



The Scottish Parliament
Pàrlamaid na h-Alba

Official Report

EQUAL OPPORTUNITIES COMMITTEE

Thursday 11 February 2016

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EQUAL OPPORTUNITIES COMMITTEE

4th Meeting 2016, Session 4

CONVENER

*Margaret McCulloch (Central Scotland) (Lab)

DEPUTY CONVENER

*Sandra White (Glasgow Kelvin) (SNP)

COMMITTEE MEMBERS

*Christian Allard (North East Scotland) (SNP)

*John Finnie (Highlands and Islands) (Ind)

*Annabel Goldie (West Scotland) (Con)

*John Mason (Glasgow Shettleston) (SNP)

*Drew Smith (Glasgow) (Lab)

*attended

THE FOLLOWING ALSO PARTICIPATED:

Stuart Foubister (Scottish Government)

Alex Neil (Cabinet Secretary for Social Justice, Communities and Pensioners' Rights)

CLERK TO THE COMMITTEE

Ruth McGill

LOCATION

The James Clerk Maxwell Room (CR4)

Scottish Parliament

Equal Opportunities Committee

Thursday 11 February 2016

[The Convener opened the meeting at 10:00]

Decision on Taking Business in Private

The Convener (Margaret McCulloch): Welcome to the fourth meeting in 2016 of the Equal Opportunities Committee. Please switch off any electronic devices or set them to flight mode.

I will start with introductions. We are supported at the table by clerking and research staff, official reporters and broadcasting services and around the room by the security office. I also welcome the observers in the public gallery.

I am the committee convener, and I ask members to introduce themselves in turn.

Sandra White (Glasgow Kelvin) (SNP): Good morning. I am the MSP for Glasgow Kelvin.

John Mason (Glasgow Shettleston) (SNP): I am the MSP for Glasgow Shettleston.

Annabel Goldie (West Scotland) (Con): I am a West Scotland MSP.

Christian Allard (North East Scotland) (SNP): Good morning. I am a North East Scotland MSP.

John Finnie (Highlands and Islands) (Ind): Madainn mhath. Good morning. I am a Highlands and Islands MSP.

Drew Smith (Glasgow) (Lab): I am a Glasgow MSP.

The Convener: Agenda item 1 is a decision whether to take in private item 4, which is consideration of a paper on our review of budget considerations. Are we agreed?

Members *indicated agreement.*

Subordinate Legislation

Equality Act 2010 (Specific Duties) (Scotland) Amendment Regulations 2016 [Draft]

10:01

The Convener: Agenda item 2 is an evidence-taking session with the Cabinet Secretary for Social Justice, Communities and Pensioners' Rights on an instrument that, having been laid under the affirmative procedure, must be approved by Parliament before the provisions may come into force. Following the evidence taking, the committee will under agenda item 3 be invited to consider a motion to approve the instrument.

I welcome the cabinet secretary and his accompanying officials to the meeting, and I invite him to make some opening remarks.

The Cabinet Secretary for Social Justice, Communities and Pensioners' Rights (Alex Neil): Thank you very much, convener. First of all, I should introduce Eileen Flanagan from the equalities unit, who deals with the policy side of things, and Stuart Foubister, who is a Government solicitor and advises us on legal matters. Both are available to answer the committee's questions, if required.

I am pleased to be here to answer members' questions on the draft Equality Act 2010 (Specific Duties) (Scotland) Amendment Regulations 2016 and to move the motion on the instrument. I will keep my remarks brief to allow maximum time for questions and answers.

The draft regulations propose two things. First, they require listed public authorities to publish the gender composition of their boards and to produce succession plans to increase the diversity of their boards; and secondly, they lower the threshold for listed public authorities to publish information on their gender pay gap and equal pay statements from authorities with more than 150 employees to those with more than 20.

Our intention is that the new requirement to publish the gender composition of boards and to produce diversity succession plans will give added impetus and drive to how public bodies think about and plan their board recruitment processes, including how they can bring greater diversity to the board if the evidence tells them that that is what is needed. We want our bodies to reflect Scotland's diversity and to make the most of the talent that is out there in our communities.

The intention behind lowering the threshold for authorities to publish their gender pay gap and equal pay statements is to bring greater

transparency and accountability to the issue of pay. It is regrettable that 45 years after the Equal Pay Act 1970 women are continuing to bring equal pay cases to the employment tribunal. Although the full-time gender pay gap in Scotland narrowed last year to 7.3 per cent, the gap remains persistent and significant; indeed, it more than doubles when part-time work is factored in.

We have plenty of work ahead and challenges still to overcome. However, public bodies in Scotland have a central role to play in helping to promote equality and diversity and in tackling inequality and discrimination. I would like our public sector in Scotland to lead the way and set a benchmark for others to aspire to, and I believe that our public bodies are up to that challenge.

I hope that the committee will approve the draft regulations.

The Convener: Thank you, cabinet secretary. Annabel Goldie will ask the first question.

Annabel Goldie: I have three pretty simple questions, cabinet secretary. First of all, how many additional listed authorities will now be brought under the provisions of the Equality Act 2010?

Alex Neil: Thirty additional authorities will now be covered. I will read some of them out to you, but we will send you a full list of them. We can also send you a list of the 20 or so organisations that will not be covered because they have fewer than 20 employees.

Quite a number of valuation joint boards will now be covered by this legislation, and other bodies include the Accountant in Bankruptcy, Corseford school, Creative Scotland, Donaldson's school, East Park school, Forth Estuary Transport Authority, Harmony school, Jordanhill school, Lews Castle College, Newbattle Abbey College, Orkney College, the Royal Blind school, Bòrd na Gàidhlig, south west of Scotland transport partnership, Stanmore House school, Tay bridge joint board, the Mental Welfare Commission for Scotland and West Highland College. That is just a sample; we will send you the full list of 30.

Annabel Goldie: Thank you. That is helpful.

I know that, during the consultation, some concerns were raised about data protection issues because of the smaller size of some of the listed authorities. How will those concerns be addressed?

Alex Neil: The main concern was about the level at which we should set the lower number, and on the advice of the Equality and Human Rights Commission, it has been set at 20. The advice from the commission, which we have adhered to, was that if we went below 20 we would be in danger of de facto putting data-

protected information about employees into the public domain.

The Scottish Government has an organisation called ScotXed—Scottish exchange of data—which, day after day, keeps an eye on the Government to make sure that anything that we do across Government in no way endangers the data protection rights of any Government employee or Government agency. We also sought the advice of ScotXed on this, and its advice was that if we went below 20, we would be in danger of crossing the provisions in data protection legislation.

Annabel Goldie: Finally, there will obviously be an additional financial and administrative obligation on the smaller listed authorities. Has there been any attempt to quantify what that will mean for those authorities?

Alex Neil: Before we decided to introduce this secondary legislation, we looked at whether there were other administrative ways of fulfilling this requirement without having to bring in additional secondary legislation. For example, we looked at whether the public appointments system in Scotland was robust enough to provide this information without the need for any additional secondary legislation. We came to the conclusion that additional secondary legislation was needed, and when we discussed the legislation with the relevant bodies, we determined the additional administrative cost to be very marginal. There is no requirement for a supplement to be made to anyone's budget for this to be done effectively. The organisations have the information, and it is simply a case of collating it in a way that they might not have collated it previously. It will involve a one-off exercise with their computer and human resource systems, but once the computers have been set up to collate the information, they will churn it out on a regular basis.

Annabel Goldie: So you do not expect the organisations to have to take on extra staff.

Alex Neil: Not at all.

Christian Allard: I have a brief question. When I looked at the amendments that you are making in these regulations, I saw that proposed new regulation 6A(1) of the Equality Act 2010 (Specific Duties) (Scotland) Regulations 2012, as inserted by regulation 4 of the draft regulations, begins with the phrase

"The Scottish Ministers must from time to time take steps to—".

That is then followed by a range of steps. I found that quite interesting. Is that how legislation is usually drafted? Do we usually use phrases such as

"must from time to time"?

I have to say that I have a problem understanding what that means.

Alex Neil: I will bring in Stuart Foubister but speaking from my 17 years' experience in Parliament, I have to say that the phrase "from time to time" has appeared regularly.

Christian Allard: It just seems very strange to have the word "must" before it.

Alex Neil: Absolutely. The answer, I think, is that it allows a degree of flexibility. If we were too prescriptive—if, for example, we said that something had to be done every three, six or 12 months—we could create a bit of a bureaucratic nightmare by making way-over-the-top requirements. Moreover, being too prescriptive could lead to underreporting. It is all about leaving the decision on when matters need to be reported to the judgment of ministers, while making it clear that that must happen on a regular basis. It is a fairly standard piece of phraseology in legislation.

Stuart Foubister (Scottish Government): That is correct. If the regulations were silent on the matter and did not use the phrase "from time to time", it could be suggested that there was an obligation to do this only once. The phrase "from time to time" gives the sense that we need to keep picking up this information over time without, as the cabinet secretary has said, having to introduce set timescales.

Christian Allard: What is the minister's intention just now? Have you any idea when you will be taking those steps?

Stuart Foubister: Once the regulations are in force, it will be a case of doing that as quickly as possible, but the idea is that after some information is picked up, the process will not just stop. We will wait for a bit, and then the information will be refreshed. That is what will happen from time to time.

Alex Neil: I can provide some clarification on the timetable. In effect, the new arrangements for the 30 additional bodies that will be covered become operational from April 2017. After that, we will monitor the situation to make sure that the bodies take the necessary steps to ensure diversity in their succession plans and in the recruitment of new board members and new employees; in some cases, of course, board members will also be employees. We want to make sure that, in their recruitment processes, they fulfil the legislation's requirements.

Annabel Goldie: Given the delightfully flexible drafting of the regulations, I suppose that the phrase "from time to time" can mean now and again when it comes up the minister's humph to do it. Regardless of the phrasing, I would like to know what the sanction would be if the Scottish

ministers did not take steps to gather the information in question.

Alex Neil: I think that the Parliament, led by this committee, would take a very dim view of that and, as would normally be the case, would decide what to do about the minister who had failed to carry out their duties. I do not think that we would include provisions that would mean my having to go to Barlinnie if I failed to carry out my duty, but there are other things short of sending me to Barlinnie that the Parliament can do to me.

John Finnie: I suspect that we would discuss the sanctions in private, cabinet secretary. [Laughter.]

I had intended to ask about the number of listed public authorities with fewer than 20 employees. I would still like to ask about that, but I also have a supplementary to that question.

I can well understand why you would seek advice from the Equality and Human Rights Commission, but people might be surprised to learn that there are data protection issues in relation to what are, in effect, the salaries of public officials. Do you hope that the provision of that information will be expanded at some point in the future? After all, we should be open and transparent about the expenditure of public money. Given that your salary and my salary are known to the public, I do not see why it should be an issue for anyone else.

Alex Neil: The issue with organisations with fewer than 20 employees relates to the diversity requirements. For example, someone might not want it to be known that they are disabled. With regard to organisations that have fewer than 20 employees, the EHRC's advice is that we could in effect be putting that information into the public domain and thereby betraying that individual's data protection rights.

John Finnie: I am sorry—I should have clarified that I was asking exclusively about pay matters. Clearly, I would not wish to disadvantage anyone in the way that you have described.

Alex Neil: As far as pay is concerned, everyone knows the pay of people on a board, because we publish that information for every board member, regardless of whether they are the chair, the vice-chair or an ordinary board member. All of that information is already in the public domain.

John Finnie: Let me rephrase my question—I might be slow on the uptake here. Are we talking about public authorities in which there are certain individuals who are employees but not board members? Are you able to say how many of those there are?

Alex Neil: The situation varies across the board. Let me take the example of Scottish

Enterprise, which is already covered by the legislation; the chief executive of Scottish Enterprise is automatically a member of the board. The chief executives of the health boards in Scotland are automatically members of the board. However, there are other organisations in which the chief executive is not a member of the board. They attend board meetings but, under the law, they are not board members. In those cases, we would still publish the chief executive's salary information.

We will be as open as we can be. The remuneration of the most senior manager in an organisation will still be in the public domain even if they are not also a board member.

John Finnie: Thanks very much for that.

An aspiration for some people, including me, is that we address the issue of wage ratios in a more public way. Obviously there can be a gender element to that. Do you imagine that that could be something that the public sector would address? Would you support its being addressed?

10:15

Alex Neil: I am very sympathetic to that. In his report, Will Hutton suggested that no organisation in the public sector—and, if I remember correctly, the private sector—should have a lowest-paid to highest-paid ratio in excess of 1:13. Given our commitment to the living wage, I cannot think of a case in the Scottish Government or in any of our organisations—in fact, as a minister, I have asked for this information in every job that I have been in—in which we have a ratio in which the highest-paid person is getting paid 13 times more than the lowest-paid.

John Finnie: Thanks very much.

Alex Neil: To be absolutely exact, the number of organisations that will not be covered by the legislation because they employ fewer than 20 people is 17. We will send you a full list of them.

The Convener: As members have no more questions, we move to agenda item 3, which is formal consideration of motion S4M-15553.

Motion moved,

That the Equal Opportunities Committee recommends that the Equality Act 2010 (Specific Duties) (Scotland) Amendment Regulations 2016 [draft] be approved.—[*Alex Neil.*]

Motion agreed to.

The Convener: We will report the outcome of our consideration to the Parliament. I thank the cabinet secretary for his participation.

Alex Neil: I again thank the committee very much indeed.

The Convener: That concludes the public part of today's meeting. Our next meeting will take place on Thursday 25 February.

10:17

Meeting continued in private until 10:38.

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