



HOUSE OF LORDS

Secondary Legislation Scrutiny Committee

9th Report of Session 2019–21

Drawn to the special attention of the House:

Draft Census (England and Wales) Order 2020

Includes information paragraph on:

Draft Environmental Protection (Plastic
Straws, Cotton Buds and Stirrers) (England)
Regulations 2020

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Secondary Legislation Scrutiny Committee

The Committee's terms of reference, as amended on 11 July 2018, are set out on the website but are, broadly:

To report on draft instruments and memoranda laid before Parliament under sections 8, 9 and 23(1) of the European Union (Withdrawal) Act 2018.

And, to scrutinise –

(a) every instrument (whether or not a statutory instrument), or draft of an instrument, which is laid before each House of Parliament and upon which proceedings may be, or might have been, taken in either House of Parliament under an Act of Parliament;

(b) every proposal which is in the form of a draft of such an instrument and is laid before each House of Parliament under an Act of Parliament,

with a view to determining whether or not the special attention of the House should be drawn to it on any of the grounds specified in the terms of reference.

The Committee may also consider such other general matters relating to the effective scrutiny of secondary legislation as the Committee considers appropriate, except matters within the orders of reference of the Joint Committee on Statutory Instruments.

Members

<u>Baroness Bakewell of Hardington Mandeville</u>	<u>Lord Hodgson of Astley Abbotts</u>	<u>The Earl of Lindsay</u>
<u>Rt Hon. Lord Chartres</u>	<u>(Chair)</u>	<u>Lord Lisvane</u>
<u>Rt Hon. Lord Cunningham of Felling</u>	<u>Lord Kirkwood of Kirkhope</u>	<u>Lord Sherbourne of Didsbury</u>
<u>Viscount Hanworth</u>	<u>Lord Liddle</u>	<u>Baroness Watkins of Tavistock</u>

Registered interests

Information about interests of Committee Members can be found in the last Appendix to this report.

Publications

The Committee's Reports are published on the internet at <http://www.parliament.uk/seclegpublications>

Committee Staff

The staff of the Committee are Christine Salmon Percival (Clerk), Helen Gahir (Adviser), Philipp Mende (Adviser), Jane White (Adviser), Louise Andrews (Committee Assistant) and Ben Dunleavy (Committee Assistant).

Further Information

Further information about the Committee is available at <https://www.parliament.uk/business/committees/committees-a-z/lords-select/secondary-legislation-scrutiny-committee/>

The progress of statutory instruments can be followed at <https://statutoryinstruments.parliament.uk/>

The National Archives publish statutory instruments with a plain English explanatory memorandum on the internet at <http://www.legislation.gov.uk/uksi>

Contacts

Any query about the Committee or its work, or opinions on any new item of secondary legislation, should be directed to the Clerk to the Secondary Legislation Scrutiny Committee, Legislation Office, House of Lords, London SW1A 0PW. The telephone number is 020 7219 8821 and the email address is hlseclegscrutiny@parliament.uk.

Ninth Report

INSTRUMENTS DRAWN TO THE SPECIAL ATTENTION OF THE HOUSE

Draft Census (England and Wales) Order 2020

Date laid: 2 March 2020

Parliamentary procedure: special

This draft Order provides for taking a census for England and Wales on 21 March 2021. It specifies who must respond and who should be included and sets out the topics on which questions may be asked. The form of the instrument is unusual in that it has elements that follow the negative procedure and elements that follow the affirmative procedure; exceptionally, the affirmative elements are amendable. This report describes the procedure to which this Order is subject and outlines the new features to be included in the 2021 Census.

This draft Order is drawn to the special attention of the House on the ground that it is politically or legally important or gives rise to issues of public policy likely to be of interest to the House.

1. This draft Order provides for taking a census for England and Wales on 21 March 2021. It specifies who must respond and who should be included and sets out the topics on which questions may be asked. It is laid by the Cabinet Office with an Explanatory Memorandum (EM).
2. Delivering the census in England and Wales is the statutory responsibility of the UK Statistics Authority, which operates through the Office for National Statistics (ONS). In Northern Ireland it is the responsibility of the Northern Ireland Statistics and Research Agency, and in Scotland the National Records of Scotland. These three offices work closely to ensure the three censuses provide comparable statistics on the UK population.

Procedure

3. The basis for the census is set out in the Census Act 1920 (“the 1920 Act”), as amended. The form of the instrument is unusual in that it has elements that follow the negative procedure and elements that follow the affirmative procedure; exceptionally, the affirmative elements are amendable.¹
 - All the basic question topics — name, age, occupation, residence, nationality, sex and religion are set out in paragraphs 1 to 5 of the Schedule to the 1920 Act and follow the draft negative procedure, which means that this Order must lie before the House for 40 sitting days before it can progress.
 - Paragraph 6 of the Schedule to the 1920 Act allows questions on anything to ascertain “the social or civil condition of the population”. That represents the bulk of the questions, and approval must follow the affirmative procedure.

¹ Another example is the Civil Contingencies Act 2004, [section 27\(3\)](#).

- The particularly unusual aspect of this draft Order is that it is amendable:

“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 to by both Houses, except as so modified.**”

Proposed amendments to the instrument are considered as amendments to the approval motion and are therefore debated during the debate on the main motion. Any amendment, to be effective, must be agreed by both Houses.

New questions

4. The content of the 2021 Census has been driven principally by the demands and requirements of the users of census statistics, the evaluation of the 2011 Census and requests made during a 12-week public consultation in 2015.²
5. Almost all the topics asked in 2011 will appear again in 2021, although the way in which some questions are asked will change. For example, the ethnicity question will include a new tick-box for people of Roma ethnicity, alongside the existing ‘Gypsy or Irish Traveller’ tick-box, and the national identity question will allow respondents to record more than one.
6. New questions will be introduced on:
 - Veteran status: whether the respondent has ever served in the UK Armed Forces.
 - Sexual orientation: whether the respondent identifies as gay, lesbian, bisexual or heterosexual.
 - Gender identity: whether the respondent’s gender is different from the sex they were registered as at birth.
7. While participation in the census is a legal obligation and refusing to answer or providing false answers to census questions is a criminal offence, legal exceptions³ have been made for questions on religion, sexual orientation and gender identity. These questions will be voluntary and will, among others, not be asked of the under 16s. This Order, for the first time, also enables people to make separate individual returns, so that everyone can answer the questions in confidence, if they wish to do so.
8. There are other minor changes to how people living in communal establishments are to be included in the census, for example people living in hospitals, care homes, residential schools, prisons and military bases and hotels on the night of the census. The definitions for residence in a communal establishment have been revised and vary according to the type of establishment. There are also differences in how those not capable of completing their own questionnaires will be treated, with responsibilities placed on appropriate individuals to help, dependent on the situation and type of communal establishment in question.

2 House of Commons Library, Preparing for the 2021 census (England and Wales), Research Briefing [CBP-8531](#), March 2020.

3 See for example [Census \(Return Particulars and Removal of Penalties\) Act \[HL\] 2017-19](#).

9. The census will be completed predominantly online so people can take part when and how they want, although help and support and paper forms will be available for those who prefer that format. The Government state that their aim is to make the 2021 Census the most inclusive census to date, so that the results reflect everyone in society.

Use of the data

10. The ONS aims to publish an initial set of census reports one year after it has taken place, and to make all outputs available within two years. Census statistical data is made available free at the point of use. Users may commission additional ONS analysis of census data, the results of which are made available to all users. A 2018 White Paper outlines the ONS' plans to develop a flexible online dissemination system that will let users construct their own data outputs.⁴
11. Like the 2011 Census, which cost approximately £480 million, this programme is publicly funded. The Government state that the cost of the census has to be set against its value in helping central and local government to allocate many billions of pounds of funding appropriately.
12. Census data are kept confidential for 100 years after which time they are released to the National Archives and published. A comprehensive Data Protection Impact Assessment, including how data are to be processed and protected, will be published before the 2021 Census takes place in collaboration with the Information Commissioner's Office.
13. There will be no obligation to share the data with the EU, as that will be revoked by the UK Statistics (Amendment etc.) (EU Exit) Regulations 2019 (SI 2019/489) which come into force at the end of the transition period. Paragraph 6.5 of the EM to the Census Order states that the UK's longer-term participation in the European Statistical System will be determined as part of the formal negotiations between the UK and the EU.

⁴ HM Government, *Help Shape Our Future: The 2021 Census of Population and Housing in England and Wales* (December 2018): https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/765089/Census2021WhitePaper.pdf [accessed 9 March 2020].

INSTRUMENTS OF INTEREST

Draft Environmental Protection (Plastic Straws, Cotton Buds and Stirrers) (England) Regulations 2020

14. These draft Regulations propose to ban the supply of single-use plastic straws, single-use plastic-stemmed cotton buds and plastic drink stirrers in England to prevent environmental pollution and harm to human and animal health. The Department for Environment, Food and Rural Affairs (Defra) estimates that 4.7 billion plastic straws, 316 million plastic stirrers and 1.8 billion plastic-stemmed cotton buds are used in England every year. Defra says that the proposed ban was first announced in April 2018, and that 82% of the individuals and 81% of the organisations which responded to a public consultation on the proposals in 2018 expressed support for a ban on plastic straws. There was also strong support for restrictions on plastic drink stirrers (89% of all respondents) and plastic-stemmed cotton buds (90% of all respondents). The instrument sets out exemptions for the use of plastic straws and plastic-stemmed cotton buds for medical and certain other specified purposes. Defra expects that 60% of the additional costs will be passed on to consumers, with the total net present costs estimated to be £54 million over 10 years. To minimise the impact of the ban, businesses will be allowed to use existing stock until 31 October 2020. Defra has provided a comprehensive and well-written Explanatory Memorandum and Impact Assessment (IA) in relation to the ban on plastic straws. While draft IAs for the ban on plastic stirrers and plastic-stemmed cotton buds were published at the consultation stage, the Department told the Committee that full IAs are not required for these measures as the annual costs to business in each case are expected to be less than £5 million. Instead, Defra will publish regulatory triage assessments setting out the rationale for the measures before the instrument is debated in Parliament. It would have been helpful for these documents to have been available at the time of laying. The Committee notes that plastic straws and stirrers have not been used in catering outlets on the Parliamentary estate since October 2018.

INSTRUMENTS NOT DRAWN TO THE SPECIAL ATTENTION OF THE HOUSE

Draft instruments subject to affirmative approval

Air Traffic Management (Amendment etc.) (EU Exit) Regulations 2020

Automatic Enrolment (Earnings Trigger and Qualifying Earnings Band) Order 2020

Civil Aviation (Insurance) (Amendment) (EU Exit) Regulations 2020

Environmental Protection (Plastic Straws, Cotton Buds and Stirrers) (England) Regulations 2020

Representation of the People (Electronic Communications and Amendment) (Northern Ireland) Regulations 2020

Instruments subject to annulment

SI 2020/187 Video Recordings (Labelling) (Amendment) Regulations 2020

SI 2020/193 Social Security Revaluation of Earnings Factors Order 2020

SI 2020/195 Occupational and Personal Pension Schemes (General Levy) (Amendment) Regulations 2020

SI 2020/201 National Health Service (Charges for Drugs and Appliances) (Amendment) Regulations 2020

SI 2020/207 Financial Assistance for Environmental Purposes (England) Order 2020

SI 2020/208 Oil and Gas Authority (Levy and Fees) and Pollution Prevention and Control (Fees) (Miscellaneous Amendments) Regulations 2020

SI 2020/210 Magistrates' Courts (Knife Crime Prevention Orders) Rules 2020

SI 2020/211 Insolvency Act 1986 (Prescribed Part) (Amendment) Order 2020

SI 2020/214 Isles of Scilly (Application of Water Legislation) Order 2020

SI 2020/219 Eritrea (Asset-Freezing) (Revocation) Regulations 2020

SI 2020/221 Republic of Maldives (Asset-Freezing) (Revocation) Regulations 2020

SI 2020/223 Superannuation (Admission to Schedule 1 to the Superannuation Act 1972) Order 2020

SI 2020/224 Public Service (Civil Servants and Others) Pensions (Amendment) Regulations 2020

SI 2020/225 Civil Service (Other Crown Servants) Pension Scheme (Amendment) Regulations 2020

- SI 2020/226 National Health Service (General Medical Services Contracts and Personal Medical Services Agreements) (Amendment) Regulations 2020
- SI 2020/236 Animals (Scientific Procedures) Act 1986 (Fees) Order 2020

APPENDIX 1: INTERESTS AND ATTENDANCE

Committee Members' registered interests may be examined in the online Register of Lords' Interests at <http://www.parliament.uk/mps-lords-and-offices/standards-and-interests/register-of-lords-interests>. The Register may also be inspected in the Parliamentary Archives.

For the business taken at the meeting on 17 March 2020, Members declared no interests.

Attendance:

The meeting was attended by Viscount Hanworth, Lord Hodgson of Astley Abbotts, the Earl of Lindsay and Baroness Watkins of Tavistock.

