



OFFICIAL REPORT
AITHISG OIFIGEIL

DRAFT

Equalities, Human Rights and Civil Justice Committee

Tuesday 20 February 2024

Session 6



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EQUALITIES, HUMAN RIGHTS AND CIVIL JUSTICE COMMITTEE
5th Meeting 2024, Session 6

CONVENER

*Karen Adam (Banffshire and Buchan Coast) (SNP)

DEPUTY CONVENER

*Maggie Chapman (North East Scotland) (Green)

COMMITTEE MEMBERS

*Meghan Gallacher (Central Scotland) (Con)

*Fulton MacGregor (Coatbridge and Chryston) (SNP)

*Paul O'Kane (West Scotland) (Lab)

*Annie Wells (Glasgow) (Con)

*attended

THE FOLLOWING ALSO PARTICIPATED:

Shirley-Anne Somerville (Cabinet Secretary for Social Justice)

Kevin Stewart (Aberdeen Central) (SNP) (Committee Substitute)

LOCATION

The James Clerk Maxwell Room (CR4)

Scottish Parliament Equalities, Human Rights and Civil Justice Committee

Tuesday 20 February 2024

*[The Deputy Convener opened the meeting at
10:05]*

Convener

The Deputy Convener (Maggie Chapman): Good morning, everyone, and welcome to the fifth meeting in 2024 of the Equalities, Human Rights and Civil Justice Committee. We have received no apologies for our meeting.

As members will be aware, Kaukab Stewart has resigned as convener of the committee, following her appointment as Minister for Culture, Europe and International Development. For that reason, I am chairing this part of the meeting in my capacity as deputy convener. I take this opportunity to put on the record our thanks to Kaukab for her work, and I wish her well in her new role.

Under our first agenda item, the committee is invited to choose a new convener. The Parliament has agreed that only members of the Scottish National Party are eligible for nomination as convener of the Equalities, Human Rights and Civil Justice Committee.

Do we have any nominations for convener?

Fulton MacGregor (Coatbridge and Chryston) (SNP): I echo your remarks about the previous convener.

I nominate Karen Adam.

Karen Adam was chosen as convener.

The Deputy Convener: Congratulations, Karen. I hand over the chair to you.

The Convener (Karen Adam): Thank you so much. It is an absolute honour to serve as convener of the committee. I look forward to working with everybody over the next few weeks, months and—possibly—years.

Gender Representation on Public Boards (Amendment) (Scotland) Bill: Stage 1

10:07

The Convener: Item 2 is evidence from the Scottish Government on the Gender Representation on Public Boards (Amendment) (Scotland) Bill. We have with us Shirley-Anne Somerville, Cabinet Secretary for Social Justice, who is accompanied by supporting officials Eileen Flanagan, head of the women's equality unit; Lucy Galloway, a solicitor in the Scottish Government's legal directorate; and Annie Milovic, senior policy adviser in the gender equality policy team. Thank you for joining us this morning.

I refer members to papers 1 and 2, and I invite the cabinet secretary to make a brief opening statement.

The Cabinet Secretary for Social Justice (Shirley-Anne Somerville): Thank you, convener. I congratulate you on your new role.

It is a pleasure to be before the committee to speak about the Gender Representation on Public Boards (Amendment) (Scotland) Bill, which seeks to remove the section 2 definition of "woman" from the Gender Representation on Public Boards (Scotland) Act 2018. The bill follows decisions of the inner house of the Court of Session, which were effective from 19 April 2022. The court decided that the section 2 definition was outwith the legislative competence of the Scottish Parliament and was, accordingly, not law. The court decided that the section 2 definition has no legal effect, and that has been the position since 19 April 2022. At that time, our counsel told the court that we would remove the definition. The bill, if passed, will provide clarity by removing the redundant definition from the statute book.

I appreciate that introducing such a small bill is very unusual. We have looked at other planned legislation, but we did not find a suitable vehicle for making the change. Furthermore, the change needs to be made through primary legislation rather than through secondary legislation.

This short bill therefore simply makes a small technical fix to the statute book by removing the redundant definition, which will ensure that no one is misled. The bill does not change the policy intention of the 2018 act; we still need the boards of public bodies to better represent and reflect the population of Scotland. As I have said, the bill simply clears up the statute book to ensure that it is not misleading. Removing the definition from the statute book will eliminate the possibility of any

confusion for readers of the 2018 act who are unaware of the court orders in 2022.

The Convener: We move on to questions, and I will kick off. My first question is about an issue that you touched on in your opening statement. What is the main purpose of the bill?

Shirley-Anne Somerville: The main and, indeed, only purpose of the bill is to remove that redundant definition. As I said in my opening remarks, following the court's action, the definition does not have any legal standing, but we gave a commitment to the court that we would remove the definition, so it is important that we do so.

The Convener: We move on to Paul O'Kane.

Paul O'Kane (West Scotland) (Lab): Thank you convener, and congratulations—I look forward to working with you in your new role.

The cabinet secretary's introductory contribution was useful. I wonder whether we could explore the timescale. The judgment was made in April 2022, and it effectively changed the law by virtue of its ruling on the definition. This is an exercise to tidy up the statute book, so why has it taken until 2024 to get it going?

Shirley-Anne Somerville: I touched on that point briefly. It was important that we considered whether we could use another legislative vehicle, such as another bill that was going through Parliament. In many ways, that would have been an easier process than introducing a whole bill to do just this one thing, but that was not possible. We were very aware that we had made that commitment as a Government, so it was therefore important to move forward with it. We endeavoured to find another way, but, once we found that no other routes were open to us through primary legislation, I felt that it was important that we took the decision—unusual though it is to have such a small bill—to do it this way, rather than continue to wait to see whether the change could be attached to another bill.

Paul O'Kane: I assume that the work from 2022 was on trying to establish the Government's programme. Did you consider any bills as an avenue for doing that, or were they all dismissed out of hand straight away?

Shirley-Anne Somerville: If you look at the scope of the bills that Parliament has passed, you will see that there was no available alternative. In many ways, the decision was to not continue to wait until an appropriate bill came along but to make sure that we lived up to the commitment that we had made in court.

Meghan Gallacher (Central Scotland) (Con): I will pick up on stakeholder engagement. I understand that the Government did not consult on the matter, but officials have engaged with the

LGBTQI+ community on legislation relating to gender in the past. Following the court ruling, has the Scottish Government engaged directly with women's groups to mend relationships and perhaps to reassure them that there will be no repetition of what happened with this bill?

Shirley-Anne Somerville: As Meghan Gallacher rightly points out, there was no formal consultation. The bill is a technical fix to fulfil a commitment that we made in court, so the Government did not feel that we needed to go through a full consultation process. In the time that has elapsed since the court ruling, the Government has had discussions with a variety of stakeholders who have differing opinions on various equalities issues. If those stakeholders wished to bring the matter up, we would have had those discussions with them. In the context of the bill, we felt that there was no need to have a formal consultation, given that it is a technical fix.

Meghan Gallacher: You mentioned "a variety of stakeholders". Does that include women's groups?

Shirley-Anne Somerville: Yes.

Meghan Gallacher: Thank you. I will move on to a question about legislative competence. Can the cabinet secretary confirm that the Scottish Government has accepted that, to be legislatively competent, the bill must use the definition of the protected characteristic of sex and, within that, the definition of women as applied under the Equality Act 2010? Can she confirm that no further amendments will take the bill outwith legislative competence?

10:15

Shirley-Anne Somerville: The Government has no intention of amending the bill. It is short enough and has only one purpose, and we intend to carry on with the bill as introduced. Of course, the legal definition of women stands as it is in the Equality Act 2010 and the Gender Recognition Act 2004. The legal definitions are there for all to see. There will be no definition in the 2018 act.

Meghan Gallacher: I have a final, more practical question. Does the cabinet secretary believe that a board with five men, four women and someone who was born male and has transitioned, obtained a gender recognition certificate and identifies themselves as female achieves equality for women?

Shirley-Anne Somerville: As I said in my previous answer, the definition of women is based on what is in the Equality Act 2010 and the Gender Recognition Act 2004. That is the legislative basis of the definition, which we will refer to for the workings of the act.

The Convener: I thank the cabinet secretary for that answer. I remind members to keep questions within the scope of the bill that we are scrutinising today. Kevin Stewart has a supplementary question.

Kevin Stewart (Aberdeen Central) (SNP): Thank you, convener, and congratulations on your new role.

Cabinet secretary, this is perhaps not a question for you directly, but perhaps you could take it back to colleagues. It is about technical fixes and finding the right legislative vehicle to deal with them. You carried out a search and could not find the right legislative vehicle. All of us who have been ministers have had that situation at one point or t'other, even in relation to simple things. Could the cabinet secretary go back to colleagues and to Parliament to see whether there is a way to deal with technical fixes across the board in some other way, rather than with individual pieces of legislation?

I know that that might require amendment of the Scotland Act 1998, but it seems that we, in the Scottish Parliament, sometimes make things overly complex because of the Scotland Act 1998, and sometimes things that should be fixed remain on the statute book for longer than they should. I wonder whether a conversation with the Minister for Parliamentary Business, the Scottish Parliamentary Corporate Body, the Parliamentary Bureau and others could lead to something other than dealing with such matters through very short, technical bills.

Shirley-Anne Somerville: You raise an interesting point. The process of introducing a bill to Parliament can be time consuming, but it is the process that we have to go through. This is an example of the way that it has to be done for a very small technical fix.

That raises another interesting point. When we all consider what should be in primary legislation and what should be in secondary legislation, a discussion about getting specific details in a bill is quite rightly sometimes had. I am not saying that that is the case for this bill, but Mr Stewart raises a wider point about how quickly we can make changes. Obviously, changes to adapt to circumstances, events and so on can be made more quickly if they are made through secondary legislation.

However, as I say, that is not the case with this bill. The bill deals with a specific issue that originated in the courts and needed, rightly, to be dealt with through primary legislation. I will ensure that colleagues are made aware of that wider point.

Kevin Stewart: I will go on a little bit, convener. This is from an equalities viewpoint, but, if you rule

me to be outwith the scope of the bill, I will understand. Language is used in pieces of primary legislation, and in old legislation, particularly in relation to folks who have mental health problems, that is outdated and utterly out of order. That kind of thing should also be looked at if we are going to consider how to deal with technical fixes.

The Convener: We move on to questions from Annie Wells.

Annie Wells (Glasgow) (Con): I do not have any questions. It is a short bill, and we have heard from the cabinet secretary.

The Convener: Do members have any further questions?

Fulton MacGregor: Thank you, convener, and welcome to your role.

I have a quick question. You partly covered this issue in your opening statement, but the obvious question is, what would the consequence be of not introducing the bill?

Shirley-Anne Somerville: In many ways, there would be no legal effect. I will clarify that: there would be no legal effect. In no way is there a legal necessity for us to carry this through. This is a tidying-up exercise, but, if the definition remains on the statute book, it could be confusing even though it has no legal effect. People with wider knowledge could read something in the 2018 act that they know that the court judgment has dealt with, and that could lead to confusion, so it is important that we tidy it up.

The Convener: As there are no more questions, that concludes our business in public. I thank the cabinet secretary and her officials for their attendance, and we move into private session to consider the remaining items on our agenda.

10:21

Meeting continued in private until 10:35.

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