

EQUAL OPPORTUNITIES COMMITTEE

Tuesday 28 October 2003
(Morning)

Session 2

£5.00

© Parliamentary copyright. Scottish Parliamentary Corporate Body 2003.

Applications for reproduction should be made in writing to the Licensing Division,
Her Majesty's Stationery Office, St Clements House, 2-16 Colegate, Norwich NR3 1BQ
Fax 01603 723000, which is administering the copyright on behalf of the Scottish Parliamentary Corporate
Body.

Produced and published in Scotland on behalf of the Scottish Parliamentary Corporate Body by The
Stationery Office Ltd.

Her Majesty's Stationery Office is independent of and separate from the company now
trading as The Stationery Office Ltd, which is responsible for printing and publishing
Scottish Parliamentary Corporate Body publications.

CONTENTS

Tuesday 28 October 2003

Col.

BUDGET PROCESS 2004-05	103
CIVIL PARTNERSHIP REGISTRATION	116

EQUAL OPPORTUNITIES COMMITTEE

5th Meeting 2003, Session 2

CONVENER

*Cathy Peattie (Falkirk East) (Lab)

DEPUTY CONVENER

*Mrs Margaret Smith (Edinburgh West) (LD)

COMMITTEE MEMBERS

*Shiona Baird (North East Scotland) (Green)

*Frances Curran (West of Scotland) (SSP)

*Marlyn Glen (North East Scotland) (Lab)

*Marilyn Livingstone (Kirkcaldy) (Lab)

Campbell Martin (West of Scotland) (SNP)

*Mrs Nanette Milne (North East Scotland) (Con)

Elaine Smith (Coatbridge and Chryston) (Lab)

COMMITTEE SUBSTITUTES

Jackie Baillie (Dumbarton) (Lab)

*Patrick Harvie (Glasgow) (Green)

Carolyn Leckie (Central Scotland) (SSP)

Tricia Marwick (Mid Scotland and Fife) (SNP)

Mr Jamie McGrigor (Highlands and Islands) (Con)

*attended

THE FOLLOWING GAVE EVIDENCE:

Hilary Campbell (Couple Counselling Scotland)

Maria Clark (Outright Scotland)

Ms Margaret Curran (Minister for Communities)

Ewa Hibbert (Scottish Executive Development Department)

Tim Hopkins (Equality Network)

Ali Jarvis (Stonewall Scotland)

Helen Mansbridge (Scottish Executive Finance and Central Services Department)

Matthew Middler (LGBT Youth Scotland)

Sue Robertson (Lesbian Mothers Scotland)

Yvonne Strachan (Scottish Executive Development Department)

CLERK TO THE COMMITTEE

Jim Johnston

SENIOR ASSISTANT CLERK

Ruth Cooper

ASSISTANT CLERK

Roy McMahon

LOCATION

Committee Room 1

Scottish Parliament

Equal Opportunities Committee

Tuesday 28 October 2003

(Morning)

[THE CONVENER *opened the meeting at 10:02*]

Budget Process 2004-05

The Convener (Cathy Peattie): Good morning and welcome to the fifth meeting of the Equal Opportunities Committee in the second session of the Parliament. This morning we will take evidence on the budget process and on civil partnership registration. I have received apologies from Elaine Smith.

I welcome Margaret Curran, the Minister for Communities, and Yvonne Strachan, Ewa Hibbert and Helen Mansbridge from the Executive. I invite the minister to make a statement before we proceed to members' questions.

The Minister for Communities (Ms Margaret Curran): I am pleased to be back at the Equal Opportunities Committee and I look forward to our continuing discussions. This is a useful opportunity to talk about the 2004-05 budget process. I am sure that the committee is aware that how equality relates to the budget is a huge subject. However, I will limit myself to a brief description of the improvements that we have made this year to the way in which the budget documents and, indeed, the budget process, deal with equality issues.

Members will be aware that this year's budget process is a bit different from that of previous years. Last May's elections meant that we did not publish the annual expenditure report, so this is the first opportunity that we have had together to scrutinise our spending plans for 2004-05.

We have made several changes to this year's draft budget. In so doing, we have taken account of opinions from a number of sources, including the Finance Committee and the equality proofing budget and policy advisory group—if you can think of a shorter name for the group, I would be very grateful. I will talk about the group later.

I am sure that those who were members in the previous session will know that the budget documents made few references to equality in previous years. We and the committee expressed concern about that, so last year the annual expenditure report highlighted the equality work that is being undertaken in housing and education. That was the first step forward, but this year we

have taken a significant step forward by including in each main portfolio additional information about spending and work on equality.

More than 100 projects and areas of work have been identified. They range from major instances of spending, such as the £106 million on concessionary fares for pensioners and disabled people, to smaller projects, such as the £55,000 Scottish Executive placement scheme for students who are from minority ethnic communities or who have disabilities.

The work of the equality proofing budget and policy advisory group is mentioned in the introduction to the draft budget document. I put on record our thanks for the work of that group, which has been extremely helpful to us as we have developed the agenda and engaged in its detail. The group was formerly known as the equality proofing budget advisory group—we are not exactly experts at giving groups jazzy titles—and it was renamed to make a better link between budget and policy. We have talked about that before, because we need to get it right.

We are working with partners to improve the presentation of information about equality issues in the Executive's budget documents; to raise awareness about the need to mainstream equalities in policies and budgets; and to investigate ways of monitoring Executive expenditure on different groups. Members of the advisory group include officials from the Executive's equality unit and from its Finance and Central Services Department and representatives from the Scottish women's budget group, the Equality Network, the Equal Opportunities Commission and the Commission for Racial Equality. Professor Arthur Midwinter, who is the Finance Committee's adviser, is an observer of the group.

I can see that the convener is trying to hurry me up. To cut a long story short, we are trying to improve and to make sharper and more detailed the information that we provide, so that people can see the range of equality work. We could never include all the information that is requested; the amount of information makes that impossible. As some people have said, some good work that is being done might not be highlighted in the budget documents. We want to manage that, to highlight information and to give people the opportunity to hold us to account for the work that we do on equality. I will shut up there.

The Convener: There has clearly been considerable improvement in the inclusion of equalities in the budget. Several witnesses have expressed to the committee their support for the equality statements in this year's budget. How will those statements be maintained and developed in future budgets?

Ms Margaret Curran: I will start the reply to that question, but Yvonne Strachan has led the officials' detailed work. Along with our key partners in the equality and voluntary sectors, the officials have done a good job. We want to provide clear and sharp information in the budget documents without overloading the system. Another aim is to signpost more detailed information about particular spends. Our intention is partly to deepen the link between policy and budget. If people focus only on where the money is and what that money means, they always end up asking questions about policy. We need to be clear about the equality policy and how it is held to account and we need to link that with the budget. To be honest, there is more work to do.

Yvonne Strachan (Scottish Executive Development Department): The minister explained well the agenda for the equality proofing budget and policy advisory group. Its intention is to obtain progress year on year and to consider presentation and what else needs to be done to enable the Executive to reflect properly to the public how our spend works. The minister outlined the agenda. It is for the advisory group and the Executive to make that agenda happen.

The Convener: Some groups have felt that some subjects that were included under statements relating to closing the opportunity gap might have been better placed in the equality statements. Could you clarify the remit of the statements and how the Executive aims to achieve a consistent approach from departments?

Ms Margaret Curran: We are aware of the committee's evidence on that and we saw that some departments included equality issues more as social inclusion or closing the opportunity gap matters. In the coming year, we intend to ensure consistent information across all the headings.

Marlyn Glen (North East Scotland) (Lab): In its recent response to research conducted by Dr Ailsa McKay of the equality proofing budget and policy advisory group, the Executive stated its commitment to

"focussing effort on improving the linkage between expenditure and the outcomes the expenditure delivers".

That was also supported in the Executive's equality annual report, in which the Executive stated its commitment to developing more outcome-based targets. Can you detail the progress that the Executive has made in that area?

Ms Margaret Curran: Like most people, we strongly support the connection between spend and outcomes. Of course, simply wanting that connection to be made does not mean that, when one looks at how expenditure is disaggregated across a range of organisations, it will be easy to

make it. The committee will be aware that there has been a public debate about targeting. It is easy to set a target, but it is important to be open about how one tries to meet that target and, if it is not met, the reasons for not meeting it, which might be good reasons, such as changing circumstances. We need to be open about the process of getting to outcomes as we move towards making outcome expenditure part of the focus of our work. Yvonne Strachan can detail the progress that we are making in that regard.

Yvonne Strachan: As part of the 2002 spending review process, we established the outcome and output targets to try better to link expenditure to results. In the 2004 spending review, the intention is to improve on the targets that we set and to make the link between expenditure and outcomes easier to see. We are working on a programme of progress in that area.

Marlyn Glen: The Disability Rights Commission stated in evidence that there are

"quite a number of positive aspects under many of the budget heads where it is clear that equality has been considered from the initial targets through to the detail of the expenditure."

However, it added:

"For one or two budget heads, although they have top-level equality statements, it is more difficult to work out where the detailed expenditure is." —[*Official Report, Equal Opportunities Committee*, 7 October 2003; c 68-69.]

It pointed out that the education portfolio is a good example of linking targets to expenditure but felt that the Justice Department, for example, did not provide strong links between objectives and top-level targets. What are your views on that?

Ms Margaret Curran: That sort of evidence is compelling and we must give more attention to it. In developing the equality strategy, we have tried to be strategic in the first instance. We have developed work in relation to the housing and education pilots with a view to rolling out initiatives across the Executive. If the committee is telling us that we need to pay greater attention to the Justice Department, I would refer that message to the relevant groups to see what they might do to dig further into the outcome-related activity. We will consider the question in more detail and ensure that it remains part of our dialogue.

Marlyn Glen: That is helpful. I realise that there is a limit to the amount of information that you can present and that you must be careful in that regard. However, another committee suggested that, if the budget information were to be presented on a programme basis rather than only on a departmental basis, that might point it up a bit more.

Ms Margaret Curran: That is interesting. I think that we moved from a programme basis to a

portfolio basis. We were trying to arrange the budget in a way that would allow ministers to manage the money for which they were responsible.

Helen Mansbridge: (Scottish Executive Finance and Central Services Department): Historically, the budget documents were presented on a departmental basis. They have been moved to a portfolio basis to show more clearly how the money is being spent. Marilyn Glen's point is perhaps to do with the level of detail involved. Given that a lot of our money goes out in blocks to local government, for example, it is quite hard to follow the money using the degree of detail that she is looking for. We are trying to find ways to improve the level of detail that we use, but that work is on-going.

Ms Margaret Curran: Do you mean, Marilyn, that you want us to present the figures in terms of, for example, expenditure in relation to disability as opposed to on a departmental basis?

Marilyn Glen: Yes. However, I understand that we always want more detail and that there is a limit to the level of detail that you can present us with.

Marilyn Livingstone (Kirkcaldy) (Lab): The Disability Rights Commission would like the budget to be made available in various formats to suit disabled people and the Commission for Racial Equality would like translations of the budget to be made available. What are your views on that?

Ms Margaret Curran: We are sympathetic to that in principle. We have had discussions about it in the past. We would not produce automatically every document in Braille or in every language, because most people accept that that might not be the best use of resources. Should anyone request a translation, we would do our utmost to provide it.

10:15

Yvonne Strachan: There has not been a demand for the budget document to be made available in alternative formats, so the issue has not arisen. Marilyn Livingstone asks about policy on making sure that information is readily available. As the minister said, the Executive's view is that, if there is a demand, we will have to respond to it.

The Executive has to bear in mind the relationship between demand and public funding. The budget document is technical and much of it relates to figures. We are trying to strike a balance in providing information to the public about a technical area and in being accessible. Although we have not received a demand for translation, the Executive would have to consider what to do should such a demand be made.

Marilyn Livingstone: An important part of mainstreaming and equality proofing is consulting users on their views about the impact of policy. How confident is the Executive that the views of key stakeholders have been incorporated into target setting—which is important—in this year's draft budget and that the outcomes can be assessed in conjunction with those groups?

Ms Margaret Curran: I am confident that we try. I cannot say that we have got everything perfectly right and I am sure the stakeholders would not say that, either. As Yvonne Strachan said, we must strike a balance. Different groups will say different things to us and there are often tensions around what they ask us to include, particularly given that we have to set priorities. We make strenuous efforts to work with key stakeholders and the advisory group does that effectively. A number of the equality groups would say that there is now a forum for discussion.

As members know, we have done a lot of work on gender issues in particular. The momentum to do that in the first session was great and we have kept it up. We hope to continue with that work as best we can within individual portfolios. However, things can be hard in our business and the fact that we consult people does not mean that we reach consensus—consensus is not always the right conclusion in any event. We are initiating processes that are thorough and engaging, but I acknowledge that they are imperfect.

Yvonne Strachan: The only point that I would add to the minister's comment is that part of the equality strategy has been to ensure that there is an effective process of consultation and dialogue with different communities across the equality spectrum. The Executive has attempted and encouraged that in its different policy areas. The process is improving and, as a result of that dialogue, we expect better engagement around the setting of priorities and the determining of objectives and targets.

Marilyn Livingstone: Is the advisory group comprehensive? Does it include all the key stakeholders?

Yvonne Strachan: The group covers the main equality groups and those that had a particular interest in equality proofing the budget. To that extent, those players have been involved. There is a huge range of interests across the equality agenda and those interests cannot all be part of an advisory group. However, the way in which equality work is undertaken allows for a lot of dialogue and networking and all the organisations pride themselves on their ability to discuss matters among their memberships. Therefore, we hope that what they bring to the Executive has been debated and considered by a group wider than just the individuals who participate in our working group.

Ewa Hibbert (Scottish Executive Development Department): Would it be helpful if I read out the current membership of the group?

Marilyn Livingstone: Yes, thank you.

Ewa Hibbert: There are representatives from the Scottish Executive equality unit—usually Yvonne Strachan and I—and Helen Mansbridge and another colleague from the Finance and Central Services Department usually attend meetings. The other members are Ailsa McKay and Kay Simpson from the Scottish women's budget group, Tim Hopkins from the Equality Network, Rona Fitzgerald from the Equal Opportunities Commission and Mick Conboy from the Commission for Racial Equality. As the minister mentioned, Professor Arthur Midwinter, the adviser to the Finance Committee, also sits on the group as an observer. We had a representative from the Disability Rights Commission, but at the moment that organisation is not able to send someone to attend. The open invitation stands—anyone who expresses an interest in that area of work is welcome to participate in the group.

Shiona Baird (North East Scotland) (Green): Although the Scottish women's budget group welcomed the progress made in relation to equality statements, it expressed disappointment at the lack of disaggregated baseline information in the budget. For example, it welcomed the inclusion of spending to address domestic abuse, but would have wished

“to see an indication of the prevalence of domestic violence and of how the funding aims to address that in the objectives and targets.”—[*Official Report, Equal Opportunities Committee*, 7 October 2003; c 63.]

How would you respond to those concerns?

Ms Margaret Curran: In principle, I can understand why people would want the detail of that information, but whether we should put that in the budget is a challenging issue for us. Information on a whole range of spend on tackling domestic abuse, whether through greater refuge provision or greater awareness raising, for example, is quite detailed. Although I think that such information should be publicly available, it could be made available elsewhere. That is what I meant by signposting. If we provided that level of detail in every area, the budget document would be huge and cumbersome. If the budget became too cumbersome, that would not be helpful in terms of accountability. We should indicate to the people who want such disaggregated information where they can find it.

There will be areas on which we do not have the level of disaggregated information that we need. We need to keep pushing on that. Although it can be difficult to disaggregate the information,

sometimes it is not as difficult as one might imagine. We could do it on domestic abuse, for example, because of the range of work that we are doing in that area. There is a separate group in that area, which could represent one way of indicating spend on domestic abuse. I can understand why organisations would want that information. There must be ways in which we could provide such information, but I am just not sure that including it in the budget would always be the right way.

Shiona Baird: The Scottish women's budget group, the Equality Network and the Commission for Racial Equality all emphasised the need to conduct impact assessments to examine the implications of the Executive's policy. How does the Executive use equality impact assessments to examine the impact of its policies and the respective budget allocations?

Ms Margaret Curran: In all honesty, we do not use equality impact assessments as much as we want to, because we do not really have the tools to help us to do that. That is now on the agenda of the equality proofing budget and policy advisory group—we need to get a different name for the group, so that I can remember it more easily. The group's work will enable us to consider the impact assessment on various groups.

Conducting impact assessments is a sophisticated exercise. We have decided to do that properly, rather than to make a token effort, which we could have done a couple of years ago. That would have produced headline figures, but I would have been the first to say that that was not enough. We have gone for a more detailed approach, which the relevant networks and groups support. From assessing the experience elsewhere, I think that we have caught up with countries such as Canada and New Zealand, which were ahead of us. Am I right to say that, in opting for that level of detail, Scotland is up there with other countries?

Yvonne Strachan: Yes.

Frances Curran (West of Scotland) (SSP): How confident are you that this year's budget is a step forward in creating a standard level of mainstreaming equality in all the departments?

Ms Margaret Curran: I am confident that it is a step forward. We are certainly trying our best to be clear about what is happening out there and to tell people about the information that we are providing, so that we can allow them to ask questions about it. It is also proper that we are using the budget as a tool to ensure that equality is mainstreamed. We can all say that we have a general commitment to equality—all portfolios in the Executive, as well as officials, genuinely share that commitment. However, if one examines the

details, one sometimes finds that that commitment gets a bit forgotten. The budget allows us to examine the detail and to find out what is actually going on. This year's budget is a step forward, but there is still more to be done.

Frances Curran: I notice that the spend for 2004-05 and 2005-06 is static. Is there a rationale for the amount that is going to be spent on mainstreaming equality?

Ms Margaret Curran: Do you mean the equality budget allocation?

Frances Curran: Yes.

Ms Margaret Curran: In the year before this new session, the equality budget increased by something like 500 per cent. Before then, the budget was low—the theory was that we should not need a big equality budget because the equality spend was in the big departments. No matter what I would do as equalities minister, the health or education budgets should be getting spent on equality anyway. There was an argument that we should keep the equality unit's budgets small, because most of the work was going on elsewhere. However, we still argued with the Minister for Finance and Public Services about the need to increase the budget. I think that it increased from £1 million to £5 million, so we have more money, which explains why it is at that level just now.

Frances Curran: Will you continue to support existing projects over a number of years, rather than introduce new projects?

Ms Margaret Curran: We are introducing new projects because we have just gone from having a budget of £1 million to having one of £5 million. I do not know where we will take that. We will need to see how the money is spent and what we achieve from it. I do not want to get into a situation where we are seen as the ones who spend money on equality. That needs to be done by all departments across the board, which is why we have taken the approach of making sure that every department has responsibility for spending on equality. If I have not answered your question properly, you can come back to me.

Margaret Smith (Edinburgh West) (LD): At the committee's last meeting, we heard evidence from John Curtice on the National Centre for Social Research's findings on attitudes towards discrimination in Scotland. I think that we all agree that that was an important piece of work, which was commissioned by the Executive. Does the Executive plan to use the findings of that research and, if so, how might that impact on next year's budget? In particular, the report states:

"Overall the results indicate that discriminatory attitudes are more likely to be expressed in respect of gay men and lesbians and minority ethnic groups than they are either women or disabled people."

I take your point that things are difficult because we have to set priorities, but that was the clear message that came out of the study. Does the Executive plan to make use of the research to determine how it spends its budget next year?

Ms Margaret Curran: I can honestly say yes to that. The research is interesting in relation to how we develop policy. Spend should follow policy anyway, so the answer to the question is yes.

On the specific groups that you highlight, when we deal with equality arguments—and I know that you would agree—the most invidious thing that we can do is to set equality groups against one another, so that they say, "I'm more oppressed than you are." That just misses the point, in relation to the big arguments that we need to have. We would not want to get into that. Nonetheless, the report tells us some interesting, penetrating and searching things, which we will think about as time goes on.

Particularly in relation to gay issues, we do quite a lot of work with the equality sector. There is work to be developed. At a meeting with the Equality Network yesterday, we agreed to meet separately to develop that agenda a bit more. There is a good base for work that is going on at the moment, but there is a need to develop the agenda, particularly around bullying in schools and bullying of young people. We need to start moving on the striking research on the matter that was conducted a couple of years ago. We may have to sit round a table and discuss how we take that forward.

In part, the National Centre for Social Research study helps us by giving us insights into and justification for our work. It gives us a steer on where we need to go, but it is not the only thing that will do that. The Parliament's view is an obvious influence, such as the debate that we had on equality, during which that research was mentioned. The research provides a steer for the kinds of issues that we need to pursue.

Margaret Smith: One of the issues that came out of the research was that the groups that were more likely to be discriminated against were the very groups on which people felt that too much money and effort had been spent to fight discrimination. It is a chicken-and-egg situation. The question of justification is important.

I smiled when the minister mentioned bullying, as I was wondering whether she had seen a copy of our questions. My next question is more specifically about the budget. The Equality Network has highlighted the anti-bullying work that should be done in schools. The anti-bullying network was given £100,000 in the 2003-04 budget, which was specifically meant to be for consideration of such matters as homophobic and racist bullying. There is evidence to suggest that

work on such matters has not been done—for example, the anti-bullying network's website still refers to a pre-repeal scenario in relation to section 2A. What are you doing about that? Money seems to have been made available for an issue that should be tackled. You mentioned targeting, outputs and monitoring. We all agree that such work must be done. What is the department doing to ensure that money is being spent on what it should be spent on?

10:30

Ms Margaret Curran: To be honest, I do not know about the specifics of the matter, so I will need to come back to you about it. I talked to the Equality Network yesterday about the subject, which is a coincidence. I think that Stonewall research has found that there are serious incidents in schools relating to such matters. The subject was raised with me and we agreed to consider and discuss it and find out what we could do, but that was only yesterday. Can I come back to the committee on the matter? I take the point that if we say that we are doing things that relate to equality, we must ensure that the money is spent properly and that it does what we want it to do. I will pursue the matter.

Mrs Nanette Milne (North East Scotland) (Con): A number of witnesses have pointed out the impact of delegated budgets on mainstreaming equality, particularly in relation to service delivery and best value at local levels. What assurances can you offer to stakeholders that the Executive is doing all that it can to ensure that mainstreaming equality is monitored and promoted at local authority level?

Ms Margaret Curran: Obviously, there is a challenge when money is given out to a range of organisations, particularly to smaller organisations in the community. The answer to your question lies in the best-value regime. Ewa Hibbert can use the technical language for the committee.

Ewa Hibbert: The best-value regime for local authorities and a similar regime for the wider public sector set out a framework within which they should operate. The best-value principles are intended to inform and reinforce continuous improvement in the performance of public sector bodies. Local authorities and the wider public sector should deliver greater efficiency and effectiveness, but must also take into account economy and the need to comply with the requirements of equal opportunities legislation.

The Local Government in Scotland Act 2003 introduced a statutory duty of best value on local authorities and the Accounts Commission for Scotland is scheduled to introduce a new framework for auditing best value in local

government from November this year. We have issued guidance to local authorities about how they should show compliance with their best-value duties. For example, the guidance says that to comply with the equal pay legislation, local authorities should conduct equal pay reviews of their staff.

The best-value regime has been rolled out across the wider public sector from the beginning of 2002 and extended to Executive agencies, Executive non-departmental public bodies, a range of national health service bodies and the Scottish Executive itself. Under the regime, accountable officers have a duty of best value under the terms of the accountable officer memoranda in the Scottish public sector finance manual—I am using some rather technical terms.

Ms Margaret Curran: Nanette Milne wanted an answer, did she not?

Ewa Hibbert: The same principles that are applied towards local authorities under their statutory duties will be applied to accountable officers of other public sector organisations. Therefore, they must ensure that they have arrangements in place to secure continuous improvement in performance while maintaining an appropriate balance between quality and cost. They must also have regard to economy, efficiency, effectiveness and equal opportunities requirements and must contribute to the achievement of sustainable development.

I hope that that describes the way in which best value will roll out equal opportunities requirements in the wider public sector. There will be an obligation to report on how all those bodies are meeting those requirements.

Mrs Milne: Are they reporting to the Auditor General? Who is the ultimate monitor?

Ewa Hibbert: There are slightly different regimes. The Accounts Commission for Scotland will investigate whether local authorities are fulfilling their duties. Accountable officers are monitored by Audit Scotland.

Ms Margaret Curran: Officials are wonderful, are they not?

The Convener: We have campaigned for a long time to get best value to work in equalities, so the news is very good. I am sure that the committee will want to come back and examine those issues, but that answer was very welcome.

As there are no other questions from members, I thank the minister and her team for their evidence this morning.

Ms Margaret Curran: Thank you. We will get back to you on those things that the committee asked about.

The Convener: That would be useful.

I suspend the meeting for five minutes to give our next witnesses a chance to take their seats.

10:35

Meeting suspended.

10:41

On resuming—

Civil Partnership Registration

The Convener: I welcome Patrick Harvie to the meeting. If you want to participate by raising issues with the committee or asking questions of the witnesses, please feel free to do so.

Patrick Harvie (Glasgow) (Green): Thank you.

The Convener: I also give a warm welcome to Tim Hopkins from the Equality Network, Ali Jarvis from Stonewall Scotland and Hilary Campbell from Couple Counselling Scotland. Today we are taking evidence on civil partnership registration from several witnesses. Members have questions to ask and I remind them, if they want answers from more than one organisation, to make that clear.

Do the members of the panel agree in general with the basic principles that are outlined in the Executive's consultation to allow same-sex couples to register their partnerships in Scotland and for those partnerships to be recognised by the UK Government for reserved purposes?

Tim Hopkins (Equality Network): The quick answer is yes. We consulted lesbian, gay, bisexual and transgender people throughout Scotland over a period of two and a half years. It was clear that people felt that the solution to the big problems faced by same-sex couples and their families was to introduce civil partnership with a similar range of secular obligations, protections and rights as marriage has. That is what the Executive is proposing. Some of the details need to be examined more closely, but that is what is being proposed fundamentally and we welcome it.

Ali Jarvis (Stonewall Scotland): We, too, support the proposals. We have been working with the Westminster Government and the Scottish Parliament on considering the balance between devolved and reserved matters. Our supporter base—numbering 3,500 people throughout Scotland—is fully supportive of the proposals.

Hilary Campbell (Couple Counselling Scotland): All relationships have stresses and strains and the couples who come to us have the same issues—communication, kids, jobs and money—irrespective of their gender. All the additional stresses that same-sex couples face as a result of the lack of legal safeguards make life even more difficult for them. Therefore, we warmly welcome the proposals.

The Convener: At our meeting on 7 October, we heard about findings from the Scottish social attitudes survey that showed that discriminatory attitudes are still prevalent in respect of gay men and lesbians. Can you clarify briefly for the

committee the nature of the discrimination that is faced by same-sex couples in the absence of the proposed legislation?

Tim Hopkins: One of the major issues is couples' being treated as a single financial unit. When two people are married, they are treated as a single financial unit and are obliged to support each other. If the marriage breaks up, the court can intervene to ensure a fair division of property. When one of them dies, the spouse can inherit their property; indeed, the spouse has a right to inherit whatever is in the will, which means that a husband or wife cannot write their spouse out of a will without agreement. Furthermore, a spouse has a right to inherit free of inheritance tax. If a person in a married couple dies, the other can usually claim a survivor's pension from the dead person's pension scheme.

None of that currently applies to same-sex couples. The only way of accessing such measures is to introduce a system that would allow couples who want to enter into such a strong mutual obligation to sign up to one. That is what a civil partnership is.

However, that is just one example. I am sure that the other witnesses can give other examples.

10:45

Ali Jarvis: It is important to consider not only the legal but the social discrimination that same-sex couples face. For example, I was advised recently of a case in Oban that involved a woman who had been living with her same-sex partner for 40 years. When her partner died, she asked for time off from work and was allowed one day for the funeral. There was no recognition that she had been in a lifelong partnership and that, to all intents and purposes, it was her spouse who had died. There was no recognition of that person's bereavement or of the loss in her life. Subsequently, she suffered a breakdown and had to leave her employment because her employer did not recognise the strain she was suffering. I should say that the couple were not out—they did not feel comfortable being out. As far as the employer was concerned, it was a flatmate—a casual acquaintance—who had died.

Hilary Campbell: I underline what Tim Hopkins and Ali Jarvis have said. There is a myth that lesbian and gay people do not have long-term relationships. That is absolute garbage. The majority of those relationships are long-term. The proposed legislation presents a great opportunity to resolve the additional stresses and strains that such relationships are subject to.

Mrs Milne: To what extent do you believe that legislation that is enacted on the basis of the proposals from the UK Government and the

Scottish Executive will be effective in removing discrimination from same-sex couples?

Ali Jarvis: It will be largely effective with regard to civil partnerships and the recognition of same-sex relationships. Although we still need to recognise that social attitudes sometimes take a little bit of time to catch up, legislation is without doubt the gateway to social change. We believe that the proposals will cover about 98 per cent of the problems that people in same-sex couples face and have highlighted to us.

Tim Hopkins: The proposals as they stand are not complete. For example, certain issues—in particular, parenting issues in Scotland, adoption and fostering roles—are being dealt with through separate consultation. Otherwise, I agree completely with Ali Jarvis that the proposals cover and will solve the practical problems that I mentioned.

The proposals will also have an important symbolic effect. For the first time, individuals will be able to make a public declaration of their commitment to each other. We need only consider how important marriage is to mixed-sex couples to appreciate the importance of that measure. Such an ability will both change the way that people feel about themselves and start to change public attitudes. However, the latter will take time.

Hilary Campbell: We see the proposed legislation as an enabling measure. People make choices about their relationships. The ability to choose to make a public commitment will become available, which will be a great step forward.

Mrs Milne: The Scottish Executive's consultation paper states that civil partnership registration for same-sex couples will be introduced in Scotland in the event that the UK Government introduces such legislation. Such a bill has failed twice at UK level. If the third attempt fails at Westminster, what would you propose for Scotland?

Tim Hopkins: You are right. Two previous Westminster bills on civil partnership were introduced by back benchers without Government support. As a result, it is not really surprising that they failed. In any event, I think that those bills were more about raising the issue rather than serious attempts to change the law.

We do not know yet whether a bill will be introduced at Westminster this year, but perhaps we will find out in a month's time when we hear the Queen's speech. I very much hope that that will happen. If it does not happen, we have a problem. Although something like two thirds of the issues are devolved, important matters such as tax, social security and pensions law are reserved. That said, if a bill is not introduced at Westminster, there is no reason for the Scottish Parliament not

to go ahead with a bill such as the one that Patrick Harvie has proposed, which deals with the devolved aspects of the matter. I hope that that will not be necessary, because I very much hope that a bill will be introduced at Westminster this coming session.

Hilary Campbell: We hope that, on this matter, the Scottish Parliament will be as leading edge as it usually is.

Shiona Baird: The Executive has stated that the Scottish Parliament could legislate for a scheme that is open to mixed-sex couples and, perhaps, household companions. However, it decided against taking that approach because it would have gone much further than the UK Government's proposals and that could have proved problematic because the reserved aspects would not have been recognised by Westminster. What are the panel's views on that?

Tim Hopkins: That rolls two different issues into one. The first is the issue of mixed-sex couples and civil partnership; the second is the issue of household companions. I shall deal with the second issue first.

The Scottish Executive and the UK Government agree completely, as do we, that the kind of relationship that household companions have—for example, the relationship between two elderly spinsters who have lived together for 30 years or the relationship between a man and his grandfather whom he has looked after for 20 years—is different from the kind of relationship that civil partnership is aimed at. Civil partnership is aimed at couples who live together in a relationship that is like the relationship between husband and wife. Same-sex couples are recognised as such in Scots law, in various pieces of legislation that deal with cohabiting. Civil partnership is about marriage-like relationships and, at the moment, same-sex couples cannot enter those relationships at all. That is a key issue. Something needs to be introduced to ensure that same-sex couples and their children—if they have children—get the same range of protections.

The law may need to be improved to give better protection to people such as two elderly spinsters sharing a household; however, that is a separate issue. We would have no problem with that issue being examined or with consultation on it being undertaken. Nonetheless, it is a completely separate issue and should be progressed separately. It certainly should not be used as an excuse to hold up dealing with the very real problem that is faced by committed same-sex couples.

In our consultation, we met mixed-sex couples who said that they did not want to marry but that they would want to enter a civil partnership. They were people who were living together as husband

and wife but who, for a number of reasons, did not want to marry. At the conference about this subject, last year, I met a woman who is a member of the House of Lords. She has been married, but her husband died some years previously and she is now in a relationship with another man. She does not want to marry him, as she sees her marriage as a unique, lifelong commitment; however, sadly, her husband died. She would like to access the package of protections that would come with civil partnership, but not by marrying her partner.

There are many such reasons why a minority of mixed-sex couples would want to enter a civil partnership, and that is one reason why we think that civil partnership should be open to mixed-sex couples. Another reason is that limiting civil partnership to same-sex couples would package same-sex relationships into a different kind of thing from mixed-sex relationships. That would set up a system that would put mixed-sex relationships in one place and same-sex relationships in another place, with the two forever different in law.

A third reason for allowing mixed-sex couples to enter civil partnership relates to transsexual people. As you may know, another piece of legislation is being produced at Westminster that will, for the first time, allow transsexual people to have their true gender recognised in law—that is, their brain gender as opposed to their body gender. That will involve transsexual people registering their real gender, at which point their legal gender will change from what it was on their birth certificate to what it really is. If civil partnership was open only to same-sex couples, there would be a problem for transsexual people who entered a civil partnership in their legal gender before they had registered their true gender. When they went through the registration process, they would have to dissolve the civil partnership, as civil partnerships would be allowed only for same-sex couples and the relationship would have become a mixed-sex relationship, legally, although it would be the same relationship.

For those reasons, we feel that civil partnership should be open to mixed-sex couples as well. The UK Government strongly opposes that, and it will not happen in the Westminster bill. Nevertheless, the Scottish Parliament could consider extending civil partnership to mixed-sex couples in devolved areas, and we would like the Parliament and the Scottish Executive to look into that, in time—which means probably in the context of the family law bill that will be introduced in perhaps a year's time. The UK Government clearly does not agree with the principle of extending civil partnership to same-sex couples; therefore, that will not happen through the Westminster bill.

I am sorry that I have spoken so long about that.

The Convener: That was helpful. Thank you.

Hilary Campbell: We, too, would like civil partnership to be extended to mixed-sex couples. The census showed a significant increase in the number of cohabiting couples in Scotland. We work with couples who are in intimate personal relationships, and we feel that a brother and sister living together is a separate issue. If the legislation covers just same-sex couples, I agree with Tim Hopkins that that would somehow see them as an anomaly. We see same-sex couples as mainstream. We would like the provisions of the bill to be enacted across the board.

Ali Jarvis: The only thing that I would add is that at this stage our view is one of focus and priority. At the moment, the greatest disadvantage is faced by same-sex couples who have no options whatever. We could draw a matrix to show the opportunities that opposite-sex couples have to cohabit, in which case they get a certain set of rights and responsibilities, or to marry, in which case they get a full package of rights and responsibilities.

The same matrix could be used to show that same-sex couples can cohabit, in which case they get a slightly more limited set of rights and responsibilities, but that they do not have the option of making a formal, public, long-term commitment, with rights and responsibilities, that is fully recognised. That is our priority.

I concur with Tim Hopkins and Hilary Campbell that many opposite-sex couples are choosing not to marry because of different social factors. It is important that that choice is recognised. We do not have a particular view on whether the change to the law should be made as part of the civil partnership bill that is currently under discussion or whether it would sit better under the provisions on family law that are to be introduced at a later date.

Marlyn Glen: The view has been expressed that extending similar rights to registered same-sex couples to those that are held by married couples would undermine marriage. How do you respond to that view?

Tim Hopkins: If the two gay men or two lesbians who live at number 24 enter into a civil partnership, the fact is that that has no effect on the married couple who live at number 26. The fact that same-sex couples can enter a civil partnership will not affect married couples' marriages. It would also not affect the institution of marriage. If anything, it points up the importance of marriage for people. Same-sex couples are, in effect, saying, "We also have these kinds of relationship. We want our relationship to be recognised in the same way that mixed-sex marriages are recognised."

Ali Jarvis: Anything that gives couples the opportunity to recognise that stability and commitment are important social factors can only enhance all the different social structures that enable stability and commitment to happen—whether that be civil partnership or marriage. I see a more positive knock-on benefit between the two. I do not believe that one will undermine the other.

Hilary Campbell: We do not think that it would undermine marriage at all. We respect the choices of all the couples who come to us—whatever form their relationship takes.

Marlyn Glen: It is helpful to have that put on the record. At its meeting on 23 September, the Equal Opportunities Committee expressed concern about the press statement that was issued by the Minister for Justice on 10 September, in which she spoke about strong and stable families and said

"the pillar around which such families are built is marriage."

The committee is concerned that that statement marks a departure from section 35(1)(a) of the Ethical Standards in Public Life etc (Scotland) Act 2000. The act refers to

"the value of stable family life in a child's development".

That is the sort of terminology that emerged from the vigorous discussions during the section 2A debate. What are the panel's views on the minister's use of that terminology in relation to civil partnership registration?

Ali Jarvis: We were very uncomfortable with it and wrote to put that on the record. I return to the point that Hilary Campbell made about choice and respect. We need to recognise that different people choose different ways to formalise their relationships. If we start to place a hierarchy on what is good and what is less good, we will do a disservice to all the people of Scotland, not just to single-sex couples or opposite-sex couples who choose not to marry.

Hilary Campbell: What is really important is the quality of the relationship. People need to live in loving, happy families in which the relationships are good. We do not have any views on the labels that society puts on those relationships.

Tim Hopkins: I have nothing to add.

Margaret Smith: Under paragraph 5.4 in the consultation document, the Executive states a belief that same-sex couples in Scotland registering their partnership should have access to

"a comprehensive package of rights and responsibilities in devolved areas that largely mirrors those available to civil registered partners in England and Wales."

Does the panel have any comments on that belief as a statement of principle? Are you satisfied that it will ensure access to a suitable range of rights and responsibilities? I am

particularly interested in hearing your comments about some of the omissions in the consultation paper; they include devolved areas such as tenancy succession, domestic violence protection, the law of evidence, sexual offences law and joint assessment for legal aid entitlement.

The paper from the Equality Network covers all those issues. There are some discrepancies between Scots and English law, which the paper highlights when it talks about paragraphs 6.26 to 6.29 of the consultation document. I think that you have made the Executive aware of those discrepancies. What was the Executive's response?

11:00

Tim Hopkins: The statement in paragraph 5.4 of the consultation document is slightly indirect. What is being proposed for England and Wales and for Scotland is a civil partnership that mirrors the secular parts of civil marriage—there is an indirect statement that we will mirror what is done in England and Wales. That raises the danger that we might accidentally import some parts of English law. As we say in our submission, some mistakes—to do with the way in which a civil partnership would be dissolved—were made when the consultation document was drawn up. One or two aspects of divorce law south of the border have been imported into the document but they do not apply to divorce law in Scotland. Rather paradoxically, they would make dissolving a civil partnership in Scotland harder than dissolving a marriage. That is not the policy intention, which is that the two types of dissolution should work in the same way. We have pointed that out to the Executive and I get the impression that it was a mistake rather than a deliberate policy decision. That is good.

In our submission, we mention a couple of issues that have been missed out from the consultation, such as protection from domestic violence, which is important. The same protection should be available to civil partners and their families as is available to married couples and their families. Another important issue is the law of evidence. Both those issues are mentioned in the consultation document for England and Wales, but they are not mentioned in chapter 6 of the Scottish consultation document. Again, my guess is that they have been left out accidentally. I cannot see any policy reason why those measures should be enacted in England and Wales but not in Scotland. We have had no indication—from anything said by the Executive or anybody else—of any plan to open up differences between the way that the measures to be introduced will affect civil partners and the way that the secular aspects of marriage will be covered. I hope that all those omissions will

be put right as we move towards consideration of the actual legislation.

Ali Jarvis: I endorse all that Tim Hopkins has said. We have a scrutiny opportunity in Scotland. We have to acknowledge that some of the proposals have been made with a degree of haste. They may not have as much foundation as would have been desired. At the beginning of next year, this committee, or perhaps the justice committees, will have the opportunity to conduct effective scrutiny. The committee could consider not only whether the proposals in Scotland match the proposals in England and Wales but whether, in some areas, we can be better. There is no reason why we cannot. Scrutiny is not only about checking that the same stuff is there but about asking whether anything is missing. Some things have slipped through the net, which may be simply because of the process. However, checking whether anything should be there but is not is as important as checking whether our standards are the same as those in England and Wales.

Hilary Campbell: I agree with that.

Margaret Smith: You have touched on the dissolution of partnerships. The Executive states that its outline proposals for the dissolution of civil registered partnerships are based on civil arrangements for divorce and would be based on Scots law. Grounds for dissolution include unreasonable behaviour and periods of separation, which, currently, are two years with consent and five years without consent. What are your views on that?

The family law bill may reduce the period with consent to one year. Should we legislate now for one year with consent, or are you happy for the period to match that for secular marriage in Scots law before revisiting the issue in the family law bill?

Tim Hopkins: When we consulted, there was a feeling that one year was the right length of time for obtaining a dissolution as long as there was nothing such as domestic abuse, in which case a dissolution could be immediate on the ground of behaviour. We are talking about a dissolution sought by both partners after a period of non-cohabitation; people felt that one year was the right period. In divorce law, the rule is currently two years. The Scottish Executive proposes reducing the period to one year in the proposed family law bill next year. However, I understand that it wants to consult on its proposals in the new year.

We think that it would be a mistake to pre-empt that consultation on the family law bill and the debate that will follow. The right thing to do now is to mirror the current rules for divorce—two years non-cohabitation with agreement—and reassess

that during and after the debate on the family law bill proposals. At that point, if the periods are changed for divorce, we would expect them to be changed for civil partnership at the same time.

Ali Jarvis: We concur. Tim Hopkins spoke earlier about the creation of a separate state and a separate identity that applies to only one set of people in Scotland. The quicker the development of civil registered partnerships, which could become a strand of Scots family law and could be treated alongside other elements of Scots family law, the quicker we will move to a mainstreamed environment. We are not looking to pre-empt the family law bill, but we are looking for civil partnerships to be treated alongside other aspects of Scots family law.

Hilary Campbell: We are obviously aware that relationship breakdown is a painful process and we are keen that there is a level playing field for all couples, irrespective of the legal status of their relationship.

Tim Hopkins: It is worth adding that family law, particularly divorce law, is complex. Since the legislation was introduced, the courts have interpreted it. To introduce something that is different from existing divorce law would mean that we would have to go through the whole process again with the courts interpreting the new legislation. We would have two sets of complicated but different legislation. There are good, practical reasons for having both pieces of legislation work the same.

Margaret Smith: My next question is more general and is about the section on Scots family law in paragraph 6.36 of the consultation document—we probably have great screeds of Scots law covered in single paragraphs. Do you feel that the consultation document provides enough detail when it discusses, among other issues, parental responsibility and inheritance to allow you to understand the potential impacts? What are your views on that area of the proposals? If you do not think that there is enough meat on the bones, I presume that you would expect there to be the kind of scrutiny later on that you talked about earlier.

Tim Hopkins: The consultation document does two useful things: it sets out the principle that all the measures should be included for civil partnership on the same basis as for civil marriage; and it lists those measures. We have identified a small number of things that have been left off that list. However, the document does not say in detail how the measures will be implemented. The right way to implement the measures is largely to copy the legislation that exists for marriage where that is appropriate. My guess is that that is what will happen, given the time scale that would be involved in drafting brand

new legislation. Nevertheless, however carefully that is done, mistakes can be made. As we discussed earlier, it seems that there are a couple of mistakes relating to dissolution. It is important that committees, such as the Equal Opportunities Committee and one of the justice committees, have an opportunity to examine the detail of the legislation to see whether there are omissions and potential mistakes and perhaps to consult us and other interested parties before we get to the Sewel motion stage. That would allow mistakes and omissions to be put right at the earliest possible stage.

Margaret Smith: We touched on the issue of parental responsibility and you talked earlier about adoption and fostering. Are you happy that that is being dealt with separately?

Tim Hopkins: Yes. We are a long way behind England and Wales in amending adoption and fostering legislation. Fostering legislation has been different in England for a long time and adoption law was amended last year. The adoption review is taking a long time, but it is right not to pre-empt it in the civil partnership legislation and to let it take its course.

Ali Jarvis: In response to Margaret Smith's points about the section on Scots family law, that is where scrutiny comes in. There is also a consultation role. The consultation document has missed out, perhaps by virtue of the haste with which it was produced, on clearly communicating to people what the proposals will entail. We are talking about complex areas of law and we are supportive of further communication that helps consultees to understand the implications. If we assume that the proposals become law, there is a social need to make absolutely clear to people what they are getting into. I recollect one woman in Edinburgh telling me how it took one signature for her to get married but £15,000, three years and 24 pages of legal text for her to come out of her marriage 10 years later. A clarification of exactly what such a commitment entails is also an important part of changing the structures.

Hilary Campbell: I agree with Tim Hopkins and Ali Jarvis that this area contains a lot of technical stuff, but it is important that we do the work and sort it all out. We want to see a level playing field.

Mrs Milne: I want to ask about the formal requirements for registration of a civil partnership, including the minimum age of 16, the exclusivity of partnerships and the prohibited degrees of relationship. Will you comment on those?

Tim Hopkins: We certainly agree with all those requirements. Civil partnerships are intended for committed same-sex couples. When people enter such partnerships, they will expect them to be lifelong relationships—like marriage, things will not

always work out like that—so it is quite right that they should be exclusive.

The age of 16 is one point on which the Executive's consultation document differs from the document for England and Wales. That reflects the difference in marriage law and in other aspects of the law in Scotland. In Scotland, the age of majority or legal capacity is effectively 16. Parental responsibilities and rights to direct a child end at 16 in Scotland, so the person is in control of their own life once they reach 16. Related to that, people in Scotland can marry at 16 or 17 without parental consent. That is not the case south of the border. Quite rightly, the Executive's proposals reflect that, whereas the proposals for England and Wales reflect the fact that parental consent is needed at that age in England and Wales.

The prohibited degrees of relationship reflect the fact that civil partnerships are not about a brother and sister who share a house together. They are about a marriage-like relationship that is committed and long term. It is quite right that people should not be able to enter a civil partnership with a brother or sister.

Marilyn Livingstone: My question is about procedural issues connected with registration. This question has two or three parts, but it may be better if I just ask them together.

Does the panel have any comments on the general procedures for registration that have been outlined by the Executive, such as the giving of notice to the registrar? Do you have any views about religious representation where all parties to the partnership have agreed to that? Finally, it is proposed that registration would be a matter of public record and that payment of a fee would be required. I know that there are some concerns about that because some gay and lesbian couples like to keep their relationship secret. What impact will that have on the whole registration process? Do you have any views to add about that?

Ali Jarvis: We have had quite a lot of feedback on all three of those points. On the first point, in general we think it appropriate that the registration process reflects the registration processes for relationships that exist in current law.

The only comment that I would add to what I said earlier is that all relationships might benefit from having a little more information about the implications. I know that there has already been talk about extending information about the implications of marriage to couples who are about to undertake it. We would certainly endorse the role that a registrar could play in providing further information, such as a pack, to those who inquire about registration, so that people are absolutely sure about what they are doing. We should give people the best possible support to have a long-

lasting relationship that does not need Hilary Campbell's support at a later point.

The second part of your question was about religious involvement. Essentially, we see civil partnership registration as a secular activity in secular law. People already have their relationships blessed within religious environments but, at the moment, those cannot have a legal standing. We would recognise religious freedom. If people are in an environment where they wish a further religious element to their registration on top of that which is secular and part of the framework of Scots law, that should be a matter of personal choice for the people involved and for those who might wish to conduct that blessing or endorsement. However, we would not see that as an obligation on any religious body, as that would be inappropriate.

Will you remind me of the final part of your question?

Marilyn Livingstone: The final point was about whether partnerships could be secret.

Ali Jarvis: A couple of people who have come back to us have raised concerns about that, but equal numbers of people have said that it is absolutely right and proper that civil partnerships should be open. At the end of the day, the process will confer social rights and responsibilities on people, so our organisation believes that civil partnerships have to be a matter of public record.

However, if people are fearful about having their relationships recognised in public, we need to understand why that is. In Scotland, it is still all too often because they are fearful of neighbourhood harassment, bullying, inappropriate treatment or disadvantage. We should recognise that civil partnerships have to be public, but we must also ensure that plenty of work is done to address the reasons why people are fearful of their relationships' being made public.

11:15

Hilary Campbell: We are particularly interested in the idea of making couples aware of the implications of a long-term relationship. When a couple divorce and you ask them how long they have had the problems that led to the divorce, they say, "Oh, years and years." People tend to come to us in a moment of crisis, but there are lots of issues in a relationship that, if you think about them beforehand, you can at least recognise when they begin to be a problem. We would welcome any initiative to give people advice and support about the implications of a long-term relationship.

Tim Hopkins: I want to re-emphasise Ali Jarvis's point about privacy and the public nature of the register. It is absolutely necessary that it is a

public register, because the nature of a civil partnership is that it is something that also affects third parties—the landlord, for example, if someone rents a flat, or the pension company. Therefore, there needs to be a public record. In fact, for a lot of same-sex couples, it is important that there is a public ceremony. Ali Jarvis is quite right: we need to look at the reasons why some couples are concerned about that and deal with the underlying attitudes that cause the problems.

Frances Curran: I want to ask you about the Sewel motion. Why would anybody know what a Sewel motion is? I have to admit that, until I was elected to the Parliament, I did not know what such motions were. A Sewel motion is used when legislation comes directly from Westminster and we adopt it in the Scottish Parliament, although we have the ability to scrutinise it—I know that the panel knows that, but this meeting is being broadcast. Are you convinced by the Scottish Executive's arguments about adopting UK legislation by means of a Sewel motion rather than by enacting legislation ourselves?

Tim Hopkins: We had a lot of concerns about the possibility of the legislation being dealt with through a Sewel motion—in other words, being dealt with at Westminster. A lot of people have told us very strongly that they do not want it dealt with in that way. There are two reasons for that. A lot of people said, "We voted for the Scottish Parliament and family law is a devolved issue, so we want it dealt with at the Scottish Parliament." People are also concerned about what will happen to the legislation as it goes through Westminster, because they have seen previous Westminster legislation that affects LGBT people run into difficulties, especially in the House of Lords. We repealed section 2A in Scotland three and a half years ago, but it took until last month for the section to be repealed south of the border, largely because the House of Lords held up the process. There are also other examples.

These are people's concerns: first, that the expertise on family law is here at Holyrood, and people voted for Holyrood to deal with that issue; and, secondly, that there may be problems as the legislation goes through Westminster. We have discussed those concerns with the Scottish Executive and it has made public comments relating to them. It is crucial that the safeguards are in place to ensure that we get the right legislation, given that it is being dealt with by that route.

One of our concerns was that we would end up getting an English version of civil partnership, and it is now quite clear that the Executive is dealing with that and that the legislation will be drafted here by the Scottish Executive—in that sense, it is not being sent up by London—to match Scots law.

The consultation document makes that absolutely clear and, although there are one or two mistakes in the document, it seems quite clear that that is the policy intention. In a sense, that is our first concern dealt with.

Our second concern was that the Scottish Parliament should have enough time to be able to scrutinise the detailed legislation and take evidence on it before the Sewel motion is introduced. Issues would normally be picked up at stage 1 of a Scottish Parliament bill, when a lot of evidence is taken and scrutinised carefully by the lead committee before the stage 1 debate. The Sewel motion debate is the equivalent of the stage 1 debate in this case, because it is a debate on the general principles of the bill that is to be passed at Westminster, as well as a debate on whether the Parliament agrees to the bill's being passed at Westminster. In our view, the Equal Opportunities Committee and one of the justice committees need to be able to look at the legislation in some detail before the Sewel motion debate happens.

Our third concern is about what would happen if Westminster starts to make significant amendments to the parts of the legislation that affect devolved issues, which it is free to do because it is free to legislate in any devolved area. My understanding from public statements that the Executive has made is that it has committed to bringing any significant amendment to the parts of the bill that affect devolved areas to the Scottish Parliament for what would be, in effect, another Sewel motion debate, so that the Scottish Parliament could say yes or no to amendments that had been made by Westminster. What is less clear is what would happen if the Scottish Parliament were to disagree to an amendment that had been made by, for example, the House of Lords. Would the House of Lords agree to reverse the amendment? The situation is unclear.

The final safeguard, in a sense, is that, perhaps a year later, the Scottish Parliament will deal with a family law bill. If, at the far end of the legislative process at Westminster, the provisions that affect devolved matters have been changed in a way with which the Scottish Parliament would not have been happy when it agreed to the original Sewel motion, the situation could be put right in the family law bill the following year.

Ali Jarvis: Stonewall Scotland has a slightly different organisational position from that of the Equality Network in that we have not been opposed to the use of a Sewel motion in this case. Perhaps that is because Stonewall is a UK-wide organisation with offices in London and Cardiff. For more than two years, my colleagues in London have been liaising with Whitehall on this matter. Further, without meaning to sound flippant, many

of our supporters in Scotland who have been in touch with us have told us that they do not care where the legislation is dealt with, as long as it is dealt with quickly and correctly.

I take on board Tim Hopkins's points and concerns, which demonstrate why it is vital that the committees of the Scottish Parliament scrutinise the devolved aspects of the legislation to ensure that it is correct for Scotland. We must also accept, however, that significant chunks of business are reserved, many of which involve matters about which people are extremely concerned, such as pensions, immigration, welfare and benefits.

Given the safeguards that Tim Hopkins has mentioned, we have no ideological objections to the use of the Sewel motion.

Hilary Campbell: We work closely with our partner organisation in England, Relate, which is supportive of the English aspects of the legislation. Our only concern is that, although the proposals clearly need to be based in Scots law as well as English law, we are aware of the fact that couples move across the border. We would like there to be a level playing field—as far as is possible—so that couples do not find themselves in a difficult position when they move from one part of the UK to another.

Shiona Baird: I am sorry—I should have asked this question earlier. The proposals aim to confer similar rights and responsibilities on same-sex couples as are conferred on married couples. What is your view on whether marriage itself should be open to same-sex couples?

Tim Hopkins: When people said in our consultation that the law needs to be changed because they are not getting the protections that they need at the moment, we said to them that there are potentially three ways in which to do that. One would be to give the same strong package of obligations and protections to all cohabiting couples, another would be to introduce civil partnerships for same-sex couples and the third would be to open up marriage to same-sex couples.

Initially, people's opinions were split roughly equally between those options. When, at conferences, we drilled down further into the matter and discussed what the changes would really mean, it became clear to people that the first of the options is not the right one, because it would mean that for any couple who lived together for a certain length of time all the obligations would kick in. For example, the obligation to share property would kick in automatically. That is not what people want: they want the obligations to apply only if they sign up for them. There should be a positive choice—there should be

cohabitation, and then something else that you choose.

That leaves us with the question of whether there should be same-sex marriages or civil partnerships. A significant minority of LGBT people think that civil partnerships are not right because they do not represent equality. They feel that a civil partnership would, because it has a different name, always be seen as second class. For them, the only thing that would represent true equality would be same-sex marriage. Three countries in the world now have same-sex marriage—the Netherlands, which was the first to introduce it, Belgium and Canada. Marriage in the Netherlands is a completely secular institution. The churches and other religions have no function in, for example, solemnising marriages in the Netherlands. There, you go to a registry office, get married, and then have your church service.

That is not the case in Scotland, because marriage in Scotland is partly religious. Priests, rabbis and other religious celebrants can legally marry people and certain aspects of marriage law are still based on the requirements of religion. Even in the family law white paper for the family law bill that is proposed for next year, some of the smaller aspects of the proposals are as they are because of the requirements of religious marriage. Marriage in Scotland is not completely secular; it is partly religious.

There is fairly widespread understanding within the LGBT communities that the debate on whether marriage should be open to same-sex couples is one in which the religious institutions—the churches and other religions—would want to have a lot of say, because marriage is partly religious in Scotland. In contrast, civil partnership is intended to be completely secular. There is an understanding that any debate on same-sex marriage needs to be a broad debate that includes the religious institutions in Scotland, and that it will take some time, whereas civil partnership deals with the practical issues and could be introduced now.

Ali Jarvis: We have also had feedback from some people that marriage still has connotations of gender and power, with which a lot of people living in same-sex relationships feel uncomfortable—they would prefer a new type of partnership that better reflects their relationships. We are comfortable saying that civil partnership is probably the best answer.

The only issue in relation to marriage is to draw the committee's attention to the Scottish social attitudes survey. Stonewall and the three equality commissions were involved in that as the four equality groups. We asked about same-sex partnerships and we considered various wordings. We asked people in the pilot whether it is okay for

same-sex couples to have civil registered partnerships, but the question was quickly thrown out because nobody understood it. Therefore, we asked the broader question whether it is okay for two gay men or two lesbians to marry, recognising the broad connotation. We were very pleased that although just under 30 per cent were opposed to that, the majority felt that it is okay. Those who were opposed tended to be people who were over 60 or had low educational attainments.

We were pleased in relation to the religious aspect: only 40 per cent of people who identified themselves as Church of Scotland adherents, 33 per cent of those who identified themselves as Roman Catholic and 20 per cent of those who identified themselves as having no religion were opposed. Therefore, even among religious communities, opposition was low. We were not planning on going for same-sex marriage, but at least those figures show that even the so-called religious opposition is not upheld by social responses from ordinary folk around Scotland.

Hilary Campbell: We regard same-sex marriage as a much bigger question; it is not something that I have specifically consulted our counsellors and local services about. We must acknowledge the multi-faith community that we have in Scotland and the fact that the question would require a much bigger discussion, which would slow the whole process down. I would like the debate to take place but, in the short term, I would like us to move ahead on civil partnerships and come back to it.

11:30

Margaret Smith: I have a question about public attitudes. Earlier, we touched on what you thought the impact of the bill would be. The paper that we have received from Stonewall covers the question of the difference between the perception and the truth of what gay relationships are all about. The perception in the *Daily Mail* is—to put it starkly—that every gay person is out every night of the week, clubbing until 3 o'clock in the morning and taking ecstasy or whatever. The reality is—as you have said—that the vast majority of gay people are like every other group of people around this table and in this room. Like everybody else, they want a good, long-term, solid relationship.

I would like to ask you about that sense of otherness. One of the things that came out in the social attitudes survey was a sense of otherness that people felt in relation to LGBT people and ethnic minorities. A startling number of people said that they felt that they had either nothing or very little in common with those groups of people. What do you think will be the impact of the bill on public attitudes generally and on that sense of otherness? Do you think that the bill will finally put

a nail in the coffin of the sense that people who happen to be in a gay relationship are in a very different type of lifestyle and relationship from people who happen to be in a marriage or a long term mixed-sex relationship?

Ali Jarvis: The short answer is yes. In our submission, we focused on the social aspect of the impact of civil partnerships. Civil partnerships will address that sense of otherness by making the relationships visible. The Scottish social attitudes survey showed clearly that the majority of people who held prejudicial views also felt very distant from lesbians and gay men in Scotland; they felt that they did not know any or had not come across any. Making relationships visible is very important in showing that—as Tim Hopkins highlighted—such people are living at number 26 and number 32b and that, on Tuesday morning, they put their bin bags out like everybody else. Putting bin bags out is much more boring than going clubbing every night, but it is probably a more realistic reflection of people's lives.

The “beyond barriers” survey that was conducted last year—the first LGBT needs assessment of people in Scotland—showed that the average length of same-sex relationship was similar to the average length of relationship reported by heterosexual couples of similar age groups. For people between 18 and 25, relationships might last for 18 months to two years and, as people get to 25 and 35 when they become more settled and established, the norms are pretty much the same in same-sex relationships and opposite-sex relationships.

As the social attitudes survey underlined, the more someone can identify people as being different and somehow “other”, the easier it becomes for them to demonise those people. We believe that civil partnerships will bring three things: first, an opportunity for couples to make a personal commitment to each other—a sort of rite of passage that is important for an individual's psychological well-being and sense of identity; secondly, a social and public commitment that will help to make relationships visible; and finally, it will bring the legal rights and responsibilities that will offer protections. In those ways, a civil partnership would help significantly to shift social attitudes in Scotland and throughout the UK.

Patrick Harvie: I would like to go back to the discussion about safeguards, which you described as being fourfold: time for committee scrutiny in the Scottish Parliament before the Sewel motion is debated; a second Sewel motion to give the Parliament the opportunity to amend the legislation; flexibility or willingness at Westminster to accept amendments from the Scottish Parliament, which we do not have the authority to make; and the use of the proposed family law bill

or other relevant legislation to iron out the wrinkles at some point in the future. You said that, if those safeguards were in place, the legislation would be strong enough. Have you received any indication that those safeguards will be put in place? Would they be sufficient to overcome your concerns about the use of the Sewel motion procedure?

Tim Hopkins: The Executive has said clearly and publicly that, if significant amendments are made at Westminster, it will introduce a further Sewel motion debate in the Scottish Parliament to consider those amendments. That is one of the safeguards. I am not aware of any specific commitment to make the bill available to committees for scrutiny before the Sewel motion is debated. What will happen with the other two safeguards is, to some extent, out of the hands of the Scottish Parliament and the Scottish Executive, because it will depend on what happens at Westminster. Westminster could decide to ignore what the Scottish Parliament has said about one of its amendments: it is the highest Parliament in the land and can legislate in devolved areas. That is why the fourth safeguard—being able through the proposed family law bill to put right later anything that was wrong—will not be needed, hopefully. However, it might be needed. I am not sure what commitments could be made, other than the general commitment, which has been given already, that the Scottish Executive wants to get the legislation right for Scotland.

Ali Jarvis: Our liaison with the team that is working on the bill at Westminster has shown us that the idea of significantly changing devolved aspects of the bill is not high on their agenda. They also have a very tight legislative agenda, and there is real governmental commitment to getting the bill passed. I hope that it will be mentioned in the Queen's speech in a month's time; however, if that happens, the parliamentary timetable for the bill will be tight. The concerns in Scotland are acknowledged by the civil servants with whom we deal down there, but they recognise that their agenda is to get the bill passed as well as to let us in Scotland work hard on getting it right at our end. That is not a guarantee of anything, but the commitment exists to move the matter forward through partnership.

The Convener: Are you happy with that, Patrick?

Patrick Harvie: Yes. I thank both the witnesses.

The Convener: As there are no other questions, I thank the panel for their evidence. I suspend the meeting for five minutes to allow for the changeover of witnesses and a comfort break.

11:36

Meeting suspended.

11:44

On resuming—

The Convener: We have a new panel of witnesses. I give a warm welcome to Sue Robertson of Lesbian Mothers Scotland, Matthew Middler of LGBT Youth Scotland—you are particularly welcome because we need young people to give evidence—and Maria Clark of the Granite Sisters and Outright Scotland.

We will follow a similar process to that for the previous panel. Members will have an opportunity to ask questions and all members of the panel can answer if they want to. If witnesses do not want to answer some questions, that is fine.

Does the panel agree in general with the basic principles that are outlined in the Executive's consultation on allowing same-sex couples to register their partnerships in Scotland and having those partnerships recognised by the UK Government for reserved purposes?

Sue Robertson (Lesbian Mothers Scotland): Lesbian Mothers Scotland is happy to welcome civil partnership as a long overdue public recognition of same-sex couples. I emphasise the public aspect, because that is vital for parents and children. It is important to consider the wider context when we think about the legislation. At the moment, it is not acceptable even to raise the subject in schools. Difficulties arise over raising the subject in schools and putting in school libraries books that portray same-sex relationships. Those matters are really contentious, so the principle of civil partnership as public recognition is a welcome start for parents and their children.

However, we are concerned about confining civil partnerships to same-sex couples—which has been mentioned in the evidence this morning—because to do so risks the creation of second-class status for such partnerships. Ideally, civil partnership should be open to heterosexual couples as well as to same-sex couples. On the principle of equality, we would like marriage to be opened up to same-sex couples as well as heterosexual couples. One can draw a distinction between civil marriage and religious ceremonies. It is obviously up to each church—and each congregation in many cases—to decide on such matters but, in principle, the situation would be more equal if marriage were open to same-sex couples. We accept that the UK Government does not want to do that, but if we are talking about equal opportunities, we must make that point.

We would like civil partnership to have a stronger impact on parental responsibility. The law on that is extremely complicated. As has been said, adoption and fostering legislation in Scotland is way behind that in England and Wales, where it is legal for a same-sex couple jointly to adopt or foster a child. In Scotland, it is illegal to place a foster child with a same-sex couple and a same-sex couple cannot adopt jointly. That sends strong messages from the Scottish Parliament to the country about the acceptability of raising children in same-sex relationships. Although it is simpler legally to follow the track that we are on, we must be careful about the wider messages that that sends, because many tabloid journalists are quick to jump on the bandwagon of saying that they are concerned only about the needs of the children and that the situation is terrible for children. Discrimination is a problem.

Civil partnership also relates to parental responsibility when a couple gets together in which one partner already has children. It is proposed that a civil partnership would not confer parental responsibility, but the registered partner could apply to the court for responsibility. We would like a civil partnership to confer responsibility in principle, with the child's agreement. That is being proposed for unmarried step-parents in the context of the proposed family law bill. We have to be careful that the civil partnership proposals do not get out of step with what is being proposed in the family law bill for step-families. Otherwise, we will have to deal with two lots of legislation in that area in quick succession, which would be a pity.

There is also the point about children who are born by donor insemination. If a child is born by donor insemination to a married couple, the husband is automatically assumed to be the father of the child. That is not the case with a lesbian couple and that needs to be taken into account.

We would like civil partnerships to have a clearer impact on parental responsibility, which we think would be important in the wider context of how the public views same-sex couples' raising of children. That is a key aspect to getting rid of discrimination against lesbian and gay people. It is vital that the legal reforms are part of a much wider agenda for the recognition of same-sex couples. There is a commitment to equal opportunities in the education sphere, yet there is a rather hands-off attitude as to how to implement it in practice.

In our written evidence, I mention the disappointing example of a project's using dolls for illustrating differences to young children. That was picked up by the tabloid press and was misrepresented as being use of the dolls to teach young children about lesbian sex, which was

complete rubbish. It was disappointing that the need for such tools to teach young children about difference in the broadest sense was not being positively endorsed by Executive spokespeople. There is a real need for such a wide commitment. If we are serious about equalities, we must publicly back education about equalities in their broadest sense.

Matthew Middler (LGBT Youth Scotland): I carried out a short consultation on civil partnership with a group of about 40 young people in Glasgow two weekends ago as one of our "have your say" events. The consultation followed a brief explanation for those young people who might not have been aware of what a civil partnership is. We did a brief workshop and questions were asked, not so much about the finer details of the bill, but more about the emotional and social aspects of how the young people felt such a partnership would affect them. The consultation showed that those young people feel that some form of civil registered partnership or gay marriage would benefit them greatly.

Maria Clark (Outright Scotland): There are many couples in Scotland who are living a lie because of their sexuality. They cannot get married or registered, although they are a couple in every sense in which a heterosexual couple is. Without a civil partnership, they remain in total isolation and in total darkness. We are very lucky to live in a democracy in which everybody is supposed to be the same, but gay couples are not regarded as being the same. We pay taxes; we are doctors, firemen, nurses and police officers; we do things for other people—yet we are not recognised as being the same. Civil registration would be a step forward. As for the idea that long-term relationships do not last in gay partnerships, that is complete rubbish. I have been in a 31-year relationship, which I think is testimony to the fact that they do last.

The Convener: On 7 October, the committee heard about findings from the Scottish social attitudes survey, which showed that discriminatory attitudes are still prevalent in respect of gay men and lesbians. Can you clarify the actual nature of the discrimination that is faced by same-sex couples, or indeed by other members of your organisations, in the absence of the proposed legislation?

Sue Robertson: Schools are a very important part of the picture.

One of the difficulties that are faced by Lesbian Mothers Scotland is that we are perpetually being asked by journalists for lesbian parents who they can interview. We do not doubt that those are sympathetic journalists who want to put across an honest portrayal of lesbian and gay families, but our difficulty is that when we ask our children how

they feel about their parents being on television they all gasp and say "No! Please don't!". That is a handicap.

The survey on discrimination mentioned that it is the otherness of the lesbian and gay community that contributes to discriminatory attitudes, but as long as there are discriminatory attitudes, our children will not feel safe for us to come out and talk about being in a lesbian relationship. That is a major factor and I do not believe that Scotland has begun to tackle that in any open way. Even very small beginnings immediately begin to attract the wrath of the tabloid journalists. Also, the type of statement that Cathy Jamieson made when she was introducing the consultation paper did not help.

If Scotland is serious about having equal opportunities across the board, it is vital that politicians stand up and publicly endorse that and make it clear that they have no time for a society that has that discriminatory attitude to people. Until our children feel that it is safe to acknowledge that their parents are lesbian or gay, we will not make much progress.

Matthew Midler: As well as a few of the legal rights that would come with a civil partnership, some of the young people who were consulted mentioned such issues as partners not being legally recognised as part of the family and the fact that the outside world does not acknowledge how important or serious LGBT relationships are—people believe that those relationships are less committed.

The Convener: Young people also speak about their experiences in schools and about being able to talk about their situation in school. Will you explore some of that?

Matthew Midler: A lot of people mentioned the fact that, with the existence of a law and the introduction of civil partnerships, they would feel that there were more opportunities for LGBT issues to be brought up in schools. Tim Hopkins and I ran a workshop on how people can get involved in campaigning in the Parliament and other places. We asked the workshop participants to make up a list of laws that might affect LGBT people that are not in place or that should be changed. The lack of LGBT issues within the education system ranked at the top of those lists.

The Convener: Are you talking about making people aware?

Matthew Midler: LGBT issues should be talked about in schools and teachers and others should be aware of the issues. Young people should not feel that they are different or alone in school.

Maria Clark: In employment there is hidden homophobia, and that is certainly seen in the police force. In front of the bosses, everyone is seen to be non-homophobic, but on the street and in the muster room, homophobia is quite prevalent. Proof of that can be seen if we ask how many gay police officers we have in Scotland. When I was in the police, I could not be out at all and that is still the same today. Such attitudes have to go.

Civil registration is one of the ways in which we will start getting rid of such attitudes—when authorities acknowledge those relationships. That might encourage police officers to come out and acknowledge that they are in a relationship. If someone is in the police and is also gay, it is difficult for them. As in many organisations, getting a promotion in the police is a rat race, and if someone outs themselves, they are put down beside the police dogs.

The Convener: So legislation will make a difference, because the police recognise legislation.

Maria Clark: Yes, attitudes will slowly change and police officers will gain the courage that they need to say that they are gay and in a relationship. When they do that, they will become entitled to the benefits that their married colleagues get. If they have not come out, they are regarded as single and do not get those benefits.

Mrs Milne: My questions relate to comments that the previous panel of witnesses made. I think that you have already answered my first question to some extent. To what extent would the proposed legislation be effective in removing discrimination against same-sex couples?

12:00

Sue Robertson: It would be a first step along the way. However, the climate in which the legislation is introduced and its promotion by the Scottish Parliament and the Scottish Executive will be important. The Parliament and the Executive should not take action just because we need to keep up with Westminster and have the same laws throughout Britain; they must present the proposed legislation more positively, as a measure that is vital to the commitment to equality under the Scotland Act 1998.

Matthew Midler: Many young people think that to introduce legislation and give people legal recognition would be a great step forward in educating people to have a better understanding of LGBT issues. Young people hope that that would lead to a reduction in discrimination, much of which is caused by ignorance.

Maria Clark: When more people have the courage to come out, because society allows them to do so, people will realise how normal we are. I was at a writers workshop, working on a screenplay. I was paired with an older lady and we had to describe something about ourselves that was unique. She said, "There is nothing unique about me. What about you?" I said, "Well, I am gay." She replied, "Are you? I have never met a gay person before." There were about 100 people at the workshop and I said, "Well, there are six more over there." Her attitude changed after that and we had many conversations during the weekend. She wanted to know more, because her idea of lesbians and gay people was completely wrong. I think that if a civil partnership registration scheme is set up, more lesbians and gay people will come out and people will realise that we can be their next-door neighbours.

Sue Robertson: A lot of the prejudice against lesbians and gays comes from the public's mistaken perception that lesbian and gay relationships are fragile and do not last. That is one of the reasons why people are prejudiced against the idea of raising children in such relationships. However, given the lack of public recognition of lesbian and gay relationships and the difficulties that we face, our relationships are often amazingly stable. A legal acknowledgment of stability in relationships will be important in helping to overcome the barriers to viewing lesbian and gay relationships as stable family situations in which children can be raised.

Mrs Milne: If, perchance, the proposed legislation by the UK Government were to fail, where would Scotland go from there?

Sue Robertson: The issue would have to be picked up in the family law reform, but that would be complicated and create a difficult package. The family law bill could deal only with devolved matters, but legislation in a UK-wide context is needed because so many important aspects of the discrimination that same-sex couples face are not devolved matters. Scotland could act independently of Westminster on devolved matters, but that would lead to a major failing in areas such as pensions, tax and the whole infrastructure of reserved issues.

Maria Clark: If this country wants to move forward and be seen as the leading light in the world—which we have been for many years—we must first look at our own back yard and treat our own people properly before we can send anyone to sort out other countries where bad things are being done. Society's cruelty to an elderly lesbian couple who are not recognised as being next of kin, are not exempt from paying inheritance tax and can face terrible things is dreadful. Such cruelty is unconscious—this country is a caring country rather than a cruel country.

The awareness of cruelty towards some people in this country must be realised. Some straight people to whom I have spoken have been flabbergasted that same-sex couples cannot be registered. Others have said that the situation is dreadful and that same-sex couples should be able to get married. Awareness of the issues should be promoted. I think that this country will respond to such a challenge.

Mrs Milne: My final question is about the formal requirements for registering a civil partnership. The Executive's consultation outlined formal requirements for civil partnership registration, including a minimum age of 16, the exclusivity of partnerships and the prohibited degrees of relationship. Do you have any comments to make on those requirements?

Sue Robertson: They are fair enough. I endorse what people have said about the importance of spelling out to people the legal implications of arrangements into which they enter—it is equally important to spell out such implications to people who are getting married. There should be an obligation for legal implications to be spelled out to everyone, whether in a same-sex couples or heterosexual couples entering into significant legal relationships with each other.

Maria Clark: I agree. That is part of citizenship, learning to care for people and understanding what responsibility is. Nowadays, people are aware of their rights, but forget about their responsibilities. Partnership for same-sex or mixed-sex couples is about responsibility, caring and considering the long term rather than the short term. Before anyone gets married or agrees to a civil partnership registration, they should look into what it really means. It is not just a matter of saying, "Och, we'll stay together for a couple of years and see how things go." There should be a long-term commitment and a marrying of souls.

Margaret Smith: I want to ask Matthew Midler what differences there will be for members of the younger LGBT community who are looking ahead at their lives. What new potentials and choices will there be for that community? In the first session, the Equal Opportunities Committee carried out a consultation on LGBT issues, which highlighted the pressures and problems that young people in particular face. Such problems are shown in extreme form in young people's mental health difficulties and in many other things that young gay people face in Scotland. If the proposals go ahead, what will be the impact on younger members of the gay community in Scotland?

Matthew Midler: I definitely think that there would be more support for younger people. For young LGBT people, mental health support is an extremely important issue and the introduction of the bill as well as other proposals would help a lot.

In the consultation, LGBT young people commented that civil partnerships would allow them to

“grow up in an environment of respect”,

which they feel they do not have at the moment. They also said that education on LGBT issues should be encouraged and that civil partnerships might make it “easier to come out”—understandably, many young people have problems with that—and would help with acceptance. There were comments about everyone wanting to have a wedding party. One young person wrote:

“Gay people could have weddings—yay!”

It was also said that civil partnerships would help to make heterosexual people familiar with LGBT issues. LGBT young people feel that it is all a question of being accepted.

In the consultation, we did not have the chance to go into great detail on the bill but, given that many of the people involved were as young as 14, they might not have been capable of understanding the bill's finer details. In general, many LGBT young people felt that not being accepted in society was a major issue. They also felt that there should be education on LGBT issues and acceptance.

Maria Clark: Our young people are the citizens of tomorrow—it is they who will look after us in our old age and who will set the laws and the standards of life. It is important that young people do not feel that they are odd or that there is something wrong with them just because of other people's attitudes. Unless people are happy with themselves, no one else will be happy with them. It is important that young people are content that they are what they are and can have a bumper sticker on their car that says, “Your point is ... ?”

Sue Robertson: It is important that we remember young people with lesbian and gay parents, as opposed to young people who are themselves lesbian and gay. Some young people have to deal with issues to do with parents changing their sexuality during their lives, which can be quite confusing. People might start off in a heterosexual relationship, but things can change suddenly; it is common for that to occur on both sides. Young people have to come to terms with that. There is not a great deal of discussion about the fact that people's sexuality can change and family relationships can change as a result, but the issue needs to be in the public arena so that there is acceptance. All too often, people who change their sexuality are regarded as being really strange and odd.

Margaret Smith: It is not surprising that I totally concur with that view. Homophobic bullying must

also be examined. It is not simply a question of a child's being bullied because someone thinks that they are gay; they might be being bullied because their family relationships have been taken into account.

A number of people have expressed the view that extending to registered same-sex couples the rights that are given to married couples would undermine marriage. What is your view on that?

Sue Robertson: Personally, I think that that is complete rubbish. In a way, the extension of those rights to same-sex couples would strengthen marriage because, as has been said in earlier evidence sessions, many same-sex couples want to make the same commitment to each other that heterosexual couples make. If more people are prepared to make such a strong public commitment to each other, that will only strengthen society. Society should be delighted about the fact that more people want to make that kind of commitment to each other. It is unfortunate that the attitude of too many people is that such commitment is only for them, not for that other lot. We should celebrate people who are in long-term, committed relationships. That is the important thing, both for the individuals concerned and for any family that they support in the process.

Matthew Midler: I agree with that.

Maria Clark: Everyone strives for stability in the world and stability in relationships. People in long-term relationships want to commit themselves—officially and publicly. They want to make a declaration to themselves and to have a milestone in their lives.

I totally disagree with the view that same-sex couples, who feel exactly the same way as heterosexual couples, are undermining marriage by wanting to make such a commitment. I feel that they are in exactly the same position as heterosexual couples. In fact, many same-sex couples would like to get married. It seems that, in this day and age, getting married is not the thing to do, but the gay community wants to do it.

Marlyn Glen: To return to procedures, does the panel have any comments on the procedures for registration that the Executive has outlined, such as giving notice to a registrar? Do you have any views on whether religious organisations should be able, if they wish, to officiate at civil partnership registrations?

Sue Robertson: I believe that religious organisations should be able to do that. The hierarchies of church organisations might be critical of same-sex relationships, but congregations are often supportive of such relationships. If the people concerned are accepted as members of a congregation, the congregation is willing to consider same-sex

relationships in the same light as heterosexual ones. That fact is not widely appreciated, but it should be. As was said earlier in relation to the results of the study on discrimination, attitudes among religious people are not nearly as discriminatory as the tabloid press likes to portray them as being.

12:15

Matthew Middler: It is important for religious LGBT people to have the option of formalising their relationship religiously. However, I cannot comment on whether there should be religious input into a civil partnership registration.

The issue of giving notice to a registrar was discussed at the most recent annual general meeting of the Scottish Youth Parliament, which took place in the Scottish Parliament's debating chamber. Divorce rates were another issue that was raised. There is agreement within not only the LGBT community but the wider community that notice should be given to a registrar. As Maria Clark said, responsibilities come with marriage, so it should not be rushed into.

Maria Clark: Heterosexual couples must give public notice to a registrar. There is no difference between a gay couple getting registered and a heterosexual couple getting married. Banns go up and people know about a marriage—it is a public declaration. Such formal notice also allows time for anyone who objects. That is only right and proper because same-sex couples are no different from heterosexual couples who want to undertake a partnership obligation, albeit that a same-sex couple will have a civil registration rather than a marriage. However, it is the same thing.

We are under the same obligation as a heterosexual couple, which is to ensure that what we are doing is right and that neither person is prohibited from the registration because of particular circumstances. It is only right and proper for there to be public notice to a registrar of a civil registration. I do not see any reason why that should not be the case.

I believe that it is up to the churches to decide whether they want to organise any religious element to a civil registration for those of us who have a deep faith. That is a huge issue in itself and I believe that the religious element will come with time. However, the first step is to have civil registrations of same-sex couples.

Marlyn Glen: I have a question on parenting issues, about which Sue Robertson made useful comments in her opening statement. I wonder whether Maria Clark and Matthew Middler want to add something on that.

Matthew Middler: In our consultation—I apologise for constantly referring to that, but it was

the only thing that I had time to do—young people flagged up the fact they feel that their relationships would have more respect from and be more acceptable to their families if same-sex relationships were legally recognised. Moreover, if their families disapproved of their relationships, young people would be able to tell their families to keep their opinions to themselves.

Again, I return to the issue of educating people about relationships. If such relationships were legally acceptable, they might also be socially acceptable within and outwith families. We feel that it is important for LGBT couples to have similar rights as heterosexual couples as far as issues such as adoption and children are concerned.

Maria Clark: One of the fundamental rights in this country is the right to a normal family life. If we expect young people to grow up in society and come out normal, we have to give them a normal and stable family life. It does not matter whether that happens with mixed-sex parentage or a same-sex couple. Young people have the same problems and anxieties and need parents who have the same legal back-up to support them and to help them to help their children. As a result, it is extremely important that young people's parents do not have to deal with any extra issues that are not even recognised. How are children to recognise what their parents say is right if people in society do not recognise their parents as being their parents? What chance do young people have of becoming good citizens if the rest of the community will not recognise that their parents are regular people?

Marlyn Glen: Does Sue Robertson have anything to add to her opening comments?

Sue Robertson: I agree with Maria Clark's comments. I am frustrated that adoption in Scotland will be running so far behind England and Wales. It is a nonsense that a same-sex couple cannot jointly adopt a child and that legally only one person in such a couple can be a parent to that child. The more adults that are constructively involved in its upbringing, the more a child will benefit. I am very disappointed that we are in this situation.

Margaret Smith: Sue Robertson said earlier that she wanted civil partnerships to confer parental responsibility almost automatically. I should point out that, at the moment, marriage does not automatically confer parental responsibility on a step-parent, which means that any such measure in the proposed civil partnership bill would put things out of step. Do you accept that the examination of those rights in the proposed family law bill should be extended to include civil partners to ensure that we keep things in step, instead of changing the situation using the proposed civil partnership legislation?

Sue Robertson: That is the advisable way forward from a technical point of view. However, I am trying to convey the importance of the principles behind the proposed legislation, including standing up for same-sex couples and allowing them to have parental responsibility. The step-parent situation is complicated because we also have to consider the other parent's situation. For example, in some cases another known parent will be involved, but not in others. As a result, we get into quite a tricky area where three or more parents might be legally recognised. However, that is not necessarily a difficulty as long as the legal framework encourages the constructive engagement of all those people in supporting the child. The more adults responsibly involved in bringing up children, the better.

Marilyn Livingstone: Even though I know what your answer will be, I want to ask you the question about registration that I asked the previous group. How do you feel about the proposal to make any registration a matter of public record?

Sue Robertson: We accept that that is quite reasonable. However, as others have already said, steps must be taken to influence social attitudes to make the situation easier for children. One could imagine a couple who have children from previous relationships and who might very much want to commit to each other in a civil partnership. The children might worry that that might become public knowledge among their school fellows. That is a serious difficulty for many children. If couples are to feel happy about accessing legally and publicly recognised partnerships, it is vital that work be done to combat discriminatory attitudes.

Maria Clark: Civil registration, in itself, will change attitudes. Although many couples will hesitate to go public, I think that they will have the overwhelming feeling that they want to do it. The will to commit to each other will be greater than the will to hide the relationship. That in itself will generate a certain awareness and a change of attitude. We can see that sort of thing happening already; for instance, people were aghast at the idea of women in the clergy, thinking it was terrible, but now people think, "Have we not had women in the clergy for years and years?" Things evolve, and civil partnerships will be a huge step in that process.

Marilyn Livingstone: My second question is on the dissolution of civil partnerships. As you know, the Executive's proposals will mirror the divorce laws—requiring a period of two years when there is consent and five years when there is not. What are your views on the proposals?

Sue Robertson: This is a bit like the previous issue. I can see Tim Hopkins's point: it is probably neater to do things in parallel with marriage and

then bring in reforms with the family law bill. It is quite disappointing that the present proposals reflect what is already acknowledged as unsatisfactory for heterosexual couples. Having a long period before a relationship can be dissolved encourages people to seek dissolution on behavioural grounds, which can be damaging for any children. It would be better, if a relationship has broken down, to be able to dissolve it by mutual consent within a year or so. The case for shortening the period for dissolving heterosexual relationships would be equally valid for same-sex couples.

Matthew Middler: In its debate on civil partnerships, and in other discussions on the subject, the Scottish Youth Parliament has shown its strong belief that the details on divorce and separation times—and everything else—should be exactly the same in the legislation on civil partnerships as they are in the legislation on heterosexual marriage.

Maria Clark: I agree with Matthew. I always worry when any legislation for the gay community is different from legislation for the heterosexual community. That immediately attracts the comment, "Oh well, they are different." We are not different; we are exactly the same. If it takes 10 years for a change in the divorce laws, it will take 10 years for all of us because we will all be in the same boat—although I hope that I will not. However, we would all be in it together, whether change comes sooner or later. Sameness, and not otherness, is vital.

Frances Curran: I will ask the question that I have asked before. The Executive's chosen route for this legislation is via a Sewel motion. Sue Robertson has already commented on the difference between devolved and reserved powers. What is your view on using a Sewel motion in this way?

Sue Robertson: The advantage of using a Sewel motion is that non-devolved areas will be picked up on immediately. However, as was noted earlier, the difficulty will lie in ensuring that Scotland has adequate time to scrutinise the proposed legislation. Family law in Scotland is already messy. Adoption and fostering laws lag behind those of England and Wales, as do the rights and responsibilities of unmarried fathers. We are out of step in a number of areas. What is being brought in now in Scotland is designed to bring us into step in certain areas, but it will immediately throw up anomalies in other areas. We certainly regret that the family law bill has been so long in coming. The fact that there has not been faster progress in family law reform has caused complications.

Matthew Middler: Again, we did not have time to consult on the finer details of the bill, so I would not like to comment on that issue.

Maria Clark: The nature of my work means that there has been a need to get it right first time, as so many problems are caused otherwise. The bill comes into that category. We have to get it right first time, but we also need to get it through in our lifetime. Although it would be very nice for Scotland to take it on board and do the whole thing, the best route is to go through Westminster. However, we will need to ensure that everything for Scotland is right first time. We do not want to end up five years down the line saying, "It's a pity that that is not what happens here."

12:30

Frances Curran: In the previous evidence session, I think that Tim Hopkins highlighted the question of what the impact on Scotland would be if Westminster were to amend the bill. I want to ask that question the other way round. What is your view on how devolved family law might be amended in Scotland that would make it different from the situation in England and Wales? I think that that is what I am trying to ask.

Sue Robertson: In principle, the legislation might be more progressive when it is implemented in Scotland. However, I pick up a strong reluctance at Westminster to consider, for example, broadening the arrangements to include mixed-sex couples, so I think that there will be a strong push to keep laws the same across the UK. Realistically, I do not think that the opportunity for Scotland to be more progressive will arise in the context of this legislation, especially as the bill will be dealt with through a Sewel motion. That opportunity will probably have to wait for the family law bill, which will deal separately with devolved matters.

The Convener: Do Matthew Middler or Maria Clark want to comment on that?

Maria Clark: I agree with Sue Robertson.

Shiona Baird: My question has basically already been answered, but it would be useful to have your view on record. Should mixed-sex couples also be able to register their partnership?

Sue Robertson: Yes, I think that they should. Two situations that concern mixed-sex couples need to be considered. One is the situation in which a mixed-sex couple would like similar rights and responsibilities to those that are conferred by marriage but have reasons why they do not want to get married. In that case, it would be relevant for such couples to have access to civil partnerships. Another situation is the one in which a mixed-sex couple who are living together wish to have stronger legal protection. Proposals on that are being considered in the context of the family law bill.

The lack of public information about this is worrying—there is widespread misinformation. Far too many mixed-sex couples who live together think that simply by living together they automatically gain certain rights and responsibilities. When the relationship breaks down, they are rudely disillusioned about that.

The situation is problematic for children who are brought up in such relationships because, by and large, the parent who has the children when the relationship breaks down is economically disadvantaged by the lack of legal protection surrounding that relationship. Children's needs must be considered very carefully, given the fact that large numbers of people cohabit, rather than marry. We should be wary of arguments that we would undermine marriage if we did anything in respect of cohabitation; they are a distraction. Our prime concern should be the needs of the children and what creates the most stable environment for them.

Matthew Middler: The young people said that they felt that civil partnerships should be open to mixed and same-sex couples. They also said that they did not want the introduction of such a bill to create another opportunity for one community to be segregated from others. We did not go into the finer detail of the argument, but that was the general opinion that was put forward by a handful of the young people.

Maria Clark: Any serious commitment by couples, whether they are same sex or mixed, is a good thing for this country. It is good for society and young citizens to see people taking on responsibilities. Responsibility is a huge thing in my life. Although it is so serious a matter, it is hardly touched on and people do not realise what responsibilities they have in their lives. They do not realise that they are responsible for themselves as individuals and for the actions that they take. Responsibility should be recognised. It can only be a good thing for same-sex couples and mixed-sex couples to take on the serious commitment of being responsible and being together. I am absolutely for such a commitment to be open to both mixed-sex and same-sex couples.

Shiona Baird: My final question is about marriage. In their previous comments, Maria Clark and Sue Robertson indicated that they feel strongly that marriage should be an option for same-sex couples. Bearing in mind what was said in the previous evidence-taking session, where would you place that option in the context of a civil partnerships bill? Evidence from the previous panel seemed to indicate a preference for that option to be secondary to the most important thing, which is the adoption of civil partnerships.

Sue Robertson: Realistically, that has got to be the case—in part because the proposed bill is a

Westminster bill. It is clear that the Westminster Government is not prepared to look at marriage, but it should remain on the agenda in Scotland as part of the discussion on family law. The person on the street is not necessarily going to make a clear distinction between the two. Even though there is no proposal for same-sex couples to be able to marry, there will probably be a lot of grumbling in the tabloid press about that.

The differentiation between the two is problematic. It would be better to push for equality for same-sex couples in both respects. The process is a complicated one in which it will be tricky to disentangle the civil from the religious aspects. As I said earlier, we should not lose sight of the fact that churches are already recognising same-sex relationships. It should be possible to move forward on the issue.

Matthew Middler: I agree.

Maria Clark: I feel that marriage for same-sex couples is going to come. However, the reality in which we live today means that we need civil registration. Ali Jarvis touched upon the important gender role within same-sex couples. Civil registration would stabilise that. Some same-sex couples might not want to take the further step into marriage. They might feel happy and secure within a civil partnership.

The Convener: Would you like to ask a question, Patrick?

Patrick Harvie: I would like to make a general comment if I may, convener. From various parts of the discussion today, it is clear that the committee is aware that change to the law and to social attitudes and support services—dedicated and mainstream—are important to the communities that we are talking about. As someone who spent a good few years as a youth worker supporting young people who were coming out—and who struggled to keep the service going—I can absolutely attest to the value of longer-term measures to address social attitudes and social support.

At the same time, I am aware that the decisions and the actions of the Scottish Parliament can have an immediate and individual impact on people. We all saw that during the section 28 debate. I am pleased to see that the committee is aware of all of those factors.

The Convener: As no other member has a question for the panel, I thank the witnesses for their evidence this morning. We plan to hold several other sessions before we pull our inquiry together.

Maria Clark: May I make one last comment?

The Convener: Certainly.

Maria Clark: The letter that I sent to the committee was not to be published, but I would like to repeat in public the bottom line.

“We are not asking for the world, we are only asking to be part of it.”

The Convener: Thank you for that. Your letter, which we did not publish, was very helpful.

Our last item of business is to agree civil partnership registration witness expenses. I suggest that the matter is left to me and the Scottish Parliamentary Corporate Body.

Members indicated agreement.

Meeting closed at 12:40.

Members who would like a printed copy of the *Official Report* to be forwarded to them should give notice at the Document Supply Centre.

No proofs of the *Official Report* can be supplied. Members who want to suggest corrections for the archive edition should mark them clearly in the daily edition, and send it to the Official Report, 375 High Street, Edinburgh EH99 1SP. Suggested corrections in any other form cannot be accepted.

The deadline for corrections to this edition is:

Wednesday 5 November 2003

Members who want reprints of their speeches (within one month of the date of publication) may obtain request forms and further details from the Central Distribution Office, the Document Supply Centre or the Official Report.

PRICES AND SUBSCRIPTION RATES

DAILY EDITIONS

Single copies: £5

Meetings of the Parliament annual subscriptions: £350.00

The archive edition of the *Official Report* of meetings of the Parliament, written answers and public meetings of committees will be published on CD-ROM.

WHAT'S HAPPENING IN THE SCOTTISH PARLIAMENT, compiled by the Scottish Parliament Information Centre, contains details of past and forthcoming business and of the work of committees and gives general information on legislation and other parliamentary activity.

Single copies: £3.75

Special issue price: £5

Annual subscriptions: £150.00

WRITTEN ANSWERS TO PARLIAMENTARY QUESTIONS weekly compilation

Single copies: £3.75

Annual subscriptions: £150.00

Standing orders will be accepted at the Document Supply Centre.

Published in Edinburgh by The Stationery Office Limited and available from:

The Stationery Office Bookshop
71 Lothian Road
Edinburgh EH3 9AZ
0870 606 5566 Fax 0870 606 5588

The Stationery Office Bookshops at:
123 Kingsway, London WC2B 6PQ
Tel 020 7242 6393 Fax 020 7242 6394
68-69 Bull Street, Birmingham B4 6AD
Tel 0121 236 9696 Fax 0121 236 9699
33 Wine Street, Bristol BS1 2BQ
Tel 01179 264306 Fax 01179 294515
9-21 Princess Street, Manchester M60 8AS
Tel 0161 834 7201 Fax 0161 833 0634
16 Arthur Street, Belfast BT1 4GD
Tel 028 9023 8451 Fax 028 9023 5401
The Stationery Office Oriel Bookshop,
18-19 High Street, Cardiff CF1 2BZ
Tel 029 2039 5548 Fax 029 2038 4347

The Stationery Office Scottish Parliament Documentation
Helpline may be able to assist with additional information
on publications of or about the Scottish Parliament,
their availability and cost:

Telephone orders and inquiries
0870 606 5566

Fax orders
0870 606 5588

The Scottish Parliament Shop
George IV Bridge
EH99 1SP
Telephone orders 0131 348 5412

RNID TYPETALK calls welcome on
18001 0131 348 5412
Textphone 0131 348 3415

sp.info@scottish.parliament.uk

www.scottish.parliament.uk

Accredited Agents
(see Yellow Pages)

and through good booksellers