Dear Lord Young,

Census (Return Particulars and Removal of Penalties) Bill [HL]

I write on behalf of the Constitution Committee in relation to the Census (Return Particulars and Removal of Penalties) Bill. The Bill proposes to amend the Census Act 1920 and the Census Act (Northern Ireland) 1969 to allow for the addition of questions about sexual orientation and gender identity to the census in future.

The Census Acts 1920 and 1969 (as amended) make the failure or refusal to answer questions in a census an offence for which an individual may be liable on summary conviction to a fine. They contain an exemption for questions about religion, such that “no person shall be liable to a penalty” for not answering such questions, but the Acts do not state that this is not an offence. The Bill proposes to treat questions about sexual orientation and gender identity in future censuses in the same manner.

The explanatory notes for the Bill contain contradictory wording on this issue. Paragraph 5 states:

“anyone who does not wish to provide information on their sexual orientation and gender identity in future censuses in England and Wales and/or Northern Ireland would not thereby be committing a criminal offence by refusing or neglecting to answer these questions.” (emphasis added)

However, paragraph 32 states:

“Subsection (3) amends section 8(1A) of the 1920 Act such that no person shall be liable to a penalty under section 8(1) of that Act for refusing or neglecting to state any particulars in respect of sexual orientation or gender identity – effectively making any such questions voluntary.” (emphasis added)

We do not believe that failure to answer questions about religion, sexual orientation or gender identity in a census should be an offence and nor should there be any ambiguity in
the legislation about it. We acknowledge that this is not the Government’s intention and so, for the avoidance of doubt, we believe the Bill should be amended to state explicitly that failure to answer such questions in a census is not an offence.

Yours sincerely,

Baroness Taylor of Bolton
Chairman of the Constitution Committee