the Census (Return Particulars and Removal of Penalties) Act 2019 which received Royal Assent on 8 October 2019 (c. 28).

- These Explanatory Notes have been prepared by the Cabinet Office in order to assist the reader in understanding the Act. They do not form part of the Act and have not been endorsed by Parliament.
- These Explanatory Notes explain what each part of the Act will mean in practice; provide background information on the development of policy; and provide additional information on how the Act will affect existing legislation in this area.
- These Explanatory Notes might best be read alongside the Act. They are not, and are not intended to be, a comprehensive description of the Act.

Table of Contents

Subject	Page of these Notes
Overview of the Act	3
Policy background	3
The Census in England and Wales	4
The Census in Northern Ireland	4
The Census in Scotland	5
Legal background	5
Territorial extent and application	7
Commentary on provisions of Act	8
Section 1: Amendment of the Census Act 1920	8
Section 2: Amendment of the Census Act (Northern Ireland) 1969	8
Section 3: Extent, commencement and short title	8
Commencement	9
Annex A - Territorial extent and application in the United Kingdom	10
Annex B - Hansard References	11

Overview of the Act

- 1 The Census (Return Particulars and Removal of Penalties) Act 2019 provides for voluntary questions on sexual orientation and gender identity to be asked in the England and Wales and Northern Ireland censuses. It does this by removing the criminal penalty for not responding to questions on these matters. It also clarifies the existing law that such questions may be asked. In the case of England and Wales only, this will lead to any such questions being subject to the draft negative Parliamentary procedure in future Census Orders.

Policy background

- 2 The twenty-second national census is planned to take place in March 2021 across the United Kingdom, subject to Parliamentary approval. The census is a devolved matter. The three census offices of the United Kingdom (Scotland, Northern Ireland, and England and Wales) work closely to ensure the three censuses together provide comparable statistics on the UK population.
- 3 The information the census provides on the population, including their characteristics, education, religion, ethnicity, working life, housing and health, gives decision-makers in national and local government, community groups, charities and businesses the opportunity to better serve communities and individuals in the United Kingdom. Information derived from the census helps to inform policy, plan services, and distribute resources effectively to local and health authorities and enable these resources to be directed to where they are needed.
- 4 Completion of the census is mandatory across the United Kingdom. With the exception of questions on religion or (in Northern Ireland) religious profession, refusal to answer census questions is a criminal offence and subject to a penalty.
- 5 This Act makes amendments to the Census Act 1920 and Census Act (Northern Ireland) 1969 to remove the criminal penalty for refusing or neglecting to respond to any census questions on sexual orientation and gender identity in the England and Wales and Northern Ireland censuses. This will ensure that if these questions are asked in future censuses (by inclusion in future Census Orders, which will be subject to separate Parliamentary scrutiny) they are voluntary. In particular, anyone who does not wish to provide information on their sexual orientation and gender identity in future censuses in England and Wales and/or Northern Ireland would not thereby be committing a criminal offence by refusing or neglecting to answer these questions.
- 6 In the interests of clarity, accessibility and legal certainty, the Act also adds both matters to the Schedules of the 1920 and 1969 Acts as specific matters on which census questions may be asked. In England and Wales only, matters individually listed in the Schedule are subject to a different Parliamentary procedure to those which are not listed individually. Those not listed fall under the general category in paragraph 6 of the Schedule. This amendment will change the applicable procedure, such that the approval of any questions relating to sexual orientation and gender identity in future Census Orders will be subject only to the draft negative procedure. The secondary legislation, needed to enable a census to take place, will set out the full proposed content of the 2021 Census.

The Census in England and Wales

- 7 The UK Statistics Authority has statutory responsibility for carrying out the census in England and Wales. The Government published a White Paper, *Help Shape our Future: The 2021 Census of Population and Housing in England and Wales*¹ in December 2018 ('the White Paper'), setting out the UK Statistics Authority's detailed proposals for the census in England and Wales.
- 8 The UK Statistics Authority's proposals for the 2021 Census follow a programme of public consultation, stakeholder engagement, and research and testing. As a result of this consultation and testing, the UK Statistics Authority recommends new questions on sexual orientation and gender identity are asked in the 2021 Census for England and Wales to meet the need for better quality information for equality monitoring and public service provision. Further detail on the consultation and testing that informed the proposal to include new questions on sexual orientation and gender identity in the next England and Wales census can be found in the White Paper in paragraphs 3.34 – 3.54.
- 9 Due to the sensitive nature of these questions, both the UK Statistics Authority and Government believe they should be voluntary, ensuring that no-one is required to answer these questions if they do not wish to. The White Paper therefore stated that the Government and UK Statistics Authority would consider how to ensure this was the case (paragraphs 3.45 and 3.54). This Act achieves this by amending the principal census legislation for England and Wales to remove the criminal penalty for not responding to census questions on sexual orientation and gender identity.
- 10 A binary, mandatory 'sex' question will continue to be included in the England and Wales census (What is your sex? Female/Male). A primary focus of the UK Statistics Authority's testing of the inclusion of a gender identity question has been to ensure there is no risk to the quality of data collected about a person's sex (male or female) in order to meet user needs for this data and to preserve data continuity. Further detail can be found in paragraphs 3.34 – 3.45 of the White Paper.

The Census in Northern Ireland

- 11 The Registrar General for Northern Ireland has statutory responsibility for carrying out the census in Northern Ireland. The Northern Ireland Statistics and Research Agency published its proposals for the Northern Ireland census in April 2019 ('the Northern Ireland Proposals').² This followed a programme of public consultation, stakeholder engagement and testing, the details of which can be found in section 2 of the Northern Ireland Proposals.
- 12 The Northern Ireland Statistics and Research Agency propose to ask a question on sexual orientation in the 2021 Census to inform policy development and enable organisations to meet and monitor their statutory equality obligations stemming from section 75 of the Northern Ireland Act 1998 and other relevant legislation. Section 3.6.2 of the Northern Ireland Proposals sets out the consideration process informing this proposal in more detail.
- 13 Without an amendment to the census primary legislation for Northern Ireland, a question on sexual orientation would remain subject to a criminal penalty for non-response. To ensure people in Northern Ireland are afforded the same level of protection as people in England and Wales the provisions of the Act extend to Northern Ireland. The amendments to the primary

¹ Cm 9745, available at: <https://www.gov.uk/government/publications/the-2021-census-of-population-and-housing-in-england-and-wales>

² 2021 Census Northern Ireland Proposals Document (April 2019), Available at: <https://www.nisra.gov.uk/publications/2021-census-proposals-document>

census legislation for Northern Ireland mirror those for England and Wales, rather than excluding gender identity from the amendments, notably because this does not require future Northern Ireland censuses to include such a question.

The Census in Scotland

- 14 The Registrar General for Scotland has statutory responsibility to carry out the census in Scotland. National Records of Scotland published its plans for the 2021 Census in Scotland in September 2018 ('Plans for Scotland's Census 2021').³ In accordance with its plans, the Scottish Government has enacted the Census (Amendment) (Scotland) Act 2019 to enable census particulars about sexual orientation and transgender history and status to be gathered voluntarily.

Legal background

- 15 This Act amends existing legislation. The primary legislation that provides for the taking of a census in England and Wales (and in Scotland) is the Census Act 1920 ('the 1920 Act'). Under the provisions of section 1(1) of the 1920 Act, an Order in Council may prescribe:
 - The date on which the census is to be taken;
 - The persons by whom and with respect to whom the census returns are to be made; and
 - The particulars to be stated in the returns.
- 16 The matters in respect of which particulars may be required are in turn listed in the Schedule to the 1920 Act. This specifies the following matters:
 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.
 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.
- 17 Before Parliament, the Order in Council is subject to the draft negative resolution procedure for all of these matters except those falling in paragraph 6. The latter are subject to the draft amendable affirmative procedure.
- 18 Section 8 of the 1920 Act provides a number of criminal offences in respect of the census. It also provides an exception in section 8(1A) whereby 'no person shall be liable to a penalty under subsection (1) for refusing or neglecting to state any particulars in respect of religion'.

³ Plans for Scotland's Census 2021 (September 2018) Available at:
https://www.scotlandscensus.gov.uk/documents/census2021/Plans_for_Scotlands_Census_2021.pdf

- 19 Section 8(1A) and paragraph 5A of the Schedule were inserted by the Census (Amendment) Act 2000 (insofar as the 1920 Act extends to England and Wales). Those amendments are similar to those in this Act.
- 20 Finally, the above provisions also apply in the case of a local census ordered under section 6 of the 1920 Act.
- 21 In Northern Ireland, the primary census legislation is the Census Act (Northern Ireland) 1969 ('the 1969 Act'). 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.
- 22 Sexual orientation and gender identity already fall within the Schedules to the 1920 and 1969 Acts, as both constitute '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'. However, without this amendment to the primary legislation, any such questions would be compulsory and refusing or neglecting to answer would be subject to criminal penalty.

Territorial extent and application

- 23 Section 3 sets out the territorial extent of the Act. Section 1 extends to and applies in England and Wales. Section 2 extends to and applies in Northern Ireland.
- 24 See the table in Annex A for a summary of the position regarding territorial extent and application in the United Kingdom.

Commentary on provisions of Act

Section 1: Amendment of the Census Act 1920

- 25 This section amends the Census Act 1920 insofar as it extends to England and Wales to enable the asking of voluntary census questions on sexual orientation and gender identity.
- 26 Subsection (2) adds sexual orientation and gender identity to the Schedule of the 1920 Act. This means they are specified as matters in respect of which census questions may be asked in England and Wales and any such questions will be subject to the draft negative procedure.
- 27 Questions on sexual orientation and gender identity could already be asked in the England and Wales census under paragraph 6 of the Schedule to the 1920 Act. Adding these matters is intended to clarify this existing law and to make clear to which matters the removal of penalties in subsection (3) relates. As a consequence of the statutory scheme, this amendment means that the Parliamentary procedure to which such questions are subject will change from draft amendable affirmative to draft negative. This amendment does not require questions on these matters to be asked in future censuses.
- 28 Subsection (3) amends section 8(1A) of the 1920 Act such that no person shall be liable to a penalty under section 8(1) of that Act for refusing or neglecting to state any particulars in respect of sexual orientation or gender identity – effectively making any such questions voluntary.
- 29 Section 1 forms part of the law of, and applies to, England and Wales.

Section 2: Amendment of the Census Act (Northern Ireland) 1969

- 30 This section amends the 1969 Act to enable the asking of voluntary questions on sexual orientation and gender identity in Northern Ireland.
- 31 Subsection (2) adds sexual orientation and gender identity to the Schedule to the 1969 Act. This means they are specified as matters in respect of which census questions may be asked in Northern Ireland.
- 32 Questions on sexual orientation and gender identity could already be asked in the Northern Ireland census under paragraph 8 of the Schedule to the 1969 Act. Adding these matters is intended to clarify this existing law and to make clear the matters to which the removal of penalties in subsection (3) relate. It does not require questions on these matters to be asked in future censuses.
- 33 Subsection (3) amends section 7(3) of the 1969 Act such that no person shall be liable to a penalty under section 8(1) of that Act for refusing or neglecting to state any particulars in respect of sexual orientation or gender identity – effectively making any such questions voluntary.
- 34 Section 2 forms part of the law of, and applies to, Northern Ireland.

Section 3: Extent, commencement and short title

- 35 This section specifies the territorial extent of the Act and when its provisions come into force. See ‘Commencement’ and Annex A for further details.
- 36 Section 3 forms part of the law of, and applies to, England, Wales and Northern Ireland.

Commencement

37 This Act comes into force on 8 October 2019

Annex A - Territorial extent and application in the United Kingdom

Provision	Extends to E & W and applies to England?	Extends to E & W and applies to Wales?	Extends and applies to Scotland?	Extends and applies to Northern Ireland?
Clause 1	Yes	Yes	No	No
Clause 2	No	No	No	Yes
Clause 3	Yes	Yes	No	Yes

These Explanatory Notes relate to the Census (Return Particulars and Removal of Penalties) Act 2019 which received Royal Assent on 8 October 2019 (c. 28)

Annex B - Hansard References

38 The following table sets out the dates and Hansard references for each stage of the Act's passage through Parliament.

Stage	Date	Hansard Reference
<i>House of Lords</i>		
Introduction	1 May 2019	Vol. 797
Second Reading	13 May 2019	Vol. 797 Col. 1429
Grand Committee	4 June 2019	Vol. 798 Col. 2GC
Report	18 June 2019	Vol. 798 Col. 723
Third Reading	26 June 2019	Vol. 798
<i>House of Commons</i>		
Introduction	26 June 2019	No debate
Second Reading	17 July 2019	Vol. 663 Col. 870
Committee of the whole House	7 October 2019	Vol 664 Col 1588
Report and Third Reading	7 October 2019	Vol 644 Col 1597
Royal Assent	8 October 2019	House of Lords Vol. 799 House of Commons Vol. 664

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