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**Ed Humpherson, Director General for Regulation**

Paul Lowe  
Chief Executive and Registrar General for Scotland  
National Records of Scotland  
(by email)

4 October 2020

Dear Paul

### **Guidance on the sex question in the forthcoming Census for Scotland**

I know how much emphasis you put on stakeholder engagement. In general, National Records of Scotland (NRS) seeks to engage with a wide range of users of its data and key stakeholders on its statistical developments and outputs, including on Scotland's Census. I am writing about one specific area of concern that has been raised with us, but it is important to set it in the context of the positive approach that NRS takes overall.

The background is that I have recently been contacted by Professor Susan McVie and Professor Lindsay Paterson of Edinburgh University, who have asked me to consider the nature of correspondence received from NRS, regarding the guidance that will accompany the sex question in Scotland's upcoming 2022 Census.

Specifically, Professor McVie and Professor Paterson cite two instances where, in response to enquiring about the potential for additional review of and consultation on this guidance, they were told by NRS that this would not be possible because the guidance is finalised, having been approved by the Culture, Tourism and External Affairs (CEETA) committee of the Scottish Parliament. Professor McVie and Professor Paterson feel this response is unsatisfactory because, as they confirmed with CEETA and as I have been able to confirm with NRS since, CEETA's legal responsibility relates to the Census Order and the Census Regulations, so covers the Census questions, but not the guidance that will accompany them, which is not a legal document.

NRS have clarified to us that the letters to Professor McVie and Professor Paterson aimed to explain NRS's view of the relationship between the Census Order and the guidance. In short, the NRS view is that the Scottish Parliament agrees the Census Order and Regulations and that, once this happens, NRS sees the guidance to accompany the sex question (which sits within NRS's responsibilities) as also concluded. NRS feels that the

Census Order and Regulations were agreed by CEETA and wider Scottish Parliament in full knowledge of the guidance that NRS had developed to accompany the sex question: therefore, in NRS's view, it is appropriate that the guidance is now considered finalised.

Having reviewed the correspondence received by Professor McVie and Professor Paterson, I think that the letters they received from NRS could have been clearer. Indeed, when I first read your initial letter, I too interpreted it as saying that the guidance itself had been approved by the Committee, which of course is not the case. Regarding the guidance as finalised when the Census Order and Regulations were approved by Parliament is a policy choice made by NRS, and I do not think that this was as clear as it could have been.

Our recent [Assessment of the Scottish Census](#) sets our expectation that "Census offices should be open and transparent on their decision-making processes and in their decisions on Census questions and guidance, particularly in relation to any areas of contention." During this Assessment, NRS told us you feel that you have benefited from public scrutiny and criticism of your sex question and guidance, and that you welcome the challenges from different stakeholder groups. NRS should continue to engage with stakeholders, meet any commitments it has made, and seek to provide answers or explanations on areas of concern, in a transparent and open way. In future communications with stakeholders, whether made publicly or privately, NRS should strive to be clear on its views, decision-making and position, presenting information in an unambiguous way to avoid any misinterpretation. I am encouraged that when we spoke you expressed your ongoing commitment to openness, transparency and clarity when engaging with stakeholders.

We appreciate the willingness you have shown so far to engage with users of statistics about collecting data on sex and gender more broadly. This has included NRS participation in a discussion hosted by the Royal Statistical Society (RSS) in September, which focussed on the ethics of collecting data on sex and gender, and participation in the Scottish Government Chief Statistician's [Working Group on Sex and Gender](#) in Data Collection.

Thank you for taking the time to engage helpfully with us on this matter. As highlighted in our recent Assessment, overall, we are pleased to see the ongoing work of NRS to secure a successful Census in Scotland and your commitment to delivering high quality data and statistics.

Yours sincerely



Ed Humpherson

Director General for Regulation