

EQUAL OPPORTUNITIES COMMITTEE

Tuesday 18 January 2000
(Morning)

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EQUAL OPPORTUNITIES COMMITTEE 1st Meeting 2000 (Committee Room 1)

CONVENER :

*Kate MacLean (Dundee West) (Lab)

COMMITTEE MEMBERS :

*Malcolm Chisholm (Edinburgh North and Leith) (Lab)
*Johann Lamont (Glasgow Pollok) (Lab)
Marilyn Livingstone (Kirkcaldy) (Lab)
*Mr Jamie McGrigor (Highlands and Islands) (Con)
*Irene McGugan (North-East Scotland) (SNP)
*Mr Michael McMahon (Hamilton North and Bellshill) (Lab)
*Tricia Marwick (Mid Scotland and Fife) (SNP)
*Mr John Munro (Ross, Skye and Inverness West) (LD)
*Nora Radcliffe (Gordon) (LD)
*Shona Robison (North-East Scotland) (SNP)
*Tommy Sheridan (Glasgow) (SSP)
*Elaine Smith (Coatbridge and Chryston) (Lab)

*attended

WITNESS:

Mick Conboy (Commission for Racial Equality)

COMMITTEE CLERK:

Martin Verity

ASSISTANT CLERK:

Rodger Evans

Scottish Parliament

Equal Opportunities Committee

Tuesday 18 January 2000

(Morning)

[THE CONVENER *opened the meeting at 10:03*]

The Convener (Kate MacLean): Welcome to the first Equal Opportunities Committee since the new year. I would like to welcome a new member of the committee—Tricia Marwick. I have worked with Tricia on the Justice and Home Affairs Committee and have been impressed with her work there. I am sure that she will contribute greatly to the work of this committee.

I thank Michael Matheson for the contribution that he made to the Equal Opportunities Committee, particularly in regard to disability issues. We will miss his contribution.

I will ask Tricia to declare her interests.

Tricia Marwick (Mid Scotland and Fife) (SNP): Thanks for your welcome. I look forward to contributing to the committee to the best of my ability.

I have no interests to declare.

Deputy Convener

The Convener: The first item on the agenda is the appointment of a deputy convener. Parliament agreed on 16 December that the deputy convener should come from the Scottish National party. I invite nominations for the post.

Irene McGugan (North-East Scotland) (SNP): I nominate Shona Robison.

The Convener: Does Shona Robison accept the nomination?

Shona Robison (North-East Scotland) (SNP): Yes.

The Convener: I welcome you to your new post and look forward to working with you.

Sorry, I should have asked if there were any other nominations. How undemocratic of me. Are there any? It seems not. In that case, my last remarks stand.

Shona Robison was elected deputy convener by acclamation.

Census (Scotland) Order 2000

The Convener: The second item is the Census (Scotland) Order 2000. Mick Conboy from the Commission for Racial Equality will give evidence to the committee on the matter. I understand that the clerk has circulated a paper from the Commission for Racial Equality. Everyone should also have a copy of the draft Scottish statutory instrument.

Mick Conboy (Commission for Racial Equality): I thank the committee for inviting me to give the response of the Commission for Racial Equality to the Census (Scotland) Order 2000.

Our proposals in the paper that was circulated to members centre on three related elements: ethnicity, language and religion. We believe that the data produced from those questions would greatly assist planning at a central and local level to identify need, provide appropriate services and assess the effectiveness of those services. The introduction of the questions would be helpful in implementing the Government's commitment to mainstreaming equality that was illustrated recently by the checklist that was launched by the First Minister. It would also be helpful to the Executive's equality strategy that was launched yesterday by the Deputy Minister for Communities.

We must consider legal commitments. Domestically, the Children (Scotland) Act 1995 and schedule 5 of the Scotland Act 1998 are relevant. Internationally, the introduction of the European convention on human rights will trigger a review of the need for legislation on religious discrimination. International Labour Organisation convention 111, concerning discrimination in employment and occupation, also covers religion, as do the directives that emanate from article 6a of the Amsterdam treaty.

The questions that are used in the census need to offer ways of opening up our understanding of differentials and inequalities rather than affirming the user interests that have already been perceived. Challenging exclusion must include uncovering issues that agencies do not fully understand. The inclusion of those three areas provides a major platform for the development of a national strategy on monitoring that would assist in addressing the historic lack of data available in Scotland.

We want the ethnic classifications used in the census to be expanded to allow for the fact of evolving identities and emerging issues. The changes suggested to the ethnic origin categories, which were accepted for the census in England and Wales, would improve the response rate from ethnic minority communities.

Similar arguments have been made for the inclusion of the question on language as for the inclusion of a question on Gaelic-speaking people in Scotland, namely, that that information will provide data on change over time and will assist in planning bilingual education provision. It will also inform the national strategy on interpreting and translating that we mentioned to the committee on a previous occasion.

In our view, the question on religion would supplement that on ethnic origin and would be of particular benefit to Government and public services such as education, health care and social work. I stress that that is not a way of gauging religious activity; rather, it underlines the essential function of the census as a planning tool. All these questions centre on essentially the same arguments as those for the introduction of a question on ethnic origin, namely, to identify and address differentiated need and effectively to plan and assess performance.

Finally, I would like to touch on one or two of the reasons for not including some of these questions. The inclusion of a question on religion was not identified as a priority by user groups. I remind the committee that, prior to 1991, there was a degree of opposition to the introduction of an ethnic origin question. The Commission for Racial Equality and racial equality councils may not qualify for definition as users of census information. However, we were consulted by the General Register Office for Scotland and we recommended the use of these questions. Other census users are principally service providers. We suggest asking questions on the demand for services that are provided by those users, and cite one instance of a major service provider—City of Glasgow Council—coming out in support of the question on religion.

It has been suggested that there would be an adverse reaction to the introduction of a question on religion. The arguments against introducing a question on ethnic origin were similar in nature pre-1991. However, since 1991, history has shown the benefits, particularly to ethnic minority groups, of gathering such data. It is now commonly accepted that ethnic monitoring is a prerequisite for providing effective services. Considerable testing was carried out during the run-up to the introduction of the white paper, and no adverse reaction was found to the question on religion.

We have established that the census in 1991 cost £134.5 million to conduct, and we ask the committee whether it is convinced by the arguments over the additional costs that would be involved in asking further questions. In the draft amendment bill that was brought before the House of Lords recently, to amend the Census Act 1920 there were no financial implications for introducing

the question on religion for England and Wales. I am not sure whether that has already been taken account of in the calculations. However, it begs the question of the overall cost of the lack of appropriate services for ethnic minority communities in areas such as health and education.

There is also an implicit acceptance that the size of the ethnic minority population in Scotland is not sufficient to warrant an additional expense on this account. We stress the fact that the census is supposed to be looking forward as well as taking a snapshot on the census night. Religion is likely to increase in importance as an indicator over the next decade, as it has over the previous decade.

The Convener: Thanks very much. Do members have any questions?

Malcolm Chisholm (Edinburgh North and Leith) (Lab): I may have missed something. Why is religion likely to increase in importance as an indicator?

Mick Conboy: On the basis that the ethnic minority population is likely to increase over the next 10 years. The ethnic minority population in Scotland, as in the UK as a whole, is younger, and the fruits of that indicator will be seen over the next 10 years.

Mr Michael McMahon (Hamilton North and Bellshill) (Lab): There is potential for the data that we want on religion to be collected from other sources, from surveys and so on. Do you think that that information would be as valuable, or would you prefer it to come directly from the census?

10:15

Mick Conboy: The main problem with surveys is their extent: any survey has limitations on its range and scope. We have highlighted that in our response. I refer you again to the House of Lords amendment to the 1920 census, which gives a pretty good indication of why the census is regarded as the most authoritative source of information. I cite that in support of the argument that a survey would not give the scope and range of information that the census would.

Mr McMahon: Would the cost of other surveys be prohibitive? There must be a cost implication for the census as well. Is there not an economic argument against further surveys?

Mick Conboy: The census has the mechanisms in place already. Further questions in the census would be added on; there would be no need to change the mechanisms through which the information would be delivered. However, a survey on ethnicity, language and religion would start from scratch, and the additional costs would have

to be weighed against any costs that would be incurred by introducing an additional question in the census.

Johann Lamont (Glasgow Pollok) (Lab): I apologise for being late. You may have covered this point before I came in.

The arguments against including this question centre on the fact that the business case has not been made. This committee has already discussed whether, if someone was not sensitive to the needs of a particular black or ethnic minority community, they could be expected to make the business case. If they do not make the business case, that is then used as an argument.

It has also been argued that the consultation process was flawed, and did not enable groups to contribute early enough, to make the kinds of points that you have made. Can you comment on why the consultation did not develop these arguments early enough for them to be taken on board?

Mick Conboy: There are several points there. The first point deals with the direct impact on ethnic minority communities as identified through ethnic monitoring data. Several service organisations do not regard racial equality as an issue; their planning is already devoid of a racial equality element. When approaching an organisation on what might be regarded as a colour-blind issue such as the census, it is likely that a racial equality element will be overlooked. That is the argument for introducing a mainstreaming approach to equality issues for planning that has previously been regarded as having nothing to do with racial equality. The intention is to make planners and policy makers think about equality issues when they deal with finance planning and so on.

In terms of the general response from service users, it is likely that those questions were simply overlooked. In the case of Glasgow, there was further consultation with both internal and external groups, to identify views. In terms of the wider consultation, the CRE was in discussion with the GRO about a year ago. The CRE and the racial equality councils felt that we had made out the case, but we do not know whether, at that time, the GRO had made contact with other ethnic minority organisations.

The Convener: Could I ask people to speak right into the microphone, as some people at the top of the table are having difficulty hearing what is being said?

Tommy Sheridan (Glasgow) (SSP): On the exclusion of the question we are discussing, is there anything else that we can do before the census is done and dusted? I was involved in the relevant council committee in Glasgow and we felt

that it was important to make our feelings known. We hoped that we had changed the view of those who organise the census, but that does not seem to have happened. Is there anything else that we can do to influence the decision?

Mick Conboy: I understand that the Scottish Parliament is the last port of call in terms of amending the draft order, and that it is out of the hands of individual authorities such as Glasgow City Council. It is down to the Equal Opportunities Committee and to the Parliament to make the final decisions.

The Convener: We will discuss our approach after we have taken evidence.

Irene McGugan: It is probably worth while reminding the committee about a related issue. The only other contentious element around the draft census order as it stands is that it does not mention a question on the Scots language. Many of Mick Conboy's arguments are relevant to that question—detail would be collated that would be of assistance in planning the provision of education and other services. The issue is also one of recognition, which is an important element. I ask the committee to bear that in mind as we move towards making recommendations and conclusions, as it will be quite difficult to determine how best to progress this matter.

Mr John Munro (Ross, Skye and Inverness West) (LD): I am interested in the document and in the classification of people who are required to comply with the census regulations. There is no provision for the homeless—that is, those people who live on the street—to establish how many there are. We keep hearing from the media and reading in the press about the thousands who sleep on our streets. How are we to assess that group of people? Do the regulations propose to record those individuals?

Mick Conboy: While I understand your question, the CRE has no statutory locus in relation to the homeless as a group. There are issues about ethnic minority communities and hidden homelessness, such as overcrowding, but they make up a sub-group of the wider group of the homeless. I do not know whether the issue of homelessness is picked up elsewhere in the census.

Mr Jamie McGrigor (Highlands and Islands) (Con): The other day, I received a letter from a travelling person who said that they wished to be considered as being of an ethnic minority origin. Does the CRE have many dealings with travelling people? How are they covered by the census?

Mick Conboy: I understand that a separate census is carried out via the secretary of state's advisory committee on travelling people in Scotland. A further issue is whether the travelling

community as a whole would define themselves as having an ethnic minority background. The issue is not clear-cut one way or the other within the community itself.

Mr McGrigor: Are travelling people represented on the CRE?

Mick Conboy: We are in dialogue with traveller-based organisations. The most recent contact was a workshop organised by the secretary of state's committee. As you may know, the committee is producing an end-of-term report, as it winds down. In the spring, there will be a conference on the way forward for travelling communities in Scotland, at which Dharmendra Kanani, the head of the CRE in Scotland, will speak. We are in reasonably regular contact with travelling groups.

Malcolm Chisholm: While I believe that we should press for various changes, in the scale of things do you feel as strongly about the extra subdivisions in the ethnic monitoring categories as you do about the question on religion? Do you think that we should push one rather than the other?

While Irene McGugan mentioned the Scots language, I have a question about language generally. I may be wrong, but I do not think that there is a question about ethnic minority languages. If there is not such a question, do you think that there should be?

Mick Conboy: We should bear in mind the fact that these categories will be in place for the next 10 or 11 years or more. A large number of young Scots in particular would not necessarily see themselves as being principally of Pakistani origin, for example. There is a growing sense of dual identity, if you like—young people who claim Scottish identity in addition to identifying with their parents' background.

As I said earlier, the categories have been introduced in England and Wales to assist people on the completion of census monitoring forms, rather than leaving them to complete the "Other" category, which will lead to the loss of specific information under that general heading. The idea is to unpick that information, so that those who plan services have much better data on which to base their work.

It is important to view the matter over 10 years and to reflect the growing sense of dual identity, which links into the question of religion. Those who organise the census in England and Wales acknowledge that an awful lot of people in ethnic minority communities would see themselves as better defined with an additional element that relates to their religion or cultural background. I would not want to choose which of the three questions to push.

On the question of language, service providers regularly ask the CRE: "What are the main languages spoken in Scotland? How many people are we talking about? How do we target translated materials at those individuals?" Those questions might have been answered in the previous census, which forms the basis of the argument for including such questions now. In order to provide a better service, providers need to know the characteristics of their audience.

Johann Lamont: You may have mentioned that one of the problems in including this question is that the law would have to be changed. Are you aware of that problem? In what way would the law require to be changed for the question to be asked?

10:30

Mick Conboy: I believe that the introduction of the question on religion for England and Wales led to the tabling of an amendment to the Census Act 1920—the amendment was laid before the House of Lords on 19 December. All that is says—it is a tiny, insignificant amendment—is, "We will introduce this line". There is a statement to the effect that the question on religion will be introduced in England and Wales, if time is found in the House of Lords to pass the amendment.

Johann Lamont: Would the responsibility for the legislation for Scotland lie with the Scottish Parliament? If so, it would be for us to make our own time available.

Mick Conboy: That is one area on which we are not clear. It is a devolved matter, but the Census Act 1920 pre-dates devolution. I am not sure what the position would be in terms of the Scottish Parliament amending the act. That point needs to be clarified.

Johann Lamont: It would be worth doing that. The Minister for Justice said during questions last week that any change might require primary legislation, which would mean that we would generate the legislation. You are saying that that primary legislation would not be extensive and would not take up a lot of parliamentary time—it would therefore not be an insurmountable hurdle.

The Convener: We can go into that when Martin Verity explains the procedures.

I thank Mick Conboy for coming along to give evidence. We are going to discuss this issue now, so you are welcome to stay, although we will understand if you have to rush off somewhere else.

Mick Conboy: I will be happy to stay.

The Convener: Because the Justice and Home Affairs Committee, rather than the Parliament, was

going to deal with this issue, I asked Martin Verity to tell the bureau that we wanted it to be referred to us as well. However, that is not going to happen, as the order is now going to be debated in the full Parliament. I think that the date of that will be decided today—it may be 27 January. I have asked Martin to find out what procedures we can use to have any influence, given that we cannot consider this fully as a committee and take evidence from a range of organisations. He will outline what is happening and we can discuss what we will do as a committee or as individuals.

Martin Verity (Committee Clerk): My understanding is that the census order is unique in two respects. First, it combines affirmative procedure with negative procedure. Secondly, I understand that the affirmative part can be amended.

The order has been laid and it is up to the bureau to determine where it will go next. As the convener said, we understand that it will be laid before the full Parliament rather than before any specific committee. I believe that that will be on 27 January, but I am not certain.

The Executive will lodge a motion and members who wish to amend the census order would do so by lodging an amendment to the Executive motion. This is a complex procedure; the chamber office clerks are working on guidance for members on how these amendments should be lodged and worded. My understanding is that that guidance will be available to members when the Executive motion is known. It is for the committee to decide how to respond to the request from the CRE and other organisations and to establish its view on the census order. If the committee desires to lodge an amendment when the Executive motion is published, we will provide advice, in consultation with the chamber office clerks, on how to do so.

The Convener: Are there any questions on the technicalities, before we discuss amendments?

Mr McMahon: Would an amendment be lodged in an individual's name or in the name of the committee?

Martin Verity: It would have to be lodged in the name of an individual MSP. All motions and amendments are lodged in the name of an individual MSP. That would not prevent the MSP from making it clear that he or she was moving it on behalf of the committee, if that was what the committee wanted.

Malcolm Chisholm: You said that that the order was partly affirmative and partly negative. Does that matter? As we are having a debate, do we need to know which part is which?

Martin Verity: Because of the complexity of the situation, my advice would be to have the debate

before we consider the technicalities of the amendment.

Johann Lamont: The committee structure is useful, especially in this instance, as it allows us to discuss and explore the issues. In a formal debate, someone is either for something or against it, which can make it difficult to engage the minister in the way in which we could have done had we been able to call him to this committee. We might have teased out why some people, who one would have expected to be supportive of these questions, had taken an alternative view. We would have wanted to ask the appropriate people to consider some of these issues. Some matters do not lend themselves to formal debate as well as others. We should play to our strengths as a committee.

Regardless of the questions that the order omits, including on religion, ethnic origin, language and so on, I am disappointed that it uses language that I thought became outdated a long time ago—it refers to everybody as “he”. We should make representations that the language should be that of the world to which the rest of us moved a long time ago. It is not difficult to use inclusive language that recognises that there are men and women. The view that the masculine term covers everybody is outdated. We should state that the language should be changed.

Irene McGugan: It is good that we are going to debate this order in the chamber. That acknowledges the importance of these issues. As we have heard, it is possible to amend only those provisions that fall within affirmative procedures. What that includes has still not been made clear to us, but we hope that language will fall into that category. However, that still would not enable us to address the religious questions and amend the Census Act 1920.

Johann Lamont: Does that mean that, even if there was a strong feeling in Parliament that those questions should be included, we would have no mechanism through which we could debate the matter? Is it the case that we can debate the language issue but not the other issues?

The Convener: We will have to investigate the procedures; I am not sure what they are. If we decide as a committee the issues about which we are concerned, we can then consider the procedures. As Martin Verity said, the clerks are preparing guidance. We should determine the feelings of the committee and find a way in which to express them in an amendment, or we should request that these issues be debated in Parliament.

Malcolm Chisholm: On the basis of what we have heard today, some people have clearly been working on this question for a long time. I would

support using the CRE recommendations—particularly the last two pages—as a framework. There are three groups. First, we would support the sub-divisions that it suggests, although members may want to make small changes to those. Secondly, we would support the inclusion of a question on religion and, thirdly, we would support a question on language spoken in the home. If we accept that position in principle, we can then investigate the procedures by which we can advance our objectives.

Tricia Marwick: It is regrettable that, although we have reached 17 January and may have a debate on the draft census order next week or the week after, the committee is still not clear about the procedures for seeking to amend the order.

We need to have another meeting before the debate takes place in the chamber. To make the committee's views clear, we should consider producing a committee report for distribution to all MSPs, based on the CRE's submission.

My concern is that the selection of amendments to the Executive motion will be in the hands of the Presiding Officer. Those amendments have to be lodged by individual members, but we cannot debate 129 amendments, so somebody, at some point, will have to make a judgment on which amendments are debated. If the committee takes a collective view, it should be able to make that view quite clear. One mechanism for doing that would be for the committee to produce a report and ensure that all 129 MSPs receive a copy before the debate in the chamber.

The Convener: The problem with that suggestion is the time scale. The matter has been taken out of our hands. Until last Thursday, it was intended that it would be dealt with through the committee system, which would have given us time to take evidence and to produce a report. I told the business manager in writing some time ago, and repeated my point last week, that I wanted the matter to be referred to the committee.

The procedures will have to be looked at for future cases, but at the moment we will have to work within the time scale. I suspect that we will not be able to produce reports for all MSPs by 27 January. We need to find out how our views can be put in Parliament by a individual member on behalf of the committee.

Tommy Sheridan: As a member who has had four amendments refused by the Presiding Officer, I am acutely aware that the matter is in his hands. *[Interruption.]* Johann Lamont has just suggested to me that, in that case, I should not be the one to lodge the committee's amendment; she is probably right.

If we could reach agreement today along the lines of the case presented to us by the CRE, we

could lodge an amendment in the convener's name. We could produce a statement, rather than a full report, which could be e-mailed, or photocopied and distributed, to all MSPs. When the convener speaks in the debate, she could make it clear that she was speaking on behalf of the committee; that would add a lot of weight to the points that she made. Under those circumstances, I think that it would be impossible for the Presiding Officer to refuse to accept the amendment.

The Convener: I am not so sure about that last point.

I would have expected to lodge the amendment on behalf of the committee, but I did not want to be presumptuous. If Tommy is suggesting that I do so, and everyone is happy with the suggestion, that is fine by me.

Tommy Sheridan: You can give me the fiver later.

The Convener: Only a fiver?

Tommy Sheridan: I come cheap.

Elaine Smith (Coatbridge and Chryston) (Lab): All that we can do today is to discuss and agree on amendments in principle; we will have to find out the procedure later. I would be interested to know whether the Census Act 1920 has been amended for England and Wales. Does the act still cover Scotland?

The Convener: Tricia Marwick suggested getting everyone together again before 27 January. That may be difficult to arrange, but if it is possible and members agree to meet again, I would be happy to organise that meeting and could keep in touch with members by e-mail. If we decide on the general principles today, Martin Verity and I can work on those arrangements. Do members want me to go ahead with that?

Members indicated agreement.

Johann Lamont: I want to underline my earlier point about the role of the committees. The debate in the chamber will be useful, but perhaps we should ask—through the convener and the conveners committee—for some awareness of issues that lend themselves to the committee structure. The census order is a classic example of such an issue, because a formal debate will close down much of the discussion. That is nobody's fault, but a committee discussion could have been more exploratory. I am concerned that we are being driven by procedure instead of ensuring that our procedures facilitate useful debate. We have to find some way of releasing ourselves from procedures. In another place, people are often hampered by procedures. We should try to deal with this problem early.

Mr McMahon: It was intended initially that the census order would go to the Justice and Home Affairs Committee, but the plan changed because of that committee's timetable. Other committees—of which we are one—could have examined the order, but no attempt was made to seek another course for putting it through the committee system. That sets a bad precedent. We do not want to encourage a system in which one committee's timetable completely alters the way in which legislation passes through Parliament.

10:45

The Convener: It was decided that the census order would go to the full Parliament because the Justice and Home Affairs Committee is so busy dealing with the Adults with Incapacity (Scotland) Bill. I have made representations on behalf of the Equal Opportunities Committee, but I am happy to contact the bureau again on that point.

Irene McGugan: I mentioned the Scots language earlier. If amendments on language are eligible, an amendment to include Scots in the census will undoubtedly be lodged, but how do members feel about separating one language from others? If amendments are lodged to include separate questions for each language, that will generate a large number of amendments. That might divide the committee's feeling about trying to include everything that has been omitted so far. What are people's thoughts on that?

Elaine Smith: Does question 8 have to name specific languages, or could it just ask, "Which language or languages do you speak, read, write or understand?"

The Convener: The question would have to include a list of languages, plus a space in which people could include any languages not listed. I think that it would be possible to frame the question in that way.

Is everyone happy for Shona Robison, Martin Verity and I to get together to try to sort this out? We could discuss today any amendments that members want the committee to support in principle.

Does anyone want to comment on that? Malcolm, you said that you wanted the committee to support the CRE's recommendations.

Malcolm Chisholm: I made a general point about that.

Shona Robison: It will be difficult to discuss the detailed wording of amendments today. We have tried to have a discussion around the principles. Now we need to go away and put some meat on the bones, then find a mechanism for checking with members that they agree with what we have drafted. My preference would be to get everybody

physically back together, after ideas have been e-mailed out. Things get difficult if people are e-mailing backwards and forwards. After e-mailing suggestions, we should have a brief meeting to decide which ones we want to pursue.

Tommy Sheridan: I wonder whether the morning of Wednesday 26 January would be suitable for that. I do not know which other committees members sit on, but we could ask the CRE to draft an amendment, which we would discuss on the Wednesday. The meeting would have to be in the morning, because the amendment would have to be submitted to the chamber office by 4.30 pm on that day.

Malcolm Chisholm: Why not meet on Tuesday? The reporters groups tend to meet on Tuesday morning anyway.

Tommy Sheridan: Because the topic is so specific, I did not want to cut across the meetings of other reporters groups that were discussing issues that they regarded as important.

Malcolm Chisholm: The only problem is that some people have committee meetings on Wednesday morning.

The Convener: There are committee meetings on both Tuesday and Wednesday.

We will set up a meeting on either Tuesday or Wednesday, after we have found out what best suits members. We need to have at least the bare bones of what people feel would be useful, so that we can consider the practicalities of including those issues in an amendment. There may be issues other than those that the CRE has raised this morning. Like Mick Conboy, I suspect that there is not a huge cost implication in including extra questions.

Elaine Smith: I support Johann Lamont's point about language and would like you to take that on board, convener.

The Convener: We will get in touch over the next few days to try to organise another meeting before 27 January.

Unfortunately, the Scottish Refugee Council is unable to give evidence today. We do not have an alternative date yet, but we will try to organise one as soon as possible, as I realise that members are keen to hear evidence from the council.

Adults with Incapacity (Scotland) Bill

The Convener: Tomorrow the Justice and Home Affairs Committee will begin to consider amendments to the Adults with Incapacity (Scotland) Bill. Martin Verity has circulated a policy memorandum and a copy of amendment 152, in the name of Jim Wallace. The amendment covers same-sex relationships, on which the committee took evidence from the Equality Network. There is also a short report. It is up to this committee to decide whether it wants to propose any further amendments for consideration or to propose amendments that would amend existing amendments.

I told reporters that if any of the organisations that they deal with want to propose amendments, they can bring them before the committee, but so far I have had no response.

Jim Wallace's amendment 152 to section 76 addresses an issue raised by the Equality Network about the inclusion of same-sex couples in the provision for primary carers and next of kin. I am not happy with the amendment, which was lodged only this morning.

Tommy Sheridan: Can you elaborate on that?

The Convener: The amendment refers to

"a person of the same sex as the adult",

but a number of conditions are added. To say that the person should have been living with the adult

"for a period of not less than six months"

is fine if that applies equally to single-sex and different-sex couples, but the reference to

"circumstances which are characterised by, amongst other things, mutual affection, commitment and support"

should not be included unless that applies to both same-sex and mixed-sex couples. We should not attach conditions to same-sex relationships that would not legally apply to other relationships; I suspect that here they do not. I do not think that it is right to attach conditions to gay or lesbian relationships as a way of justifying equality or making it more acceptable.

Nora Radcliffe (Gordon) (LD): I agree with you. I would change the wording of the amendment to

"mutual affection, commitment and support"

full stop. I do not think that we inquire into the sexual relationships of married people or of people of different genders who are cohabiting. Is a sexual relationship a prerequisite for being recognised as a mutually supportive couple? I would not have thought so.

Tommy Sheridan: Do you know what reference is made to heterosexual relationships?

The Convener: I do not think that there is one. This provision has been added in. I welcome the fact that Jim Wallace has proposed the amendment and has recognised same-sex relationships within the context of next of kin and primary carers, but I suspect that there is no equivalent definition of heterosexual relationships. I would prefer the amendment to refer to

"a person of the same sex as the adult"

full stop.

Tommy Sheridan: Like you, convener, I welcome in principle the fact that this amendment has been brought forward to recognise same-sex relationships. However, the Justice and Home Affairs Committee was aware of the need to differentiate between someone living under the same roof as someone else for a period and someone who was in a relationship—heterosexual or homosexual—with that person and therefore next of kin.

That is why I asked you about the conditions attached to recognition of heterosexual relationships. I am sure that they extend beyond just living under the same roof, as that would be ridiculous. It would mean that people who were sharing a flat with an adult with incapacity could be recognised as next of kin. Although you may be right about the form of words that is used here, some form of words is needed that makes it clear that a person's relationship with the adult extends beyond the fact that they share a flat or house.

The Convener: I am not sure whether anything apart from the period of time is specified for mixed-sex relationships.

Shona Robison: We need to check the wording. As Tommy Sheridan said, there must be something to distinguish between people who are living together because they are sharing a flat and people who are in a relationship. That goes for both same-sex and different-sex relationships. If there is no such provision elsewhere in the bill, there needs to be; there must be some provision that would prevent someone who just happens to live under the same roof as an adult with incapacity from attempting to take responsibility for that person.

The Convener: The difference is that there is already a legal definition of cohabitee, which does not include same-sex couples.

11:00

Shona Robison: If that is the case, and if that is the understanding behind the other part of the bill, there has to be something in here to distinguish

the type of relationship, for protection of the individual if nothing else. However, I agree that the wording in Jim Wallace's amendment leaves a lot to be desired. It would probably be impossible to prove, legally, that there has been mutual affection, commitment, support and so on. The language of the amendment should be tighter and perhaps less loaded.

The Convener: The bill says:

"nearest relative" means the person who would be, or would be exercising the functions of, the adult's nearest relative under sections 53 to 57 of the 1984 Act".

Jim Wallace's amendment adds in same-sex couples, with those conditions. It was handed to me this morning and I have not had time to consider it.

Tommy Sheridan: What is the time scale?

The Convener: The amendments start being considered tomorrow, but because this is a bit further on, it will not be heard then. The Justice and Home Affairs Committee is meeting twice a week. How long the amendment takes depends on how many amendments come in for each part. I do not know the time scale. That committee may have to meet twice a week for three months.

Tommy Sheridan: Earlier, we discussed having a special meeting next week. Would it be practical to ask Jim Wallace to come and explain this amendment?

The Convener: It would be difficult to have an official meeting, because other committees will be meeting and the official report will have to deal with them. If we have a meeting next Tuesday or Wednesday, it will have to be unofficial, although we could ask Jim Wallace along.

Tommy Sheridan: It is vital that he is here.

Nora Radcliffe: The dilemma could be resolved by extending the same definition that applied to cohabitantes to same-sex couples. Common-law marriage is recognised, so there must be a definition of cohabitee. Maybe we should do a bit of homework and find out its wording.

Mr McMahon: Why would it have to be an unofficial meeting? If we are scheduled to meet on a Tuesday morning—

The Convener: We are not. Neither a room nor the official report has been booked. We have Tuesday mornings in our diaries for reporters groups, which are scheduled to meet every fortnight. There are committee meetings on Tuesday and Wednesday, so it would be difficult to organise an official meeting of the committee for those days.

Mr McMahon: If some effort could be made to have an official meeting of the committee, and if

Jim Wallace were invited, we could deal with the census issue at the same time.

The Convener: I ask Martin Verity's advice about that, because he knows more than I do about organising meetings.

Martin Verity: In principle, I do not see any difficulty in having a formal meeting of the committee. However, it would be difficult to get the Deputy First Minister along at such short notice, and on a Tuesday morning when the cabinet meets. Alternatively, the convener could write to the minister, outlining the concerns of the committee and asking for an explanation.

The Convener: He has not replied to my last letter, and we are a bit short of time.

Johann Lamont: I suggest that you write to the minister, perhaps enclosing your concerns about the other area that we have discussed. When the matter is discussed by the Justice and Home Affairs Committee, we could raise the points that have been made here with it, almost as if making a formal representation on our views.

The Convener: If the conditions in Jim Wallace's amendment are different to sections 53 and 57 of the 1984 act, we can lodge an amendment, asking for the section to be amended to add in same-sex couples, without all the conditions.

Do members want us to arrange a formal meeting?

Tommy Sheridan: One of the reporters groups is dealing with sexual orientation issues, while the full committee has heard a number of representations. Could we have a formal meeting and invite a representative from one of the groups that has given us a presentation? I am trying to remember the name—

The Convener: Tim Hopkins from the Equality Network—

Tommy Sheridan: The Equality Network was good—it said that it would be looking at the bill in detail. It would be helpful to hear what the network has to say.

Nora Radcliffe: I wonder if the act's definition of cohabitantes is that they are couples. If so, it is fair enough just to apply the definition to same-sex couples.

Tommy Sheridan: The 1984 definition of cohabitee is quite old, so if that is the existing definition, we should challenge it. I hope that we have all questioned the idea that mutual affection, commitment and support and so on, has to be

"based on a subsisting or previous sexual relationship",

regardless of whether it is homosexual or heterosexual. Being regarded as someone's next

of kin should not be based on whether a person has had a previous sexual relationship with them.

Nora Radcliffe: It looks like that is trying to define a marriage that has not been formalised, which leads me to believe that that might well be the definition of cohabitee.

The Convener: We will clarify that for the next meeting.

Shona Robison: Am I right that we would have to lodge our own amendment? We cannot amend an amendment.

The Convener: We would lodge our own amendment.

Shona Robison: It would be an amendment to Jim Wallace's amendment. Where his amendment does not mention same-sex relationships, we would leave in or take out whatever we wanted or did not want.

The Convener: If we arrange a meeting, we can deal with all this.

Mr McGrigor: Did we have a meeting on a Wednesday once? If we are going to meet next Tuesday or Wednesday—

The Convener: I do not mind whether it is Tuesday or Wednesday. We have to try to do the best we can with what is already there.

Mr McGrigor: Could we arrange the date and time now, while we are all here?

The Convener: We cannot, because we have to allow Martin Verity to get a room and the official report sorted out. If people would prefer Wednesday, we could agree on that, but that is as much as we can do now.

Mr McGrigor: The last time we met on a Wednesday, it was a lunch time or an evening.

The Convener: We will have to sort it out as best as we can. Anything else on that?

Malcolm Chisholm: On the Adults with Incapacity (Scotland) Bill—

The Convener: Just on that bill?

Malcolm Chisholm: Yes. Tricia Marwick probably thinks that she escaped from the bill when she came here, but I have two items of correspondence relating to it, which raise one of its fundamental controversies. The correspondence is relevant to the committee in the sense that it is the carers of adults with profound learning difficulties who are being affected by the bill.

I raised this issue at stage 1 in the debate, because I am very concerned about it. For some reason, people seem to have approached the bill with a negative view of carers as people who are

not to be trusted. In some people's view, carers can even wish harm on the people for whom they are caring.

Clearly, parents who have looked after adults with profound learning difficulties for decades would be seriously disadvantaged by Jim Wallace's amendment regarding a second medical opinion. I will pursue this in the Health and Community Care Committee, and in the Justice and Home Affairs Committee when it comes up there.

The Convener: What amendments will you suggest?

Malcolm Chisholm: I will support the position that is in the bill because Jim Wallace said that he would amend the bill to let a second medical opinion override the wishes of someone who has gone to the court and become a guardian.

The Convener: Has he done that?

Malcolm Chisholm: He has not lodged the amendment yet but he announced that he would do so.

The Convener: Is there anything else on this item of business? We will have time during the next couple of weeks to deal with anything that crops up.

Education Bill

The Convener: What is happening with this bill, Martin?

Martin Verity: When we drew up the agenda, we thought that the bill might have been lodged by this time. However, as it has not been, there is not much that I can report to the committee. Committee members might want to discuss how they will deal with the bill when it is lodged.

The Convener: We agreed to come up with a sort of synopsis of all the evidence that we have heard so far. That would let us start working on a report. We have to consider evidence in time to allow the Education, Culture and Sport Committee, which is the lead committee, to consider our report when it takes evidence from other bodies. I hope that we can have that synopsis by the next meeting.

Malcolm Chisholm: When will we deal with that? The bill will be available on Thursday or Friday. Will we deal with it at the next meeting?

The Convener: Yes. We will have the synopsis of evidence in time for the next meeting and then we will give a report to the lead committee.

Malcolm Chisholm: Will we put together the report at the next meeting?

The Convener: We will produce the basis for a draft report at the next meeting and agree it at the one after that. We are reasonably ahead of schedule with this bill, especially compared to how we were with the Adults with Incapacity (Scotland) Bill.

Progress Reports

The Convener: We do not have a reporter for disability issues now that Michael Matheson has left the committee. I will put that on the agenda for the next committee.

Johann Lamont, do you have a report to make on gender issues?

Johann Lamont: We have not had a meeting since the last full meeting of this committee. I can report that I have lodged a motion in relation to cross-examination of witnesses where the crime is of a sexual nature. I hope that members will support that motion and lobby for it to be taken as business.

I have lodged a question about the document, "Towards a Just Conclusion". I have not had a formal response to my question about what is happening with that document. I hope that we will reach that question in question time.

Mr McMahon: The race group met last Tuesday. Because of technical problems—a problem with an internet server—we were not able to get the information out to everyone and the meeting was sparsely attended. We raised the issue of the Immigration and Asylum Bill and were able to get it on to this committee's agenda today. I thank our convener for indicating that the bill will remain a high priority. I spoke to the convener of the Local Government Committee on the issue. Proposals for that committee to consider the bill formally will be drafted.

As I have been given responsibility for religious issues, I welcome the Executive's decision to set up a commission to consider religion in the context of health, education and employment inequalities.

11:15

Nora Radcliffe: The sexual orientation reporters group is due to meet on 29 January. I was availed of the opportunity to send out a mailing together with the Equality Network to inform people about the reporters group and to invite them to write to us with issues that they wanted to raise. I have had quite a large response, examples of which I could attach to the minutes of the next reporters group meeting. People appreciated the fact that they were being consulted.

The Convener: Has anybody made representations about section 28?

Nora Radcliffe: The people who have written to me have also written to the Executive. The Equality Network has been encouraging people to make their views known to counter the well-organised campaign of representations that were being made by people opposed to the repeal of section 28.

The Convener: Section 28 is one of the biggest challenges that we will have this year and might result in a public battle. I have received divided representations from people—perhaps more evenly divided than two or three weeks ago.

The committee will fully support any moves you make to deal with the matter, Nora. If the work load becomes onerous—if you find that visiting organisations or speaking at events is taking up too much time—I am sure that other members of the committee will support you.

Nora Radcliffe: A lot of the fears that people have about repeal are easily allayed. There is a lot of misapprehension about what the section says and what the implications of its repeal are. The more people find out about it, the more reassured they will be. If parents are concerned, schools would be happy to answer their questions about guidelines for the teaching of sensitive issues in an appropriate way.

Malcolm Chisholm: Although we do not have any legislation to consider formally, I presume that we will consider the ethical standards bill soon.

I was surprised to read yesterday that MSPs' mailbags are running 20:1 against repeal of section 28. A substantial majority of letters that I have received have been in favour of section 28.

Mr McGrigor: My experience is the opposite. Perhaps this reflects a north-south divide, but, of the hundreds of letters that I have received on the issue, not one has been in favour of repeal.

Mr Munro: My mailbag is the same.

Shona Robison: There might be a lesson to be learned from this affair about the presentation of information to the public. Particularly in matters of equal opportunities, we want to take the public with us. We should be careful to minimise misunderstandings from the outset. If this committee has a locus on any controversial matter, we should try to provide information to allay people's fears. If that had been done in this case, some misconceptions might not have developed.

The Convener: The committee can get accurate information out to the public when it takes evidence. We will have the opportunity to do that when we take evidence on the ethical standards bill. However, we should remember that it will be in some people's interests to misrepresent issues such as this to the public.

Mr Munro: Perhaps the wording of the amendment has given the wrong impression. The media are telling people that repeal of the section will allow the teaching of homosexuality in schools. The public is confused about the matter and imagines that repeal will open the floodgates.

The Convener: I do not think that the Executive gave the wrong impression. The Executive stated its intention to repeal section 28, which talks about:

"intentionally promoting homosexuality or publishing material with the intention of promoting homosexuality"

and

"promoting the teaching in any maintained school of the acceptability of homosexuality as a pretended family relationship".

The media are well aware of the intention of the section. We will have to publicise the accurate information if they choose not to mention it. We should support Nora Radcliffe, who is probably going to come under a bit of pressure.

Johann Lamont: If we are to take evidence on the draft ethical standards bill, who are we going to invite? To decide that, we will have to liaise with the Local Government Committee, which is already taking evidence on the bill. We need to

decide who to invite soon so we can timetable properly.

The Convener: We will take evidence on the bill. We should discuss with the organisations that we deal with whether there are any areas that they are concerned about. I would like the reporters to do that and come back to the next meeting with suggestions about what evidence to take.

If there are no comments on the correspondence, we will end the meeting. Sorry that the meeting is so short.

Malcolm Chisholm: Will the item that dropped off the agenda be rescheduled?

The Convener: Yes, but we do not have a date yet. At future meetings, we will try to bring forward the people who are giving evidence so that we have a fuller agenda.

Meeting closed at 11:22.

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