

DRAFT CENSUS (SCOTLAND) ORDER 2000

EXECUTIVE NOTE

1. INTRODUCTION

- 1.1 This Executive Note relates to the Census (Scotland) Order 2000 laid in draft before the Scottish Parliament. It has been prepared by the General Register Office for Scotland in order to assist the reader of the Order and to help inform debate on it. It does not form part of the Order and does not have legal effect. A similar draft Order for the Census in England and Wales is being laid before Westminster.

2 POWERS UNDER WHICH THE ORDER IS MADE

- 2.1 The primary legislation that provides for the making of an Order in Council for the taking of a census in Scotland is the Census Act 1920 (“the 1920 Act”), as read with the Statutory Instruments Act 1946 and the Scotland Act 1998 (Transitory and Transitional Provisions) (Statutory Instruments) Order 1999.
- 2.2 The purpose of the Order in Council is to prescribe:
- the date on which the census is to be taken;
 - the persons by whom and with respect to whom the census returns are to be made; and
 - the particulars to be stated in those returns.

3. PARLIAMENTARY PROCEDURE TO WHICH THE ORDER IS SUBJECT

- 3.1 Parts of the draft Order are subject to affirmative resolution and parts to negative resolution procedures. Paragraphs 1 to 5 of the Schedule to the 1920 Act lists certain matters about which particulars may be required. These particulars are subject to negative resolution. However, where the draft Order relates to particulars which fall within paragraph 6 of the Schedule to the 1920 Act, that is – “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”, then - those particulars are subject to affirmative resolution. The particulars in Schedule 2 to the draft Order printed in italics are those which are subject to affirmative resolution. Section 1(2) of the 1920 Act also contains

provision allowing for those parts of the draft Order subject to affirmative resolution to be modified with the agreement of the Parliament.

- 3.2 The Parliament will appoint a lead committee to consider the draft Order and report within forty days.
- 3.3 A detailed commentary on the articles and Schedules in the draft Order is at Annex A and a technical note on the powers and parliamentary procedure for the draft Order is at Annex B.

4. POLICY OBJECTIVES OF THE ORDER

- 4.1 Government, local and health authorities, business and others need reliable information on the number and characteristics of people and households in order to form policy, plan the delivery of services for particular groups of people, and distribute resources effectively. The information must be authoritative, accurate and comparable for all parts of the country. Only a census can provide such information on a uniform basis for the country as a whole and for small areas and sub-groups of the population.
- 4.2 The purpose of the draft Order is to ensure that appropriate and comprehensive information is collected.

5. CONSULTATION

- 5.1 The topics proposed for the 2001 Census in different parts of the United Kingdom have been formulated following extensive consultation with users through formal Advisory Groups, Working Groups and topic-related sub-groups. Less formal consultation has also taken place through information papers, *ad hoc* public meetings, a series of consultation roadshows, the Internet and correspondence. The Census Offices have welcomed views and submissions on the census from any source with or without invitation.
- 5.2 United Kingdom level Census Advisory Groups cover central government, local authorities, health authorities, the academic community and the business sector. In addition, a Scottish Census Advisory Group covers Scottish interests in all sectors. The Census Offices asked each sector of the user community to indicate the information it wished to see collected and to state the uses they would make of such information.
- 5.3 In March 1999, the UK Government issued a White Paper setting out proposals for the 2001 Census (Cm 4253 “The 2001 Census of Population”). The UK Government commended to the Scottish Executive the detailed planning and preparations already in progress for the conduct of the census in Scotland. Scottish Ministers have taken account of the proposals set out in the White Paper and comments received since its publication in deciding what topics to propose in the draft Census Order.

6. CONSIDERATION GIVEN TO SPECIAL EFFECTS ON EQUAL OPPORTUNITIES, HUMAN RIGHTS, ISLAND COMMUNITIES, LOCAL GOVERNMENT AND SUSTAINABLE DEVELOPMENT

6.1 The proposals in the draft Order take account of, and are consistent with, policies in relation to equal opportunities and disadvantaged groups as well as any arrangements for taking the Census. For example, it is intended to make translations of census questions available in a number of minority languages and to liaise with support organisations.

6.2 The proposals are compatible with the European Convention on Human Rights.

7. FINANCIAL EFFECTS OF THE ORDER

7.1 The total cost of the Census in Scotland in financial years 1999-2000, 2000-2001 and 2001-2002 is estimated to be £23.2m. Resources are available in the General Register Office for Scotland vote. Resources of a significantly smaller order will be required for subsequent periods and will be taken into account in the next Comprehensive Spending Review.

7.2 A Regulatory Impact Assessment has not been prepared since the Census concentrates on individuals rather than business, charities or voluntary bodies.

General Register Office for Scotland
January 2000

DRAFT CENSUS (SCOTLAND) ORDER - COMMENTARY ON ARTICLES AND SCHEDULES

Introduction

1. This commentary needs to be read in conjunction with the draft Order. It is not, and is not meant to be, a comprehensive description of the draft Order but is intended to be of assistance to the reader. Where an article or paragraph of an article does not seem to require any explanation or comment, none is given. This commentary has no legal significance.

Article 1 – Citation, commencement and extent.

2. This article is self-explanatory.

Article 2 - Interpretation.

3. This article defines terms used in the Order which are generally self-explanatory. Attention is drawn to the interpretation of ‘usually resident’. Previous censuses have been based on the enumeration of persons present on census day (although an additional provision to include absent residents was included in 1991). The 2001 census will be based on persons usually resident.

Article 3 - Date on which census is to be taken.

4. This article is self-explanatory.

Article 4 - Persons with respect to whom the returns are to be made.

5. In relation to Schedule 1 (see paragraph 23 below) this article provides that persons who are usually resident in Scotland are persons with respect to whom returns are to be made. In addition it provides that persons in full-time education with a term-time address outwith Scotland and a home address within Scotland are also persons with respect to whom returns are to be made. Partial returns in respect of schoolchildren and students will be required to be made at any home address which they have in Scotland. The article provides for returns to be made with respect to babies born on census day and exempts returns to be made with respect to anyone dying on or before census day.

Article 5 - Persons by whom the returns are to be made.

6. It is intended to use a number of different types of public form in the 2001 census and the detail of these will be prescribed in the Census Regulations to be laid before the Scottish Parliament following the making of the draft Order. On current plans, four types of public form will be used in the census, namely the household form, continuation form, individual form and communal establishment form.

7. For every private dwelling the return will consist of a household form, and where appropriate continuation form(s) and/or individual form(s). The household form provides for up to 5 persons in a household. Continuation form(s) will be required where the number of usual residents within the household exceeds five. Members of households can elect to complete individual returns (expanded below in commenting on paragraph (5) of this article).
8. For every communal establishment – defined as Groups II to VII of Schedule 1 (see paragraph 23 below) - a return consists of the communal establishment form and an individual form which will be required in respect of each usual resident. For persons sleeping rough on census night the return will comprise an individual form.

Paragraphs (1) and (3)

9. Paragraph (1) provides who is required to complete a household return in the case where a single usual resident occupies a private dwelling. In such a situation the household return will consist of a household form. Paragraph (3) provides who is required to complete a household return for the case where two or more usual residents occupy a private dwelling. In such a situation the household return will consist of a household form and, where there are six or more usual residents, the return will include continuation form(s).

Paragraphs (2) and (4)

10. Paragraph (2) provides that a return for a one person household need not be made in the event that the usual resident is absent on census day and does not return within six months, since for Census purposes one would not regard persons as usually resident after such a gap. Paragraph (4) makes similar provision for larger households.

Paragraph (5)

11. For the privacy of those persons usually resident in private dwellings, paragraph (5) provides that any person aged 16 years or over on census day and who is capable of completing a return may elect to make an individual return. The paragraph also provides that the responsibility to make the return lies with that person once an election is made.

Paragraph (6)

12. This paragraph provides that an individual return is required to be made by any person capable of making a return who is a usual resident of a communal establishment. The individual return will consist of the individual form. Sub-paragraphs (a) to (e) of paragraph (6) provide who requires to complete a return where usual residents of communal establishments are for any reason incapable of making a return. In such circumstances in communal establishments, the person in charge shall be required to make a return. In such circumstances involving the usual residents of hotels and guesthouses, a relative or other person accompanying the usual resident may also make the return. For people sleeping rough who are incapable of making the return sub-paragraph (f) provides that the return may be made by any other person capable of doing so on their behalf.

Paragraph (7)

13. In recognition of the circumstances in which people sleeping rough may be approached, this paragraph provides that the return in respect of a person sleeping rough may be made by any person authorised by him to do so.

Paragraph (8)

14. The 1920 Act provides for the collection of information not only about the population but also about place of abode and character of dwelling. There is a need to collect information about dwellings even where the dwellings have no usual residents. Paragraph (8) provides for the collection of information about certain dwellings which have visitors but have no usual residents. This will include second homes and holiday homes.

Paragraph (9)

15. Paragraph (9) provides for the collection of information about communal establishments. It provides for the return to be made by the person in charge of the communal establishment. The return refers to the communal establishment form.

Article 6 - Particulars to be stated in the returns.

16. This article provides for the particulars which are to be stated in each of the returns listed in article 5. The particulars which are to be stated in returns are listed in Schedule 2 of the draft Order (see paragraph 24 below).

Paragraph (1)

17. Paragraphs (1) and 1(a) provide that each household return shall include responses to the person questions and the joint questions (see paragraph 24 below), whereas paragraph (1)(c) provides that each individual return shall include responses to the person questions but not the joint questions. In paragraph (1)(b) the provision is made that where a household return includes a schoolchild or student who does not reside within the household during term-time, only a subset of the person questions within the household return pertaining to the schoolchild or student shall be required to be completed (specifically items 3 to 7 in Schedule 2 of the draft Order). A complete return in respect of such individuals is required to be made at the term-time address, being the address at which they are usually resident.

Paragraph (2)

18. Paragraph (2) provides that each household return shall also include responses to the household questions.

Paragraph (3)

19. Paragraph (3) provides that each individual return in a private household shall state his person number (i.e. the number which he is allocated for the purpose of completing the form) on the related household form.

Paragraph (4)

20. Paragraph (4) provides that each individual return in a communal establishment shall state the person's position (e.g. whether he is a member of the staff or owner of the establishment or some other person) within the establishment.

Paragraph (5)

21. Paragraph (5) provides that each household return made by visitors (as provided for in article 5(8)) shall include responses to a subset of the household questions only.

Paragraph (6)

22. This paragraph provides that each communal establishment return shall include responses to the items listed in Schedule 3.

Schedule 1

23. Schedule 1 specifies the persons with respect to whom returns are to be made. This is achieved by defining the premises, vessel or other place for which returns are required in respect of usual residents. Schoolchildren and students having a home address different from their term-time address are required to have partial information returned at their home address in addition to the fuller information being returned at their term-time address. This is provided for in Group I and Group IV. Groups I to VII cover the usually resident persons and the premises, vessel or other place within which they reside. Group VIII covers people sleeping rough. Together, the Groups are intended to give exhaustive coverage.

Schedule 2

24. Schedule 2 contains the topics which are reflected in questions on the household form, individual form or continuation form. Essentially, the questions fall under four main headings:

- joint questions for usual residents, namely items 1 and 2;
- person questions for each usual resident, namely items 3 to 20; and
- household questions, namely items 21 to 30;
- additional individual form questions, items 31 to 32.

Schedule 3

25. This Schedule contains the questions that are to appear on the communal establishment form.

General Register Office for Scotland
January 2000

DRAFT CENSUS (SCOTLAND) ORDER 2000 - POWERS AND PARLIAMENTARY PROCEDURE

(Prepared primarily for the Subordinate Legislation Committee)

1. The enabling power for the Census (Scotland) Order 2000 is contained in section 1(2) of the Census Act 1920 (“the 1920 Act”). That provision must be read with section 6 of the Statutory Instruments Act 1946 (“the 1946 Act”) and the Scotland Act 1998 (Transitory and Transitional Provisions) (Statutory Instruments) Order 1999 (S.I. 1999/1096)(“the 1999 Order”).

2. Section 1(2) of the 1920 Act provides-

“(2) Before any Order in Council is made under this section, a draft thereof shall be laid before each House of Parliament for a period of no less than twenty days on which that House has sat, and, if either House before the expiration of that period presents an address to His Majesty against the draft or any part thereof, no further proceedings shall be taken thereon, but without prejudice to the making of a new draft Order: Provided that, if by part of any such Order it is proposed to prescribe any particulars with respect to any of the matters mentioned in paragraph six of the Schedule to this Act, that part of the Order shall not have effect unless both Houses by resolution approve that part of the draft, or, if any modifications in that part are agreed by both Houses, except as so modified.”.

3. Section 6 of the 1946 Act provides-

“(1) Where by this Act or any Act passed after the commencement of this Act it is provided that a draft of any statutory instrument shall be laid before Parliament, but that Act does not prohibit the making of the instrument without the approval of Parliament, then, in the case of an Order in Council the draft shall not be submitted to His Majesty in Council, and in any other case the statutory instrument shall not be made, until after the expiration of a period of forty days beginning with the day on which a copy of the draft is laid before each House of Parliament, or, if such copies are laid on different days, with the later of the two days, and if within that period either House resolves that the draft be not submitted to His Majesty or that the statutory instrument be not made, as the case may be, no further proceedings

shall be taken thereon, but without prejudice to the laying before Parliament of a new draft.

(2) Where any Act passed before the date of the commencement of this Act contains provisions requiring that a draft of any Order in Council or other document to be made in exercise of any power conferred by that or any other Act shall be laid before Parliament before being submitted to His Majesty, or before being made, as the case may be, and that it shall not be so submitted or made if within a specified period either House presents an address to His Majesty or passes a resolution to that effect, then, subject to the provisions of any Order in Council made under this Act, a draft of any statutory instrument made in exercise of the said power shall by virtue of this Act be laid before Parliament and the provisions of the last foregoing subsection shall apply thereto accordingly in substitution for any such provision as aforesaid contained in the Act passed before the said date.”.

4. The 1999 Order makes transitory and transitional provision in relation to Scottish statutory instruments until such time as an Act of the Scottish Parliament is passed. Article 3 of the 1999 Order supersedes much of the 1946 Act. Article 3 of the 1999 Order provides *inter alia*:-

“(1) ...

(2) In relation to a Scottish statutory instrument, the following articles of this Order shall apply (in spite of anything in the 1946 Act) in place of sections 2 to 8 of that Act.

(3) In relation to such an instrument –

(a) paragraph (2) does not disapply sections 4(3), 5(2) and 6(2) of the 1946 Act, but

(b) the reference in each of those subsections to the foregoing provisions of the section in question shall be read as a reference to article 10, 11 or 12 (respectively).

(4) ...”.

5. Article 3(2) substitutes for section 2 to 8 of the 1946 Act, articles 4 to 15 of the 1999 Order. Article 3(3) provides that section 6(2) of the 1946 Act is not disapplied but is modified to the extent that where there is reference to section 6(1) in section 6(2), that reference is to be read as a reference to article 12 of the 1999 Order. The cumulative effect of those provisions is that section 6(2) of the 1946 Act provides the laying power along with section 1(2) of the Census Act 1920. The procedure for laying is to be found at article 12 of the 1999 Order and not in section 6(1) of the 1946 Act. Article 12 of the 1999 Order provides:-

“(1) Paragraphs (2) to (4) apply where any enactment-

- (a) provides, or has the effect of providing, that a draft of any Scottish statutory instrument is to be laid before the Scottish Parliament, but
- (b) does not prohibit the making of an instrument without the approval of the Scottish Parliament.

(2) The instrument shall not be made (or, in the case of a draft Order in Council, shall not be submitted to Her Majesty in Council) until after the end of the period of 40 days beginning with the day on which the draft is laid before the Scottish Parliament.

(3) No further proceedings shall be taken on the instrument if the Scottish Parliament resolves, within the period of 40 days, that the instrument be not made (or, as the case may be, be not submitted).

(4) Paragraph (3) is without prejudice to the laying of a new draft before the Scottish Parliament.”.

6. The references in section 1(2) of the 1920 Act to Parliament or either House of Parliament are amended to become references to the Scottish Parliament by virtue of paragraph 11 of Schedule 2 to the Scotland Act 1998 (Consequential Modifications) (No. 2) Order 1999 (SI 1999/1820) which amends section 9 of the 1920 Act.