

EXPLANATORY MEMORANDUM TO
THE CENSUS (ENGLAND) REGULATIONS 2020
2020 No. 560

1. Introduction

- 1.1 This explanatory memorandum has been prepared by the Statistics Board (known as “the UK Statistics Authority”) and is laid before Parliament by the Cabinet Office by Command of Her Majesty
- 1.2 This memorandum contains information for the Joint Committee on Statutory Instruments.

2. Purpose of the instrument

- 2.1 The purpose of the Census (England) Regulations 2020 is to make provision for the operational arrangements and procedures necessary for the conduct of the 2021 Census and to prescribe the questionnaires that will be used. The Regulations provide for:
- how the UK Statistics Authority must divide England into administrative districts for the purposes of the census and appoint persons to act in various census roles within those administrative districts;
 - the responsibilities of the persons appointed for the purposes of the census;
 - persons appointed for the purposes of the census to be required to sign a statutory declaration or form of undertaking regarding the confidentiality of census data;
 - where necessary, a respondent to provide information to a person completing a census questionnaire on the respondent’s behalf;
 - a description of the system used to track census questionnaires;
 - the content and method of delivery of census packs that will be sent to respondents to allow them to complete and submit a census questionnaire;
 - the process for completing and submitting a census questionnaire;
 - the initial procedure that will be followed if a required census questionnaire has not been submitted or is incomplete; and
 - a description of the questions and response options of the online questionnaires and their functionality, and specimen copies of the paper questionnaires.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory

- 3.1 The instrument has effects outside of England and Wales which the UK Statistics Authority considers to be minor or consequential.

Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)

- 3.2 This entire instrument applies to England only for the purposes of Standing Order No. 83P of the Standing Orders of the House of Commons relating to Public Business because the instrument relates to the operational arrangements and procedures in conducting census in England. Similar Statutory Instruments will be needed to enable the census in Wales, Northern Ireland and Scotland to take place. These are the responsibility of the relevant devolved legislature.
- 3.3 The instrument has effects outside of England and Wales which the UK Statistics Authority considers to be minor or consequential.

4. Extent and Territorial Application

- 4.1 This instrument extends to England and Wales only.
- 4.2 Separate Regulations have been produced for Wales by the Welsh Government. Those Regulations will be laid before the Senedd.
- 4.3 The territorial application of this instrument is set out in Section 3.2 under “Matters relevant to the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)”.

5. European Convention on Human Rights

- 5.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

6. Legislative Context

- 6.1 The Census (England) Regulations 2020 enable the Census (England and Wales) Order 2020 (S.I. 2020/532), to be carried into effect in respect of England. The Census (England and Wales) Order 2020 was laid before both Houses of Parliament on 2 March 2020; the provisions in the Order subject to the affirmative procedure were approved by the House of Commons on 6 May 2020 and by the House of Lords on 14 May 2020. The Order was made by Her Majesty in Council on 20 May 2020 and came into force on 21 May 2020.
- 6.2 Section 1 of the Census Act 1920 (c.41) (“the 1920 Act”) enables an Order in Council to be made to direct the taking of a census for Great Britain or any part of it. In England and Wales, the duty to carry out the census in section 2 of the 1920 Act (formerly conferred on the Registrar General) was transferred to the Statistics Board by the Statistics and Registration Service Act 2007 (“the 2007 Act”) (c. 18, Schedule 1, paragraphs 1 and 2). The Statistics Board (known as “the UK Statistics Authority”) acts through the Office for National Statistics (ONS) as its executive office (established under section 32 of the 2007 Act) in carrying out the work of preparing for and undertaking a census.
- 6.3 Section 3 of the 1920 Act makes provision for Regulations to be made, setting out the procedures and practical arrangements needed to conduct a census pursuant to an Order in Council. Power to make these Regulations, for England, was transferred to the Minister for the Cabinet Office by the Statistics and Registration Service Act 2007 Act. The Census (England) Regulations 2020 were made on 1 June 2020 and laid before both Houses of Parliament on 2 June 2020; they are subject to the negative

resolution procedure. Responsibility for the Census Regulations in Wales now rests with the Welsh Ministers and they will be laid before the Senedd.

- 6.4 The Census (Amendment) Act 2000 (c.24) and the Census (Return Particulars and Removal of Penalties) Act 2019 (c.28) each amended the 1920 Act to remove (in turn) any penalty for a prescribed person not responding to census questions on religion, and on sexual orientation and gender identity. This, in effect, made such questions voluntary, and they will be clearly indicated as such, as shown in the facsimile paper questionnaires and the description of the online questionnaires in Schedule 2 to these Regulations. The 2000 and 2019 amending Acts also added, as paragraphs 5A, 5B and 5C, the specific matters of religion, sexual orientation and gender identity to the Schedule to the 1920 Act.
- 6.5 Regulation (EC) No 763/2008 of the European Parliament and Council, as well as various implementing instruments under that Regulation, impose obligations on the United Kingdom with respect to the provision of statistical outputs based on the census (or comparable data sources) in the year 2021. The UK Statistics (Amendment etc.) (EU Exit) Regulations 2019 (when in force at the end of the transition period) will revoke Regulation (EC) No 763/2008 removing the obligation on the UK to provide these statistics to the EU. Longer-term UK participation in the European Statistical System will be determined as part of the formal negotiations between the UK and European Union.
- 6.6 Under section 39 of the 2007 Act, personal information collected in the 2021 Census must be kept confidential. The unlawful disclosure of personal information by the UK Statistics Authority and its employees or agents is a criminal offence and can result in a prison sentence of up to 2 years and or a fine (s.39 of the 2007 Act). The usage and handling of any personal information collected in the 2021 census will comply fully with the 2007 Act, the 1920 Act, the Freedom of Information Act 2000 (c. 36) and the General Data Protection Regulation (EU) 2016/679 and the Data Protection Act 2018 (c.12).
- 6.7 Section 3(4) of the Public Records Act 1958 (c.51) requires public records selected for permanent preservation, which would include census data, to be transferred to The National Archives after 20 years. However, the same sub-section of that Act permits transfer to be delayed pursuant to a Lord Chancellor's Instrument (LCI). A series of LCIs are in force permitting census files under 100 years old not to be transferred. Each LCI applies for 10 years, as Government policy continues to be that these files will not be released for 100 years, the LCIs are renewed on a rolling basis. After 100 years census data are released to The National Archives and becomes publicly available.

7. Policy background

What is being done and why?

- 7.1 The date for the Census is set as Sunday 21st March 2021 across the United Kingdom through the Census (England and Wales) Order 2020 and separate Census Orders for Scotland and Northern Ireland. The census provides an opportunity, once every ten years, to build a detailed and comprehensive picture of the nation.
- 7.2 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.

- 7.3 Delivering the census in England and Wales is the statutory responsibility of the UK Statistics Authority. In Northern Ireland it is the responsibility of the Northern Ireland Statistics and Research Agency, and in Scotland the National Records of Scotland. These three census offices work closely to ensure the three censuses together provide comparable statistics on the UK population.
- 7.4 The aim is to make the 2021 Census the most inclusive census to date to ensure the results reflect everyone in society. It will be completed predominantly on-line so people can take part when and how they want. To ensure no-one is excluded there will be help and support, and paper forms will be available for those who prefer to fill it in on paper or are unable to complete on-line.
- 7.5 It is essential that everyone is included and therefore participation in the census is a legal obligation. Refusal to answer census questions (other than questions on religion, sexual orientation and gender identity), or providing false answers to questions, is a criminal offence and subject to a penalty.
- 7.6 The White Paper on the 2021 Census entitled 'Help Shape Our Future: The 2021 Census of Population and Housing in England and Wales' was published in December 2018 and set out the UK Statistics Authority's recommendations for the content and conduct of the census in 2021. The recommendation was for the majority of the questions to stay the same as those that appeared in the 2011 Census to ensure comparability of data between censuses. New questions or changes to question design have only been included where this is justified following a process of public consultation, stakeholder engagement, research, testing and evaluation. On the basis of this process, a new question capturing past service in the UK armed forces has been added and two questions have been removed: the last year a person worked, and the number of rooms in a household. New response options have been included for some questions where they satisfied relevant evaluation criteria. The topics and, in many cases, the response options to be included in the 2021 Census through the questionnaires prescribed in the Schedules to this instrument were set out in the Census (England and Wales) Order 2020.
- 7.7 The White Paper also proposed that new questions be included in the 2021 Census covering sexual orientation and gender identity for individuals aged 16 and over. As set out above, the Census (Return Particulars and Removal of Penalties) Act 2019, which received Royal Assent on the 8 October 2019, enables these questions to be asked in the 2021 Census on a voluntary basis by removing the penalty for not providing particulars; this reflects the approach taken in 2000 in relation to questions on religion. Overall this means that no-one is required to answer questions on religion, sexual orientation or gender identity if they do not wish to.
- 7.8 Other than the above changes, the proposed questions are the same in substance as those in the previous census in 2011.

What does this instrument do and why?

- 7.9 The Census (England) Regulations 2020 outline the operational requirements of the 2021 Census and revoke the Census (England) Regulations 2010 for the 2011 Census.

- 7.10 The instrument makes specific provision for the completion and submission of a census questionnaire online by using a Unique Access Code (UAC). A UAC is a 16-digit code that acts as a password for secure access to (as the case may be) a household, individual or communal establishment online questionnaire. The online and paper questionnaires are designed to collect the same information, but the way the questions are presented may differ. This is to ensure they collect high quality data and are accessible regardless of whether people complete their census on a tablet, computer, smartphone or on paper.
- 7.11 The instrument provides the detail of how online and paper census questionnaires will be provided or made accessible to households and communal establishments and the process for submitting questionnaires. The Regulations make clear that any individual can respond to the census anonymously by accessing an individual questionnaire. Individual questionnaires will automatically overwrite a response provided for that individual by a householder.
- 7.12 The Schedules to the Regulations will describe the content and functionality of the online questionnaires in the Schedule. Parts 1, 2 and 3 of Schedule 2 describe the questions, response options and other information necessary to provide an understanding of how the online questionnaires will work in practice. Part 8 of Schedule 2 provides general and specific details about the features and functions of the online questionnaires. Parts 4, 5, 6 and 7 of Schedule 2 contain specimen copies of the four types of paper questionnaires.

8. European Union (Withdrawal) Act/Withdrawal of the United Kingdom from the European Union

- 8.1 This instrument does not relate to withdrawal from the European Union.

9. Consolidation

- 9.1 The Census (England) Regulations 2010 (S.I. 2010/532) (“the 2010 Regulations”) provided for the 2011 Census. This instrument will provide for the 2021 Census and no consolidation is necessary. This instrument revokes the 2010 Regulations.

10. Consultation outcome

- 10.1 The content of the 2021 Census has been driven principally by the demands and requirements of users of census statistics, as well as the evaluation of the 2011 Census and the advice and guidance of organisations with experience of similar operations. The ONS has been engaging widely on the census questions. The ONS undertook an extensive programme of consultation, research, evidence gathering and evaluation.
- 10.2 In June 2015, the ONS launched a 12-week public consultation asking census users for their views and evidence on the requirements for the questionnaire in England and Wales for the 2021 Census. Anyone could take part and the resulting feedback informed further research which contributed to the development, testing and evaluation of the proposed census questions.
- 10.3 The ONS’s full response to the consultation was published in May 2016, setting out the topic evaluation criteria used and ONS’s views on those to be included in the 2021 Census. The ONS also published individual topic reports, each setting out the evaluation of that topic against the set criteria, the updated view for that topic, equality implications and the next steps to be taken.

- 10.4 The public consultation was followed by a continuous programme of research and engagement by the ONS with stakeholder groups, and with the wider public, to test different question design options. The ONS also worked with a number of interested parties to understand detailed needs for specific questions and definitions including:
- government departments who were consulted through the Heads of Profession within the Government Statistical Service (GSS) and inter-departmental committees, and through liaison with GSS topic experts;
 - Census Advisory Groups with representatives from central government departments, local authorities, the health service; the academic community, business and professional associations, and users and other interested parties in Wales, and third-sector bodies representing the interests of local communities, minority population groups, people with disabilities and faith organisations; and
 - topic experts and methodologists within GSS, who were regularly consulted for their in-depth, specialist knowledge.
- 10.5 This engagement ensured a fuller understanding of the importance of, and support for, the aims and objectives of the 2021 Census.
- 10.6 Liaison with community groups, charities and other third-sector bodies helped the ONS to ensure that, as well as meeting the statistical needs of users, the census is supported, and completed, by all segments of the community.
- 10.7 The ONS has been engaging with Parliament on various aspects of the census proposals since the White Paper was published in 2018. This has entailed responding to numerous Parliamentary Questions, official correspondence from Parliamentarians and Select Committees, working with a number of All-Party Parliamentary Groups, as well as appearances at hosted events in Parliament. During the passage of the Census (Return Particulars and Removal of Penalties) Act 2019, a number of drop-in sessions were held for MPs and Peers to explain both the Act, and the wider proposals for the 2021 Census. Engagement was also offered to MPs and Peers during the passage of the Census (England and Wales) Order 2020.
- 10.8 In October 2019, the ONS undertook a census rehearsal in four local authority areas within England and Wales: Carlisle, Ceredigion, Hackney and Tower Hamlets. The rehearsal was an opportunity to check processes, systems and services ahead of the 2021 Census. The rehearsal offered both online and paper completion and field staff were utilised to encourage completion.

11. Guidance

- 11.1 The ONS will, in close co-operation with the census offices in Scotland and Northern Ireland, and supported by a dedicated telephone helpline, arrange nationwide and local publicity to explain the purpose and value of the census, to encourage the return of completed questionnaires and to ensure that people know when and how to do so, and to give assurances about confidentiality and data security.
- 11.2 Guidance will be provided on how to respond to census questions., This guidance is being developed and refined based on engagement with stakeholders, user need and extensive testing. The questionnaires, website and guidance will make clear that while completing the census is mandatory, the questions relating to religion, sexual orientation and gender identity are voluntary and that a person does not commit any offence if they do not answer such questions. Guidance will also explain which

questions are age-related, for example the sexual orientation and gender identity questions will only be asked of those aged 16 and over.

- 11.3 Special assistance will be available to anyone who has difficulty in completing the census questionnaire, particularly through language difficulties or disability. The online questionnaire will improve the accessibility of making a census return and field staff speaking a number of languages, signers and specialist community engagement staff will be employed. They will be supported by translations of information leaflets in a large number of languages and other accessible formats; this will also be available via a dedicated on-line help centre.

12. Impact

- 12.1 The impact on business, charities or voluntary bodies has been assessed as minimal. The direct costs to business resulting from this instrument have been certified by the Cabinet Office Chief Economist as falling below the de minimis threshold, of £5 million, where a Regulatory Impact Assessment would be required.
- 12.2 The statistical data gained via the census will be of value to many different bodies. Commercial business, professional organisations and the public at large, all benefit from reliable information on the number and characteristics of people and households.
- 12.3 Government, local authorities, the health service, the education and academic community and other public bodies all rely upon census data to aid planning of budgets, services and resources nationwide.
- 12.4 An Equality Impact Assessment was first published alongside the 2018 White Paper. Since publication further work in preparation for the 2021 Census has been undertaken. A revised version of the Equality Impact Assessment was published alongside the publication of the draft Census (England and Wales) Order 2020 on 2 March 2020. The latest version of the assessment can be found on the ONS website: <https://www.ons.gov.uk/census/censustransformationprogramme/legislationandpolicy> This takes account of further testing of questions and guidance and reflects additional work undertaken in light of the passage of the Census (Return Particulars and Removal of Penalties) Act 2019 and those points that were raised in debates.
- 12.5 Issues on the full census proposals relating to privacy and data protection are being assessed in a comprehensive Data Protection Impact Assessment. This is due for publication before the 2021 Census operation takes place. It will take account of the full technical design to be used during the census, as well as how data are to be processed and protected. During this process the ONS will consult the Information Commissioner's Office (ICO) and will work with the ICO to finalise and quality assure the ONS's plans from a data protection and privacy perspective. Summary information as to those measures currently planned to be in place, is available at <https://www.ons.gov.uk/census/censustransformationprogramme/legislationandpolicy>

13. Regulating small business

- 13.1 The instrument does not apply to activities that are undertaken by small businesses other than those activities assessed as above.

14. Monitoring & review

- 14.1 This legislation allows for, and governs, the undertaking of the proposed 2021 Census. The legislation itself does not require monitoring or review. The ONS will produce a

post-census report, reviewing the entire operation, which will be published alongside census outputs. The ONS are also planning to bring forward proposals for how future census-type data will be collected in the years following the 2021 Census and will make a recommendation to Government on the future of the census in 2023.

15. Contact

- 15.1 Matthew Ford at the UK Statistics Authority, telephone: +44 (0)1329 447915 or email: matthew.ford@statistics.gov.uk can be contacted with any queries regarding the instrument.
- 15.2 Victoria Latham as the Senior Responsible Officer for the 2021 Census legislation at the Cabinet Office can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 The Minister for the Cabinet Office can confirm that this Explanatory Memorandum meets the required standard.