

Summary of main proposed changes from 2020 Recommendations

This section is part of the chapter previously entitled Field and Other Operational Activities.

1. The section has been expanded and divided into sub-sections with headings for improved readability.
2. The key roles of census legislation have been spelled out in the opening section.
3. Content has been adapted from relevant sections of the CES guides on statistical legislation, e.g. on the essential aspects to be specified in legislation; and on timing and flexibility in the legislation. A footnote has also been added to mention these as important reference sources for more detail.
4. Emphasis has been added on the importance of communication with the public in relation to legal requirements associated with the census.

The legal basis for a census

Whatever type of census an NSO conducts, it should take place within an established legal framework¹. This can be permanent and/or it can require issuance of new legislation for each census. In the latter case, a Statistics Act or Census Act must be approved before each census, to authorize the topic content, prescribe access to administrative data, and deal with many other issues outlined below.

When a General Statistics Act includes all the necessary provisions required for the conduct of a population and housing census and/or the production and dissemination of statistical data, specific census legislation may not be necessary.

In general, countries employing a fully register-based census design are more likely to find that the census is sufficiently covered by general statistical legislation, while those using a combined or fully enumeration-based design are more likely to require a dedicated census law.

Whether general or specific, permanent or recurring, legislation plays a crucial role in safeguarding the conduct and quality of a census. Such legislation:

- (a) gives the NSO the power to oblige universal response (in the case of enumeration-based censuses) and/or the power to obtain the necessary administrative records (for register-based or combined censuses)

¹ While this section gives the key recommendations for census legislation, more detail can be found in the relevant sections of the CES Guidance on Modernizing Statistical Legislation (2019), available at <https://unece.org/info/Statistics/pub/21939>; and the Generic Law on Official Statistics (2016), Available at <https://unece.org/info/Statistics/pub/21934>.

- (b) helps protect the census office from outside influence such as politically-driven demands to include certain questions/variables, follow certain procedures or include certain groups that ought not to be included among usual residents
- (c) fosters trust and better cooperation of the public, no matter what the census design, by reassuring them that data are used only for statistical purposes.

These essential roles of legislation must be balanced against the challenges that it can pose if not appropriately designed. Too-detailed legislation can limit the flexibility of the NSO (see below); delays in adoption of legislation can hinder efficient planning and conduct of the census; and a requirement for a new census law for each iteration of the census can expose the NSO to the exigencies of political matters such as changes in government which may lead to delays.

Establishing the required legislation for a census

In countries that lack permanent or primary legal authority for the taking of periodic censuses, or in countries where specific legislation is required to enable a particular round of the census to take place, it is important to act early to establish the necessary legal authority.

The legislative process and the timeframe necessary to complete it will vary from country to country, but sufficient time should be allowed for the completion of such a process well before the scheduled starting time of any activity that is dependent on the legislation, such as a request for allocation of funds or the appointment of field staff.

In planning such a timetable, countries should always build in a contingency to allow for unscheduled delays in the legislative process. As described in Chapter [X], 'Emergency Management and Contingency Planning', the risk of delays in the legislative process should be a part of the risk register, which should spur discussions on mitigations that might prevent a problem with the legislative process.

Scope of census legislation

Irrespective of the census design, the legal basis for the preparation and conduct of a census should usually cover at least the following:

- (a) the allocation of funds for the census operations, including amounts and timing of disbursement
- (b) general aspects of the scope, methodology, content and timing of the census (see 'Flexible census legislation' below)
- (c) provisions and standards for protecting confidentiality, privacy and security in the collection, transmission, storage and dissemination of data, including specific provisions prescribing access to, and protection of, any administrative data used for the census
- (d) provisions for obtaining and permissible uses of registers and other administrative sources to produce census data or to support field operations, including provisions for linkage among sources and for high-granularity dissemination products

- (e) the relationships between the agency responsible for the census and other public administrations involved in the census operations
- (f) the procedures and necessary delegations of authority for procuring equipment and supplies and recruiting personnel
- (g) in the case of censuses involving direct enumeration: the obligation of citizens to provide complete, accurate and timely census information and the obligation of the enumerators to record the responses faithfully, and the sanctions and penalties to be imposed for failure to comply with either of these obligations.

Where registers or other administrative sources are used that are produced and owned by entities other than the NSO, the census legislation must be carefully aligned with other national legislation pertaining to these sources, such as privacy and data protection laws, to ensure coherence and avoid ambiguity. In some cases, such general data protection laws may already include all the provisions necessary to cover the specific needs of censuses, including the use of register data for censuses, or specific measures to be applied to census enumerators. In other cases, specific provisions on data confidentiality must be included in the census-specific legislation.

Whether part of general statistical legislation or census-specific legislation, the following provisions should also be ensured by enshrining them in law:

- (a) the Chief Statistician should be free to decide on the allocation of overall resources for official statistics between subject areas, with only the total budget decided at the political level as part of the budgetary process
- (b) The Chief Statistician should determine the census reference date and the dates of field operations without political influence
- (c) census agencies must not be subject to any official or unofficial clearance process involving government bodies outside the statistical system for the release of census results
- (d) census results must be publicly accessible, and disseminated simultaneously for all users, including government users, at dates determined by the statistical system
- (e) the NSO has the right to communicate directly with the media regarding the results of the census.

Census legislation is equally important for protecting the *rights* of the NSO, and for formalizing their *duties*. Where the duties and responsibilities are clearly specified in legislation, this can help to bolster public trust and support for the census.

Flexible census legislation

Census legislation should be as flexible as possible: that is, it should be designed without provisions that are rigid or prescriptive regarding the census design, content or operation. Legislation that defines the specific methods, questions or content and/or outputs of the census can limit the freedom of the census agency to respond adequately to changing circumstances, including evolving user needs, technological changes, poor quality administrative sources, or crisis situations calling for significant changes in methodology or timing.

Instead of being contained in legislation, the necessary detail should be included in the census regulations or other more detailed implementation plans produced by the census authorities.

Public communication on census legislation

As described in detail in Chapter [XX] on Communications, public communications materials should be developed to ensure that members of the public understand the reasons for conducting a census, how it will take place, and their role in the process. This should include helping the public to understand the data protection mechanisms enshrined in the law; and information explaining the legal obligations of citizens and potential penalties for non-cooperation.

While many countries' census laws designate the census as mandatory and include specific provisions for imposing sanctions for non-compliance, the communications implications of enacting these sanctions may be negative. Imposing penalties, or even using the threat of penalties as a means of soliciting responses, may result in adverse publicity which may reduce the degree of cooperation.

If there is to be a significant change in census design—such as a move from a census based primarily or exclusively on data collected from direct field enumeration to one that employs registers or other administrative sources—new legislation must be drafted. It is important to allow time not only for the development of the legislation itself, but for public participation and consultation in this process, to ensure that the new census design and the associated legislation enjoy public support.