

Scotland's Census 2021

Impact Assessments

Stakeholder Survey Report

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1. Introduction

1.1 In September 2019, National Records of Scotland (NRS) published a suite of draft impact assessments to support informal scrutiny of the draft Census Order by the Culture, Tourism, Europe and External Affairs Committee of the Scottish Parliament. The impact assessments are:

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

1.2 To support this work NRS held a series of sessions with stakeholders to gather views and feedback on these impact assessments. Stakeholder sessions were advertised on the census website and in a newsletter to over 1800 subscribers of the census newsletter.

1.3 Sessions in respect of the Equality Impact Assessment were held in Edinburgh on 19 and 23 September 2019. A session on the Data Protection Impact Assessment was held on 24 September 2019.

1.4 An online survey was available to anyone, so those stakeholders who were unable to attend sessions in person could still contribute. The online survey was open from 12 September 2019 until 11 October 2019. You can view the full set of online survey questions at [Annex A](#).

2. Main Findings

Stakeholder sessions

2.1 The stakeholder sessions began with a presentation by NRS Officials on the purpose of the census and the requirement for impact assessments. This was followed by discussion of the impact assessments. The following is a summary of the discussions related to impact assessments:

- The Children's Rights and Wellbeing Impact Assessment and the Human Rights Impact Assessment were thorough and well considered for children.
- It was good to see freedom of speech and expression being considered in the Human Rights Impact Assessment.
- There was concern by one stakeholder about the assessment of outcomes of data, particularly the impact on deaf and blind communities.
- It was commented by some stakeholders that the Equality Impact Assessment lacked protection of sex.

- One stakeholder asked about the intersection between the protected characteristics of the Equality Act 2010 and the barriers to people taking part in the census.
- If census was to be completed primarily online, reassurance was sought that people would be supported to complete the census and other options for completion were available to them.
- It was suggested that the Equality Impact Assessment would require to be updated if the proposed sex question guidance changed from self-identification as this would impact on the trans community.
- It was commented that the summary of evidence included in the Equality Impact Assessment was good.
- In consideration of the post-GDPR information security landscape, there was wide-ranging discussion about the NRS approach to Data Protection Impact Assessment where the need for assessment is identified and implemented at workstream level with material high-level risks then rolled into the overarching programme assessment. Discussion also centred around the legal basis for processing.

2.2 Much of the discussions at these sessions focussed on the sex question and supporting guidance.

Online survey

2.3 The online survey had 13 questions which can be found at [Annex A](#).

2.4 The following is a high-level summary of responses to the online survey:

- A total of 17 responses were received to the online survey.
- Ten of 14 respondents who answered the question felt that Scotland's Census 2021 will have a positive impact on Scotland as a whole.
- Eight of 14 respondents who answered the question felt that Scotland's Census 2021 will have a positive impact on them as individuals.
- The highest number of respondents (six) considered that the most important aspect of Scotland's Census 2021 proposals to them personally was "*Support and assistance will be available to those who need it*". None of the respondents considered that aspect to be the least important.
- The group of most interest to the highest number of respondents was women or females.
- The impact assessment that received the highest number of responses was the Equality Impact Assessment (13).

3. Impact of Scotland's Census 2021 on Scotland as a whole

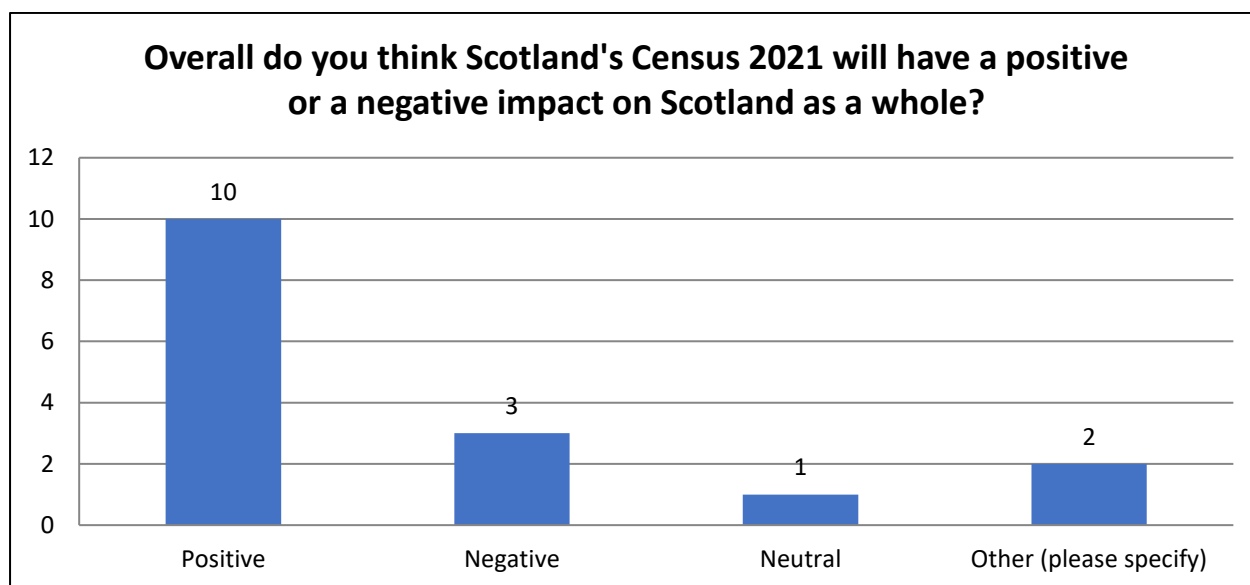
3.1 The following question was included in the online survey:

Overall do you think Scotland's Census 2021 will have a positive or a negative impact on Scotland as a whole? (Question 12)

- *Positive*
- *Negative*
- *Neutral*
- *Other (please specify)*

3.2 Ten of 14 respondents felt that Scotland's Census 2021 will have a positive impact on Scotland as a whole. A full breakdown is shown at Figure 1.

Figure 1: Impact of Scotland's Census 2021 on Scotland as a whole



3.3 Two respondents who selected 'negative' also added comments under 'Other (please specify)'. These comments related to the sex question and can be found at [Annex B](#).

4. Impact of Scotland's Census 2021 on respondents as individuals

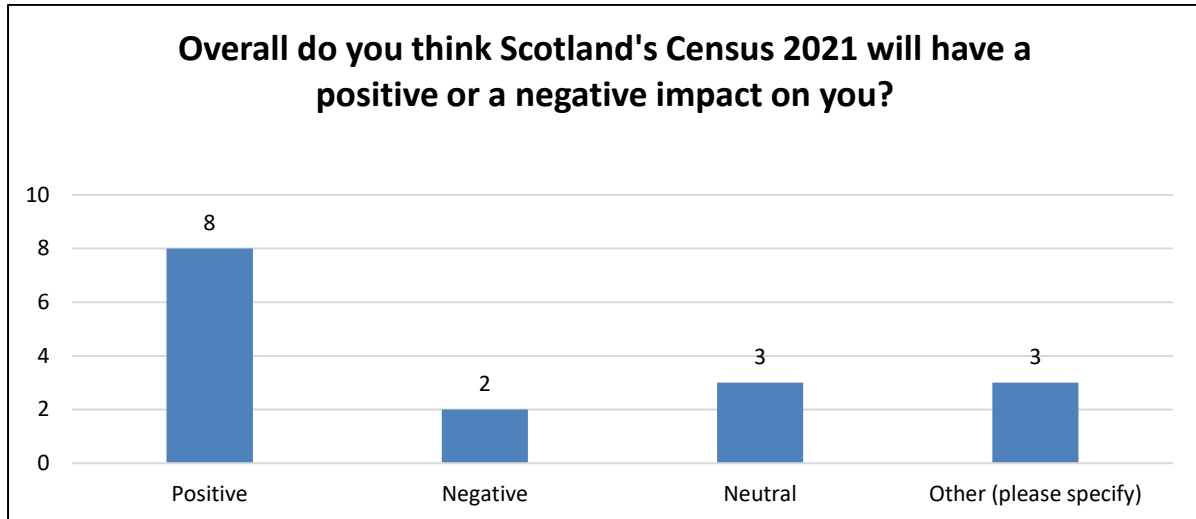
4.1 The following question was included in the online survey:

Overall do you think Scotland's Census 2021 will have a positive or a negative impact on you? (Question 11)

- *Positive*
- *Negative*
- *Neutral*
- *Other (please specify)*

4.2 Eight of 14 respondents felt that Scotland's Census 2021 will have a positive impact on them as individuals. A full breakdown is shown at Figure 2.

Figure 2: Impact of Scotland's Census 2021 on respondents as individuals



4.3 Two respondents who selected 'negative' also added comments under 'Other (please specify)'. These comments related to the sex question and can be found at [Annex B](#).

5. The most important aspects of Scotland's Census 2021 proposals to respondents

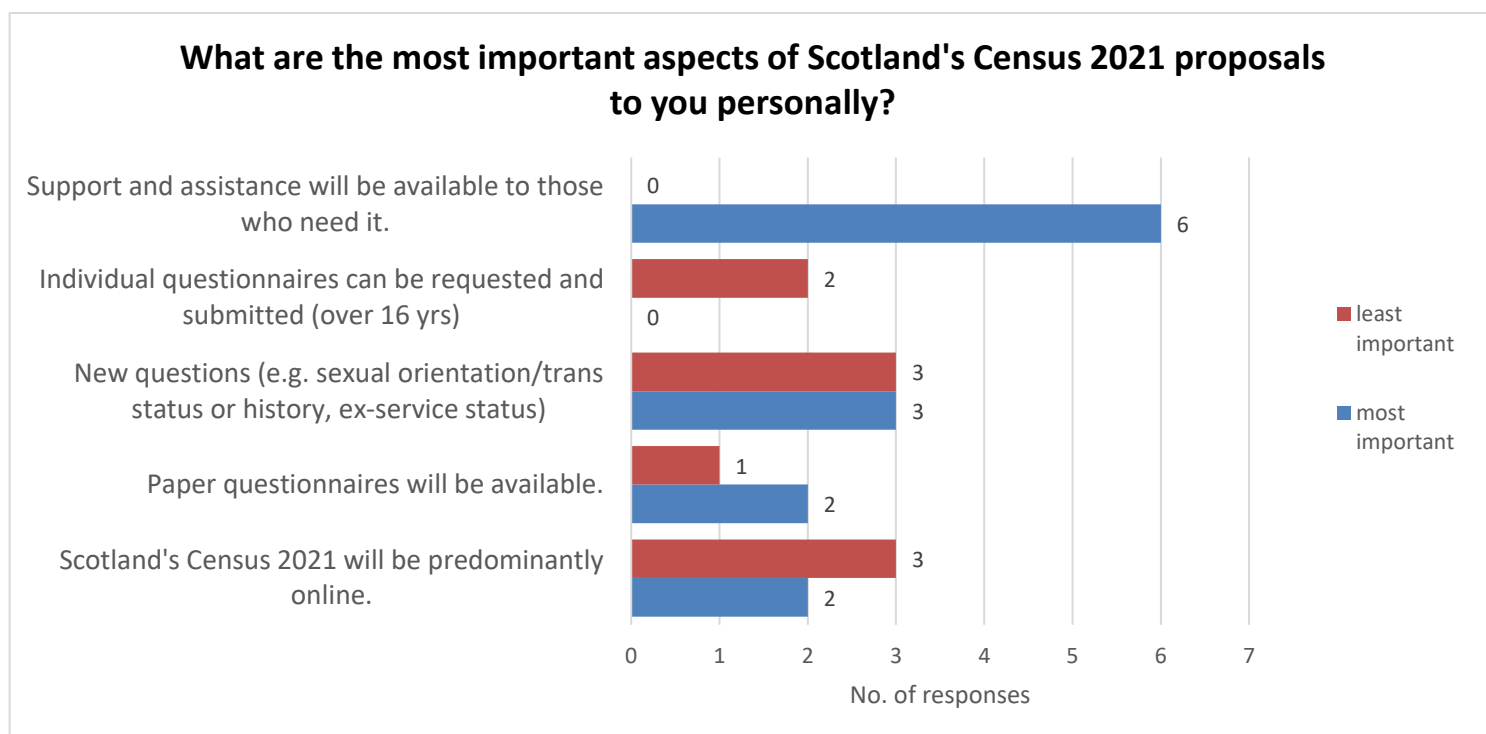
5.1 The following question was included in the online survey:

What are the most important aspects of Scotland's Census 2021 proposals to you personally? (rate 1 to 5, where 1 is most important and 5 is least important)
(Question 10)

- *Scotland's Census 2021 will be predominantly online.*
- *Paper questionnaires will be available.*
- *New questions (e.g. sexual orientation/trans status or history, ex-service status)*
- *Individual questionnaires can be requested and submitted (over 16 yrs)*
- *Support and assistance will be available to those who need it.*

5.2 The highest number of respondents (6) considered that the most important aspect of Scotland's Census 2021 proposals to them personally was "*Support and assistance will be available to those who need it*". None of the respondents considered that aspect to be the least important. A full breakdown is shown in Figure 3.

Figure 3: The most important aspects of Scotland's Census 2021 proposals to respondents



6. People, groups or communities of most interest to respondents

6.1 The following question was included in the online survey:

Which people, groups or communities are of most interest to you? (Question 5)

6.2 The group of most interest to the highest number of respondents (5 of 16 respondents) is women or females. Respondents were able to provide multiple responses to this question. A full breakdown is shown in Table 1.

Table 1: People, groups or communities of most interest to respondents.

Women or females	5
All groups and communities	2
Island communities, islanders	2
All the communities within the Western Isles.	1
Communities living with poverty	1
Disabled people	1
Immigration	1
Isolated rural communities	1
Lesbians	1
Local	1
Protected characteristics	1

The protected characteristic of sex	1
Trans people	1

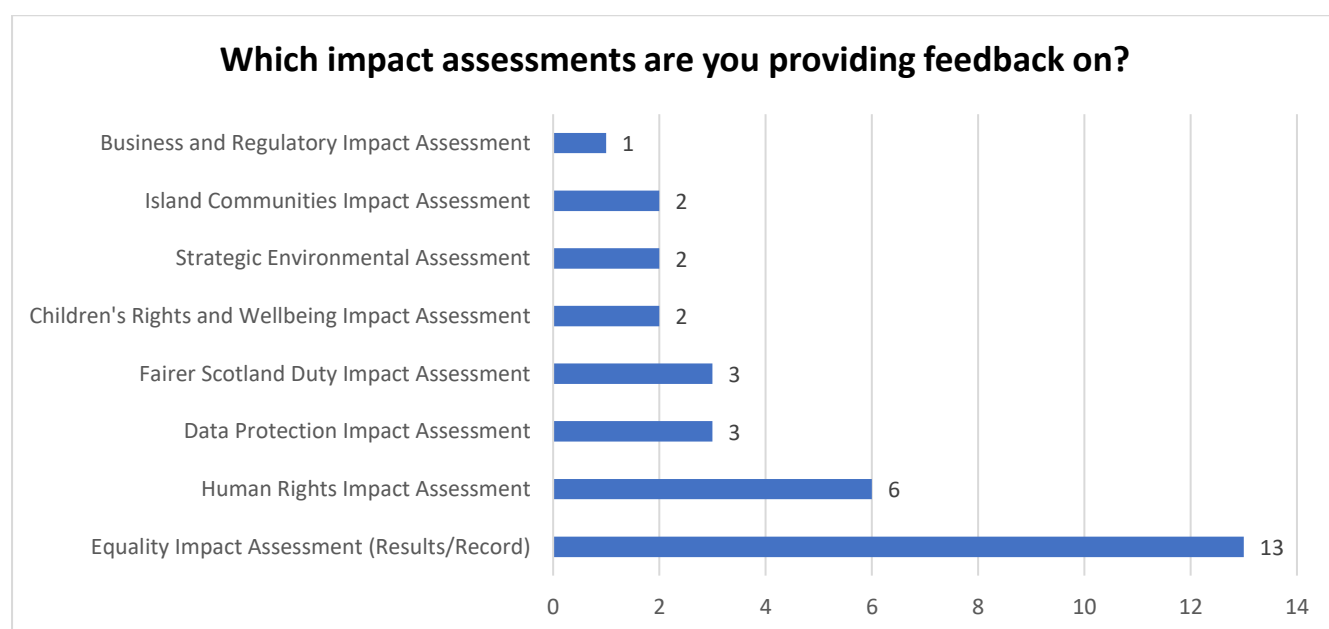
7. Impact assessments for which feedback provided

7.1 The following question was included in the online survey:

Which impact assessments are you providing feedback on? (Question 6)

7.2 The impact assessments that received the highest number of responses were the Equality Impact Assessment (13 responses) and the Human Rights Impact Assessment (6 responses). Respondents were able to provide multiple responses to this question. Feedback was provided on all impact assessments. A full breakdown is shown in Figure 2.

Figure 2: Impact assessments for which feedback provided



8. Organisations Represented

8.1 The following question was included in the online survey:

Which organisation do you represent (if any)? (Question 2)

8.2 The following responses to this question were noted: -

- Comhairle nan Eilean Siar
- Inclusion Scotland
- MurrayBlackburnMackenzie
- North Ayrshire Council
- Scottish Islands Federation

- Scottish Trans Alliance
- South Ayrshire Council
- The Alwaleed Centre, University of Edinburgh

9. Significant Impacts

9.1 The following question was included in the online survey:

What do you think are the most significant impacts on you/your community or others? Are they positive or negative impacts? (Question 7)

9.2 Full responses to this question can be viewed at [Annex B](#). In summary:

- The highest number of responses related to the sex question.
- Other responses received concerned topics including disabled people, digital inclusion, and island communities.
- Stakeholders noted positive impacts around decision making and resource allocation, and the addition of a new question about sub-group within the Muslim community.
- Potential negative impacts were noted around online completion for older people and areas of poor digital connectivity.
- Stakeholders noted evidence to indicate negative impacts on some disabled people in relation to being able to complete the census online.
- The language used in the Census questionnaire and in communications about the Census may also impact negatively on some disabled people's ability to take part.
- Some disabled people will need support to complete the Census (online or on paper).

10. Negative Impacts

10.1 The following question was included in the online survey:

Are there any negative impacts which you consider unacceptable and must be eliminated? (Question 8)

10.2 Full responses to this question can be viewed at [Annex B](#). In summary:

- The highest number of responses related to the sex question.
- There is stakeholder support for direct provision of paper questionnaires to all island postcodes.

11. Change and Improvement

11.1 The following question was included in the online survey:

Based on your understanding of our plans for delivery of the 2021 Census are there things you would like to see us do better or differently to improve impacts? (Question 9)

11.2 Full responses to this question can be viewed at [Annex B](#). In summary:

- The highest number of responses related to the sex question.
- There is a stakeholder view that census results (outputs) should be analysed in sufficient detail to reflect the differing natures of different island communities.
- Stakeholders felt that engagement with disabled people should be central to census planning.
- Other themes noted included equality for minorities and ensuring equality of opportunity to respond.

12. Conclusion

12.1 We are very grateful to all the stakeholders who provided their feedback at the stakeholder sessions and via the online survey.

12.2 Where appropriate, we have followed up particular issues with stakeholders to ensure that preparations for Scotland's Census 2021 consider the needs identified for those communities with protected characteristics.

12.3 Assessment of impacts is an ongoing process which will continue to the Census in March 2021 and beyond.

12.4 While this period of stakeholder engagement has ended, we would encourage our stakeholders to contact us at scotlandscensus@nrscotland.gov.uk if there are any issues which they would like to discuss further.

ANNEX A – ONLINE SURVEY QUESTIONS

1. What is your name? (optional)
2. Which organisation do you represent (if any)? (Requires answer)
3. Please provide a brief description of your organisation, if you represent one?
 - E-mail address:
 - Telephone number:
4. If you would like us to contact you again in the future about census issues, please provide contact details (e-mail/telephone)
5. Which people, groups or communities are of most interest to you?
6. Which impact assessments are you providing feedback on?
 - Equality Impact Assessment (Results/Record)
 - Data Protection Impact Assessment
 - Human Rights Impact Assessment
 - Children's Rights and Wellbeing Impact Assessment
 - Fairer Scotland Duty Impact Assessment
 - Business and Regulatory Impact Assessment
 - Strategic Environmental Assessment
 - Island Communities Impact Assessment
7. What do you think are the most significant impacts on you/your community or others? Are they positive or negative impacts?
8. Are there any negative impacts which you consider unacceptable and must be eliminated?
9. Based on your understanding of our plans for delivery of the 2021 Census are there things you would like to see us do better or differently to improve impacts?
10. What are the most important aspects of Scotland's Census 2021 proposals to you personally?
 - Scotland's Census 2021 will be predominantly online.
 - Paper questionnaires will be available.
 - New questions (e.g. sexual orientation/trans status or history, ex-service status)
 - Individual questionnaires can be requested and submitted (over 16 yrs)
 - Support and assistance will be available to those who need it.
11. Overall do you think Scotland's Census 2021 will have a positive or a negative impact on you?
 - Positive

- Negative
- Neutral
- Other (please specify)

12. Overall do you think Scotland's Census 2021 will have a positive or a negative impact on Scotland as a whole?

- Positive
- Negative
- Neutral
- Other (please specify)

13. Are you content for NRS to attribute specific comments/quotes to you?

ANNEX B – FULL SURVEY RESPONSES

Question 7 - “What do you think are the most significant impacts on you/your community or others? Are they positive or negative impacts?”

Nick Bailey: In relation to the ability of the Census to measure sex, I support the retention of a binary question. I would strongly support the accompanying guidance stating that this should be on the basis of legally-recognised sex, i.e. birth certificate or GRC.

The Alwaleed Centre, University of Edinburgh: The addition of a new question about sub-group within the Muslim community will add a significant amount of detail to the understanding of Muslims in Scotland.

Anonymous: Gender-disaggregated data (Gender-sensitive sex-disaggregated data) is a vital component of work to advance women's equality. It is vital that the census continues to collect the richest and most complete data about women and specific groups of women. We, therefore, wish to make sure that the sex question and any guidance results in the most accurate and complete data exercise. We do not believe that the current sex question would have any significant positive or negative impacts for our work or on women's rights.

Anonymous: Women as a sex class will be erased-even the language we use to define ourselves-if the Census allows any man to "self identify" as a woman. Sex disaggregated data is essential & this cannot be accurate if "gender" is conflated with sex. No-one can change sex. If you want to include those with a Gender Reassignment Certificate, because have legal (fiction) now different gender, that is very different from saying any man (even those who have "lived sex" as woman) can self declare now a woman. What does it mean to live as a woman-discrimination not based on perception but biologically reality. This will skew sex discrimination stats as they will not have faced it-as due to female biology (childbirth etc.) & SEX pay gap, SEX Pension gap.

Scottish Islands Federation: Accessibility of online recording . Need to ensure inclusion for those areas with poor or weak digital connectivity and also elderly or households with limited/nil digital connectivity or fear or dislike of computer based questionnaires. Danger of alienating older respondents who are familiar with paper copies.

Professor Kathleen Stock: The following are both negative impacts: - the retention of the concept of self-identified sex is inconsistent with the stated desire to make "estimates by age and sex.. the priority" and that the information collected be "authoritative, accurate and comparable" for all parts of Scotland," (these are quotes from the impact assessments). In effect, statisticians will be relying on the good will and/or ignorance of people about the guidance, to answer this question accurately, in order for the statistics to be robust. The retention of self-identified sex won't be effectively mitigated by the trans question, because some trans people might in fact record actual not self-identified sex. This confusion will have an impact on gathering accurate data about females (and about males). A further negative impact is on the statistics for sexual orientation. This must be indexed to a) actual sex and not b) self-identified sex. This is because currently many biologically male heterosexual transwomen (actually male) call themselves lesbians (because they self-identify as women and are attracted to women) and so will answer in that way. This will distort the figures for lesbians/ gay people overall. This will leave the data not fit for purpose. Transwomen are not lesbians in the original sense of the term, and should occupy a different statistical class than lesbians, as their social situation and interests diverge. It should therefore be made clear in the guidance that 'sexual orientation' refers to same-sex attraction and opposite-sex, attraction (or both, as with bisexuality) and that sex is not 'self-identified' in these cases.

South Ayrshire Council: Decision making, resource allocation, positive impact.

Inclusion Scotland: Disabled people have the right to full and effective participation and inclusion in society. Taking part in the Census is part of securing this right and therefore the state has obligations to ensure the Census process is as accessible and inclusive as possible. There are numerous potential impacts on disabled people which we detail below.

Internet access As noted in the EQIA, disabled people are less likely than non-disabled people to use the internet. The Scottish Household Survey 2017 reported that 28% of disabled people did not use the internet, compared with 8% of non-disabled people. Disabled people are also more likely than non-disabled people to live in poverty, to earn less and to be unemployed (Equality and Human Rights Commission, 2018). This has particular implications for accessing the internet given that people living in deprived areas, in social housing and on low incomes are less likely to have access to the internet at home and are less confident in carrying out activities online (Equality and Human Rights Commission, 2018). The EQIA notes that older people are both more likely to be disabled and less likely to use the internet. The difference in internet use between disabled and non-disabled people is greater in older age groups compared to younger age groups (Scottish Household Survey, 2019). All of these statistics suggest that there will be negative impacts on some disabled people in relation to being able to complete the census online.

Accessibility The language used in the Census questionnaire and in communications about the Census may also impact negatively on some disabled people's ability to take part. Initial letters which will be sent to citizens to inform them of their responsibility to complete the Census may present barriers for people with visual impairments and people with learning disabilities. It may take time for some people to get assistance to read the letter

which would reduce the time they have to arrange support and/or complete the questionnaire. We therefore suggest that consideration is given to how long people have to complete the Census, and whether sufficient time has been factored in to allow people to arrange support. Receiving official letters can also be a source of fear and stress for some people and we would therefore advise that reassuring language is used along with providing practical advice and information. This should include reassurance about how people's information will be used and kept safe. The impact of security concerns on internet activity is greater for disabled people (Scottish Household Survey, 2019) and providing reassurance and information from the outset could go some way to addressing this. While we acknowledge the commitment to use plain English in correspondence, we suggest that Easy Read versions of the initial letter should be available and sent out along with the plain English letter. Easy read explanations of terms used in the questionnaire such as 'sex', and 'trans' would also be beneficial for some disabled people. These could enable people to complete the questionnaire by themselves and would also act as a resource for people who are supporting others to complete the questionnaire. We also suggest that consideration is given to how people with visual impairments may be identified before letters are sent out so that they can be contacted in an alternative way. As far as possible the onus should not be on disabled people to request accessible information - if there are ways for communications and the questionnaire (online and on paper) to be made readily accessible then this should be done.

Support Some disabled people will need support to complete the Census (online or on paper). The EQIA states that people can get support through the Contact Centre and that family members, friends or carers may complete a questionnaire on an individual's behalf. Disabled people may also live in communal establishments where staff will complete the questionnaire on their behalf. This raises issues around confidentiality and privacy for disabled people who require support. Some disabled people may feel unable, or be unwilling, to disclose certain sensitive information to a family member/friend/carers who is completing their questionnaire. We would like to know what NRS will do to overcome this. There is also a risk of under-reporting of disability if someone is completing the questionnaire on behalf of a disabled person but is unaware of the disabled person's condition(s). We therefore suggest that people who require support (including those living in communal establishments) should be offered the opportunity to have their questionnaire completed by a member of the field force staff. This option should be communicated to people through local organisations and should also be included in the initial contact letter.

All staff who support people to complete their questionnaire should be given training on privacy issues and on how to deliver the service in a way which respects individual's dignity.

Engagement with disabled people and organisations supporting disabled people is essential to be able to determine the most effective ways of engaging and supporting disabled people to take part in the Census.

References Scottish Government (2019) Scottish Household Survey 2018: annual report. Equality and Human Rights Commission (2018) Is Scotland Fairer?

Comhairle nan Eilean Siar: As regards the ICIA's brought about by the Islands Act, we will be implanting these once the guidance has been issued, from early in 2020. Geographical handicap, peripherality, insularity, demographic imbalance, transport resilience, infrastructure and digital connectivity, housing, economy and jobs, health and social care.

MurrayBlackburnMackenzie: The framing of sex question in the 2021 census will impact on the quality and reliability of data collected, and is likely to influence other data collection exercises in the same way. We believe that a sex question accompanied by guidance which suggests that sex has no definition beyond a person's own sense of self-identity presents risks in relation to data reliability, and the ability to accurately monitor and track sex-based discrimination. We note that the EQIA refers to the introduction of online guidance based on gender self-identification in the 2011 census: "in response to user requests, additional information was provided online to help trans people understand how they should answer this question. That guidance advised people who were trans that they did not need to answer the question with the sex recorded on their birth certificate" (p. 16). The 2011 guidance was introduced without wider consultation or scrutiny and, as acknowledged by NRS in the recent CTEEA Committee meeting, it is not known how far it influenced answers to the sex question: [Wilson: "We do not know how the guidance affected people and we do not know how many people actually looked at it in 2011." (SP CTEEA 12 September 2019 col. 6)] We are concerned that the EQIA fails to acknowledge these shortcomings, particularly given that the Scottish Government has drawn on the 2011 guidance to make its argument for a self-identified sex question based on consistency with the previous census.

LMcL.: The reliability and accuracy of the sex question in the 2021 census will be compromised if people are allowed to self-id their sex. The 2011 Census which had on-line guidance re self-id of sex was introduced without wide consultation or scrutiny and which the NRS themselves have admitted they do not know how much this impacted the results. These uncertainties re effect or skewing of accurate data, and the Scottish governments acknowledgment that they have drawn on the 2011 guidance to further their aim of self-id are worrying at best and ignore the very reasons for needing robust data collection.

Anonymous: Both

Anonymous: I am concerned that you are in danger of obtaining unreliable data when the concepts of sex and gender identity are being confused or combined. For some services our biological sex is surely important and therefore relies on the collection of the correct data and having partial or incorrect data could result in a negative impact overall, particularly in tracking the impact of sex-based inequalities.

North Ayrshire Council: Positive impacts

Scottish Trans Alliance: The Equality Impact Assessment, Data Protection Impact Assessment, Human Rights Impact Assessment and Children's Rights and Wellbeing Impact Assessment all note the positive impact that may result for lesbian, gay, bisexual and trans people due to the introduction for the first time of questions about sexual orientation as well as trans status or history. There is currently a lack of high quality data about LGBT people in Scotland. The Census is the only large enough data source to provide robust, statistically significant information that can inform policy and service provision decisions to improve the lives of LGBT people. Each of these impact assessments also correctly highlights the importance of having introduced these questions on a voluntary basis. Information about a person's sexual orientation, or trans status or history, is sensitive and personal. While we would hope that LGBT people will feel comfortable and confident responding to these questions, it is right that they are not required to, particularly as there are legal penalties for not completing the Census. Introducing these questions on a voluntary basis reflects the introduction of a voluntary question on religion to the Census, and we think that it is sensible and appropriate to take the same approach to these new questions.

Definition of trans in the Equality Impact Assessment Page 20 of the Equality Impact Assessment Results defines the protected characteristic of gender reassignment. The wording should change to reflect the exact wording used in the legislation, which is that a person has the protected characteristic of gender reassignment if they are: "proposing to undergo, is undergoing or has undergone a process (or part of a process) for the purpose of reassigning the person's sex by changing physiological or other attributes of sex." The definition makes it clear that in order to have the protected characteristic, a person does not need to have undergone any gender reassignment medical treatments, or to be under medical supervision. Social and legal aspects of changing your sex count as well (in the definition, called 'other attributes of sex'). It also makes it clear that a person has the protected characteristic from the point that they are proposing to make these changes – not only at the point that those changes are occurring or have occurred. In this sense, the protected characteristic is broad, and covers a diverse range of trans people at varying stages of their transition. This can be seen by the Solicitor General's comments to the UK Parliament during the passage of the Equality Act 2010, in which she said: "This is not gender reassignment on a medical model... It concerns a personal journey and moving a gender identity away from birth sex. I am sure that that is as capable of being done by a young person as by an older person, and it is indeed likely to have manifestations. Those manifestations are the things that will indicate that some sort of process is in place. If a person makes the proposal—it is a proposal, not a decision where someone says, "I will do it and never turn back"—that they may move along that pathway, at that point, and at that point only, does it become practical to protect someone." As the legal definition of the term 'transsexual' is much broader than the historical medical definition, we use the

term 'trans' in its place (although when discussing the Equality Act 2010, still meaning those people with the protected characteristic of gender reassignment). No third option for non-binary people on the sex question. The sex question will continue to provide only two answer options – male and female. Our position is that there should be a third option at the sex question, to allow non-binary people to respond in a way that reflects how they live and identify, as trans men and trans women are able to. The EQIA should be updated to reflect that non-binary people with the protected characteristic of gender reassignment may be negatively impacted by having to complete the sex question by responding with either male or female.

Potential change to guidance for the sex question

In the EQIA, DPIA, HRIA and CRWIA, there is no discussion of how the guidance issued to go alongside the sex question may impact trans people. Currently, the Scottish Government are proposing to continue to issue guidance alongside the sex question that tells trans people to answer in-line with how they are living. This was the approach that was formalised in 2011 by National Records of Scotland, and is likely the way trans people have been responding to the Census prior to guidance being issued. There were numerous discussions throughout the passage of the Census (Amendment) Scotland Bill, and that remain ongoing, around whether or not the guidance for answering the sex question should be changed. This has included discussion of whether to tell trans people that they must answer with their legal sex (the sex recorded on their birth certificate) or their biological sex at birth. If a decision is taken to make a change to the sex question in this way, the EQIA, DPIA, HRIA and CRWIA would need to be updated to reflect the impact this would have on trans people. It is likely that trans people would feel more uncomfortable responding to the Census if they are required to respond to the sex question differently to previous years, and in a way that undermines how they live and identify. As the Census is a household survey, a move to change the sex question may also result in trans people having to out themselves to people who live in their household, as they could be required to respond to the sex question in a way that does not align with how they are living. A change to the guidance for the sex question would also mean that trans people would be forced to answer the sex question differently from how they respond to the overwhelming majority of other data collection exercises – such as when engaging with the NHS, employers and other public bodies. If a change to the guidance for the sex question is made, to require trans people to respond with either their legal sex or their biological sex at birth, this would need to be properly considered in the impact assessments. The EQIA would need to include consideration of this in the section on the impact on people with the protected characteristic of gender reassignment. Furthermore, if a legal sex question was introduced that required people to answer with the sex on their birth certificates, this might have a particularly negative impact on trans people who also have the protected characteristic of race. This is because some trans people will be from a country of origin that does not allow them to change the sex recorded on their birth certificate, due to lack of legal gender recognition laws. Requiring a trans person to answer with the sex on their birth certificate may mean that a trans person who has legal recognition of their gender in Scotland (as they have obtained a Gender Recognition Certificate) but who has not been able to update their birth certificate (as this wasn't issued in Scotland) has to respond in a way that doesn't reflect their legal status. This might be a breach of the Gender Recognition Act 2004. The

HRIA would need to include consideration of this in the section on how responding to the Census interacts with people's Article 8 right to a private and family life. The DPIA would need to include consideration of this at: • Data Protection Impact Assessment Screen Question 9 • Questions to Identify Privacy Issues Question 7 (on personal data) • Linking the DPIA to the GDPR data protection principles The CRWIA would need to include consideration of this throughout. Although the trans status and history question is going to be age routed so only over 16s can respond, the sex question is a mandatory question. This means that all trans young people would have to respond to the sex question. As it currently isn't possible to update the sex on your birth certificate until you are 18, any change to the guidance to require a legal sex or biological sex at birth response would mean that all trans young people would have to respond in a way that undermines how they live and identify. As those under 16 would not have the option to respond to the trans status and history question to give further details, this might have a particularly negative impact on trans young people.

Question 8 – “Are there any negative impacts which you consider unacceptable and must be eliminated?”

Nick Bailey: The use of self-identification for sex will undermine the value of Census data for the measurement of sex-based discrimination. The situation in 2011 is not a precedent here since there was no consultation on the guidance that I am aware of and it is doubtful the guidance was widely used.

The Alwaleed Centre, University of Edinburgh: No.

Anonymous: We believe that any requirement that trans people provide information specifically relating to their sex assigned at birth would be incompatible with human rights, not correspond to the ways in which most agencies and data users should treat trans individuals and would jeopardise accurate data collection, based on the evidence published with the census order.

Anonymous: If sex continues to be conflated with gender-it will impact on women's sex based rights under EA2010. Women as a sex class will be erased-even the language we use to define ourselves-if the Census allows any man to "self identify" as a woman. Sex disaggregated data is essential & this cannot be accurate if "gender" is conflated with sex. No-one can change sex. If you want to include those with a Gender Reassignment Certificate, because have legal (fiction) now different gender, that is very different from saying any man (even those who are not living as women) can self declare now a woman. This will skew sex discrimination stats as they will not have faced it (as due to female biology & childbirth etc.).

Scottish Islands Federation: Whilst we wholeheartedly support the reduction in paper usage this cannot be at the expense of not collecting data on those who do not have access to on line recording/digital connectivity. For this reason, serious consideration should be given to sending census forms in hard copy to all island post codes.

Professor Kathleen Stock: To repeat: The following are both negative impacts: - the retention of the concept of self-identified sex is inconsistent with the stated desire to make "estimates by age and sex.. the priority" and that the information collected be "authoritative, accurate and comparable" for all parts of Scotland," (these are quotes from the impact assessments). In effect, statisticians will be relying on the good will and/or ignorance of people about the guidance, to answer this question accurately, in order for the statistics to be robust. The retention of self-identified sex won't be effectively mitigated by the trans question, because some trans people might in fact record actual not self-identified sex. This confusion will have an impact on gathering accurate data about females (and about males). A further negative impact is on the statistics for sexual orientation. This must be indexed to a) actual sex and not b) self-identified sex. This is because currently many biologically male heterosexual transwomen (actually male) call themselves lesbians (because they self-identify as women and are attracted to women) and so will answer in that way. This will distort the figures for lesbians/ gay people overall. This will leave the data not fit for purpose. Transwomen are not lesbians in the original sense of the term, and should occupy a different statistical class than lesbians, as their social situation and interests diverge. It should therefore be made clear in the guidance that 'sexual orientation' refers to same-sex attraction and opposite-sex, attraction (or both, as with bisexuality) and that sex is not 'self-identified' in these cases.

South Ayrshire Council: No

Inclusion Scotland: Any negative impacts on particular groups should be mitigated as far as possible. Consideration should also be given to the positive impacts that taking part in the Census can have for disabled people. This includes positive impacts not only in relation to the valuable data outputs, but also in terms of advancing the active participation of disabled people in the Census and in society. It also provides an opportunity for the Census to be used as an example of accessible and inclusive design and delivery. We suggest that issues around privacy, dignity and accurate recording of sensitive information for disabled people are of particular importance and further consideration should be given to how to uphold these principles while undertaking the Census.

Comhairle nan Eilean Siar: Geographical handicap is permanent and can never be eliminated. However, greater support and development in the above areas would mitigate, to some extent, the challenges of living on an island and would help islands achieve a degree of parity with mainland areas and greater economic prosperity.

MurrayBlackburnMcKenzie: A sex question which is accompanied by guidance advising respondents to answer based on their self-declared gender identity represents a departure from the Equality Act 2010 and as such presents a risk to equalities monitoring. If census data is to properly assist public authorities in meeting their duties under the Equality Act 2010, then the definitions used in the census must mirror those in the Act. Any redefinition of sex within the context of the census is likely to be replicated in other data collection exercises. This introduces the risk that robust data on sex will be lost, either through its conflation with, or replacement by, data based on self-defined gender identity. We are also concerned that if it is accepted that it is wrong to ask a person's sex in the context of the UK's most high-profile population survey, that the same principle will be adopted widely, with negative impacts for the operation of the Equality Act. Given these risks, we support the suggestion made by CTEEA that NRS should test the sex question without any accompanying guidance. Arguably there is no justification for guidance to accompany the sex question, given that the 2021 census will contain a new question on trans status. NRS could revert to having no guidance at all, as was the case in all censuses between 1801 and 2001. Whichever direction is taken, the census is not the appropriate vehicle to either preempt legal reform on gender self-identification, or to set legal precedents.

LMcL: Yes. Asking people if they want to self-id their sex and including guidance on this option is self-defeating if accurate and detailed information is to be collected on the sex of the population. The Equalities Act is used to help public authorities meet their duties and as such the census must reflect the definition of sex contained within the Equality Act. Outwith the 2011 Census, all other census data re sex has been collected without the need for guidance. There is no good reason to offer any guidance re the sex question, particularly in light of there now being a separate question re transgender status. Self-id is not in law and the implications of such a law are still under discussion. The census is not a testing ground, nor should it be.

Anonymous: Discrimination due to minority Muslim community

Anonymous: Robust data on sex should not be lost - conflation and/or replacement with data based on self-defined gender identity is not recording the same thing and surely has an impact on healthcare, services etc following the Equality Act definitions.

Professor Jackie Cassell: I support the retention of the sex question. However, I am concerned by the fact that there are still two conflicting approaches to guidance on completion. You state that both approaches are undergoing testing, but you do not say how a decision on which approach to use will be taken, and in particular how the final version can be guaranteed to be compliant with the Equality Act 2010. This "kicks the can down the road" and leaves it unclear what approach you will use or how this will be decided. As you note, there are strong views on this and it is important that the final version is chosen in a transparent way, and that it is legally defensible. As a public health professional with clinical and research experience in sexual health and health inequalities, I agree with the use of the second guidance option at Annex A - i.e. advice to respond in accordance with either Birth Certificate or Gender Recognition Certificate. This enables the Census to fulfil its legal duty under the Equalities Act to collect, as far as possible, sex as a protected characteristic which has impact from the beginning of life. It is clearly also extremely important that Trans individuals have the opportunity to respond in a meaningful way. I therefore think it is particularly helpful that this version of the guidance on how to complete the sex question points out that individuals have the opportunity to state Trans or Non-Binary identity in an optional next question. For these reasons, I disagree with the first version of guidance also being tested which advises responding on sex by self-identification. This is likely to result in less reliable data on the legally protected characteristic of sex.

North Ayrshire Council: Supporting fairness and equality for communities is important and anything which endangered that would be negative. Online is fantastic where connectivity and skills are available and provision of alternative methods of response remain important in island and rural contexts, especially for older people.

Scottish Trans Alliance: We think that any change to the guidance for the sex question to require trans people to answer with their legal sex, or biological sex at birth, would have an unacceptable negative impact on trans people in Scotland.

Question 9 – “Based on your understanding of our plans for delivery of the 2021 Census are there things you would like to see us do better or differently to improve impacts?”

Nick Bailey: Binary sex question with guidance clarifying that this is based on legally-recognised sex. Possibly follow the English proposal by highlighting that there will be a separate trans identity question later.
The Alwaleed Centre, University of Edinburgh: No.
Anonymous: What is the impact on sex disaggregated data if you enable fiction people can change sex or that men can be women based on feeling in their head. They will not require Obs/Gyn/Maternity services or be at risk of DV in the way biological women are. It will have an escalating negative impact on women's rights to sex based services. I don't know any women who would be comfortable having a male HCP if specifically asked for female because they feel, as transsexual or NB, they are not male. If they are male bodied are male. Why should women have to undergo smear/mammogram or intimate care or be classed as a bigot if refuse that someone who is not female undertakes this.
Scottish Islands Federation: Census results (output areas) should be analysed in sufficient detail to reflect the differing natures of different island communities, particularly splitting Harris and Lewis data or Tiree and Coll. Date of census should be in a period where results are not distorted by high level of temporary visitors or during school holidays, particularly in winter months when many islanders chose to be away from island homes. 21 March 2021 seems a reasonable date.
Professor Kathleen Stock: Make the guidance for sex, actual not self-identified; retain the trans question. Make the guidance for 'sexual orientation' about actual same-sex or opposite-sex attraction (or both, as in bisexuality). Detach it from self-ID of sex.
South Ayrshire Council: Unsure
Inclusion Scotland: Engagement with disabled people should be central to Census planning.
Comhairle nan Eilean Siar: No.
MurrayBlackburnMcKenzie: We would like NRS to engage more fully with census data users with a background in data analysis, researchers using population data (including health research), and independent statisticians, and to put the purpose of the census at the forefront of its deliberations: that is, as a data collection exercise that provides the information needed
LMcL: The NRS has been woeful in engaging properly with appropriate data analysts, independent statisticians and users of the census data who will use its information to decide policy, planning and spending. I would hope the NRS shows more critical

thinking here re the necessity for accuracy re data collection and negative implications for inaccurate data collection.

Anonymous: Equality for minorityâ€™s

Anonymous: Am concerned that you have not coordinated with key census data users, like researchers doing important data analysis in health research for example, or independent statisticians. The purpose of the census is to provide the information needed to develop policies, plan and run public services, and to allocate funding. No point in the data being collected if it doesnâ€™t match important groupings and sectors of society, such as those tracked bt the Equality Act.

Professor Jackie Cassell: Clarify your approach to guidance on the "sex" and "trans" questions, to ensure it meets the Equality Duty in relation to sex as a protected characteristic while enabling Trans individuals to respond meaningfully.

Local Authority: Keep sex question as binary. Additional gender/gender identity question

North Ayrshire Council: Ensuring equality of opportunity to respond

Question 11 – “Overall do you think Scotland’s Census 2021 will have a positive or a negative impact on you?”

Anonymous: It will be negative if the previous Census question on filling in sex re: how person lives is allowed (this did NOT have public scrutiny & people were confused.) I will not fill it in if this is what it says as insulting to generations of women in my family who have been discriminated against on the basis of sex.

LMcL: It appears the NRS are determined to compromise robust and accurate data collection, in line with the Scottish Governments continued conflation of sex with gender. I believe the NRS stated aims of collecting data robustly and accurately has been compromised by those in positions of power within the NRS and only the objections of some very determined and principled citizens and MSPs has prevented this policy capture. I am disheartened at best by NRS officials being willing to compromise such an institution as the census data collection.

Question 12 – “Overall do you think Scotland’s Census 2021 will have a positive or a negative impact on Scotland as a whole?”

Anonymous: A No 11. This should never have been allowed to get to controversial stage. No-one has any problem with Trans people answering additional, voluntary question but skews data if men counted as if women.

LMcL: I think if the census goes ahead with skewing the sex question to allow self-id, the citizens of Scotland will suffer due to poor policies, planning and funding allocation by public bodies which use the census for the information and data contained within it...to provide appropriate services and planning adequate funding.