



OFFICIAL REPORT
AITHISG OIFIGEIL

Culture, Tourism, Europe and External Affairs Committee

Thursday 27 February 2020

Session 5



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CULTURE, TOURISM, EUROPE AND EXTERNAL AFFAIRS COMMITTEE

7th Meeting 2020, Session 5

CONVENER

*Joan McAlpine (South Scotland) (SNP)

DEPUTY CONVENER

*Claire Baker (Mid Scotland and Fife) (Lab)

COMMITTEE MEMBERS

*Annabelle Ewing (Cowdenbeath) (SNP)

*Kenneth Gibson (Cunninghame North) (SNP)

*Ross Greer (West Scotland) (Green)

Gordon Lindhurst (Lothian) (Con)

*Stuart McMillan (Greenock and Inverclyde) (SNP)

*Oliver Mundell (Dumfriesshire) (Con)

*Beatrice Wishart (Shetland Islands) (LD)

*attended

THE FOLLOWING ALSO PARTICIPATED:

Jackie Baillie (Dumbarton) (Lab)

Fiona Hyslop (Cabinet Secretary for Economy, Fair Work and Culture)

Scott Matheson (Scottish Government)

Pete Whitehouse (National Records of Scotland)

CLERK TO THE COMMITTEE

Stephen Herbert

LOCATION

The Robert Burns Room (CR1)

Scottish Parliament

Culture, Tourism, Europe and External Affairs Committee

Thursday 27 February 2020

[The Convener opened the meeting at 09:35]

Interests

The Convener (Joan McAlpine): Good morning, and welcome to the seventh meeting in 2020 of the Culture, Tourism, Europe and External Affairs Committee. I remind members and the public to turn off their mobile phones. Members who are using electronic devices to access committee papers should ensure that they are turned to silent, please. We have received apologies from Gordon Lindhurst MSP.

Agenda item 1 is a declaration of interests. I welcome to the committee Oliver Mundell MSP and invite him to declare any registrable interests that are relevant to the committee's remit.

Oliver Mundell (Dumfriesshire) (Con): I have no interests to declare.

The Convener: Thank you, Oliver. I thank Alexander Stewart MSP and Donald Cameron MSP for their valuable contributions to the committee's work.

Subordinate Legislation

Census (Scotland) Order 2020 [Draft]

09:36

The Convener: Under agenda item 2, the committee will take evidence on the draft Census (Scotland) Order 2020. I welcome to the meeting the Cabinet Secretary for Economy, Fair Work and Culture, Fiona Hyslop; Scott Matheson, senior principal legal officer for the Scottish Government; and Pete Whitehouse, director of statistical services at the National Records of Scotland.

Members should note that the order is laid under the affirmative procedure, which means that the Parliament must approve it before the provisions can come into force. Following this agenda item, the committee will be invited to consider the motion to approve the order.

I ask the cabinet secretary to make a short opening statement.

The Cabinet Secretary for Economy, Fair Work and Culture (Fiona Hyslop): Thank you, convener.

Today is another crucial milestone on the journey to Scotland's 2021 census. It is critical that we have legislation in place to support the taking of the census in March 2021, and the committee's support is important in achieving that.

Collecting data to enable the production of high-quality census outputs is a priority for the National Records of Scotland. The census is the official count of every person and household in the country, and the census questionnaire is the only questionnaire of its kind to ask everyone the same questions at the same time. No other survey provides the range of information that the census provides, and we can be very proud of the richness of the data that we hold.

Work is being progressed to protect that valuable source of data. We must ensure that the 2021 census is secure and that privacy is protected, with census records held securely and confidentially for 100 years. The census legislation enables us to achieve that, and I am grateful to everyone who is involved in helping us to reach that important milestone.

I am glad that the committee has engaged on the census order for a number of months as part of the new informal engagement process. Although the sex question has dominated the discussion, I am aware that the committee has thoroughly considered the order over that time.

As members will be aware, there are some differences between the draft census order that is

before them and the census order that was approved in 2010. The drafting of the order has taken account of previous census orders, and it also reflects changes to the National Records of Scotland's policy development and its updated approach to the census. For example, the draft order reflects the proposed addition of new questions in the census for households and communal establishments on topics such as sexual orientation, transgender status and history, and veterans. It also sets out the age limitations on asking certain questions.

The draft order includes clearer detail on which individuals are to be counted, where individuals are to be enumerated and the properties to be enumerated. Although the 2021 census will be predominantly online, that does not change the basis of the order. I hope that members will see that every effort has been made to ensure that we have an appropriate order for Scotland's 2021 census.

Finally, my letter to the convener this week in response to the letter from the committee confirmed that, subject to the census legislation being in force, the registrar general will conduct a census that includes a binary sex question, supported by guidance on self-identification, and that I support that approach for Scotland's 2021 census.

National Records of Scotland officials are currently considering how the supporting guidance can be updated to ensure that there is clarity on the purpose of the census and the data that is being gathered. I will update members once that work has been completed.

The Convener: Thank you very much, cabinet secretary.

As you rightly said, the committee has scrutinised the census order for some time. Before it came before us, we spent a lot of time on the Census (Amendment) (Scotland) Bill, of course. The committee backed the asking of a question on transgender status in the census, because we were persuaded that people who identify in that way should be recorded, as they have a protected characteristic. The committee also asked that the sex question in the census remain binary. Both positions are reflected in the census order that is before us, which I welcome. The census order has a binary sex question and a question on transgender status, and it is therefore uncontroversial in that regard.

A number of outside organisations have issued statements about the committee's deliberations and today's meeting that conflate the order that we are discussing with future regulations, which you have said will be clarified at a later date. Obviously, that guidance will relate to the sex

question as well as to every other question. As you have made clear, the guidance is not contained in the census order and will not be put before the committee and the Parliament until later. Nevertheless, I would like to ask you a few questions about that guidance.

When you came to the committee previously, we talked about the letter from Alice Sullivan and 80 senior academics, who raised concerns about the guidance. Ten of those academics were members of the British Academy, and all of them were social scientists who gathered population data. What consideration have you given to their letter?

Fiona Hyslop: I will clarify what I said to ensure that people understand. It is the regulations that will come later. They are separate from the order, and the guidance is separate from the order and the regulations. As I indicated in my letter, I will consider the points that the committee made in its most recent letter to me about clarification and the legal status of guidance. I want to actively consider that. I said in my response this week that that is my commitment to the committee.

With regard to the evidence from the group that you referred to, there has been active engagement not just with the NRS but with the Office for National Statistics because, as members know, statistical experts from the other Administrations are involved in that. My understanding is that the ONS has engaged with that group and is in the process of replying to it.

I think that members are also aware that there is active engagement with statistical academics and others who are interested in the field on the longer-term work on how the Government and others will want to look at the capture of statistical information on a sex basis and a gender basis in the future. That is a separate piece of on-going work, and I think that that is the correct space for that engagement.

As far as my responsibilities are concerned, I need to ensure that we have in place an order that allows us to capture the information that we need. As the convener has correctly pointed out, an order is before us that has a sex question on a binary basis.

The Convener: Do you think that Professor Sullivan and the other 80 academics wrote the letter expressing concern about the guidance encouraging self-identification of sex because they are anti-trans?

Fiona Hyslop: I do not know the motivation, but I sincerely doubt that, because any academic in any field will, obviously, take a very professional approach. I think that the question is about encouraging as opposed to capturing. That is when people would have interpretations, and I am

not sure that that was the language that was used in the letter. I do not have the letter before me, so I cannot say whether they used the words “encouraging” or “capturing” or similar words. However, I would not at all challenge the motivations of the people behind the letter.

09:45

The Convener: I welcome that reassurance because, in December last year, the head of Stonewall Scotland, which receives £100,000 a year from the Scottish Government, said that those who were raising concerns about the guidance were anti-trans. I take it that you do not agree with that position.

Fiona Hyslop: I speak for the Scottish Government. Other organisations can speak for themselves, and they are perfectly capable of making independent comments, whether or not they receive money from the Government. I would not pass judgment on that, and it is important that people can express their views. I do not agree with that view. I represent the Scottish Government; I do not represent other organisations.

The Convener: I welcome the fact that you are engaging with the academics who signed Professor Sullivan’s letter. Are you aware of the communication that the committee received today on the freedom of information request in relation to the other academic letter, which we discussed in previous evidence sessions and which you mentioned in your letter as being one of the things that influenced you in coming to decisions about the guidance? The FOI response suggested that the NRS did not do due diligence on that letter to find out who the signatories were.

Fiona Hyslop: I was made aware by the clerk moments before I came into the meeting that you had received a communication. I think that you will understand that it was not possible for me to read that before I came into the meeting, as I was told about it as I approached the door.

The Convener: Sure. It was a late submission to the committee. However, perhaps you could agree to giving it some thought, given that you previously cited that letter as one of the pieces of evidence that convinced you to take a certain view of the—

Fiona Hyslop: I do not think that I would have said “convinced”. I am aware of lots of different evidence from lots of different groups in making decisions. I do not think that I have ever said that any one particular letter from one particular organisation has convinced me to make a decision. My responsibility is to take a broader view.

The Convener: Okay, but will you consider—

Fiona Hyslop: Yes, of course. Obviously, we will look at anything that the committee sends to us.

The Convener: As I said, the guidance is separate from the order, but I thought that it was worth asking those questions.

Claire Baker (Mid Scotland and Fife) (Lab): I want to ask a couple of questions, the first of which is about Sikhs as an ethnic group. You are aware of the debate about that. What is your understanding of the United Kingdom legal situation? Did you anticipate any action being taken in Scotland with regard to that?

Fiona Hyslop: My understanding—although I stand to be corrected on this—is that the appeal has not been determined as yet and that we are yet to hear about it.

Claire Baker: That is at the UK level.

Fiona Hyslop: Yes.

Claire Baker: Do you anticipate any action in Scotland?

Fiona Hyslop: I am not responsible for actions that might be taken by others. I met the Sikh Federation UK and Sikhs in Scotland recently. I think that I previously indicated to the committee that I would meet them. It was a very constructive meeting in which we went through their concerns and issues.

Over a period of time, there has been consideration of what would happen to response rates to the wider question on ethnicity should a tick box be included. My view is that an ethnic tick box for Sikhs would not be the best way forward. We must remember that the purpose is to ensure that we have the best way of capturing data not just for one community but for all communities.

I take very seriously the importance of visibility for the Sikh community. This is not about changing the order; if we wanted the order to include an ethnic tick box for the Sikh community, we would have to withdraw the order and start again. However, with regard to what will appear in the regulations, which will come later, I have asked officials to look at a proposal that I am now considering for an option in the “Other ethnic group” section, in which, currently, the only example given is Jewish. The proposal is to put the word “Sikh” in there, as well, to provide that visibility.

I reassured the committee previously not only that “Sikh” would be captured under the religious question, but that there would be the option to write in the word “Sikh” under the ethnic question. Giving “Sikh” as an example should go some way towards ensuring that the Sikh community is visible in Scotland and should start to address

some of the issues that the Sikh community raised with me, some of which were wider and not about the census. I have also made a commitment to work with the Minister for Older People and Equalities, Christina McKelvie, to ensure that the other issues are actively addressed as well.

Claire Baker: I asked the question in order to hear the Scottish Government's response to the debate, but also to raise some of the concerns around delays. I understand that there is some concern that legal action in the UK might cause a delay.

Fiona Hyslop: If there were delays and a legal case, what we could do would pretty much be on pause. Obviously, a legal case would have to go through the processes. Our issue, particularly for the census, because it is online, is that we need to get in place not just the order but the regulations that will come after it in time for summer in order to do the build of the online aspects, to allow the interpretation that we need. Therefore, there would be serious concerns if legal action were taken either on our census or, indeed, on the census for the rest of the UK.

The process that we have carried out to consider what would be best for the census has been thorough, but it has also tried to reflect what the interests are. Therefore, the proposal that I am asking the NRS to consider would be a way forward. It is not for the order; it would be for the regulations.

Claire Baker: I have received representation on the wording of the language question. I understand that individuals have also been in touch with the NRS and the Scottish Government, but I have been made more aware of the issue this week. Will you clarify a matter for me? Paragraph 26(e) of schedule 2 to the order says:

"whether English is the person's main language and, if not, which language is."

Will that wording appear in the census, or is there still flexibility about how that question will be presented?

Fiona Hyslop: I will start and then I will ask Pete Whitehouse to come in.

The importance of that question is not about status. I think that your question raises a general issue to do with the census. The census is not about anybody's status; it is about capturing information that can then be used to support, primarily, service needs. For language in particular, the question is not about the status of people who have multiple languages—as a Government, we want to encourage people having different languages, and we do that through our one-plus-two approach in schools and so on—but

its purpose is to identify people who need support with English as a second language.

That is the primary driver for the question. It is worded as it is to identify people who need support with English as a second language—or, rather, it is to identify the localities where the support is needed, because the census allows for that granular-level look at communities. Therefore, the question is for service delivery purposes.

Obviously, the order describes what needs to be included, but the regulations will contain the wording that will be in the census.

Pete, will you address the question?

Pete Whitehouse (National Records of Scotland): I—

Claire Baker: I understand that the question was presented differently in 2011. The wording was along the lines of, "Do you speak English at home?", which was different from the wording in the England and Wales census.

Pete Whitehouse: I have to say that I am not fully up to speed on all aspects of the question, other than that it will have been tested and discussed with data users.

As the cabinet secretary says, the purpose of the question is to allow data users to understand whether there is a need for services to be provided in a language other than a particular main language. Other questions have asked different things in the past about the different languages that are spoken at home or about the range of languages that people speak. That information is gathered in other surveys.

The purpose of the census is to flag up where services need to be provided in a language other than English, or another main language, so that local service providers and others can think about the approach needed to engage fully.

I think that we are probably asking something different from what we asked previously, but I will hand over to Scott Matheson to comment.

Scott Matheson (Scottish Government): I just want to come in on the point about the relationship between the order and the regulations, and, therefore, the question. I also want to pick up Claire Baker's reference to paragraph 26 of schedule 2. I believe that, in the version that is in the committee's papers, the numbering is a bit off. In your papers, schedule 2 starts at paragraph 8. In the version as laid, paragraph 19 of schedule 2 deals with language matters. Those are the particulars that are required to be stated in the census returns. Those will be broken down into questions that will appear on the census form and on the online system for collection. That will be presented differently, and we will come to that

matter at the stage when the regulations are made and laid.

Claire Baker: Therefore, the question will not necessarily ask what a person's main language is. The question might be worded differently, or it might be the same as what is in the schedule. The regulations might be different, although the question will still try to elicit the same information.

Scott Matheson: That is correct.

Annabelle Ewing (Cowdenbeath) (SNP): Good morning, cabinet secretary. I think that we—officials, you and the committee—are all very pleased that we have reached this stage, and we have all done a power of work to get to where we are. I very much welcome your letter of 26 February 2020 to the committee, in which, having listened to the views of many committee members, you have indicated that you have instructed your officials to consider adding additional text

“to ensure it is clear that responses do not affect the legal rights, obligations or status of individuals and respondents have confidence that credible data is being collected through the Census operation.”

What is the likely timeframe for that piece of work to be completed? In addition, I hope that you would consider it appropriate to ensure that a draft would be made available to the committee, in the interests of transparency, given our long journey on the subject, so that we could look at that text.

Fiona Hyslop: We gave you all the guidance previously—when it was drafted back in September 2019, you got most of the guidance.

On the timeframe, given that any reference that we add will be to legal status, I want to consult thoroughly with our officials, and particularly our legal officials, on how we best present that. It should not be a long piece of work. I understand that this is the guidance that you are very interested in, but there is a whole load of additional guidance, and that will not be completed for some time. However, we could try to give you the suggestions for this particular guidance sooner rather than later.

Annabelle Ewing: That is very reassuring. We have been on this long journey together, and I think that, in that context, it would be appropriate for the committee to have a look at it.

Fiona Hyslop: With regard to our relationship, I have tried to share and respond as quickly as possible and to listen to what the committee is saying. This is where we have to reach a point where we can present something to Parliament that we are comfortable with and confident in.

The Convener: If the ONS decided to take a different view on the guidance—I know that you are as one on this at the moment, but there have been indications that it may be looking at taking a

different view—would that affect the guidance in Scotland?

Fiona Hyslop: At the end of the day, we have our own census, and, because of that, we can make that decision ourselves. Several Scottish Administrations have now carried out the Scottish census.

I go back to the principles of what the census is meant to do: obviously, it is to count people; people must have confidence in it; it must be credible; and it must be consistent and comparable over time. It is also useful in certain circumstances to be able to compare and contrast statistics with different parts of the UK, whether that be with Northern Ireland or with England and Wales.

Obviously, it is our officials who deal with the guidance. I am not in contact directly with my counterpart ministers in relation to the issue. The communication is mostly carried out at official level. It is my understanding that the ONS is seeking to have similar guidance, but the wording might be different.

I do not know whether Pete Whitehouse has heard something more recently.

The convener has indicated that the ONS might be changing its view. That has not been communicated to me.

The Convener: I was thinking not so much about ONS, but about whether discussions might be taking place at a political level.

Fiona Hyslop: I do not know. That is speculation that I am not aware of.

10:00

Pete Whitehouse: The emphasis for the three census bodies across the United Kingdom is to ensure the harmonisation of outputs. On how we gather data, there is a lot of discussion and we share a lot of knowledge and methodology. Our commitment is to ensure that the census is accessible to the populations that we are conducting the census with and enabling them to take part in it. As statistical bodies, we commit to the outputs being comparable and harmonised in the best way, so that users who want to look at and compare statistics in the UK can do so.

The Convener: That is very interesting, thank you. We have Jackie Baillie with us today. Welcome, Jackie.

Jackie Baillie (Dumbarton) (Lab): Thank you, convener, and thank you for letting me come along today. I want to pursue the issue of the Sikh ethnic tick box. I heard the cabinet secretary's proposals, which take us some way forward. I am curious to know how robust her proposal is for putting Sikh

ethnicity under the “another ethnic group” tick box. Is there likely to be a drop-off in identification? Has that been tested? If the Sikh community still has concerns, as I understand it, it may consider taking legal action in the Court of Session. I want to test the balance of whether it would be quicker and better to withdraw and resubmit the order with a Sikh ethnic tick box or to allow that court process to proceed, with the delays that it would cause for the census.

Fiona Hyslop: This is also about handling the issue and the best response to it. Legal action can achieve certain things, but it can also be counterproductive to what people are trying to achieve. There is no indication as to whether a legal case would be successful. It would certainly disrupt the process, and that can be used as a threat, but I do not think that that would be wise. It would be unfortunate if people were to pursue that option.

We previously discussed the issue at committee. I think that Stuart McMillan asked me about the testing of some of the issues. Obviously, this is not a new issue; it has been raised before.

On the quality of the data received and the experience of Sikh respondents, no single view on what was preferable resulted from the discussions, the focus groups and the different activities. My understanding is that some in the Sikh community did not like including Sikh as an option under ethnicity because they wanted it to be included under religion.

We are proposing to cover it in both particulars. By doing that, with regard to the outputs—because that is what we want to deal with—we would ensure that the information on the religious question and enabling people to write in their own response on the ethnicity question mean that we will capture as much of the Sikh community as possible. As has been explained, there will be some third- and fourth-generation Sikhs in this country who will want to be able to answer under ethnicity. Our original proposal was always that they could answer under the “another ethnic group” box and write in their answer. We are making that more obvious to a wider group by including words to say that that is where they can answer the question.

That is our approach. We think that it is perfectly reasonable, and it has been considered—importantly, the process that has led us to this position has been considered, thoughtful and based on discussion with the Sikh community. However, we must also remember that the census is not put together for one particular organisation or individual. It must be possible for it to be answered well across the piece, and how we maximise the count, its credibility and people’s

confidence in doing it have been part of our consideration.

The Convener: As there are no further questions from members, we can move swiftly on to agenda item 3, which is our formal consideration of motion S5M-20742. I invite the cabinet secretary to move and speak to the motion.

Fiona Hyslop: We have had a thorough consideration of the draft census order. I appreciate the committee’s work over a long time and the diligence with which committee members have carried out their responsibilities. I encourage members to support the motion today.

Motion moved,

That the Culture, Tourism, Europe and External Affairs Committee recommends that the Census (Scotland) Order 2020 [draft] be approved.—[*Fiona Hyslop*]

Motion agreed to.

The Convener: The committee will report on this instrument in due course. I suspend the committee to allow witnesses to leave the room.

10:05

Meeting suspended.

10:06

*On resuming—***Public Petition****National Tourism Strategy (PE1721)**

The Convener: Agenda item 4 is consideration of petition PE1721, by John Hanks on behalf of Friends of Geilston, on the national tourism strategy for Scotland and the role of the National Trust for Scotland. The petition was referred to the committee by the Public Petitions Committee for consideration under our remit.

Members are invited to comment on the following proposed actions. We could close the petition under rule 15.7 of standing orders, on the basis that the National Trust for Scotland is already involved in the development of the national tourism strategy; we could close the petition under that rule, but, in doing so, we could agree to consider the issues raised in the petition in the wider tourism strategy, once it is published—it is not yet published—as part of our business planning day, following the summer recess; or we could take another action, if the committee considers that appropriate.

Stuart McMillan (Greenock and Inverclyde) (SNP): I suggest that we take the second option, and include the topic on the agenda for the business planning day. As you rightly said, the new tourism strategy has not yet been published, and that could be a good opportunity for the committee to engage further on this area of tourism.

Annabelle Ewing: I agree absolutely with Stuart. It is a very interesting—probably underdeveloped—area of tourism activity. I love my garden, so I am up for it. I hope that we will have opportunities, as potential tourists, to visit some gardens.

Kenneth Gibson (Cunninghame North) (SNP): Bring your wellies.

Jackie Baillie: I promise that I will not come along to this committee often, but Geilston garden is in my constituency, so I supported the petitioners. A number of high-profile gardens have been closed down in the past, and that may happen in future to other gardens, including to Geilston garden. The UK Parliament's Digital, Culture, Media and Sport Committee produced a very interesting report on tourism strategies, including the garden economy.

I would be delighted if the committee would consider the issue further, whether as part of the onward work programme or otherwise.

I invite everyone on the committee to come to see Geilston garden. I am sure that you would enjoy it thoroughly.

The Convener: Thank you. I certainly love a good garden myself, so I will give serious consideration to that invitation.

Claire Baker: Is the tourism strategy referred to in the petition due in the spring? Do we have an update on that?

The Convener: We were told that it was due in March. We have had discussions on that, although I honestly cannot remember whether they were in public or in private. It is probably something that we would want to look at as a committee, given that tourism is in our remit.

I think that the tenor of the discussion is that we close the petition and consider the issue further on our business planning day.

10:10

Meeting continued in private until 10:20.

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