

SL(5)555 – The Census (Wales) Regulations 2020

Background and Purpose

These Regulations make provision of the operational arrangements and procedures necessary for the conduct of the 2021 census (“the Census”) and prescribe the questionnaires that will be used. Specimens of the paper questionnaires and descriptions of the questions and response options for the online questionnaires are contained in the Regulations.

The Census is a survey conducted every 10 years of all people and households in the United Kingdom. It provides essential information from national to neighbourhood level for government, business, and the community.

These Regulations are made under section 3 of the Census Act 1920 (“the 1920 Act”) and enable the Census (England and Wales) Order 2020 to be carried into effect. The Welsh Ministers were consulted on the draft Census (England and Wales) Order 2020 via a letter sent to the Minister for Finance and Trefnydd. The Census (England and Wales) Order 2020 (“the Census Order”) was approved by Parliament on 14 May 2020 and made by Her Majesty in Council on 20 May 2020.

Procedure

Negative.

Technical Scrutiny

The following point is identified for reporting under Standing Order 21.3 in respect of this instrument.

Standing Order 21.2(viii) – that it uses gender specific language

1. Gender-specific nouns

The questionnaires use both gender-specific nouns (for example son or daughter and mother or father in the English version, or ‘mab neu ferch’ or ‘mam neu dad’ in the Welsh version) as possible answers when seeking details of how people within a household are related. These appear in Part 1 (pages 26 and 27 of the English version and 29 and 30 of the Welsh version), Part 4 (question H6 on pages 43 and 44 in the English version and 46 and 47 in the Welsh version) and Part 5 (question C1 on pages 75 and 76 in the English version and 78 and 79 in the Welsh version) of Schedule 2. The same questions also use possible answers that are not gender-specific nouns (for example grandchild or grandparent; ; ‘wyr neu wyres’ or ‘taid/tad-cu neu nain/mam-gu’ are stated in the Welsh version). Legislative Drafting Guidelines produced by the Welsh Government states that “Generally, gender-specific language should only be used for references to persons of one gender or the other”.

It is not clear why non-gender-specific nouns were not chosen for all of the possible answers in the English version. An explanation is requested from the Government.

Merits Scrutiny

The following five points are identified for reporting under Standing Order 21.3 in respect of this instrument.



Standing Order 21.3(ii) - that it is of political or legal importance or gives rise to issues of public policy likely to be of interest to the Senedd

1. Human Rights

In requiring the mandatory provision of personal information in response to the Census, the Regulations engage the right to respect for private and family life under Article 8 of the European Convention on Human Rights. Article 8 is a qualified right, which permits the Welsh Ministers to interfere with the exercise of the right if necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

The conduct of the census is well-established in the United Kingdom, and is common practice in many countries. Undertaking a census is often justified as being necessary in a democratic society and as a source of information which allows governments to understand social needs.

It is acknowledged that there are safeguards that provide some protection of a person's privacy, including references to how information is protected by law, offences for disclosure of census information and permitting individuals in a household to complete an individual questionnaire. It is also noted that the 1920 Act in effect makes questions concerning religion, sexual orientation and gender identity voluntary by removing any penalty for a prescribed person not responding to those census questions. Finally, the Data Protection Act 2018 will apply to the processing of personal data included in a census return and will therefore provide further safeguards.

Although the requirement to respond to the Census is a justified interference with the right to private and family life under Article 8, the Explanatory Memorandum does not contain a justification for the interference.

2. Use of Welsh terms for household

Regulation 3(3) provides that in the body of the Regulations, the term "aelwyd" is used in Welsh to correspond to "household" in English. However, regulation 3(4) provides that in the questionnaires, the term "cartref" is used to correspond to "household". "Aelwyd" is more generally used to correspond to "hearth", whilst "cartref" would be used to correspond to "home".

It is unclear why a distinction has been made and why one term could not be used in both the body of the Regulations and the questionnaires. An explanation is requested from the Government to explain the choice of language.

3. Difference between the English and Welsh texts

The English guidance text included in individual question 28 (Part 4 of Schedule 2 on pages 49, 54, 59, 64 and 69, Part 5 of Schedule 2 on pages 80, 85, 90, 95 and 100 and Part 6 of Schedule 2 on page 110), reads 'Record any qualifications you have ever achieved in Wales, England or worldwide...' whereas the Welsh text states '...Cymru neu o unrhyw le arall yn y byd...', not including England. Although the question would be answered in the same way irrespective of whether a person used the English or Welsh version of the questionnaires, it is not clear why this distinction has been made, or whether there is meant to be a significance to the difference.



An explanation is requested from the Government to explain the reason for the difference.

4. Prescribed persons and version of questionnaires

Although it is possible to ascertain which prescribed persons are required to complete which questionnaires by reading the Regulations, the layout and formatting of the table contained in the published version of Schedule 1 to the Regulations creates ambiguity.

It could be inferred that the gaps between the questionnaires listed in columns (2) and (3) are intentional and are intended to distinguish their relevance to the prescribed persons in column (1). By way of example, one interpretation is that the Household Continuation Questionnaire (paper) is only relevant where article 5(11) of the Census Order applies and that the Individual Questionnaire (paper) is only relevant to every person specified in column (2) of Group G in Schedule 1 to the Census Order.

As such, the published version of the Regulations would benefit from being more clearly delineated or formatted between each of the three groups of questionnaires that need to be completed, perhaps by numbering or including borders between the rows.

An Government response is requested.

Standing Order 21.3(v) - that it imperfectly achieves its policy objectives

5. Differences between the online and paper questionnaires

There are some differences between the questions asked, and answers offered, in the online questionnaire when compared with the paper questionnaire. These differences are:

(a) The online questionnaire identify the Advanced Welsh Baccalaureate, Intermediate Welsh Baccalaureate and Foundation Welsh Baccalaureate as separate options for information on qualifications but group these with "2 or more A levels, 4 or more AS levels", "5 or more GCSEs (A*-C, 9-4), O levels (passes), CSEs (grade 1)" and "Any other GCSEs, O levels or CSEs (any grades), Basic Skills course" respectively. These differences appear in Part 1 of Schedule 2 (on page 33) for the online questionnaire and individual question 31 (Part 4 of Schedule 2 on pages 49, 54, 59, 64 and 69, Part 5 of Schedule 2 on pages 80, 85, 90, 95 and 100 and Part 6 of Schedule 2 on page 110) for the paper questionnaires.

(b) If a person has not achieved identified qualifications or equivalents, they are asked "Have you achieved any other qualifications?" in the online questionnaire (Part 2 of Schedule 2 on page 34). The three possible answers for that question allow for a person to state that they have (i) other qualifications in Wales or England, (ii) other qualifications outside England and Wales or (ii) no qualifications. A person completing a paper questionnaire is not asked to distinguish between qualifications achieved inside Wales and England and those achieved outside Wales and England.

(c) The routing instructions in the online questionnaire (Part 2 of Schedule 2 on page 35) specify that certain questions are only asked for certain responses. The equivalent questions (individual questions 36 and 37) in the paper questionnaires are asked irrespective of the response to earlier question 35 (Part 4 of Schedule 2 on pages 49, 54, 59, 64 and 69, Part 5 of Schedule 2 on pages 80, 85, 90, 95 and 100 and Part 6 of Schedule 2 on page 110).



(d) The online questionnaire includes a question "Where do you mainly work?" with options including "At a workplace" and "Report to a depot". A follow up question "Do you mainly work in the UK?" includes responses that distinguish between addresses in the UK, which requires an address to be provided, and those outside the UK, which requires only a country to be provided. The paper questionnaires combine the options of workplace and depot in question 49 (Part 4 of Schedule 2 on pages 50, 55, 60, 65 and 70, Part 5 of Schedule 2 on pages 81, 86, 91, 96 and 101 and Part 6 of Schedule 2 on page 111). The paper questionnaires also do not distinguish between workplaces inside and outside the UK, requiring a full address to be provided irrespective of the location of the workplace for question 50 (Part 4 of Schedule 2 on pages 50, 55, 60, 65 and 70, Part 5 of Schedule 2 on pages 81, 86, 91, 96 and 101 and Part 6 of Schedule 2 on page 111).

It is not clear whether these differences are intentional, and if so why those differences are necessary. The collection of different answers between the online and paper questionnaires as part of the Census may impact on the quality of the data collected and the statistics that can be ascertained from that data. Those differences affect the policy objective of undertaking a data collection exercise which provides a detailed picture of the entire population.

An explanation is requested from the Government to explain the reason for the differences.

Implications arising from exiting the European Union

None.

Government Response

A Welsh Government response is required to the technical point and the second, third, fourth and fifth merits points.

Legal Advisers

Legislation, Justice and Constitution Committee

10 June 2020



Senedd Cymru

Pwyllgor Deddfwriaeth, Cyfiawnder a'r Cyfansoddiad

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Welsh Parliament

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