

EXPLANATORY NOTES

Census (Amendment) (Scotland) Act 2019 (asp 12)

£4.90

These notes relate to the Census (Amendment) (Scotland) Act 2019 (asp 12)
which received Royal Assent on 18 July 2019

CENSUS (AMENDMENT) (SCOTLAND) ACT 2019

EXPLANATORY NOTES

INTRODUCTION

1. These Explanatory Notes have been prepared by the Scottish Government in order to assist the reader of the Census (Amendment) (Scotland) Act 2019. They do not form part of the Act and have not been endorsed by the Parliament.

2. These Notes should be read in conjunction with the Act. They are not, and are not meant to be, a comprehensive description of the Act. So where a section, or a part of a section, does not seem to require any explanation or comment, none is given.

BACKGROUND

3. The primary legislation that provides for the taking of a census 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.

4. Section 6 makes equivalent provision in relation to local censuses.

5. The Schedule to the 1920 Act authorises the inclusion in the Census Order of specified topics in respect of which particulars may be required. "Particulars" are, essentially, the answers that people give to the questions in the census form. The current Schedule lists the following topics:

- names, sex, age;
- occupation, profession, trade or employment;
- nationality, birthplace, race, language;
- place of abode and character of dwelling;
- condition as to marriage, relation to head of family, issue born in marriage;
- religion; and
- 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.

6. Section 8(1) of the 1920 Act makes it an offence (punishable on summary conviction to a level 3 fine) to refuse or neglect to comply with an Order in Council under section 1 or 6 of the 1920 Act. It also makes it an offence for a person required to answer any question in pursuance of such an order, to refuse or neglect to answer or give a false answer to that question. Section 8(1A) provides that a person is not liable for a penalty under section 8(1) in relation to questions on religion.

THE ACT

7. The Act provides that no person shall be liable to a penalty under subsection (1) of section 8 of the 1920 Act for refusing or neglecting to state any particulars in respect of sexual orientation and of particulars prescribed in an Order in Council with respect to transgender status and history.

COMMENTARY ON THE ACT

Section 1 – Particulars about transgender status and history and sexual orientation may be gathered in census

8. Section 1(2) of the Act adds express reference to transgender status and history and to sexual orientation to the list of matters in the Schedule to the 1920 Act. This provides clarity for the purposes of the provision substituted by section 1(3) (see below). The particulars which an Order in Council made in terms of section 1 or 6 of the 1920 Act can validly require to be stated in the census returns are limited to those with respect to such matters as are mentioned in the Schedule.

9. This section will set out "transgender status and history" as a separate matter. The term "transgender" refers to a diverse range of people who find their gender identity does not fully correspond with their sex at birth. Transgender people may or may not experience the medical condition of gender dysphoria. They may or may not have completed a process of gender reassignment.

10. "Sexual orientation" is also set out as a separate matter for the first time, removing it from the generality of paragraph 6 of the Schedule to the 1920 Act. The term "sexual orientation" refers to a combination of emotional, romantic, sexual or affectionate attraction or feelings that a person may have towards another person.

11. The inclusion of particulars with respect to transgender status and history and sexual orientation in an Order in Council under section 1 or 6 will therefore not attract the parliamentary procedure set out in the proviso in section 1(2) of the 1920 Act (as read with the Interpretation and Legislative Reform (Scotland) Act 2010, Part 2). Were the Schedule not amended, then the proviso to section 1(2) of the 1920 Act would apply to the provisions of an Order in Council prescribing particulars about transgender status and history and about sexual orientation as they would be included by virtue of paragraph 6 of the schedule. As such, those provisions would attract the affirmative procedure and be amendable by the Parliament. Adding "transgender status and history" and "sexual orientation" to the Schedule means that the provisions of an Order in Council prescribing particulars in respect of these matters will be subject to the negative procedure.

12. Section 1(3) substitutes a new subsection for section 8(1A) of the 1920 Act. In doing so it extends the exception from the penalty provision (which exception currently applies only to particulars in respect of religion) to particulars in respect of sexual orientation. It also extends it to some particulars with respect to transgender status and history. Section 1(3) retains the existing exception from the penalty provisions to particulars in respect of religion.

13. The particulars with respect to transgender status and history which are to be so excepted must be identified by being prescribed in an Order in Council under section 1 or 6. The effect is that Her Majesty in Council may, when prescribing particulars in respect of transgender status and history as particulars which must be included in a census return, separately provide that some or all of those particulars are identified as being particulars for which no person will be liable to a penalty if that person refuses or neglects to state those particulars. This renders census questions about those particulars voluntary.

PARLIAMENTARY HISTORY

14. The following is a list of the proceedings in the Scottish Parliament on the Bill for the Act and significant documents connected to the Bill published by the Parliament during the Bill's parliamentary passage.

Proceedings and reports	***Reference***
INTRODUCTION	
Bill as introduced – 2 October 2018	SP Bill 40A – Session 5, 2018
STAGE 1	
(a) Culture, Tourism, Europe and External Affairs Committee	
32nd Meeting, 6 December 2018	Official Report
33rd Meeting, 13 December 2018	Official Report
34th Meeting, 20 December 2018	Official Report
1st Meeting, 10 January 2019	*In private*
3rd Meeting, 24 January 2019	*In private*
1st Report 2019 (Session 5) – Stage 1 Report on Bill – 7 February 2019	Report
(b) Delegated Powers and Law Reform Committee	
31st Meeting, 30 October 2018	*In private*
50th Report 2018 (Session 5) – Bill at Stage 1 – 31 October 2018	Report

Proceedings and reports	***Reference***
(c) Consideration by the Parliament	
Stage 1 Debate – 28 February 2019	Official Report
STAGE 2	
(a) Culture, Tourism, Europe and External Affairs Committee	
13th Meeting, 2 May 2019	Official Report
Bill as amended at Stage 2	SP Bill 40A – Session 5, 2019
(b) Delegated Powers and Law Reform Committee	
19th Meeting, 4 June 2019	*In private*
31st Report 2019 (Session 5) – Bill as amended at Stage 2 – 5 June 2019	Report
STAGE 3	
Consideration by the Parliament	
Stage 3 Debate – 12 June 2019	Official Report
ROYAL ASSENT	
Royal Assent – 18 July 2019	Census (Amendment) (Scotland) Act 2019

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