

The 2011 national census and LGBT people – discussion paper

This version dated: 27th November 2008

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The Equality Network believes that a question on (self-identified) sexual orientation should be included in the 2011 national census in Scotland. This paper outlines the issues involved.

Background

The national census in Scotland is held every ten years – the next is in 2011. The census in Scotland is devolved, and is separate from, but coordinated with, the census in other parts of the UK. The census in Scotland is organised by the General Register Office for Scotland (GROS, part of the Scottish Government). The census in England and Wales is organised by the Office for National Statistics (ONS, part of the UK Government). The census is held on the same day throughout the UK, and the set of questions is similar, but by no means identical, in each country.

The census aims to gather information about everyone in Scotland. It is sent to each household, and asks for information on everyone in the household, and on the relationships between the different household members. It is addressed to the “householder”, and consists of one page asking about the whole household (eg the kind of house), two pages asking about the relationships between the different household members, and several pages for each individual household member. All of this is part of a single form, which means that each person’s answers may be seen by other members of the household. For the first time, in 2011, it will be possible to complete the form online instead of on paper.

In 2001, there were 34 questions for each household member. These included questions on gender, age, marital status, ethnic group, country of birth, religion and disability, alongside a range of other questions, including about work and qualifications. Almost all of the questions were

compulsory (it is a criminal offence punishable by a fine of up to £1000 to refuse to answer the questions). The exception was the questions about religion, which were voluntary.

Of the seven grounds covered by anti-discrimination law (age, disability, gender, gender reassignment, race, religion/belief, and sexual orientation) only gender reassignment and sexual orientation were not covered by the 2001 census questions.

Completed census forms are kept confidential for 100 years. The only data released is statistical data from which it is impossible to find anything out about any individual.

No country has, so far as we know, yet included questions on sexual orientation or transgender identity in their national census. Two countries, Canada and New Zealand, have done considerable development work towards the possibility of including a sexual orientation question, but have not yet included a question.

The Equality Network's position on sexual orientation and transgender identity questions in the census

Including questions on five of the equality strands, and not on sexual orientation or transgender identity, sends a message that those equality strands are not as important, or are too 'difficult', 'sensitive' or 'embarrassing' to deal with.

We know that there is a need for good estimates of the numbers of LGBT people in each part of Scotland. For example, the national LGBT organisations are often asked by local public services how many LGBT people are in their area.

The Equality Network therefore met with GROS in 2004 and 2005, together with the other two national LGBT organisations, to discuss the issue. We also consulted through our network, in 2005, to find out what LGBT people think about questions in the census.

We asked whether people thought that there should be a sexual orientation question. In our first fairly small survey (n=50), 84% said yes. Our second, larger, survey (n=141) detailed how the census works,

including that the locally recruited 'enumerator', who collects the forms, gets to see the responses. We asked whether people would be prepared to disclose their sexual orientation in response to a census question. 88% said that they would.

Consultation with transgender people and groups produced a different result. There is significant concern that more development work needs to be done on possible questions to cover the range of transgender identities. More also needs to be done to change the law and the reality on the ground to protect transgender people from discrimination and harassment. Until this is done, it was not felt appropriate to question people about their transgender identity in the census.

Taking into account the views of LGBT people we have consulted, and the usefulness of the data (more details below), the Equality Network believes that a question on sexual orientation (but not a question on transgender identity) should be included in the 2011 census in Scotland.

We believe that the question should be voluntary, like the religion questions in 2001, so that there is no criminal liability for not answering the sexual orientation question. We believe that the sexual orientation question should be for people aged 16 and over.

GROS's and ONS's positions on a sexual orientation question

GROS

GROS, part of the Scottish Government, conduct the census in Scotland. The national LGBT organisations have been discussing with GROS a possible sexual orientation question for the 2011 census since late 2004.

GROS tested a sexual orientation question in a small scale postal test in 2005. A report of the results is available here:

www.gro-scotland.gov.uk/census/censushm2011/question-development/sexual-orientation-in-the-census.html

In that report they concluded that the results (2.2% replied LGB or Other; 8.5% replied Prefer not to answer; and 6% did not answer the question

at all) call into question the accuracy of the data that would be gathered from the question, and therefore its utility.

In spring 2007, GROS consulted on the content of the 2011 census. They received ten responses dealing with the issue of a sexual orientation question, of which eight were in favour of including a question (three from LGBT groups, and five from other public and voluntary groups and individuals).

Details can be found here (pages 92 and 93):

www.gro-scotland.gov.uk/files1/stats/consultation-report-v5.pdf

However, at the current time, GROS's position remains that they do not plan to include a question, for two reasons:

- Concern about data quality, and, as a result, usefulness.
- Concern that the inclusion of a question could place pressure on LGB people to come out within their household (these concerns are discussed further below).

Meanwhile, the Scottish Government is developing a sexual orientation question that is likely to be used as part of the 'core' set of questions common to five surveys that the Government conducts. These are the Household Survey, the House Condition Survey, the Health Survey, the Crime and Justice Survey, and the Scottish section of the UK Labour Force Survey.

The question is being used in 2008 in the Scottish Health Survey and the Scottish Crime and Justice Survey.

ONS

ONS, part of the UK Government, conduct the census in England and Wales.

In 2005, ONS consulted on the content of the 2011 census. Having analysed responses, they concluded that there was a very strong user requirement for a sexual orientation question, "in particular to facilitate monitoring of equality objectives, and where users in local government and the NHS have asked for this information to target service provision for the Lesbian, Gay and Bisexual (LGB) population."

ONS's assessment of the need for a sexual orientation question can be found here:

www.ons.gov.uk/about/consultations/closed-consultations/consultation-on-2011-census---responses/sexual-orientation.pdf

However, ONS went on to state, "The ONS view remains that such questions are not suitable for the 2011 Census. ONS has significant concerns surrounding the issues of privacy, acceptability, accuracy, conceptual definitions and the effect that such a question could have on the overall response to the Census."

ONS continue to oppose the inclusion of a sexual orientation question, although we understand that they have dropped their concern that including a question will affect the overall census response rate.

More details on ONS's position can be found here:

www.ons.gov.uk/about/consultations/closed-consultations/consultation-on-2011-census---responses/this-paper.pdf

Meanwhile, ONS have established a project to develop a sexual orientation question (which they call a sexual identity question – see the annex to this paper) for the Integrated Household Survey (which combines most ONS household surveys in England and Wales).

This project is doing very useful development work on question wordings and ways of presenting questions.

Details can be found here:

www.ons.gov.uk/about-statistics/measuring-equality/sexual-identity-project/index.html

Marriage, civil partnership and cohabitation

Despite their current positions on a sexual orientation question, both GROS and ONS have agreed that the previous marital status question in the census will be expanded in 2011 to ask about marital and civil partnership status.

GROS's planned question for the 2011 census is:

What is your marital or civil partnership status?

- | | |
|---|--|
| <input type="checkbox"/> Never married and never formed a civil partnership | |
| <input type="checkbox"/> Married | <input type="checkbox"/> In a same sex civil partnership |
| <input type="checkbox"/> Separated (but still legally married) | <input type="checkbox"/> Separated from a civil partner (but still in a civil partnership) |
| <input type="checkbox"/> Divorced | <input type="checkbox"/> Dissolved from a civil partnership |
| <input type="checkbox"/> Widowed | <input type="checkbox"/> Surviving civil partner |

In addition, the question asking about relationships between household members is likely to include "Partner" as a separate option from "Husband or wife" and "Civil partner". This means that cohabiting mixed-sex and same-sex partnerships will also be identified.

The advantages of a sexual orientation question

As noted above, ONS consulted on and analysed the need for sexual orientation data from the census. They rated the user need for statistical data on sexual orientation from the census as very strong.

Key points identified by ONS include:

- The data would help ensure fair access by LGB people to public services and employment, by helping plan and provide services, and helping assess whether services and employment are delivering fairly. The UK Government's proposed Equality Bill will place public services under a statutory duty to promote and

monitor equality on all grounds covered by UK equality law, including sexual orientation. The census would provide baseline data for diversity monitoring surveys conducted by public authorities and others.

- The census provides statistical data for small geographical areas, and this is needed because LGB people move around, and may migrate for example to larger cities, and to plan and monitor services in local areas.
- There is no current alternative source of data on sexual orientation of the general population across the country.
- The census allows “multivariate analysis”, that is, a breakdown by sexual orientation of other questions in the census, such as household composition, ethnicity, religion, qualifications, employment data etc.
- The census provides data for the whole nation.

In addition to these points, LGBT groups and organisations such as the Equality and Human Rights Commission consider that omitting a sexual orientation question, when questions are included covering age, disability, gender, race and religion/belief, sends a message that sexual orientation equality is less important than the equality on the other grounds covered by UK law, and thereby undermines efforts to promote equality as strongly, and in an integrated way, on all these grounds.

The disadvantages of a sexual orientation question

Concerns raised by GROS and ONS about the inclusion of a sexual orientation question include:

- Conceptual issues, about what the census will measure, what we actually need measured, and the need for a question that is widely understood.
- A low response rate would undermine the quality of the data, and therefore the usefulness of the question. When there are other questions queuing up for inclusion, a question should not be included if it does not provide useful data.
- The fact that there is one census form for the whole household means that people who are not ‘out’ as LGB in their household will come under pressure to come out when the form is filled in.

These concerns are discussed further in the following sections.

Conceptual issues – what is being measured?

The term “sexual orientation” can be used in a broad way to apply to anything which concerns the way a person’s sexuality is related to other people’s gender. This can include, for example, sexual behaviour – that is, the gender(s) of a person’s sexual partner(s) – and sexual and emotional attraction – that is, the gender(s) of the people a person is sexually or emotionally attracted to.

However, sexual orientation is frequently used to mean a dimension of a person’s self-identity – that is, whether the person identifies as lesbian, gay, bisexual, straight, queer, etc.

So broadly, we can identify at least three different dimensions of sexual orientation, covering sexual behaviour, sexual and emotional attraction, and self-identification.

The term “sexual orientation” appears in UK equality legislation. It is defined there as “a sexual orientation towards: (a) persons of the same sex; (b) persons of the opposite sex; or (c) persons of both sexes.” This definition does not indicate the meaning and scope of the phrase “sexual orientation”, but it does indicate that “orientation” relates to the gender(s) of other people.

Equality legislation (both UK and EU) covers discrimination on grounds of sexual orientation, and the Equality Network believes that this includes discrimination against someone because of the gender of an actual or presumed sexual partner, or because they are (or are presumed to be) attracted towards people of particular gender(s), or because they self-define (or are presumed to self-define) as a particular sexual orientation (lesbian, gay, bisexual, heterosexual etc). In other words, the legislation protects from discrimination on grounds of all of the dimensions of sexual orientation identified above. However, there is little case law as yet, at either UK or EU level, addressing the boundaries of the legal definition of sexual orientation.

It is well known that the number of people who report in research studies that they have participated in same-sex sexual activity at some time in

their lives is larger than the number who report that they are attracted to people of the same sex, and that number is larger than the number who self-identify in surveys as lesbian, gay or bisexual. The three dimensions of sexual orientation are different, although related.

It is a strong principle of the Equality Network's work that people have the right to choose how to name and describe their own sexual orientation. Like any words, the words "lesbian", "gay", "bisexual" etc have complex total meanings. When the Equality Network refers to an individual's sexual orientation, we mean their self-identified sexual orientation.

A growing number of employers and service providers now ask diversity questions including sexual orientation. This can be, for example, for recruitment monitoring, workforce diversity surveys, service user complaint analysis etc. Usually the question asks the person whether they identify as lesbian, gay, bisexual or straight/heterosexual (and in some cases "other") without giving further explanation of these terms.

Clearly, what such surveys measure is whether a person is willing to self-identify, in the context of the survey, using one of the terms lesbian, gay, bisexual, straight/heterosexual or other. This is not the same thing as asking about the gender(s) of the people the person is attracted to, although it is clearly related to this. Nor is it the same thing as asking about the gender(s) of the people the person has had sex with during their life.

It would be possible to include questions in the census exploring the different dimensions of sexual orientation. There could be a question asking what gender(s) the person has had sex with (although that would be unusually intrusive for the census), a question asking to what extent the person is emotionally or sexually attracted to different genders, and a question asking the person which term most closely identifies them: straight/heterosexual, lesbian, gay, bisexual or other.

Behaviour data is directly useful in planning and evaluating sexual health services. Attraction data might be indirectly useful for the same purpose, and might also be indirectly useful in planning and evaluating current and future services for couples and families (although there are other questions on the census that ask about family relationships more directly).

Self-identity data indirectly relates to service needs for same-sex couples and their families, and is likely to relate fairly closely to needs around experienced discrimination and hate crime (which are based on the identity of a person as perceived by another person). Self-identity data from the census would also provide a baseline for the self-identity questions that are included in many diversity and equality monitoring surveys.

A self-identity question is also the least intrusive of the questions discussed above.

The Equality Network therefore believes that it is a sexual orientation self-identity question that should be included in the census, rather than a question about sexual behaviour or sexual/emotional attraction.

It has been suggested by ONS that if a question asks about self-identified sexual orientation, then, to distinguish that concept from the gender(s) of people a person has sex with or is attracted to, the term “sexual identity” should be used (instead of “sexual orientation”), to describe what the question is measuring. The Equality Network disagrees with this for reasons noted in the annex to this paper.

It is worth noting that issues around there being different dimensions of identity and behaviour are not unique to a sexual orientation question in the census. They arise with other questions as well, for example the religion question. The proposed religion question for 2011 asks “What is your current religion, denomination, body or faith?” This is different from asking whether people regularly worship in a particular faith, and also different from asking about a person’s lifetime faith-related behaviour (in the 2001 census there was an additional question asking what religion the person was brought up in).

Related to the question of what dimension of sexual orientation the census should ask about is the need to use a question that people will understand. We believe that the terms “gay” and “lesbian” are now very widely understood, especially by people who might self-define with them. “Bisexual” is rather less widely used, but increasingly understood.

A significant proportion of the majority, heterosexual, population may never have considered how they would define their sexual orientation. However, that proportion is reducing with increasing public discussion of

sexual orientation issues, and the increasing prevalence of diversity monitoring in an employment and service provision context. There is evidence that the term “straight” is more widely understood than “heterosexual”, and of course the question would not use those terms in isolation, but in contrast to “lesbian”, “gay” and “bisexual”.

ONS is conducting research into people’s comprehension of a question on self-identified sexual orientation, as part of their sexual identity project:

www.ons.gov.uk/about-statistics/measuring-equality/sexual-identity-project/index.html

Response rates and data quality

People who self-define as lesbian, gay or bisexual are ‘out’ to a different extent in different contexts. A young person may have realised that they are gay, but not yet have told anyone else. An LGB person may be out to their friends and family but not to their work colleagues.

Because the census is a household survey, with a single form covering everyone living in the same household, a question asking a person’s self-identified sexual orientation is effectively asking for their sexual orientation as they are prepared to reveal it to other household members.

For example, a young person living with their parents may identify as gay to friends but not be out to their parents, and would probably be recorded in the census as straight. An older LGB person may share a house with one or more people who they are not out to, although we believe that this is increasingly rare.

We understand that the Equality and Human Rights Commission is planning research to identify quantitative estimates of the different numbers of people who are out as LGB within their household, and who are out in other contexts such as at work. This should allow estimates for other contexts to be usefully extrapolated from census data.

There is another factor which will affect the data collected on sexual orientation in the census. A person may be willing to reveal their self-

identified sexual orientation to other household members (or they may live alone), but they may nevertheless not be willing to reveal it on the census form.

The Equality Network's survey of our network members (mostly LGB people) in autumn 2005 found that 2% (of a total n=141) would not reveal their sexual orientation on the census form, and further 4% might not, because of concerns about the confidentiality of the census data handling. A further 6% said they would not reveal their sexual orientation for other reasons – written comments included that sexual orientation is not a matter that it is appropriate for government to ask about.

The number of people who do not answer the question because of concerns about the confidentiality of the census procedures, and the number who do not answer because they do not think that the government has any business asking, can probably be reduced by advance publicity about the census confidentiality measures, and about the uses for the data, respectively.

Pressure to come out because of the census

It has been suggested that including a question on sexual orientation in the census will put pressure on people who are not out to the people they share their house with, to come out.

We think that this will be rare. Many young LGB people are not out to their parents (and of course many have not yet come to a conclusion about their sexual orientation and named it to themselves). However, young people who are not out to their parents are used to keeping private their thoughts about their own sexual orientation, and it is unlikely that the arrival of the census form will significantly add to the wide variety of other pressures on them to reveal their sexual orientation.

Most older LGB people will either be out to the people (if any) that they share a house with, or will have chosen to conceal their sexual orientation from those people over a significant period of time. That concealment often requires effort and care. We do not think that the need to conceal once more as a result of the arrival of the census form is likely to prove significantly more difficult.

What happens next

GROS are expected to publish a 'white paper', around the start of December 2008, setting out what questions they plan to include in the census in 2011. This may not be in the form of a consultation paper, but at least would be expected to be considered by one or more Scottish Parliamentary committees.

In March 2000, the Scottish Parliament passed the very short Census (Amendment) (Scotland) Act 2000, to add religion to the list of things (listed in the Census Act 1920) that the census can ask about, so that questions on religion could be included in the 2001 census.

The Census Act 1920 already allowed questions to be asked about "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." Religion questions could probably have been included in the 2001 census under that heading, without passing an amendment Act. However, the amendment Act was required so that the religion questions could be made non-compulsory (all the other questions are compulsory, with, in theory at least, criminal penalties for not answering them).

A compulsory question on sexual orientation could probably be included in the 2011 census without further amending the Census Act 1920, because sexual orientation is something "with respect to which it is desirable to obtain statistical information with a view to ascertaining the social or civil condition of the population." However, to include a question on sexual orientation which is non-compulsory, a similar short Census (Amendment) (Scotland) Act will be needed, to amend the 1920 Act. This means that a bill for this will have to be introduced and passed through the Scottish Parliament.

This bill could be introduced at any time, but would need to pass by early 2010. The bill would not require a sexual orientation question to be included in the 2011 census, but would simply allow for one to be included if a later decision was taken to do that.

In March 2000, the Scottish Parliament agreed to the Census (Scotland) Order 2000 (SSI 2000/68), which specified what the subject matter of the questions would be in the 2001 census in Scotland. The corresponding Census (Scotland) Order 2010 will be the final point for

deciding whether or not there will be a sexual orientation question in the 2011 census.

In April 2000, the Scottish Parliament agreed the Census (Scotland) Regulations 2000 (SSI 2000/102), which were then amended in June 2000 by the Census (Scotland) Amendment Regulations 2000 (SSI 2000/194). These set out the full details of the 2001 census including the wording of questions and the layout of the forms. The equivalent regulations in 2010 will set out the full details of the 2011 census.

Annex: ‘sexual orientation’ or ‘sexual identity’

As noted in the section ‘Conceptual issues’ above, it has been suggested by ONS that the term “sexual identity” should be used to describe the self-identified sexual orientation asked for in a census or survey question like: “Which of the following best describes how you think of yourself: Straight/Heterosexual, Lesbian/Gay, Bisexual, Other?”. The ONS sexual identity project, which is developing a question for use in the England and Wales Integrated Household Survey, has adopted the term sexual identity for what is being measured by such a question.

The potential advantages of moving to the term “sexual identity” to describe what this kind of question seeks to measure include:

- It reduces confusion about whether the question seeks to measure sexual behaviour, or the range of attraction/desire, or self-defined identity. Encouraging the use of this new term could help people conceptualise a variety of sexual orientation issues more clearly, and in particular make distinctions more clearly between behaviour, ranges of attraction/desire, and self-identity.
- By reducing that confusion, use of the term sexual identity helps to clarify that the census is only measuring one dimension (self-identity) of sexual orientation, and so helps to reduce concerns about the accuracy of the census results by making it clear that the census data is not intended to be an accurate measurement of other dimensions such as sexual behaviour.

The potential disadvantages of moving to the term “sexual identity” include:

- The term sexual orientation is widely used to mean self-identity (ie self-identified sexual orientation), and in particular is widely used in questions about self-identity on equality and diversity monitoring forms, by employers and service providers across the UK. Using a different term in the census could reduce the acceptability of the census data as a baseline for all those other surveys.
- Adopting the term sexual identity in the census will raise the issue of whether survey users such as employers, service providers and others across the UK should alter their surveys and diversity monitoring to come into line with the new census terminology. This risks widespread confusion lasting some years. Instead of bringing clarity, the new terminology may cause greater confusion, especially since the equality legislation, which has inspired much of the survey and monitoring work, uses the term sexual orientation.

- The term sexual orientation is used internationally to include self-identity, and to describe questions about self-identity – for example the recent EU-wide Eurobarometer survey which asked whether people agreed that there should be a sexual orientation question in their national census. Even if all data collectors and users in the UK moved to using the term sexual identity, confusion with other countries in Europe and elsewhere would continue.
- The wide adoption of two different terms: sexual identity for self-identified sexual orientation, and sexual orientation for the other dimensions such as behaviour and range of attraction/desire, may play into the hands of those who argue that discrimination on grounds of behaviour is different from discrimination on grounds of identity, and that discrimination on grounds of the behaviour dimension of sexual orientation is acceptable should not be protected against.
- The term sexual identity is likely to be confused with gender identity. In the UK and US, gender identity is the term widely used to mean various dimensions (including self-identity, physical characteristics, appearance and expression) of a person’s identity related to their gender, and includes transgender identities. There is no obvious distinction in dictionary definitions, between sexual identity and gender identity. Furthermore, in some other European countries, the term used for what we in the UK refer to as gender identity is often translated into English as “sexual identity”. The adoption in the UK of the term sexual identity to mean a particular dimension of a person’s sexual orientation is therefore likely lead to considerable confusion both within the UK and at a European level.
- The term sexual orientation has the advantage that the word “orientation” is generally understood, and is defined in UK legislation, to restrict the meanings of “sexual orientation” to ones related to the genders of other persons. We think that the term sexual orientation is increasingly widely understood by the public as relating to whether a person is gay/lesbian, bisexual or straight. In contrast, the term sexual identity is not in wide use, and without further explanation might well be interpreted as encompassing all aspects of a person’s self-identity related to sex, so including for example identities such as celibate, promiscuous, etc.

The Equality Network believes that the disadvantages of moving to a new terminology of ‘sexual identity’ for the census question outweigh the advantages, and that the term ‘sexual orientation’ should be retained, while being clear that what is being measured is self-identified sexual orientation.