EXPLANATORY MEMORANDUM TO

THE CENSUS ORDER (ENGLAND AND WALES) 2020

2020 No. [XXXX]

1. Introduction

1.1 This explanatory memorandum has been prepared by the Statistics Board 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 and Wales) Order 2020 is to direct that a census of the population of England and Wales shall be taken and to state:

- the date of the census;
- the area to be covered by the census;
- the persons required to complete the census returns;
- the persons required to be included in those returns; and
- the particulars that may be requested and from whom.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 Some provisions of this instrument require the approval of both Houses of Parliament. These are provisions which prescribe particulars with respect to the matters mentioned in paragraph 6 of the Schedule to the Census Act 1920 ("the 1920 Act").

3.2 The 1920 Act sets out the matters on which questions can be asked in the census. The particulars that relate to the specific matters listed in paragraphs 1 to 5C of the Schedule to the 1920 Act are subject to the negative resolution procedure. Those specific matters are:

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.

5B Sexual Orientation

5C Gender Identity

3.3 Some of these terms are out-dated or use terms that may be confusing when used in the census questionnaires and so, where appropriate, different language will be used in

some questions that fall under those specific matters in order to ensure public understanding. For example:

- nationality will be captured by asking about passports held;
- race will be covered by a question on ethnic group;
- relation to the head of the family will become questions asking about the make-up of the household and how people are related or connected;
- issue born in marriage is no longer asked and instead the relationship questions capture any children in a household and how they are related to the rest of the household; and
- gender identity will be captured by asking whether the gender the person identifies with is the same as their sex registered at birth, and, if not, asking them to state their gender identity.

3.4 The 1920 Act also allows for questions on any other subject to be included in a census, as long as they will provide statistical information relating to the "social or civil condition of the population." In respect of the particulars for these questions, this instrument is subject to the affirmative resolution procedure and the particulars may be modified by the agreement of both Houses of Parliament. This instrument includes questions relating to, for example:

- second residences;
- student status and term-time address;
- general health and long-term illness/disability;
- usual address one year before the census if different from that on Census Day;
- if not born in the UK the date of arrival into the country and intended length of stay in the UK;
- provision of unpaid care;
- educational and vocational qualifications and apprenticeships;
- economic activity and place of work;
- means of travel to work;
- number of cars/vans available to the household;
- tenure of accommodation and type of landlord if rented;
- visitor status;
- national identity;
- status of person within a communal establishment; and
- type of communal establishment.

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)

3.5 This entire instrument applies to England and Wales 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 taking of a census in England and Wales. Similar Statutory Instruments will be needed to enable the censuses in Northern Ireland and Scotland to take place. These are the responsibility of the relevant devolved legislature.

3.6 The instrument has effects outside of England and Wales which the UK Statistics Authority considers to be minor or consequential. Welsh Ministers have been consulted on this instrument.

4. Extent and Territorial Application

4.1 This instrument extends to England and Wales and Scotland only.

4.2 The territorial application of this instrument is set out in Section 3 under "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)".

5. European Convention on Human Rights

5.1 The Minister for the Cabinet Office has made the following statement regarding Human Rights:

"In my view the provisions of the Census (England and Wales) Order 2020 are compatible with the Convention rights."

6. Legislative Context

6.1 Section 1 of 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 UK Statistics Authority holds the statutory powers of the Statistics Board and 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.

6.2 Section 3 of the 1920 Act contains a power for regulations to be made for the procedure and practical arrangements for the census, enabling a Census Order to be carried into effect. The power to make the regulations for England was transferred to the Minister for the Cabinet Office by the 2007 Act (Schedule 1, paragraph 3). It is intended that Census Regulations for the 2021 Census in England, which will be subject to the negative resolution procedure, will be made and laid before both Houses of Parliament in Spring 2020, after the Census (England and Wales) Order 2020 has been made. Responsibility for the Census Regulations in Wales now rests with the Welsh Ministers and arrangements are being made for such regulations to be submitted to the National Assembly for Wales.

6.3 The Census (Amendment) Act 2000 and the Census (Return Particulars and Removal of Penalties) Act 2019 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. 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.

6.4 Under article 4 of the National Assembly for Wales (Transfer of Functions) (No.2) Order 2006 (S.I. 2006/3334), the National Assembly for Wales must be consulted on the making of any Census Order proposed in respect of the whole or any part of Wales before a Minister of the Crown recommends to Her Majesty in Council that the Order

be made. The functions of the National Assembly for Wales under article 4 of that 2006 Order are now transferred to the Welsh Ministers by paragraph 30 of Schedule 11 to the Government of Wales Act 2006.

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, information collected in the 2021 Census will be used solely for the production of statistics and research. Usage will comply fully with that Act, the 1920 Act, the Freedom of Information Act 2000 and data protection legislation. There are legal penalties for breaches of confidentiality or for the unlawful disclosure of personal information which has been collected in the census.

6.7 Census data are kept confidential for 100 years after which time they are released to the National Archives and published. Whilst the data are in the possession of the UK Statistics Authority, a statutory bar imposed by section 39 of the 2007 Act prevents the release of census information. Section 3(4) of the Public Records Act 1958 states that the data should be released 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.

7. Policy background

What is being done and why?

7.1 The next census will take place on Sunday 21st March 2021 across the United Kingdom, subject to Parliamentary approval. 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.

7.5 It is essential that everyone is included and therefore participation in the census is a legal obligation. Aside from questions on religion, sexual orientation and gender identity (as mentioned in paragraph 6.3), refusal to answer census questions, 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 of the census in 2021. The majority of the questions were recommended 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. A further equivalent process is followed in relation to the inclusion of new response options to the questions, and as a result of such a process an additional response option of 'Roma' has been included under the ethnic group question.

7.7 A large number of new response option tick-boxes were requested but did not meet the threshold for inclusion in the census following this process of engagement, research and testing. This includes a 'Sikh' tick-box in the ethnic group question (to note there will continue to be a 'Sikh' religion tick box as in 2011), a 'Jain' tick-box in the religion question and a 'Cornish' tick-box for national identity. These identities, and others that are not included in the existing tick-boxes for these questions, can be expressed through the write-in option on both paper and online questionnaires, supported by the new online 'search-as-you-type' functionality. In addition, it should be noted that the national identity question allows respondents to record multiple identities across the tick-boxes and write-in box, to enable people to express their national identity without being required to choose between the options presented.

7.8 The White Paper also proposed new questions be included in the 2021 Census covering sexual orientation and gender identity. The Census (Return Particulars and Removal of Penalties) Act 2019, which received Royal Assent on the 8th October 2019, enables these questions to be asked in the 2021 Census on a voluntary basis by adding these as specific matters to the Schedule to the 1920 Act and removing the penalty in that Act for not responding to questions relating to those matters. This reflects the approach taken in 2000 when the matter of religion was added to the Schedule of the 1920 Act and the penalty removed. Overall this means that no-one is required to answer questions on religion, sexual orientation or gender identity if they do not wish to.

7.9 Other than the above changes, the proposed questions are essentially the same as those for the previous census in 2011.

What does this instrument do and why?

7.10 The draft Census (England and Wales) Order 2020 states that everyone present in England and Wales on census night must be included in the 2021 Census. It also covers any usual residents who are temporarily absent. It makes householders, individuals and people in charge of communal establishments responsible for

completing census questionnaires. This instrument, for the first time, also enables people to make separate individual returns, without the knowledge of their household. This is to ensure that everyone can answer questions in complete confidence, if they wish to do so.

7.11 There are other minor changes to how people living in communal establishments are to be included in the census. This covers hotels, hospitals, care homes, residential schools, prisons and military bases for example. The definitions for residence in a communal establishment have been revised and vary according to the type of establishment. There are also differences in how those not capable of completing their own questionnaires will be treated, with responsibilities placed on appropriate individuals to help, dependent on the situation and type of communal establishment in question.

7.12 The instrument includes more age-specific questions which are not required to be answered in relation to children. Previously these concerned education and economic activity, but these exceptions now also include questions on marriage and civil partnership, sexual orientation and gender identity for those under 16, as well as questions on languages spoken and previous residence, and for infants.

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 and Wales) Order 2009 (S.I. 2009/3210) provided for the 2011 Census. This instrument will provide for the 2021 Census and no consolidation is necessary.

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. ONS has been engaging widely on the census questions. ONS undertook an extensive programme of consultation, research, evidence gathering and evaluation.

10.2 In June 2015, 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 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. 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 ONS with stakeholder groups, and with the wider public, to test different question design options. 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 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 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.

10.8 Officials from ONS have kept colleagues in the Welsh Government informed on the drafting of this instrument and have worked with the Welsh Government throughout the planning of the 2021 Census to ensure that the requirements of Wales are accommodated.

10.9 Welsh Ministers were consulted on the draft Census (England and Wales) Order 2020 via a letter sent to the Minister for Finance and Trefnydd. During this consultation, the ONS engaged with the Welsh Government on how to ensure that the Census is as inclusive as possible for respondents in Wales.

11. Guidance

11.1 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, including 'identity' questions such as those relating to religion, national identity, ethnicity, sex, sexual orientation and gender identity. Such guidance, whilst not covered by this instrument, is being developed and refined based on engagement with stakeholders, user need and extensive testing. The guidance will make clear that questions relating to religion, sexual orientation and gender identity are voluntary and that choosing not to respond to these questions will carry no penalty

11.3 In addition, each census questionnaire will be clear that while completing it is mandatory, 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.

11.4 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 The impact on the public sector of this legislation is also minimal, and 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. Therefore, a revised version of the Equality Impact Assessment is being published to accompany this instrument on ONS's website and can be found at 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 ONS will consult the Information Commissioner's Office (ICO) and will work with the ICO to finalise and quality assure ONS's plans from a data protection and privacy perspective.

12.6 Summary information as to those measures currently planned to be in place, is available at https://www.ons.gov.uk/census/censustransformationprogramme/legislationandpolicy. A full assessment is not being made available at this point as the full technical design of the census is yet to be finalised. ONS tested a number of systems during a large-

scale census rehearsal in October 2019, the results of which will determine the final model, which will be assessed in the Data Protection Impact Assessment.

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. 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.

15. Contact

15.1 Matthew Ford at the UK Statistics Authority, telephone: 01329 44 7915 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.