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SCOTTISH STATUTORY INSTRUMENTS

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**2020 No. 76**

**The Census (Scotland) Order 2020**

**Citation, commencement and extent**

1.—(1) This Order may be cited as the Census (Scotland) Order 2020 and comes into force on the day after the day on which it is made.

(2) It extends to Scotland only.

**Interpretation**

2.—(1) In this Order—

“the Act” means the Census Act 1920,

“census day” means 21 March 2021,

“census night” means the night of 21 to 22 March 2021,

“dwelling” includes part of a dwelling and any caravan, houseboat, temporary building or other structure used as living accommodation,

“household” is to be construed in accordance with paragraph (4),

“householder” means—

(a) in relation to a dwelling in Group I, a person who is usually resident at that dwelling and either—

(i) owns or rents accommodation at that dwelling, or

(ii) is responsible for paying household bills and expenses there,

or both and includes a joint householder and an acting householder,

(b) in relation to a dwelling in Group VIII, a person who is usually resident in Scotland and who owns accommodation at that dwelling,

“residential dwelling” means a dwelling for which there is an address but which is not—

(a) a hotel or guest house,

(b) a hospital, nursing home, religious or charitable community or other residential establishment whatsoever,

(c) a residential school, college or other educational establishment,

(d) premises or other place in Group V or Group VI,

“usually resident” is to be construed in accordance with paragraphs (6) to (11), and

“visitor” means any person who is staying at an address in Scotland on census night, but who is not usually resident at that address.

(2) For the purposes of this Order, a person is in full-time education if that person is registered, admitted or otherwise enrolled as a full-time pupil or student at a school, college or other educational institution.

(3) In this Order—

(a) any reference to a numbered Group is a reference to the Group so numbered in schedule 1,

- (b) any reference to a dwelling, premises or a place in a numbered Group is a reference to a dwelling, premises or a place specified in column (1) of that Group,
  - (c) any reference to a person in a numbered Group is a reference to a person specified in column (2) of that Group.
- (4) For the purposes of this Order—
- (a) in the case of a sheltered or retirement housing development (within the meaning of section 54(3) of the Title Conditions (Scotland) Act 2003<sup>(1)</sup>), a household is a person or a group of persons (whether related or not) living in one flat or unit within the development and having a usual address there,
  - (b) in the case of a dwelling which is mobile or of temporary construction, the household is the person or relevant group living in that dwelling at the place which is that person's, or that group's, usual place of residence,
  - (c) in the case of any other dwelling the household is the person or relevant group living in that dwelling and having a usual address at that dwelling.
- (5) In paragraph (4), “relevant group” means a group of persons (whether or not related) who share cooking facilities and any one or more of the following—
- (a) a living room,
  - (b) a sitting room,
  - (c) a dining area.
- (6) For the purposes of this Order a person is usually resident in Scotland if on census night any one or more of the following apply—
- (a) the person—
    - (i) has a permanent or family home in Scotland, and
    - (ii) is not staying, nor intends to stay, outside the United Kingdom for a total of 12 months or more in the period beginning with 22 March 2020 and ending with 20 March 2022,
  - (b) the person—
    - (i) is staying in Scotland, and
    - (ii) is staying, or intends to stay, in the United Kingdom for a total of 6 months or more in any consecutive 12 month period within the period beginning with 22 March 2020 and ending with 20 March 2022,
  - (c) the person—
    - (i) has a permanent or family home in Scotland,
    - (ii) is in full-time education, and
    - (iii) has a term-time address outside Scotland,
  - (d) the person is a member of the armed forces and has (either or both)—
    - (i) a permanent or family home in Scotland,
    - (ii) a base address, home port address or naval base address in Scotland.
- (7) Subject to paragraphs (8) to (11), for the purposes of this Order, a person who is usually resident in Scotland is also usually resident at a dwelling, premises or other place—
- (a) in Group I—
    - (i) if the dwelling is that person's only permanent or family home,

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(1) 2003 asp 9.

- (ii) if the dwelling is where the person spends or intends to spend the most number of daily rest periods, or
  - (iii) if, on census night, the person is staying at the dwelling, does not have a permanent or family home and is not usually resident at any other dwelling, premises or place in Group I, II, III, IV or VI,
- (b) in Group II, III or IV—
- (i) if the person is staying, or intends to stay, at the premises for a period of 6 months or more, or
  - (ii) if, on census night, the person is staying at the premises or other place, does not have a permanent or family home and is not usually resident at any dwelling in Group I or any other premises or place in Group II, III, IV or VI,
- (c) in Group V—
- (i) if the person is in custody at the premises on census night and is spending a period of 6 months or more in custody, whether at the premises or elsewhere,
  - (ii) if, on census night, the person is in custody at the premises, does not have a permanent or family home and is not usually resident at any dwelling, premises or other place in Group I, II, III, IV or VI,
- (d) in Group VI if the person has a base address, home port address, or naval base address at the premises and does not have a permanent or family home.
- (8) Where a person is usually resident at premises or another place by virtue of paragraph (7)(b), (c) or (d) that person is not usually resident at any dwelling in Group I.
- (9) Except as provided for in paragraph (8) any period of stay or custody in any premises or other place in Group II to VI is to be disregarded in determining whether a person is usually resident at a dwelling in Group I.
- (10) A person in full-time education who usually spends four or more nights per week during term-time at an address other than that person's permanent or family home is usually resident—
- (a) at the person's permanent or family home (if the person has one), and
  - (b) at that other address.
- (11) A person under the age of 16 years who spends an equal number of daily rest periods at two or more dwellings in Group I is, for the purposes of paragraph (7)(a)(ii), to be taken as spending the most number of such periods at the dwelling where the person is staying on census night.

### **Date on which census is to be taken**

3. A census is to be taken for Scotland on 21 March 2021.

### **Persons with respect to whom the returns are to be made**

4. For the purpose of the census, returns must be made in accordance with the provisions of this Order with respect to persons who are alive at 0000 hours on census night.

### **Persons by whom the returns are to be made**

5.—(1) Where a dwelling is occupied by a household consisting of one person in Group I, that person must make a return with respect to that person and every visitor at that dwelling.

(2) Where a dwelling is occupied by a household consisting of more than one person in Group I a return must be made with respect to every person in Group I and every visitor at that dwelling.

- (3) Subject to paragraph (12), a return under paragraph (2) is to be made by—

- (a) the householder, or
  - (b) if there is no householder or the householder is unable to make the return, the members of that household aged 16 years or over on census day.
- (4) Any person with respect to whom a return falls to be made in accordance with paragraph (2) may elect to make an individual return with respect to that person if the person is—
- (a) aged 16 years or over on census day,
  - (b) capable of completing the form of return, and
  - (c) not a visitor.
- (5) A person (“A”) who has, in accordance with paragraph (4), elected to make an individual return—
- (a) may, but need not, notify the person making the return under paragraph (2) that A has so elected, and
  - (b) must make the individual return.
- (6) In the case of any premises in Group II, III, IV or V, the manager, chief resident officer, director or governor, or other person for the time being in charge of the premises and in the case of any premises in Group VI the commanding officer or other person for the time being in charge of the premises, must make a return.
- (7) Every person in Groups II, III, IV, V, VI and, subject to paragraph (8), Group VII must make an individual return, but where any such person is not aged 16 years or over or is, for any other reason, incapable of making a return and that person is—
- (a) a person in Group II, then the manager or other person for the time being in charge of the hotel or guest house must make a return with respect to that person or arrange for it to be made by a relative or other person accompanying that person,
  - (b) a person in Group III or IV, then the chief resident officer or other person for the time being in charge of the premises must make the return with respect to that person or arrange for it to be made by a relative or companion of that person,
  - (c) a person in Group V, then the director or governor or other person for the time being in charge of the premises must make a return with respect to that person or arrange for it to be made by a member of staff of the owner of the establishment,
  - (d) a person in Group VI, then the return must be made with respect to that person by the commanding officer or other person for the time being in charge of the premises,
  - (e) a person in Group VII, then the return may be made with respect to that person by any other person capable of doing so on his or her behalf.
- (8) As regards a person in Group VII who is capable of making a return, the return referred to in paragraph (7) may be made by any other person authorised by that person to do so on that person’s behalf.
- (9) Subject to paragraphs (10) to (12), in the case of a dwelling in Group VIII, the householder must make a return with respect to the person in Group VIII and every visitor at that dwelling.
- (10) A return need not be made under paragraph (9) if, in relation to the dwelling to which the return relates, either or both of the following apply—
- (a) for a period of 6 months or more ending with census day, no person has stayed or lived at the dwelling,
  - (b) the householder expects that, for a period of 6 months or more including census day, no person will stay or live (or will have stayed or lived) at the dwelling.
- (11) The return referred to in paragraph (9) may be made by any person authorised by the householder to make the return or by any visitor staying at the dwelling on census night.

(12) The obligation to make a return under paragraph (2) or (9) is satisfied if, as the case may be, any householder or member of the household mentioned in paragraph (3)(b) makes such a return.

### **Particulars to be stated in the returns**

6.—(1) Every return referred to in article 5(1), (2), (5)(b), (7) and (8) must state with respect to each person required to be included in that return the particulars specified in paragraphs 1 to 27 of schedule 2 except that—

- (a) in the case of a visitor, the return which falls to be made in accordance with article 5(1) or (2) must instead state the particulars specified in paragraphs 3, 4, 5, 35 and 36 of schedule 2,
- (b) in the case of a person who, in accordance with article 5(5)(a), gives notice of an election to make an individual return, the return which falls to be made in accordance with article 5(2) must instead state, with respect to that person, the particulars specified in paragraphs 1 to 3 of schedule 2,
- (c) in the case of a person in full-time education who has a term-time address which differs from the address to which the return which falls to be made in accordance with article 5(1) or (2) relates, that return must instead state, with respect to that person, the particulars specified in paragraphs 1 to 6, 8 and 9 of schedule 2, and
- (d) in the case of any return referred to in article 5(5)(b), (7) or (8) the return must instead state the particulars specified in paragraphs 3 to 27 of schedule 2.

(2) Every return made in accordance with article 5(1) or (2) must state also the particulars specified in paragraphs 28 to 34 of schedule 2.

(3) Every return made in accordance with article 5(5)(b) and in respect of which a notification has been made under article 5(5)(a) must state also the particulars specified in paragraph 37 of schedule 2.

(4) Every return referred to in article 5(6) must state the particulars specified in schedule 3.

(5) Every return made in accordance with article 5(7) must state also the particulars specified in paragraph 38 of schedule 2.

(6) Every return referred to in article 5(9) must state the particulars specified in the following paragraphs of schedule 2—

- (a) paragraphs 28, 29, 30 and 33 as modified by paragraph (7),
- (b) with respect to a person in Group VIII who is not a visitor, paragraph 3,
- (c) with respect to any visitors, paragraphs 3, 4, 5, 35 and 36.

(7) Those modifications are that—

- (a) in paragraphs 28 and 29 the words “occupied by the household” are omitted, and
- (b) in paragraph 30 the words “only by the household” are replaced with the words “in the accommodation”.

### **Disapplication of liability to penalty for refusing or neglecting to state particulars with respect to transgender status and history**

7. The particulars specified in paragraph 6 of schedule 2 are prescribed for the purposes of section 8(1A) of the Act (disapplication of liability to penalty for refusing or neglecting to state certain particulars).

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**Status:** *This is the original version (as it was originally made).*

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*Richard Tilbrook*  
Clerk of the Privy Council