

EQUAL OPPORTUNITIES COMMITTEE

Tuesday 1 February 2000
(Morning)

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EQUAL OPPORTUNITIES COMMITTEE

2nd Meeting 2000 (Committee Room 2)

CONVENER :

*Kate MacLean (Dundee West) (Lab)

DEPUTY CONVENER:

*Shona Robison (North-East Scotland) (SNP)

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)
Tommy Sheridan (Glasgow) (SSP)
*Elaine Smith (Coatbridge and Chryston) (Lab)

*attended

WITNESSES:

Esther Breitenbach (Scottish Executive Equality Unit)
Louise Donnelly (Scottish Executive Equality Unit)
Douglas Hamilton (Scottish Human Rights Centre)
Professor Alan Miller (Scottish Human Rights Centre)
Lynn Henni (Scottish Executive Equality Unit)
Yvonne Strachan (Scottish Executive Equality Unit)

CLERK TEAM LEADER :

Martin Verity

ASSISTANT CLERK:

Irene Fleming

Scottish Parliament

Equal Opportunities Committee

Tuesday 1 February 2000

(Morning)

[THE CONVENER *opened the meeting at 10:01*]

The Convener (Kate MacLean): I welcome everyone to this morning's meeting of the Equal Opportunities Committee. Before we come to the first item on the agenda, does the committee agree to take item 6, future business, in private?

Members *indicated agreement.*

Scottish Executive Equality Unit

The Convener: Representatives of the Scottish Executive equality unit have come to give us evidence about the work and remit of the unit. Yvonne Strachan heads the unit, and is here with Louise Donnelly, Esther Breitenbach and Lynn Henni.

Have all members received the briefing note that was distributed by the clerks? Yvonne, could you kick off, speaking briefly to your note? Members will have the opportunity to ask questions later.

Yvonne Strachan (Scottish Executive Equality Unit): Thank you, convener, I will do that. We are very pleased to have been invited to give evidence to the committee today, and we hope that the information that you gain from the discussion will be helpful for the committee's deliberations.

The equality unit was set up to support the Executive in its commitment to promote equality of opportunity. In doing that, it has three main remits. The first is to provide a single point of reference and advice in the Scottish Executive to ensure that the various aspects of equality are given a particular focus, and that information may be disseminated throughout the Executive.

The second remit is to mainstream equality into all policy areas. The Executive is committed to ensure that equality of opportunity should be at the heart of policy making. For that to be developed, focus needs to be given to the principles of mainstreaming. The unit was established to assist the Executive in that task.

The third remit is to promote equal opportunities within the Executive and beyond. That task will constitute raising awareness on equality of opportunity in various ways.

As we have outlined in the short briefing note to the committee, there are two contexts in which we work. The first is legislative. As members are well aware, legislative competence on equal opportunities rests with Westminster, but the Scotland Act 1998 provides for an exemption. The definition of equal opportunities in the act is broad, and it is within that definition that the equality unit is charged to act.

The second context is defining precisely which aspects of equal opportunities we are responsible for as a unit within the Scottish Executive.

There are two strands to activity relating to equality of opportunity. The first is for the Executive to examine its responsibilities as an employer. That is the responsibility of the unit, which is part of the corporate services department of the Executive. However, our task is more to address the second strand of activity: the Executive as promoter of equal opportunities. All our activity is centred around that strand.

We are still in our early days, as members will appreciate, but we have worked to respond to the Executive's desire for an equality strategy, and committee members will have seen the consultation document, which has been distributed internally and externally. It will allow the Executive to devise a more detailed equality strategy and an equality programme.

The consultation process is highly participative. Apart from the written submissions to the consultation, we will try to ensure that dialogue takes place. The consultation period ends on 4 April. From then, it is envisaged that a detailed report will be made to Parliament in April or May with a view to having an annual report to Parliament on the progress that the Executive is making in equal opportunities.

The equality unit is also working with departments on the equality aspects of policy—that is part of the mainstreaming agenda. In external and internal consultation, dialogue and partnership, we will examine how to make the tools of mainstreaming effective for the task. We will then explore how to raise awareness of equality of opportunity, particularly through training. As important, we will develop the networks through which the equality agenda can be delivered.

The Executive has made it clear that the equality agenda can be pursued only if the partnership, dialogue and consultation with those most affected and with those who have the relevant expertise is adequate. It is our task to ensure that those networks can be devised and built upon in order to deliver the agenda.

The strategy contains some key components; I am sure that the committee will wish to discuss

them. As well as the training and development strategy on mainstreaming equality and raising awareness about equal opportunities, we hope to elicit views on improvements to the baseline statistics and research from the consultation; on how to develop practical tools for the quality impact assessment on legislation and policy; on performance management frameworks; on performance indicators; and on how to share and disseminate good practice.

We have asked for comments on all those issues in the consultation; we hope that that dialogue will enable us to devise an effective programme around these strands. I will conclude my remarks there. You may wish to discuss with us issues that have arisen both in your previous discussions of equality matters and in the consultation.

The Convener: How do you see the unit working with the committee? There has been some confusion between the role of the committee and that of the equality unit.

Yvonne Strachan: The equality unit is responsible to ministers and the Executive for its work. As part of the Executive, we need to establish a working relationship with the committee. Lynn Henni, who is the liaison officer between our unit and the committee, will say a few words about how we see that process developing.

Lynn Henni (Scottish Executive Equality Unit): I am the departmental committee liaison officer for the Executive with this committee. I have not had much chance to develop that role in the past, but we are now looking to deal with Martin Verity on a more regular basis and to come to committee meetings more often. Our liaison with the committee is very much at the development stage, and we would be happy to listen to any suggestions.

Shona Robison (North-East Scotland) (SNP): Can you say a little more about collating and improving baseline and on-going information, research and statistics? The committee has identified that there is a lack of available data in a number of areas. We would like to know how you intend to deal with that problem, and how the process of information gathering can be linked in with the issues that the committee is considering.

Yvonne Strachan: We are aware that the committee has raised this issue. I ask Esther Breitenbach to comment.

Esther Breitenbach (Scottish Executive Equality Unit): As you are aware, the memorandum that the Deputy Minister for Communities sent to the committee mentioned that there is a commitment to improving the provision of data. Currently, data on gender are better than data on ethnic minority communities

and people with disabilities. There are a number of measures in hand that should lead to improvements.

First, I have been in discussion for some time—both prior to the establishment of the equality unit, when I was women's issues research consultant, and subsequently—with the central statistics unit. We are hoping that a short publication containing key gender-disaggregated statistics will be published by the spring.

Secondly, the central statistics unit has given a commitment to carry out an audit of the opportunities to disaggregate data according to gender, race and disability. The audit, with responses to the consultation, will help inform the next step—identifying gaps and considering how to fill them.

Thirdly, the Scottish household survey, which has already been brought to your attention, is an important source of information. It will provide better gender-disaggregated information and cover ethnic communities and disabled people. Two bulletins of the Scottish household survey have already been published and are available on the internet. They include some information, disaggregated by gender and age, on topics such as health, smoking behaviour, requirements for care, income, education and training, volunteering behaviour and access to the internet from home.

At this stage, the Scottish household survey has provided little information on minority ethnic populations, partly because there is a need to build up the number of households surveyed before those data can be disaggregated meaningfully. In any case, it is likely to provide good information at a Scotland level, rather than at the level of smaller areas. I will come back to the issue of information on ethnic minorities in a second.

Fourthly, it has been brought to the committee's attention that the 2001 census will provide uniform information about the country as a whole and smaller areas and sub-groups of the population. Results will include information collected on gender, minority ethnic communities, marital status and limiting long-term illness. The census will provide fresh data on gender and ethnic minority households, covering a wealth of interrelated topics and areas. The results will be produced for a range of areas, including Scotland as a whole, council areas, council wards and output areas—the smallest level of disaggregation, which is an area containing about 50 households. Given the size and complexity of census data, they will not be available until 2002-03.

Fifthly, as we have noted, the consultation document specifically invites responses on information, statistics and research. Those

responses will inform the development of a strategy in respect of disaggregated statistics.

Last, a public announcement is expected shortly on proposals for a new and wide-ranging survey of minority ethnic communities in Scotland.

10:15

The Convener: You say that the census information will not be ready until 2002-03. For how many years beyond 2002-03 will the information that is gathered in the census be used for strategic planning?

Esther Breitenbach: As I have worked in academia and research, I can say that census data are a major source of information that is used over the next 10 years. To some extent, the information becomes out of date, but all sorts of projections and adjustments can be applied.

Johann Lamont (Glasgow Pollok) (Lab): What input did the equality unit have into the composition of the census? Were you approached at any stage about what questions relating to your field should be included?

The equality proofing of consultations is another issue. What input are you able to have there? Some of the evidence that the Local Government Committee took on the ethical standards in public life etc (Scotland) bill showed that due regard had not been given to equality issues. The committee indicated to the Deputy Minister for Local Government that it thought that that was important for the future. What is your role in ensuring that we do not have consultations that are colour-blind or gender-blind?

Louise Donnelly (Scottish Executive Equality Unit): Ministers were committed to establishing the unit by the end of 1999. However, the process of mainstreaming requires long-term and deep-rooted cultural change. We expect that, over time, the Executive's ability to proof legislative proposals in terms of equal opportunities impact will improve.

The equality unit will be consulted on all proposals at an early stage, but we would hope to do more than we have so far done. There is a heavy onus on lead-policy interests in the Executive to have regard to equal opportunities impact assessment as part of the policy statement that accompanies all bills that come before the Parliament.

Johann Lamont: Were you consulted on what should be included in the census? Do you have a particular view on whether a question on religion should be included in the census?

Louise Donnelly: Internal consideration of policy options is not something on which I am able

to answer questions, as it is a matter for ministers. The equality unit was established at the beginning of September and has been involved in discussions in relation to the on-going consideration of census issues.

Johann Lamont: You may not be able to say which questions should be included in the census when it is reviewed, but would it be fair to say that it is part of the process of the department that has responsibility for drawing up the census in Scotland to consult the equality unit on what should go in it, given the particular importance of data in that area?

Louise Donnelly: I am acknowledging the stage of development the unit was at during the detailed consideration of the development of the census.

Johann Lamont: Does that mean that the unit has not been consulted, but will be in the future?

Louise Donnelly: I could not say that we have not been consulted, but the development of the census and the detailed work had been going on for a number of years before the Census (Scotland) Order 2000 was published at the beginning of this year.

Irene McGugan (North-East Scotland) (SNP): I know that it is very early days for the consultation paper, but can you tell us how widely it has been disseminated? How many copies of the paper are in circulation? What would you consider to be a good response rate?

Yvonne Strachan: About 2,000 copies have been distributed so far. The text can also be accessed through the website. We are continually distributing through other mechanisms. We expect the paper to be disseminated widely over the consultation period.

It is rather difficult to say what would be a good response. We would hope to get a particularly good response to this consultation. It is difficult to make comparisons with other consultations, because issues have different interest points. I think it is correct to say that we received about 300 responses to the arts consultation. Other consultations have received a greater number. We will be happy if we achieve the maximum response from as wide a group of people as possible.

The Convener: Was the document distributed in other accessible formats, such as in ethnic minority languages, braille and on audio cassette?

Louise Donnelly: The document contains details in ethnic minority languages of where the whole document can be made available in those languages. Translations into community languages will be made available on request. In addition, the translations have been put on the website, as has the consultation document itself.

Arrangements have been made to make available a braille version. In the main document, we have also highlighted the fact that the document is available in large print, on tape and in other formats.

The Convener: Are those available immediately, so that people have the same length of time to respond to the consultation?

Louise Donnelly: The translations and the braille version are available. We have done a major distribution through Disability Scotland, which is highlighting the fact that the document is available in alternative formats with those groups which it is aware may find that useful.

Tricia Marwick (Mid Scotland and Fife) (SNP): Are there mechanisms in place to allow the equality unit to see proposed legislation at an early stage?

Louise Donnelly: Yes, but I stress again that we started from a standing start. The commitment was to establish a unit by the end of December. What we have been physically able to achieve in the first few months of operation must be seen in that context.

Tricia Marwick: Yes, but are mechanisms now in place to allow the equality unit to have a look at future legislation at an early stage?

Louise Donnelly: Yes.

Tricia Marwick: Can we take it, therefore, that proposed legislation from the Executive from this day on will be passed through the equality unit for equality proofing?

Louise Donnelly: Responsibility for mainstreaming equality rests with lead policy divisions. Our role is to support them and to contribute to their work. We will continue to work with lead policy divisions as they undertake preparatory work on legislative proposals.

Tricia Marwick: But are formal mechanisms in place to allow the equality unit to have input into legislation before it reaches an advanced stage?

Louise Donnelly: Yes, in the sense that guidance is available on consultation with the equality unit.

Elaine Smith (Coatbridge and Chryston) (Lab): In the briefing, you mention a training and development strategy to mainstream equality across the work of the Scottish Executive with public bodies and more widely. Do you have more details of that? Does that mean that you will provide training, for example, to local government? What is meant by "more widely"?

Yvonne Strachan: The intention is to develop a training and awareness strategy on mainstreaming. That will be done in conjunction

with the respective departments in the Scottish Executive so that the training meets the needs of the policy makers and to ensure that equality mainstreaming is appropriate to the development of the particular policy areas. In rolling that out to the wider public sector, the Executive is charged with responsibility to promote equal opportunities.

However, that does not mean that the Executive's definition of the position is prescriptive and must be pursued elsewhere. The intention is to co-operate with external bodies to ensure that the promotion of equal opportunities is worked into their message.

Those external bodies include all the agencies with which the Executive has a formal role and the wider public sector, including local government. We also work in conjunction with statutory equality agencies, which have a particular role in ensuring that there is greater awareness of equality of opportunity.

Mr Michael McMahon (Hamilton North and Bellshill) (Lab): What role do you have in working with the personnel director to ensure that the Executive is a good employer in terms of equal opportunities? Do you have any idea from the outset how far there is to go, because if you do not know where you are starting from, you will not know how far you have to go or the basis on which you are working.

Yvonne Strachan: The process of monitoring and evaluation is a matter for the equality unit, but, as I am sure you are aware, the programme for modernising government contains commitments to improve the level of representation for women, people from ethnic minority communities and people with disabilities, particularly in the senior civil service. Targets for that have been established.

Through the equal opportunities unit and in consultation with the equality unit, the Executive is considering how best that can be developed, how those targets can be met and how the issue of equality of opportunity can be translated into appropriate employment practices within the Executive.

Louise Donnelly: It is also on record that the equal opportunities unit has established a diversity working group, which includes representatives of the Equal Opportunities Commission, the Commission for Racial Equality, the trade unions and an external employer. The purpose of the group is to promote good practice, to identify some of the causes of under-representation of various groups in the Executive's staff and to consider employment-related issues throughout the office. The lead responsibility is with our colleagues in the equal opportunities unit, with whom we work closely.

10:30

Johann Lamont: We welcome the fact that we have an equality unit and an Equal Opportunities Committee—we are a long way down the road from where some of us were some time ago. I recognise that these are early days, but I am anxious to put in place procedures to maximise the benefits that will arise from those structures, as I am worried that they could be subverted.

You said that the policy divisions are responsible for being aware of equality issues within their own areas and that the role of the equality unit is, therefore, supportive. Does that mean that the policy divisions are not obliged to seek your support and that we will not necessarily have an equal opportunities perspective on legislation that comes through the system?

Do you have a view on the role of the Equal Opportunities Committee? I think that there is a danger that we will begin to operate in parallel universes—the equality unit and the Equal Opportunities Committee are both undertaking work, but you should realise that we have no statutory role to scrutinise legislation. Would it be useful to firm up the role of the Equal Opportunities Committee? For example, would it have been appropriate for the equality consultation paper to have come to this committee before it was sent out? Would it be appropriate for legislation to come to us as of right, as opposed to people thinking that it might be useful if it came to us?

Yvonne Strachan: I will deal with your last question first. I am not sure that the equality unit is in a position to comment on the process and procedures of the Parliament or its committees. While the committee may wish to explore that issue, I am not sure that we can offer advice on it.

We are at one with you on the need to get a proper procedure in place. That is at the heart of our work—it is part of what the equality strategy consultation is about. The committee has acknowledged that the unit is still very new. Our role is to work through the principles of the Executive's equality work. Our task is to work out the most appropriate means of fulfilling our role, through consultation and dialogue with those who have experience and expertise and who are affected by equality issues. For example, the unit must ensure that it can provide the best kind of legislative scrutiny by a process of assessing the impact of legislation through the particular policy divisions. We must consider how best to do that and how to improve the current procedure, to which my colleague Louise Donnelly has referred.

In addition to the external consultation on the strategy document, on which we hope to elicit views and contributions, we are conducting

internal discussions with the respective policy departments on mainstreaming equalities and on how they can improve and develop their ways of ensuring equality of opportunity through policy making and policy scrutiny.

These issues are live. We share the view that assurances should be given that the right processes and procedures will be put in place in relation to the role of the equality unit. However, we have to distinguish that from the issue of what the Parliament and its committees can do, as that is not a matter on which the equality unit should comment.

Shona Robison: Further to Michael McMahon's question, has there been an audit of civil service staff?

Louise Donnelly: Some statistics are maintained, but I cannot give an immediate answer to your question.

Shona Robison: One cannot put procedures in place to improve the situation if one does not know what the current situation is. Surely an audit is the first priority in establishing the gender, ethnic minority and disability balance.

Louise Donnelly: Statistics are maintained on employment within the Scottish Executive.

Shona Robison: Can those statistics be made public?

Louise Donnelly: I am not sure that they have not been made public in the past. We will pursue that point with colleagues from the equal opportunities unit in the personnel directorate, as it is their responsibility.

Nora Radcliffe (Gordon) (LD): Is sexual orientation included as an issue on which the unit will battle against discrimination?

Yvonne Strachan: Yes.

The Convener: Sexual orientation is not mentioned in the briefing paper, although I assume that it would come under equality more generally. The paper mentions equality in relation to gender, race and disability, whereas the committee will concentrate equally on sexual orientation.

Yvonne Strachan: The briefing note that is before the committee may be a shorthand version. The definition of equal opportunities that is given in the Scotland Act 1998, under which we work, is expansive and clearly includes sexual orientation. Sexual orientation is one of the unit's considerations and we have held meetings with the Equality Network as part of our engagement with external equality agencies. We may hold a thematic seminar on sexual orientation in April.

The Convener: Is there any way in which the committee can assist or inform the unit's work? As Johann Lamont said, there may be some duplication of work.

Yvonne Strachan: As Lynn Henni said, we are considering how to improve our working relationship, exchange of information and contact with the committee. We hope to extend that work in the months ahead. By sharing and understanding our different areas of work we will add value to what both the unit and the committee have to do in their respective areas. I hope that the unit will be the better for that.

The Convener: Perhaps Shona Robison, Martin Verity and I can get together with Lynn Henni to discuss how to take that work forward. I thank the witnesses for attending.

European Convention on Human Rights

The Convener: Professor Alan Miller and Douglas Hamilton from the Scottish Human Rights Centre are here to give evidence on the European convention on human rights. We have been hoping for ages to obtain this evidence—it was first mentioned some time ago but, because of various difficulties, we have not been able to have it until today.

I welcome the witnesses to the committee. I hope that members received the briefing paper in advance. I ask either Professor Miller or Mr Hamilton to speak briefly to the paper, after which committee members will ask questions.

Professor Alan Miller (Scottish Human Rights Centre): It is almost a ritual to say that it has been a pleasure to come and speak to whichever meeting one is invited to, but in this case it is a genuine pleasure. I was a modest bit-player in the consultative steering group and an advocate for a powerful committee system. It is nice to come along and have a minor part to play in what will become a powerful committee.

I am an academic and a practising lawyer, specialising in human rights. I would like to give a brief introduction to the relationship between the Parliament, its committees and the European convention on human rights and how that is likely to develop in the future. Before I do that, Douglas Hamilton will say a few words.

Mr Douglas Hamilton (Scottish Human Rights Centre): I am the assistant director of the Scottish Human Rights Centre. I am based in the office and will be the main contact between the centre and the Parliament over the next few years.

Professor Miller: He means that I am being overthrown and the younger generation is taking over.

There are three questions that need to be addressed. What is the relationship between the Parliament and human rights, why is that the case and how will the relationship develop?

Everyone is becoming aware that the Scotland Act 1998 requires the Parliament and the Executive to act compatibly with the European convention on human rights. That is written into the act and has become clear through various judgments, such as those relating to the Lord Advocate and temporary sheriffs. Less well known is the fact that the Scottish Parliament and the Executive have inherited a responsibility to apply a range of international human rights treaties that had been ratified by the UK. Every four to five years, a report on the application of those

international human rights must be submitted to the United Nations. That is something that the Parliament and the Executive must take on board.

The relationship between the Parliament and human rights is important because of the Human Rights Act 1998, which comes into effect throughout the United Kingdom on 2 October 2000. All public authorities will have to comply with the European convention on human rights and all our courts and tribunals will have to take the convention into account. After 2 October, law in the United Kingdom will be made and applied within the framework of the European convention on human rights. That will apply to all local authority functions, a range of quangos, the police, prisons and so on. Rather than citizens taking the long and expensive road to Strasbourg to get a remedy for a breach of their human rights, they can get it in their own tribunals and courts. That is the thrust of the Human Rights Act 1998 and the Scotland Act 1998 made that a responsibility of the Parliament and the Executive.

Everyone is on a steep learning curve, although people may be at different points on that curve. Inevitably, there are many uncertainties, such as whether legislation that is passing through the Parliament has sufficient independent scrutiny from a human rights perspective. There may be too much reliance on the belief that the Executive has ensured that legislation is compatible with the ECHR and presents no problems in terms of human rights. The emergency mental health legislation will be tested in the courts soon to discover whether its retrospective effect is in breach of the convention.

There is some concern that much Scottish law and practice may fall foul of the European convention on human rights. There is unease about what is being done to pre-empt unnecessary legal challenges and about whether changes should be made now or whether it would be better to wait for the courts to tell everyone what must be done. There are also questions about what is coming round the corner. The temporary sheriffs decision has had widespread implications for the administration of our courts. Are local authorities prepared for October, when they must take all this on board? We will have to re-examine quickly the way in which children are treated in our justice system.

10:45

The Parliament and its committees will have to raise their game in order to accept the responsibility of being compatible with the European convention on human rights and the international treaties. The present arrangement, in which the Executive provides a one-line compatibility statement, which says that everything

is kosher, does not go far enough. Legislation should not be introduced if it is not compliant with the convention, so the statement does not say much. There should be a thorough and comprehensive human rights impact assessment. That was one of the CSG recommendations; it is also a recommendation of the United Nations Human Rights Committee. The assessment should approach ECHR compatibility more thoroughly to enable the Parliament to take its own view on legislation.

The most important thing for the Equal Opportunities Committee to understand about the European convention on human rights is what is meant by proportionality. Proportionality is what gives the convention its life and allows it to grow and develop over the years. It means finding a balance between the individual rights of a citizen under the convention and the public interest, weighing up the balance and judging whether a piece of legislation strikes the right balance.

To reach that judgment, the committee needs more than a one-line statement. It needs to be aware of the European experience—what court decisions may have come from other jurisdictions—and what other international human rights treaties say. These are complex political and social considerations that cannot be reduced to technical or legal advice. The question of proportionality is critical to all decision makers. A human rights impact assessment should explore that question and ensure that MSPs were familiar with the issues and challenges that might be thrown up by the legislation so that they could decide where the balance between individual rights and the public interest should be struck.

The European convention on human rights is case driven: there must be a victim of the breach of the convention before it can be tested in court. Organisations such as Women's Aid or Victim Support cannot challenge the legislation—an individual victim must bring a challenge, although they can be supported by a voluntary organisation. The individual would have to be able to establish that they were treated differently from someone in a similar position because of their sex, race, nationality or other status. The convention is open-ended; it does not give an exclusive list of potential categories of discrimination and can therefore be applied more broadly than other anti-discrimination legislation in the UK.

Where there is discrimination, the Parliament and the Executive may be able to offer a justification for that discrimination—they may say that it is reasonable, objective and serves a legitimate aim, perhaps by advancing the role or status of women or of a national minority. There are limits within which a state or Parliament can discriminate if they have a reasonable justification

for doing so.

The committee should also be aware that the ECHR is developing. Within a couple of years, a brand new right will be added to it—a much broader, free-standing, anti-discrimination right. At present, the ECHR is fairly weak on anti-discrimination. The convention can be used in that context only if some other right—the right to privacy or to a fair hearing, for example—within the convention is at issue and the individual is being discriminated against as they try to exercise that right. Protocol 12 will be introduced in the near future, which will mean that discrimination can be challenged outright—the status is unlimited.

The second part of a human rights impact assessment would have to take into account a range of international human rights treaties. What is being done in Scotland on matters such as discrimination against women, race, the United Nations Convention on the Rights of the Child, economic, social and cultural rights and so on will have a much higher profile.

A human rights impact assessment would help to raise the level of knowledge in the Parliament's committees. Public debate would also benefit. The public are a bit mystified about the convention and about what expertise should be relied on. An impact assessment would help the committees in scrutinising legislation and in deciding what inquiries to make into human rights problems with a view to proposing legislation.

The Executive is being asked to consider issuing a consultation paper on the merits of a Scottish human rights commission. The proposed remit of such a body would be to provide public education and best practice to the local authorities, which will be under a lot of pressure after October. It would also represent members of the public in test cases, investigate patterns of human rights abuse in public life and assist the Parliament in discharging its human rights responsibilities by making it aware of the standards expected from international human rights treaties and by equipping the committees with an independent source of human rights expertise. However, a commission would not be a substitute for the Parliament raising its own game and having its own process of getting human rights information.

Books are being published on the ECHR and university courses are being organised around it but I have tried to give an outline of what it might mean to the Scottish Parliament. I will be happy to answer questions.

Mr Jamie McGrigor (Highlands and Islands) (Con): Could you give a practical example of a part of Scottish law that might fall foul of the European convention?

Professor Miller: How long do we have?

There are a number of problems. One is the way in which children are treated by our justice system. The verdict of the European Court of Human Rights on the notorious Jamie Bulger case applies equally in Scotland. There is a need for young children not to be prosecuted in adult criminal courts. It would be useful to examine the children's hearings system. I have been involved in giving training to children's reporters over the past week. There is a question about whether there is a fair and public hearing for children who are brought before the reporter and the tribunal because they are at risk or have committed an offence. I do not think that the system will survive in its present form. I do not think that legal representation and the right to legal advice will survive in their present form either. Many issues will raise their heads after October. We cannot predict how many.

Mr McGrigor: Will the incorporation of the convention make life difficult for the Scottish legal profession?

Professor Miller: The Human Rights Act 1998 was given royal assent at the same time as the Scotland Act 1998. One of the reasons why it has taken so long to come into effect was that sheriffs, judges, local authorities and the police all needed to get up to speed on what it would mean for them. It might cause problems in the short term but it will raise the standards of administration of justice and public services in the long term. It will increase the accountability of public authorities to the citizen. That must be welcomed.

Shona Robison: I noticed from your submission that you will be holding a seminar on asylum, immigration and human rights. This committee will address that issue soon. I imagine that you would argue that large parts of the Immigration and Asylum Act 1999 breach ECHR conventions and UN treaties. As immigration is a reserved matter, there is a limit to what we can do about the act. However, it amends large areas of Scottish legislation and it would be interesting to hear your views about whether the Scottish Parliament would be guilty of breaching those conventions and treaties because it had allowed Scottish legislation to be amended.

Professor Miller: That is an example of the problems of the uncharted territory that we are moving into. It is hard for anyone to predict what is and is not possible. A number of anomalies will occur because of the split in responsibilities under the Scotland Act 1998. Although immigration and asylum is a reserved matter, there seems to be little doubt that, within certain parameters, the Scottish Parliament, the Executive and the local authorities would be able to make decisions on matters relating to those areas.

If an individual says that the Immigration and Asylum Act 1999 breaches his or her rights under the European convention, the local authority would have a defence only if it could argue that it had no alternative and no discretion and that it had to implement the legislation because it was from Westminster. If the citizen can argue that discretion could be used, the local authority could become liable to that challenge. This matter must be examined carefully.

Tricia Marwick: You have suggested that there should be a Scottish human rights commission and that the Executive might consult on that. I do not know if you were here when we spoke to our previous witnesses from the Scottish Executive equality unit. Do you think that there is a need for the Scottish Executive to have a similar human rights unit that would proof proposed and existing legislation?

11:00

Professor Miller: I am not on the inside track as to what the Scottish Executive currently does about that. Although there is not a formal human rights unit in the way that there is an equality unit, I know that some proofing must be done because the Lord Advocate has to give a compatibility statement. Whether that proofing is sufficiently thorough and wide ranging is difficult to say, because I do not know what is involved.

My concern is that the Parliament, the parliamentary committees and the public should have a much greater understanding of human rights and the human rights implications of legislation. If a Scottish human rights commission were to be created, it would have that remit relating to the Parliament and the public. The Executive would have to raise its game, if it was not already at a high enough level, because everyone else would be more aware and knowledgeable about the human rights implications. You would have to ask the Executive about the current situation, because I do not know to what extent proofing in relation to human rights is being carried out.

The Crown Office carried out extensive preparations, because they had to, as of last May when the Lord Advocate became required to be compliant. Local authorities are preparing for October, but whether those preparations are advanced enough is open to question.

Johann Lamont: One of the difficulties on human rights issues is that they are often perceived to be the last defence of someone who has done something wrong and is under pressure in the courts. Human rights arguments often seem to fly in the face of a commonsense view of how things should be done. The Jamie Bulger case is

an example of that.

There was a case, which you are probably aware of, when a woman who was a victim of a rape was cross-examined by the person who was accused of the rape. That was defended in terms of his human rights. That kind of case makes it more difficult to make the case for human rights. How do you think that we could get around that?

Is the issue further complicated by the fact that, as you mentioned earlier, human rights issues are often case driven, therefore obvious trends of inequality and injustice against, for example, women's human rights seem to be less important than an individual's human rights? I was interested in what you said about proportionality because often I do not think it is clear enough that the issue is all about achieving a balance of rights that coheres with a general view of what is fair and just.

Professor Miller: There is a danger that unless we have a coherent, confident, knowledgeable approach to human rights, which the Parliament should have and a commission may help to develop, we will be subject to the random nature of cases that can turn on points that do not impress the public or explain much about human rights. We should not be passive and wait for the next case to arise.

On the rape case, I have read comments that for the accused to be denied the right to cross-examine the victim of a rape would be in breach of the European convention on human rights. I believe that that reflects the low level of understanding of the convention. It would not necessarily be a breach, because the balance must be struck between the rights of the victim, a witness and the accused. It may be that a mechanism could be found that would not breach the convention, as rape is a special case.

There have been one or two judgments at Strasbourg that should give you some encouragement. If, for example, an accused was offered legal representation but refused it and insisted that he wanted to cross-examine the rape victim himself, it should at least be considered that having been given the opportunity of legal representation and refused it, the accused might, in effect, be waiving his rights under the convention to legal representation. He could, therefore, be denied the opportunity to cross-examine that witness. That issue should be considered; it should not automatically be rejected as being a breach of the right of the accused to a fair trial.

Many of these issues are complicated, so the right balance must be struck. Victims have more rights under the convention than they have without it. A report on one victim of domestic violence was

in the newspapers this morning. Strathclyde police have had a huge increase in reports of domestic violence. If one were to go through these reports in the next year or so, one would find out how many of the cases would result in prosecutions and convictions. My suspicion is that one might be surprised by how few would do so.

The victim of domestic violence now has a right under the convention, or will have come October, to go to the police and the procurator fiscals and say: "I reported this complaint, yet the man has not been charged or prosecuted. I have been denied a remedy, yet my right to privacy and physical integrity was violated, so I want an explanation." The convention will now require the fiscals and the Lord Advocate to be accountable and give an explanation as to why no prosecution took place.

Victims have rights under the convention, a fact that should be given more public attention. The convention has been too easily branded as a criminal's charter, but it is not that by any means—it is a balancing exercise throughout. A few people might be surprised at how useful it could be.

Douglas Hamilton: The convention is limited in what it can do, what rights it provides and how it can be used. It has perhaps been viewed in a negative way because the issues raised are strictly related to the convention, but the Scottish Parliament and the Executive have responsibilities under a whole range of human rights treaties which are not necessarily case driven but become implemented through policy decisions and political action rather than legal action.

Johann Lamont: That would mean that work in the Parliament on human rights and equality would have to be closely tied together, because if we have a debate about a balance of rights, we must be able to match an individual problem against social trends in inequality, particularly in relation to women. In terms of women's experience of the judicial system, it would be important to get a reassurance that human rights and equality could be pulled together.

Professor Miller: Equality is a fundamental principle of human rights and international human rights treaties. It is not the only one, but it is a fundamental aspect of them. It should inform the work of this committee and many other parliamentary committees. Human rights should not be seen just as equal opportunities and anti-discrimination, but equality before the law is certainly an important part of human rights.

Irene McGugan: As you said, we have signed up to a number of UN conventions. The Scottish Parliament and the Scottish Executive have now assumed responsibility for those. For example, there are a number of areas in which we are in clear breach of the UN Convention on the Rights

of the Child. I am not aware of there having been any great effort made in the past to encourage the UK Government to come in line and honour those. Will the situation change in the future? What is likely to happen if Scotland does not take action through the Parliament to honour those conventions?

Professor Miller: I have been invited twice to give an oral submission in Geneva to the UN Human Rights Committee, to present a counter-report to that given by the UK. The last time I was there was in 1997, in relation to the International Covenant on Economic, Social and Cultural Rights. What was clear from that and my previous experience was that Scotland was pretty much neglected in terms of the UK even giving a report as to what the level of assessment at statistical or policy level is in Scotland. I raised that in 1997 and, in its comments, the United Nations committee that was examining the UK delegation clearly indicated that it did not find favour.

It was recommended that Parliaments must have human rights impact assessments—that now applies to Scotland. The effect of having a Parliament in Edinburgh, with an Executive with specific responsibilities to international human rights duties, means that there will be no longer be a hiding place. Scotland did not hide behind the UK, but the way in which these international reports are presented means that Scotland does not get the attention it deserves.

My view is that any international exposure of human rights inadequacies in a country such as the United Kingdom, which is seen as an advanced, democratic, civilised country, is taken seriously by the UN and by the United Kingdom. The Scottish Parliament and the Executive will therefore have to ensure that they are able to report positively, not least on the UN Convention on the Rights of the Child.

Scotland is riven with contradictions. On the one hand, we have what can be seen as a progressive children's hearing system, which considers the welfare of the child. On the other hand, we are almost at the bottom of the European league table in terms of what our youth expect from life and their vulnerability to drug and alcohol misuse. There are contradictions there, and it is up to Scotland to show that it is addressing them, consistent with the UN convention, which says that children should be consulted about decisions that affect them.

Mr McGrigor: My question concerns compatibility, proportionality and the balance between individual rights and the public interest. I represent a large area, with many small communities. How do you define public? Is it the European public? The British public? The Scottish public? Or is it the public of the small communities

in which people live? That is what worries me.

Professor Miller: Depending on which of the convention's rights you are concerned with, public interest can be identified in particular ways, such as public morals, health and safety, national security, economic well-being and protection of the rights of others. Those are specific examples of what is considered to be public interest. In general terms, when proportionality is the issue, and one is weighing up the public interest against the private individual's rights, the European court in Strasbourg would take a number of factors into account.

First, it would establish whether there had been any sort of consistent development of values throughout Europe on which the UK—if that was the case that came before it—had fallen behind. For example, there is the case of Dudgeon in Northern Ireland—a homosexual man who said that the criminalisation of homosexual relations between consenting adults in Northern Ireland was an infringement of his right to form private relationships. In the 1950s and 1960s, the Strasbourg court would not have entertained that. However, because there has been a gradual liberalisation of sexual identity throughout Europe, the court agreed, and the laws in Northern Ireland had to be changed.

One would establish whether there was a European norm. If there were no European norm as such, the Strasbourg court would afford what is called a margin of appreciation, to the UK, for example, that its authority should be more in touch with the public and should know how the rights should be interpreted and applied within that country. Our courts will have to be equipped to do that; initially, our judges and sheriffs will find it difficult.

What is the public opinion? What are the public expectations and standards on moral or sexual identity questions, section 28 being a clear example? There is no easy answer to your question. Lawyers will argue in favour of their own interests. The courts and the decision makers will have to decide.

If the Parliament came to a clear decision—on warrant sales or section 28, for example—it would be seen by the Strasbourg court as reflecting public opinion in Scotland, at that particular time, on that particular question. Strasbourg would be reluctant to go against such a clearly expressed reflection of opinion, on an issue that it felt could best be judged within the UK. I do not know whether that helps you or further confuses you.

Mr McGrigor: During the French revolution, there was a thing called the committee of public safety. It was pretty lethal for any individuals, or groups of individuals, who fell foul of it. I am

worried about centralisation, and how you define public and the individuals who live in it.

11:15

Professor Miller: It would be national. Let me give you a couple of examples. There was the case of Lindsay, in the UK, in which the issue was whether a woman sole breadwinner should receive various tax breaks that a male sole breadwinner in a family did not receive. The male said that that was discrimination. He lost the case, because the Strasbourg court took the view that, for the UK, it was a reasonable policy to encourage the participation of married women in the work force, and therefore that that discrimination was justifiable. The court would not interfere with the judgment that Parliament had made, which presumably was based on public expectations that women who are married and are sole breadwinners should be encouraged to get out into the work force, if that is what they want.

McMichael was the main Scottish case, which concerned discrimination in the children's hearing system. The unmarried father said that he was denied parental rights, because if he had been married, he would have had a right to participation in the procedures. Again, the court took the view that it was all right for the UK to have that policy, because there was an identifiable public expectation that fathers should be assuming their responsibilities and that he could get a parental order—parental rights—from the court.

Those are examples of cases where the domestic authorities are left to try to interpret what is public opinion in their own country. How the courts and tribunals come to do that will be very interesting.

The Convener: Next is Elaine Smith, then I will wind it up, because we have quite a lot of business to get through. I am sure that there will be the opportunity for contact between the committee and yourselves.

Elaine Smith: I wanted to come in after Irene McGugan, because I also want to ask you about the UN Convention on the Rights of the Child. I have secured a private members' debate around that issue for Thursday night. Obviously, the UK Government ratified the convention. We have all seen the recent report on it. I picked my wording carefully when I was lodging the motion. I am asking the Parliament to affirm its support for the convention and to commit itself to ensuring that it is fully implemented in Scotland.

I may have picked you up wrong, but I take from what you are saying that it will be the UK Government that will produce the next report. Where does the Scottish Parliament fit in? Could we explore that further?

Professor Miller: Ratification of international human rights treaties is a reserved matter. The Scottish Parliament has responsibility only in terms of things that have been ratified by the UK Government. The Parliament could not ratify a treaty that the UK had not ratified.

When it comes to reporting on how that treaty has been applied, the report will go through the UK Government, because it is the ratifying member state of the United Nations. However, the UN would be disappointed if a substantial part of the report did not deal with Scotland and if there was no representative of the Scottish Executive in the delegation that goes to Geneva to be questioned. Although Scotland will be given a higher profile, at the end of the day, it is the United Kingdom that is held liable.

Douglas Hamilton: I have seen a change: the most recent report had a Scottish chapter, which had never happened before. The Parliament should have the opportunity to make its comments on what is included in the Scottish chapter, just as much as any other body that is making a counter-report or submitting an alternative report. There may be opportunities for the committees and for the Parliament to comment on those reports and ensure that the United Nations sees those comments.

The Convener: Thank you for attending. We look forward to working closely with you.

Census (Scotland) Order 2000

The Convener: I will update members on the Census (Scotland) Order 2000. At the previous meeting, I was asked to come up with an amendment to the order that would take on board some of the concerns that members had expressed. It has been a complicated matter. We asked Jim Wallace to give evidence to the committee, but he could not attend today.

On Tuesday 8 February at 1.30 in committee room 1, we will meet to hear evidence from Jim Wallace, John Randall, the Registrar General, and David Orr, the head of the census branch. The meeting will probably last for about an hour. I know that it is being called at short notice and that it will not be held at the usual committee time, but that is the only opportunity for the committee to meet Jim Wallace, from whom it is important that we take evidence on this.

Members should have received a copy of two draft amendments, which I could lodge on behalf of the committee, and also a Scottish Executive memorandum on the topics for the 2001 census.

Johann Lamont: I was disappointed that we only received the memorandum this morning. I see from the date on the memorandum that that was not because the clerks did not send it to us speedily but because of when it was drafted. It was obvious a fortnight ago that we would discuss this crucial issue at this meeting. We did not spring it on anybody. We cannot absorb information on this question if we receive it at the beginning of a meeting.

The Convener: The issue goes back further than our meeting a fortnight ago. The Equal Opportunities Committee's interest has been obvious since the clerk wrote to the Scottish Executive before Christmas to say that we wanted this matter to be referred to us.

I suggest that we agree on an amendment, which can be lodged after this meeting. We will then have a week to consider the memorandum before we hear the evidence of Jim Wallace, the Registrar General and the head of the census branch next week. If the committee is satisfied with that evidence, it would not be a problem for the committee to withdraw the amendment.

Irene McGugan: I agree. Unfortunately, if we wait until we have heard the evidence before we formulate an amendment, we will be ruled out of time, because the debate will take place within 24 hours of next week's meeting.

The Convener: We have discussed this matter, and members have copies of the options, whose admissibility is being checked by the chamber

office. We should discuss the options now. Option 1 is flexible and option 2 is more specific.

Mr McMahon: I prefer option 2, because I do not like amendments that just say that they do not want something to go through. We should explain exactly what we want. Option 2 says exactly why we want this issue to be addressed.

Irene McGugan: Perhaps there is a third option. A question on religion would involve a more complex and lengthy procedure, as a new bill would be required. However, issues of ethnic group and language could be included in an amendment to be debated next week. I am not suggesting that we exclude a question on religion, but that we need to take a different route.

The Convener: The question on religion would require an amendment to the Census Act 1920, whereas the other questions would not, although the procedure will be quite complicated for those as well. The committee probably wants the amendment to cover every question. When we agree that, it will be up to the Executive to deal with the different questions. However, it would be better to deal with all the questions in one amendment. The way in which the matter is subsequently dealt with could be different, but all the questions will be debated next week anyway.

Irene McGugan: We might lodge an amendment in two parts, perhaps, acknowledging that the question on religion would have to be introduced when the Census Act 1920 had been amended, but that the others could be included on the laying of a new census order.

The Convener: That is what option 2 says.

Irene McGugan: Not really.

The Convener: Option 2 makes explicit what would be necessary to include a question on religion. Do you have a suggestion for another amendment?

Irene McGugan: We could subdivide it, to recognise that the question on religion needs to go through a slightly different procedure to be included than is necessary for questions on ethnic grouping and language.

The Convener: Option 2 does that. It says that a bill would be required to introduce a question on religion, and goes on to say what the revised draft order would include. We could change the wording, if you think that it should be more specific, but the distinction is made in the amendment.

Irene McGugan: Yes.

Elaine Smith: If the question on religion was stopping the amendment from being supported, the other two questions would not be supported either. However, if they were dealt with in a

separate amendment, that amendment might be supported.

The Convener: There is nothing to prevent the lodging of amendments on specific questions. However, the question on religion has been raised with the committee. I believe that it is one of the most important questions to include, although other people have different priorities. I think that the committee's amendment should include all the questions, but that does not prevent other members lodging separate amendments that could be supported if that amendment was not supported.

Johann Lamont: It is important that the amendment reflects a package that the Equal Opportunities Committee wants to present in addressing the weaknesses of the census bill. We have an interest in gathering data that will address the needs of groups that we want to be better served than they are. We recognise that some questions can be addressed easily, and if the Executive wants to address them it can do so now. Other issues are more complex, and would involve the amendment of legislation, but nothing is insuperable if we are determined.

We are engaged in a political debate about the purpose of the census, and we should resist the temptation to get bogged down in the technicalities of any amendment. The Equal Opportunities Committee wants to recognise weaknesses in data in particular areas, and it believes that the amendment covers information that would be crucial to developing an equal opportunities policy. The amendment is designed to do a political job, in taking on that political debate. The Executive can manage the technicalities and the drafting later. It would be helpful to lodge an amendment that pulled the whole thing together, and that reflected the committee's view, which is what the convener is doing on our behalf.

Tricia Marwick: I want to acknowledge the concerns expressed by Elaine Smith and Irene McGugan that the meaning of such an amendment might be lost in debate. However, I totally accept Johann's comments. It is right and proper that all the committee's concerns are collated in one amendment. That will send a clear message from the committee that what is before us is not adequate and that it is up to the Executive not only to reconsider the legislation, but to introduce mechanisms that allow the concerns of the committee and people outwith it to be addressed.

The Convener: Are members happy with that?

Members *indicated agreement.*

The Convener: I do not know whether other members have received representations from the Convention of Scottish Local Authority about the

inclusion of a question on incomes in the census. That organisation has pointed out that councils are the main users of census information and that, as such information will be used for the next 13 years for anti-poverty strategies, community planning and service development, it feels that a question on incomes would be useful. The Executive's memorandum also raises that issue. I do not know whether this committee or another should lodge an amendment about incomes.

11:30

Shona Robison: I was not convinced by the memorandum's arguments against including the question on income. There is a strong argument for collecting information that will not be gathered in any other way. As arguments about sensitivity and the information that people are willing to provide can be made about every question in the census, it would be a lost opportunity if a question on income were not included. Whether that would be done best within the package that we have talked about is debatable. The Equal Opportunities Committee could lodge an amendment saying that the committee wants equal opportunities included in the census.

Mr McMahon: I am not as sure as Shona is about that issue. We all know that income is a good indicator of discrimination and that once certain groups have been identified within economic groups, we can examine how ethnicity, for example, impacts on people's economic standing in the community. However, that might be an issue for the Social Inclusion, Housing and Voluntary Sector Committee. Our amendments are based on concerns that have been raised with us by other organisations. If we start to expand our scope, where do we stop?

The Convener: Someone else might be lodging an amendment on income—I can find out before next Tuesday.

Is it agreed that I will lodge option 2, if the chamber desk says that it is admissible?

Irene McGugan: I agree with that.

The end of question 2 mentions a language that is spoken at home. I would very much like the committee to consider the possibility of including the Scots language in that, for very much the same reasons that the Commission for Racial Equality outlined last week. Scots is a language that is recognised by the European Bureau for Lesser Used and Minority Languages but it is not yet recognised in that way in Scotland. We would be giving Scotland's indigenous languages a level of equality.

The Convener: I am sure that the committee would agree with that. Is that agreed?

Members indicated agreement.

The Convener: Does everybody know that the final date for lodging such an amendment is Tuesday 8 February?

I will lodge that as soon as the committee is finished, and if we are satisfied with Jim Wallace's answers next week we have the option of withdrawing it.

Progress Reports

The Convener: The next item is reporters' progress reports. The first report is from Johann Lamont on gender issues.

Johann Lamont: This is beginning to sound like a repeat performance, but the group has not met and a meeting has yet to be organised. There was an important debate last week—Gill Paterson's members' business—which addressed some of the issues that we have been examining, such as the experience of women in the judicial system. Assurances were given by the Deputy Minister for Justice that action would be taken, specifically in relation to "Towards a Just Conclusion". We need to consider what the minister is suggesting. We can make progress on that but I am conscious that the group has not met, and I will try to organise that as soon as I can.

The Convener: Thank you, Johann.

Mr McMahon: There has not been a meeting of the race committee since the previous one.

The Convener: Okay. I know that Nora has a report and an update on our discussions last week on amendments to the Adults with Incapacity (Scotland) Bill.

Nora Radcliffe: The sexual orientation reporters group met last week. We were particularly concerned with examining the suggested amendment to the bill. At our previous meeting we had been concerned by the wording of the amendment, where the wording derived from, and whether it treated same-sex couples in the same way as opposite-sex couples.

We had the privilege of having a professor of family law at our meeting and representatives of Outright Scotland, which has devised the wording for an amendment that it thinks better meets the equal treatment criteria. I must apologise for the fact that I received the amendment only this morning, but Outright Scotland was able to work on it only at the weekend. Would you like me to circulate that amendment to the committee?

The Convener: Yes. Nora will lodge the amendment on behalf of the committee, but it will have to be lodged soon. The relevant section of the bill might not be considered next week, but it could be, because swift progress is being made. We will have to make a decision today.

Nora Radcliffe: I am sorry about this. It is not satisfactory.

The Convener: Does the committee want a 10-minute adjournment to look at the draft amendment?

Members indicated agreement.

11:37

Meeting adjourned.

11:44

On resuming—

The Convener: We have not had quite 10 minutes, but I hope that everyone has had a chance to consider the amendment.

Nora Radcliffe: The proposed amendment was discussed at the meeting. I can claim little credit for the end result, as I handed it over to people with legal expertise, who have come back with what they suggest is an amendment that meets an equality test. I leave it to members of the committee to decide whether they are happy with the wording as presented.

The Convener: Nora will have to lodge the amendment and attend the Justice and Home Affairs Committee to speak to the amendment. Members of that committee will then have to vote against the Executive's amendment, a copy of which we saw last week. Although Nora will not be able to vote in that committee, she will be able to move her amendment.

Are members happy with the wording? Are there any questions for Nora?

Nora Radcliffe: I am not clear about the procedure. Is it possible to ask the Executive to accept this as an alternative amendment, rather than going through the process of challenging the Executive amendment? If the Executive was happy to accept our wording, would that be a neater way of dealing with the matter?

The Convener: We could certainly try that, as we did with the census order. It would not then be necessary to lodge another amendment. We would have to get that sorted out some time today and lodge the amendment as soon as possible so that we did not miss the deadline.

Are members happy with that? I shall try to sort the matter out with the Executive; Angus MacKay is dealing with it. If we cannot do that, we can lodge the amendment on behalf of the committee.

Members indicated agreement.

The Convener: Do you have any other comments, Nora?

Nora Radcliffe: No—that was all that we concentrated on. The next meeting of the reporters group is on 1 March and any member who wants to come along will be welcome.

Disability Issues

The Convener: The next item is the appointment of a reporter on disability issues. I have not circulated any correspondence, but I invite members to suggest a suitable person or to volunteer.

Should we hold this over until next week?

Shona Robison: Could we hold it over?

The Convener: Yes. I shall ask Martin Verity to e-mail all members so that we can get the matter sorted out at the next regular committee meeting—not next Tuesday, when we will deal with only the census.

We agreed that item 6 would be taken in private, so this is the end of the public part of the meeting.

11:47

Meeting continued in private until 12:10.

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