

EQUAL OPPORTUNITIES COMMITTEE

Monday 22 May 2000
(*Afternoon*)

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EQUAL OPPORTUNITIES COMMITTEE

12th Meeting 2000, Session 1

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

Jackie Baillie (The Deputy Minister for Communities)

Yvonne Strachan (Scottish Executive)

ACTING CLERK

Sarah Davidson

ASSISTANT CLERK

Alison Campbell

LOCATION

Committee Room 2

Scottish Parliament

Equal Opportunities Committee

Monday 22 May 2000

(Afternoon)

[THE CONVENER *opened the meeting at 13:16*]

The Convener (Kate MacLean): There are some apologies, but I hope that more members will join us later. I apologise for having two committee meetings in one week—I realise that that is not easy for everybody, but it is just the way that things have worked out.

I propose that we take items 2 and 5 in private. Is that agreed?

Members indicated agreement.

13:17

Meeting continued in private.

13:31

Meeting resumed in public.

Budget Process

The Convener: I welcome Jackie Baillie, the Deputy Minister for Communities, and Yvonne Strachan. They are here to talk about the budget process, although they may be asked questions on other subjects. They will have to be flexible about whether they answer them.

I understand that Jackie Baillie wants to talk briefly to the memorandum, which every member of the committee has received. We will then ask her questions. Is that okay?

The Deputy Minister for Communities (Jackie Baillie): Absolutely—that would be great. I thank the committee for the return invitation. I think it was in September that I was last here—I was getting a bit lonely when the committee did not invite me back.

I welcome the opportunity to talk to the committee about the equalities programme budget. As you will see from the memorandum, our spending plan for 2000-01 is £0.5 million. At this stage, our difficulty is that we can give a broad indication of expenditure patterns but not the detail. The primary reason for that is that we wanted to wait for the outcome of the equality strategy, largely because we want better to align resource to activity. However, we can anticipate the likely areas of spend. I shall go through them briefly before we open up the matter for discussion.

First, on mainstreaming, we want to develop the toolkit, guidance and training for departments, so that we get the process bedded down as early as possible. Secondly, we want, as part of that, to develop support mechanisms for legislation and policy appraisal.

The second area of likely spend is awareness raising and training throughout the Scottish Executive. As you will appreciate, it is one thing to issue guidance, but it is another to achieve a culture change within an organisation. That is very much a long-term task.

The other area on which we anticipate spend is research and ensuring that we have disaggregated data. That underpins much of what we want to do in future. Discussions on how we take that forward are already under way with the central statistics unit.

The final area—and probably the most important to me—is consultative mechanisms: how we relate directly to the equality interests that are out there, and indeed to grass-roots organisations. As members are aware, we have the Women in Scotland consultative forum and the race equality advisory forum, but we have yet to develop long-

term consultative mechanisms with organisations concerned with sexual orientation or disability. That is on the agenda.

That was a broad outline of where we anticipate spend to be allocated, and we are happy to discuss and take on board the committee's views at this stage.

The Convener: Thank you. Does Yvonne Strachan wish to add anything at this stage?

Yvonne Strachan (Scottish Executive Equality Unit): Not at this stage.

The Convener: I therefore open up the discussion to members of the committee.

Tricia Marwick (Mid Scotland and Fife) (SNP): I will kick off. You said, minister, at paragraph 7 of your memorandum:

"The Executive has clearly stated its commitment to mainstreaming equality across the work of all Departments."

Can you give us an indication of how well that is going, and of when you would expect all the tools to be developed, with equal opportunities being involved in policy development at an early stage?

Jackie Baillie: As you will appreciate, the unit is nine months old. In real terms, that is quite a young age to be engaged in a mainstreaming process. We have examined a range of international experience, including that in the Nordic countries, to get a sense of the progress made elsewhere. Interestingly, other countries are all still at an early stage. For example, specific projects have been undertaken in Norway to consider aspects of mainstreaming. I do not mean to frighten anyone, but they were developed over a 10-year period. I am not suggesting that we will take that long, but the process is clearly long term.

On our current position, once the outcome of the equality strategy is known, we will take forward mainstreaming through the development of the toolkit and the guidance. It is not just a matter of the equality unit having an interest; it is one of that interest being bedded down in departments, so that they can do the equality impact assessment, the policy appraisal and the legislative appraisal right from the beginning, rather than have a unit come in from the side, if members see what I mean.

We are keen to get that process going very early on. We hope to publish the final equality strategy in September, having involved the committee in dialogue, so that the responses can be analysed and fed into the strategy from the beginning. Thereafter, we hope to have the toolkit and the guidance in place, and to get it out to departments so that they have ownership of a very big agenda.

Tricia Marwick: When you mentioned how long

it is taking other countries to develop the process, I was slightly concerned. I would have thought, however, that our opportunity lies in the fact that we are a new Parliament. If we do not take the opportunities now, the culture will be such that things will get more difficult in the future. It seems imperative to address at a very early stage the culture changes that you suggest should take place within the departments, instead of letting things continue as they are. Do you agree with that?

Jackie Baillie: Absolutely. I did not mean to suggest that we wait 10 years before doing anything. I mentioned that just to put into context the fact that mainstreaming is not an overnight process. Naturally, if we are to achieve the culture change that everyone in this committee room wants, we should recognise that it is a long-term process. However, that is not an excuse for inactivity. Work is currently under way—alongside the publishing of the strategy—to develop the tools that we need to mainstream and to engage departments as soon as the strategy is published.

I reiterate that I am not suggesting that we will wait 10 years before anything happens; we must recognise that it will take a long time to achieve the change that we require throughout the organisation. The process will start immediately, however, and I entirely agree that it would be a missed opportunity not to start the process quickly.

Nora Radcliffe (Gordon) (LD): I see that the initial objective is to get the mechanisms in place. By next year, that objective will presumably have changed into monitoring, evaluating and policing. Is that fair comment?

Jackie Baillie: Yes, that is entirely fair comment. Much of the work will be front-loaded; we will need to establish the mechanisms, the toolkit and the working methods of departments. Thereafter it will be about monitoring the impact of what departments are doing. The equality unit will continue to provide advice and information, but we might want also to consider areas that are currently untouched. I am sure that the equality strategy will begin to unpick and identify those areas, giving us a fairly substantial work programme for the future.

Johann Lamont (Glasgow Pollok) (Lab): To what extent do individual departments currently have a responsibility to consider equality issues?

Jackie Baillie: It is the Executive's view that the process of mainstreaming should be owned by departments. Way back in July 1999, the equality unit issued guidance on how they should go about that. We are considering revising that guidance and making it far more explicit, but the departments should have ownership of the process. This is entirely new terrain for many

departments, and we need to use the equality unit strategically to work with them, so that there is an understanding and appreciation both of the principle and of the practical measures that need to be taken to ensure that equality is mainstreamed in all departments.

Johann Lamont: Do you agree that the fact that the group that is committed to the issue—the equality unit—is a limited resource is a difficulty? How are we currently monitoring whether the guidance is being followed? When the Local Government Committee asked the appropriate local government divisions about the impact of their actions on women and others—as highlighted in Engender's contribution to the discussion—they did not appear to have given much, if any, thought to that and said that they would welcome comments.

How do we remedy that? I presume that the same situation must be replicated elsewhere in the Executive. The equality unit is an easy target because, although it is not resourced sufficiently, it is committed to tackling the issue. I understand that it is the departments' responsibility to come to you for advice. How do you make them do that? Should the equality unit argue for ring-fencing within departmental budgets? If we do not understand inequality and address women's needs in the budget, we will end up devising budget strategies that meet male needs. How do you think that that can be progressed?

Jackie Baillie: That is a very wide-ranging question. I will see whether I can tease out the key issues. Johann Lamont is right to point out that the equality unit is small. It was designed to be strategic and to act as a resource for other departments, rather than to take a practical, hands-on approach. If we had set up a unit of that kind, ownership of equality issues would have rested solely with the unit rather than with the entire Executive. It is worth persevering with getting that message out.

This is a bit of a chicken-and-egg situation. If we in the equality unit engaged in debate and carried out impact assessments of equal opportunities for each bill that came before Parliament, all our time would be taken up by that, to the detriment of everything else that we want to take forward. Through the equality strategy, through developing the mainstreaming toolkit and guidance, and through reissuing the guidance that we sent out in July, we will start to bed down the process in departments. I hope that next time local government division officials give evidence to the Local Government Committee you will see a marked improvement in understanding and awareness.

The second point that Johann Lamont made related to the wider budget process. As members

will appreciate, consistent with mainstreaming, that is a matter for the Minister for Finance. However, we have been working closely with him on that. It raises a number of interesting aspects; for example, Engender and the Equal Opportunities Commission are keen to have a gender analysis of budget mechanisms. Again, through financial means, we will start to bed down changes in behaviour.

13:45

Specific work on gender has been well developed in various countries; however, we have an opportunity to look more widely, in the context of the Scottish Parliament, to consider issues of race and disability. However, that presupposes that the disaggregated data are there and are robust enough. As not many data are available, we would be making a standing start, which is difficult to do so late on in the budget process. We are keen to accept the principles of what is being outlined to us by those organisations, but we might consider handling the issue more strategically and piloting it in one or two divisions that have the disaggregated data available across the board, which will enable us to tease out that process and to learn from it.

I am aware that a Scottish women's budget group is about to be—or has already been—established. It will mirror what the UK women's budget group does, which is to provide advice on budgets after they have been set. If we are to generate the type of change that we are all looking for, advice should be provided on budgets before they are set, as part of the bid process and the consultation process. That will take time to develop, but there is a commitment in principle to go down that route.

Johann Lamont: I understand that you do not want to get bogged down doing the work of individual departments for them in relation to equality issues, but can you ask them not to put a document out for consultation—for example, on stalking—or to issue a bill without the equality unit having seen it? It disturbs me that quite a lot of stuff seems to come out without going to your unit.

Would a reasonable starting point be for you to insist that departments come to you to ask whether what they have done is reasonable or sufficient, rather than asking you what to do? In regard to a number of issues, if the department had come to you to get something checked, that would have made the department more focused before the document was released.

Jackie Baillie: The principle is sound; the reality is that the unit is in danger of being overloaded. That highlights your example of people bringing along legislation and asking for assistance with

it—much time is spent on the detail rather than on the provision of advice. However, I am happy to consider whether we can offer advice in such a way that although we are not carrying the load, we are contributing at an early stage.

Johann Lamont: I was not suggesting that the departments come to you with a blank piece of paper, saying, “We have to do something about equality—what shall we put here?” They should be aware that the document will not be released or that the bill will not be issued until they can satisfy you that they have considered the equality aspects. They should come with the pages written—they tell us that it is their responsibility anyway. There has to be an incentive for them to do that work before any document is released. It would be outrageous if they came to you and asked you what to do. If something is to get past your unit, departments must have done the work beforehand. If they have not, you should send the documents back. You should not do the work for them. That is a good teachers’ approach. If they have to get documents checked by the teacher, it might help.

Jackie Baillie: Drawing on your experience, we will grade them as well. [*Laughter.*]

We will consider that, because it is a useful suggestion. You should bear it in mind that every department that is sponsoring legislation has to have an equality appraisal attached to that legislation before it can go through Parliament. That is something in regard to which Parliament has a scrutiny role.

The Convener: So it is Parliament that polices that, to ensure that every piece of legislation has regard to equality issues.

Jackie Baillie: Ultimately, it is for Parliament to ensure that all legislation stands up to scrutiny, including that aspect of equal opportunities. The separate and distinctive equality appraisal process and the statement that requires to be made give additional leverage that perhaps was not there previously.

The Convener: Eventually, every department will have the toolkit and the guidance. Presumably the equal opportunities implications of everything should be explored thoroughly. Is that adequate? Should there be another stage to check that, rather than Parliament or the committee having to consider every piece of legislation? If it is a heavy legislative year and we miss something, tough luck—it has been missed and nobody else is particularly interested.

Jackie Baillie: As part of the equality strategy, we will develop robust monitoring and evaluation mechanisms, which will apply across departments. The equality unit will have a strategic role and will take on board the points that you are making.

There are a number of checks in the system—that is useful for bedding down the principles.

Malcolm Chisholm (Edinburgh North and Leith) (Lab): I accept what you are saying, that we do not wish to consider budgets only from the point of view of gender. However, I wish to pursue what you were saying to Johann Lamont. We have had quite a lot of input from Engender during the budget process. Are you saying that you accept what it says in principle but that you have to proceed in stages to do it?

Jackie Baillie: My understanding of the discussions is that we accept in principle what Engender is suggesting. We are keen to consider a gender analysis of budgets, but in a wider context. We cannot cover the entire Executive immediately, so we might consider one or two pilot areas where robust disaggregated data are available. That is another issue which the equality unit is addressing with the central statistics unit.

Malcolm Chisholm: Are you actively considering in which departments you will start that process next year?

Jackie Baillie: Yes. We are looking closely at how we can do it, what the mechanism should be and which department should be the pilot.

Malcolm Chisholm: One of the problems that we keep coming across in the budget process, especially in health and local government, is the extent to which the budgets are devolved. Do you see that as an inherent difficulty, and would you wish to keep a closer eye on what happens to budgets at local level as well?

Jackie Baillie: Given that the signalling on potential areas of spend and on the overarching strategic priorities comes at a national level, as we start to develop the disaggregated data on the ground, that will in turn inform decision making. We would want to ensure that not only national spend but indirect local spend does not act in a gender-blind or gender-neutral fashion.

Malcolm Chisholm: Perhaps it would be appropriate to ask you about one specific fund that you were identified with—the domestic abuse development fund. Has every local authority area pursued that?

Jackie Baillie: Thirty-one local authorities out of 32 have done so—we are actively encouraging the remaining one to submit a bid. We were clear at the start that we did not want that to be competitive; we wanted quality projects to be submitted, but there was an amount available in every local authority area to plug gaps in provision and to take provision forward. That remaining authority—which I shall resist naming—will, I hope, submit a bid soon.

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

The equality appraisal process is fundamental to some of the difficulties that the committee has been grappling with. I am not sure that everybody understands that there is to be an appraisal process or what that is, and where the equality unit and the committee fit in. Despite the existence of the unit and the committee, proposals that are coming through are clearly missing the mark in terms of equality, and mistakes are being made. This relates to the cultural change about which Tricia Marwick was talking. It is important that that should not be allowed to happen, as we are supposed to be doing things differently.

I accept what you say about limited resources. Is the issue not then decisions about priorities? Perhaps one of the top priorities of the unit should be to provide a check and balance to proposals coming through the departments. If the unit does not do that, I do not know where else that will be done. Therefore, the system of priorities in the unit should perhaps be reconsidered, and resources should be directed toward fulfilling that function, which seems not to be happening at the moment.

Jackie Baillie: This is fundamental. It boils down to a choice between mainstreaming and centring everything in the equality unit. The standing orders of the Parliament make it clear that every piece of legislation should be accompanied by an equality appraisal statement. I think that that should be entirely owned by the department sponsoring the legislation. If we change the priorities of the unit, we will satisfy a short-term need, but there will be a detrimental long-term effect. I get equally frustrated when I see things that should not happen. It is still early days, but I think that bedding down and prioritising mainstreaming and achieving a sense of ownership across departments will serve us in good stead in the medium to long term. There might be frustration in the short term, but I believe that that is how we need to approach matters.

If we do not adopt that approach, we will send out a signal not that the unit will act as a check and balance—which I think is helpful on a point of advice and information—but that that small strategic unit is responsible for all equality issues. Mainstreaming should be bedded down in departments. People might disagree, but I think that we should deliver in the long term as well as in the short term, so that the process is owned by departments. Otherwise we will not achieve the culture change in the organisation that we all want.

The Convener: You are saying that in the short term we still need the equality unit at the centre, and we are not ready to depend on departments for mainstreaming.

Jackie Baillie: I do not think that the work has been done to allow departments to understand

fully the concept of mainstreaming. That is why we are going down the route of developing the toolkit and guidance, and bedding it down in departments.

Tricia Marwick: I am sorry to keep labouring this point, but you will recognise how important it is to all of us. This is about mainstreaming and the short term versus the long term. It is unfortunate that a whole list of written questions that I have asked have not yet been answered, as I asked specifically about the input that the equality unit has had to various pieces of legislation. I fully expect that when your civil servants show you that question and you reply, the answer will be that it has had no input—none of the pieces of legislation will have passed through the equality unit. There is a tension between the short term and the long term.

Although I understand your comments both about the need for mainstreaming and about not allowing departments to shove off their responsibilities, there is an issue about what we do while that culture change is bedding down. We need to do both, and if resources are not currently available to do both, they should be. As Johann Lamont said, a way of doing that in the short term might be to top-slice resources from each department for the equality unit to ensure that somebody is doing the work. That is fundamental, because I cannot see any work being undertaken anywhere. We cannot wait until the tools are available, the mechanisms are in place and the culture change happens.

14:00

Jackie Baillie: I am happy to accept the suggestion to examine some interim proposals. Although we have been consulted on different pieces of legislation, the consultation has been patchy. However, I do not want any examination of interim proposals to detract too much from the equality unit's programme of work, which I know the committee supports.

We are addressing the issue of resources elsewhere, and the committee will be advised of the outcome of that process when it is concluded.

Johann Lamont: Are named persons in individual departments responsible for equalities work?

Yvonne Strachan: It depends on the area. We are currently establishing a fairly loose network of colleagues across the office with an interest in a particular area. For example, such a network is considering the disability rights task force recommendations. Similarly, we have contacts to different interest groups as certain issues arise.

However, we do not have a specific designated

person for equality in each department or division. We are investigating that proposal as we develop the equality strategy, which will be a mechanism to deal with the work on mainstreaming. The question is how best to ensure that we have the internal structures that will help us to deliver mainstreaming. It has been argued that the single designated person for equalities work within a department or division might not necessarily be the best person for a particular area of policy. However, your point about needing an internal equality network is well made.

Johann Lamont: One of the difficulties is that the equality unit cannot do the work and to some extent the individual divisions will not do the work. As we must find a way of making divisions take responsibility, I would have thought that forcing departments to reschedule responsibilities within their own divisions so that one person is responsible for equalities might send out a fairly strong signal about mainstreaming.

The problem is that, while we are driving for mainstreaming, individual divisions effectively want somebody else to do it for them, and if the equality unit cannot do that, the work will not be done. Unfortunately, the people who are struggling with the work somehow become responsible for individual departments' lack of willingness to take responsibility. Although I understand that you want a broader, more active and more committed network, would a named person who is accountable for equalities work help to ensure that the equality strategy document does not go out without any liaison with the equality unit?

Jackie Baillie: We can certainly consider a balance between having a person specifically designated for equalities work within a division and having a wider network. The two proposals together would be useful. Let us give further thought to that suggestion.

Johann Lamont: I was concerned by paragraph 7 in your memo, which touches on the question of external consultants. Although I am all in favour of bringing external expertise to bear, it seemed to indicate that responsibility for equality was not centred within the organisation, even though the mainstream budget for staffing would not be affected.

Jackie Baillie: The programme budget is obviously different to the mainstream staffing budget. However, we would only employ consultants to proceed speedily with pieces of work, and because we recognise that much expertise on the process of mainstreaming and the development of toolkits and guidance lies outwith Government. As much of the work is front-loaded, we will need the additional capacity and expertise to drive it forward. However, you are right to say that employing external consultants is not a

replacement for bedding down ownership across the Executive.

Malcolm Chisholm: I certainly support external expertise for training, which is a point that you make in paragraph 8 of your memorandum. Furthermore, I am very sympathetic to the idea of having a named person responsible for equalities work. However, given that things tend to happen more when driven from the top, is there not an argument for ensuring that all heads of department and all principal finance officers are given awareness raising and training?

Jackie Baillie: Yes. We must strategically roll out awareness raising and training to impact on the people responsible for developing policy such as heads of division and finance officers. However, we must then cascade such training throughout the Executive as a whole. We must make sure that no door is left unopened on this issue.

Nora Radcliffe: I am worried that having a designated person for equalities work might allow other people in a department or division to hand over responsibility. Jackie Baillie made an important point about striking a balance. We should not give people an out for taking responsibility for equality issues.

Although we have talked a lot about bills and legislation and using external expertise, how much work has the equality unit done on internal issues such as the Parliament itself as an employer? How are we checking that the Parliament's recruitment practices are taking equality issues into account? For example, is the unit investigating why there is no crèche, no part-time or job share scheme, no geographical equality with the dispersal of jobs outwith the central belt?

Jackie Baillie: I want to separate out the two issues, because in some respects the equality unit does not have a direct relationship with the Scottish Parliament. For example, issues such as crèche provision, which I entirely support, are matters for the Scottish Parliamentary Corporate Body.

Let me focus on the unit's discussions with the Scottish Executive as an employer. The unit and the Executive have a good working relationship and we have set up a diversity working group, because we recognise that the Executive's employees should reflect Scotland's wider population. Although there are a significant number of women, people from ethnic minorities and disabled people, it falls far short of the overall make-up of the population. Furthermore, there are issues about how high people can rise in the hierarchy. That said, the diversity working group includes the Commission for Racial Equality and the Equal Opportunities Commission and is

supported by independent research. Our new strategy should be completed next month and will be implemented throughout the Executive.

Some committee members might have read in the press that we have conducted a survey of all Scottish Executive staff. The results of the survey, which was published last Thursday, were similar to those of any large organisation. Although three quarters of the staff feel that they have been treated equally within the Executive, we are focusing on the 10 per cent who feel that at some point they have been discriminated against for reasons such as working patterns, age, gender and so on. The diversity working group and the Executive will examine those results and undertake some follow-up work that will inform future practices.

About 9 per cent of Executive employees currently work part-time and work flexibly. We are interested in ensuring that that percentage increases and that there are more opportunities for flexible working. Those opportunities tend to help women more than men, but flexible working is also an issue for people with disabilities.

The Convener: The Scottish Parliament employs between 350 and 400 staff and an equal opportunities officer has just been appointed in the short term to put together a policy for Scottish Parliament staff. I hope that the committee will be able to meet that person formally and informally so that we can feed into that process. The interviews were last month and I am not sure when the appointment will begin, but I think that it is quite soon.

Nora Radcliffe: Presumably all the staff from whom you have had input might want crèche facilities. That might enable more people to work for the Executive.

Jackie Baillie: Interestingly enough, the Executive already provides child care in Victoria Quay. I am not sure whether that is subsidised, but the location of crèche services alongside offices is clearly helpful to many employees.

Shona Robison: I have a brief comment about the named person. My experience of working for a large local authority tells me that the problem with relying on interested people is that they are not usually involved at the decision-making level. They can be as interested as they like, but they cannot influence time and resources or policy changes. Any named person must be in senior management and any equalities training should start with senior management. I suggest that any named person should be at a level where they are able to make decisions.

Jackie Baillie: I get the sense that that is important, as is preserving a balance so that wider interests can be incorporated. As Malcolm

Chisholm has said, we must start at a sufficiently senior level among the people who influence policy development and day-to-day operation. That point is well made and taken on board.

Johann Lamont: I am all in favour of the idea that the named person should be a very senior person. However, it strikes me that if we are all responsible nobody is accountable, and the issue is really one of accountability.

I am sure that you are aware of the evidence that Engender gave to this committee and to others about the budget process. Those witnesses highlighted the importance of the gender audit and the information that they had been able to provide in the past. They sought a commitment that that work would be taken over by the Executive; they are no longer able to do it because it was done on a voluntary basis in the past. I know that you understand the importance of disaggregated data, but will there be a gender audit next year provided by the Executive rather than by Engender?

14:15

Jackie Baillie: I am conscious that there is a letter from Kate MacLean in her capacity as convener to the equality unit, raising this point. The equality unit is working closely with our statisticians to assess the availability of disaggregated data, on a gender basis and covering other equality interests. We intend, where data are readily available, to publish a short booklet, providing those data. Clearly there are gaps, some of which will be resolved as a result of the development of the equality strategy. I cannot necessarily give you a commitment of publishing like for like, but I can certainly give you a commitment that we are aware of the importance of disaggregated data, and we are working to ensure that we can produce a full set of figures.

Nora Radcliffe: This is not entirely a facetious question: I am wondering about the awareness training. Do you propose to send out senior officers with a double buggy, two kids, a load of shopping and a bus ticket? Will it be hands-on and practical really to bring home to people what it is like to struggle in such circumstances, or will it be a matter of telling someone to get from A to B in a wheelchair and see how they get on?

Jackie Baillie: I do not, at this stage, wish to prescribe particular training techniques. I am sure that people more expert in this area than I am will suggest ways of driving home the message to people more forcibly. It is a matter of gaining not just an intellectual understanding but, equally, a practical understanding. I am sure that Yvonne Strachan will take your comments on board when we come to consider awareness raising and training.

Tricia Marwick: As you said, minister, the finance department is responsible for taking forward the lead on consultation and the spending plans. When Engender gave us evidence in April, Fiona Forsyth said:

“We suggested seconding an adviser to work with appropriate officials”

in the finance department

“which would include working with somebody from the equality unit. The responsibility for, and the need for technical expertise in designing, the budget and the spending plans lies with the finance department, which is why we suggest that the adviser should be seconded to it.”—[*Official Report, Equal Opportunities Committee*, 25 April 2000; c 611.]

Do you have any views on that as a way forward in the short term?

Jackie Baillie: My understanding of Jack McConnell's meeting with Engender and the Equal Opportunities Commission was that the suggestion was made of seconding an adviser. We were mindful to consider that and give it careful consideration, largely because bringing together both areas of expertise could be a helpful mechanism. This is not just something that somebody has bolted on. We asked for an outline of what would be done and how it would be done.

To return to my earlier point about our not being able to cover the entire Executive, it might be useful to consider strategically one or two areas to pilot. I am unaware, at this stage, of where discussions between officials have reached, but we have no objection in principle. We just wanted clarity on how things would be done and precisely what would be done. We felt that that would be useful from everybody's perspective.

The Convener: I do not think that there are any other questions. I thank Jackie Baillie and Yvonne Strachan for coming along to answer questions. The minister said that she was worried about not getting an invite for so long; no doubt we will have you back soon, minister, and you might regret saying that.

Standards in Scotland's Schools etc Bill

The Convener: Item 4 on the agenda is a report from Malcolm Chisholm on amendment 140 to the Standards in Scotland's Schools etc Bill.

Malcolm Chisholm: This is an interesting and an important matter, both because of the process of the bill itself and because it leads us into the whole question of what schedule 5 to the Scotland Act 1998 says the Scottish Parliament, as opposed to the Westminster Parliament, can do about equal opportunities.

Members have a copy of the amendment that we lodged. It was slightly changed from the original and, after I lodged it, it was changed again by the clerks on the ground that my wording was out of order. I included the words

“shall promote equality of opportunity”

in accordance with schedule 5 to the Scotland Act 1998, because I wanted to anchor the provisions in what was allowed by legislation. I was told that that was out of order, which is no doubt true, for some reason. I was happy to withdraw the amendment on a technicality, because it should have said “equal opportunities” rather than “equality of opportunity”. Equality of opportunity was in the draft that we were given but, in terms of schedule 5 to the Scotland Act 1998, the wording should be “equal opportunities”.

I was happy to withdraw the amendment on a technicality only on the understanding that the matter would be revisited at stage 3. I did not commit myself to supporting what the Executive was offering, because it is up to this committee to make a decision on that. However, I will describe what the Executive seems to have offered at stage 2. Before I do so, members should look at schedule 5 to the Scotland Act 1998. It is an important schedule for this committee, because it tells us that the legislation on equal opportunities is, as we know, reserved to Westminster. Therefore, we cannot bring forward amendments to the Sex Discrimination Act 1975 or the Race Relations Act 1976. The Parliament will debate the Race Relations (Amendment) Bill on Thursday morning, but that is being dealt with by Westminster—although the Scottish Parliament can express views on it, we cannot amend it.

An interesting part of the schedule from our point of view can be found under the heading “Exceptions”, which talks about the encouragement of equal opportunities and imposing duties on certain people. My understanding of an exception is that it means that we have the power to take action in those areas.

One of the most interesting aspects is the meaning of these terms in the Scotland Act 1998. One of the difficulties that has arisen is that equal opportunities is defined more broadly in the Scotland Act 1998 than in UK legislation. The phrase with which we are most familiar in connection to other debates at the moment is that:

“‘Equal opportunities’ means the prevention, elimination or regulation of discrimination . . . on grounds of . . . sexual orientation”.

The term also includes age, for example, which is not embodied in UK legislation, so the definition of equal opportunities is broad. In accordance with the Scotland Act 1998, we are allowed to encourage equal opportunities, which seems to me to mean the same as promote, unless anybody can tell me different.

The act also mentions the “Equal opportunity requirements”, which means the observance of the UK legislation. That is an important anchor for these discussions. At stage 2, I thought that Peter Peacock made quite a good offer. Members have copies of the *Official Report*. In column 1022, he said:

“The new text would require councils in their annual statement of education improvement objectives to include an account of the ways in which they will, in providing school education, encourage equal opportunities, and in particular the observance of the equal opportunity requirements.”

That is something that local authorities would have to do. When I questioned the minister about schools, he said that the reference to local authorities includes schools, because they come under local authorities. He said that local authorities would have to give an account of what they were doing to encourage equal opportunities on the broad definition and in relation to the narrower legislative definition of equal opportunities requirements. I was quite pleased with that and I said so.

I was slightly concerned—although I did not pick this up until I read the *Official Report* after the meeting—about the minister’s response to Lewis Macdonald’s question. In column 1023, he says:

“On Lewis Macdonald’s first point, the provision requires local authorities, in this context, to report on the observance of the equal opportunity requirements; it is a fairly strong provision.”

Those comments were slightly narrower than his previous remarks, so I am concerned about that. However, on the basis of what the minister said in his first statement, I am encouraged that the Executive has moved quite a lot in response to our comments.

The minister also said many other interesting things. For example, he said:

“We do not think that it is right to require ministers to do something that they are already required to do in law”.—[*Official Report, Education, Culture and Sport Committee*, 15 May 2000; c 1022-23.]

When I asked him what objection he had to our proposal of having a duty to promote equal opportunities, he seemed to say that there was no point in imposing such a duty, as ministers were already required to promote equal opportunities. I am glad to hear that, but that is not my understanding of the Scotland Act 1998. It is an exception—we can encourage equal opportunities, but I do not think that that means that ministers automatically promote equal opportunities. Therefore, I still have questions about the Executive’s position.

I am afraid that this is—inherently—an incredibly confusing and complex area. Lurking in the background are a lot of disputes between law officers about what exactly the Scotland Act 1998 allows us to do in the area of equal opportunities. There could be an interesting debate at stage 3, but the problem is that we do not have the wording of the Executive’s amendment at this stage and so it is slightly difficult for us to know what we are dealing with.

I would be reasonably happy should Peter Peacock offer what he said at column 1022 of the *Official Report*, although I would still want to ask why our proposal of imposing a duty to promote equal opportunities was not allowable. In practice, requiring schools to report on those issues probably meets our objectives.

On the other hand, I would be concerned if the Executive were to lodge an amendment that included the narrower wording that the minister refers to in column 1023 of the *Official Report*, as that would cover only the equal opportunities requirements and would not include the broader definition of equal opportunities in the Scotland Act 1998. I am sorry that this is a bit complicated, but it is not just my muddled thinking—the situation is inherently complicated.

Shona Robison: We will have to wait and see the wording of Peter Peacock’s amendment, as it is still within the power of the committee to reword Malcolm’s amendment to make it acceptable.

Although that is fine in the context this debate about the Standards in Scotland’s Schools etc Bill, a principle is at stake—there appears to be an issue about having a duty to promote equal opportunities. The Parliament has established an Equal Opportunities Committee and it has been stated that equality of opportunity is at the core of the Parliament’s work. It seems to me to be strange—if not a little bizarre—that it is a problem for the Parliament to impose a duty on authorities to promote equal opportunities in the context of the Scotland Act 1998. The principle must be

established that this Parliament should be able to, and must, impose such duties. I have received helpful correspondence from the Scottish Parliament information centre about the matter, which it refers to as being very tricky. In the area for which the Parliament has responsibility, the issue is really one of language.

I was interested in Malcolm's comment at the Education, Culture and Sport Committee about intention. From the debates on schedule 5 to the Scotland Act 1998 at Westminster, it seems that the intention of the legislation, in terms of encouragement, was that, although the Scottish Parliament could not amend equal opportunities legislation, it would be able to promote equal opportunities. That is the key distinction; I am sure that, during the passage of the Scotland Act 1998, the intention of Westminster MPs was as Malcolm interpreted it. It would be helpful to seek clarification on that point. Although we could find a resolution in the context of Malcolm's amendment to the Standards in Scotland's Schools etc Bill, this issue will come up time and again when the Parliament seeks to impose a duty to promote equal opportunities in other bills. If that means questioning the law officers here, I am open to suggestions about how we can do that, but this committee should pursue the matter.

The Convener: Are there any other comments or questions?

Malcolm Chisholm: We have to decide on the way forward. The timing is a bit unfortunate, because my understanding is that stage 3 will most likely take place two weeks on Wednesday. I imagine that we will be meeting two weeks on Tuesday, so that creates a problem. Ideally, we would come to the meeting, consider the amendment and then decide what we want to do, but that probably will not be possible. Some people have to meet, at least informally, when the amendment is drafted.

14:30

The Convener: Immediately after this meeting, we could write to Peter Peacock expressing the committee's view on the acceptable wording of the amendment, in the hope that that would inform the people who are doing the drafting. We could then arrange to have an ad hoc meeting when the wording is made available, especially if our wording is deemed not acceptable.

Malcolm Chisholm: My worry is that there is some uncertainty even—dare I say it—among the law officers and that this matter may be a moving target. I am not sure what the final wording will be, which is why it is difficult for us to make a final decision. My view is that what Peter Peacock offers in column 1022 is significant. Having consulted the equality organisations, I know that

they are also quite pleased with what was offered in column 1022.

The Convener: What are members' views on that? What is said in column 1022 is what we want and would be the basis on which we contacted Peter Peacock.

Malcolm Chisholm: I would still have questions, but I would vote for what is on offer in column 1022. There would still be other options. We could lodge a probing amendment or another amendment without voting against Peter Peacock's amendment. There are lots of options. I would be happy if he brought forward what he said, but I am not absolutely confident that what is brought forward will be in the form that we wish.

Tricia Marwick: As the Equal Opportunities Committee, we could lodge the amendment anyway and then see what Peter Peacock comes up with at stage 3. If we were satisfied with his proposals, we could withdraw our amendment. Our amendment might help to focus minds.

Malcolm Chisholm: That is an alternative way forward. If we did that, the words "equality of opportunity" would have to be changed to "equal opportunities". The next part of the amendment that I lodged was inserted by the clerks and is not required. We would just be including the words "shall promote equal opportunities". We would probably also add the words from the earlier version of the amendment to the effect "and have due regard to the need to eliminate unlawful discrimination". That is an option as well.

The Convener: Is everybody happy with that? Are you happy to do that, Malcolm?

Malcolm Chisholm: This is a new idea, and I have not taken it in completely. I will listen to other views.

Johann Lamont: There is more than one way in which to concentrate minds. We could give some credit for the shift that has taken place. It strikes me that, if we simply lodged an amendment, we would be saying, "You have moved on this and you have promised us something else, but we are going to go ahead anyway." As long as we are not blocking off options, we may want to see whether what comes back is what we are looking for; at that stage, we may wish to do something further. However, it might be helpful to pursue the negotiations first, with the proviso that we organise an ad hoc meeting or that we give powers to Malcolm plus the convener and the deputy convener to pursue what they think would be in line with what the Equal Opportunities Committee wants.

The Convener: That is kind of what I was suggesting—that we contact the minister to find out what will be put forward.

Nora Radcliffe: I favour Johann's way forward—it is less in your face. Shona referred to seeking clarity. Could we invite somebody to talk to the committee about the legal niceties of the matter in a fortnight, or is that too short notice?

The Convener: I think that it would be too short. Like Shona Robison, I am not sure from whom we would seek clarification or whether using the Parliament's law officers would necessarily clarify the matter.

Johann Lamont: The broader questions of interpretation and so on can be pursued by the committee. There is an issue about what will be contained in the bill and a broader question about how such matters are generally viewed. We are not time limited—we can examine the matter regardless of what happens to the amendment to the bill. We can revisit the issue if we are unhappy because we are not cutting options off from the committee. We do not have to push too hard regarding a timetable, but I would be interested in finding out whether the law officers are allowed to come before the committee to give evidence and whether they have ever been asked such questions. I have a list of things that I would like to ask them.

The Convener: It has been pointed out to me that—as a result of a question that was raised at the committee's previous meeting—the clerks have asked the Executive to provide evidence to the committee on the current interpretation of section L2 of schedule 5 to the Scotland Act 1998. So far nothing has been returned to them.

Nora Radcliffe: It would be useful to see that evidence and to air the issue before having to argue a case in committee. That would give us confidence and ammunition.

Malcolm Chisholm: It would be useful to have that at the next meeting.

Shona Robison: I did not think that we would resolve the matter within the time that has been allocated to the bill. My point was that we should seek to examine the matter for future reference. We must take advice beyond that which we receive from the Executive because the Executive's interpretation will be only one of a number of differing interpretations—which is not necessarily a problem.

The committee could, however, discuss differing interpretations to come to a conclusion about which interpretation it considered to be the most reasonable. We could perhaps leave it to you, convener, and the clerks to establish the sources of other interpretations. I know that the Commission for Racial Equality, for example, has an idea of how broad any interpretation of section L2 should be.

We are trying to achieve an end with the bill, which is fair enough because we are all reasonable people. The amendment would have tested Parliament's ability to promote equal opportunities. Peter Peacock might come to the committee with a proposal that is acceptable, but we must ensure that the committee is not sending out a signal that it accepts that Parliament is unable to promote equal opportunities. The committee would not want to sanction that.

The Convener: Nobody is suggesting that we should.

Shona Robison: I know, but we must be careful about the message that we send out. That could be communicated to Peter Peacock. I am sure that you have had on-going discussions on that with the minister, Malcolm.

Malcolm Chisholm: No, I have not.

I have no problem with what is being suggested. My main concern is that he should table an amendment in accordance with what is in column 1022. I would vote for such an amendment, which would not preclude discussion of those other matters. I can see why people would still argue in favour of another amendment, but the problem with that is that—if there was a legal wrangle—we might end up with no amendment being made.

The reality is that most members will not vote against legal advice, although some might. I accept that we must explore the legalities of the matter. I am minded to wait until we see the amendment that is lodged and then to have another informal discussion about it.

The Convener: Would you like the committee to write to the minister in advance?

Malcolm Chisholm: We could do that, but I think that the minister will know how the committee feels. We should, however, ask him to provide the wording of the amendment as soon as possible. I am encouraged by what he has said, but we should to some extent reserve our position on the matter.

The Convener: We need time to lodge an amendment, so we would need to see the wording of an Executive amendment while there was still time for the committee to meet and decide on an alternative amendment.

Malcolm Chisholm: I would be very concerned if the minister retreated to the narrower definition that is in column 1023.

The Convener: We will press the minister for that wording.

That is all that we will say about the matter just now. It might be necessary to call a meeting at short notice. Parliament might still be meeting in Glasgow when we find out the wording of the

amendment, in which case we will try to get as many members of the committee together as possible.

14:40

Meeting continued in private until 15:00.

Item 5 will be taken in private.

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