

EQUAL OPPORTUNITIES COMMITTEE

Tuesday 6 November 2007

Session 3

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EQUAL OPPORTUNITIES COMMITTEE

5th Meeting 2007, Session 3

CONVENER

*Margaret Mitchell (Central Scotland) (Con)

DEPUTY CONVENER

*Elaine Smith (Coatbridge and Chryston) (Lab)

COMMITTEE MEMBERS

*Marlyn Glen (North East Scotland) (Lab)

*Bill Kidd (Glasgow) (SNP)

*Michael McMahon (Hamilton North and Bellshill) (Lab)

*Hugh O'Donnell (Central Scotland) (LD)

*Sandra White (Glasgow) (SNP)

*Bill Wilson (West of Scotland) (SNP)

COMMITTEE SUBSTITUTES

Claire Baker (Mid Scotland and Fife) (Lab)

Jamie Hepburn (Central Scotland) (SNP)

Mary Scanlon (Highlands and Islands) (Con)

Jim Tolson (Dunfermline West) (LD)

*attended

THE FOLLOWING GAVE EVIDENCE:

Philippa Bonella (Equality and Human Rights Commission)

David Cullum (Scottish Parliament Directorate of Clerking and Reporting)

Patrick Harvie (Glasgow) (Green)

Laura Turney (Scottish Government Public Health and Wellbeing Directorate)

CLERK TO THE COMMITTEE

Terry Shevlin

ASSISTANT CLERK

Roy McMahon

LOCATION

Committee Room 1

Scottish Parliament Equal Opportunities Committee

Tuesday 6 November 2007

[THE CONVENER *opened the meeting at 11:02*]

Decision on Taking Business in Private

The Convener (Margaret Mitchell): Welcome to the fifth meeting in session 3 of the Equal Opportunities Committee. I remind everyone, including members, that mobile phones and BlackBerrys should be switched off completely as they interfere with the sound system, even when they are switched to silent. We have received no apologies.

Item 1 is to ask whether to take item 5 in private. Do members agree?

Members *indicated agreement.*

Proposed Sentencing of Offences Aggravated by Prejudice (Scotland) Bill

11:03

The Convener: Item 2 is consideration of the proposed sentencing of offences aggravated by prejudice (Scotland) bill. I am pleased to welcome to the committee Patrick Harvie MSP and David Cullum, who is with the non-Executive bills unit. I remind members that today we have a specific and limited role. We will not look at the principle or substance of, or the policy intent behind the bill; our role is merely to consider the consultation and to satisfy ourselves that it was sufficiently wide and was carried out in the round. With that proviso, I ask Patrick Harvie to make an introductory statement.

Patrick Harvie (Glasgow) (Green): Thank you, convener. I am pleased to speak to my proposal. As the convener said, I will speak not about the specific proposal, but about my reasons for not wanting to carry out a further round of consultation.

I will give the committee some background, of which I am sure members are aware. In 2004, during the previous session, the Scottish Executive consulted on what measures could be introduced in the criminal justice system to tackle hate crime. That consultation was part of the work of the working group on hate crime that was established in 2003, and followed my colleague Robin Harper's efforts to amend the Criminal Justice (Scotland) Bill. At the time, there was general cross-party recognition of his efforts and of the need to address the issue in some way.

It is worth emphasising that equality was, from the word go, part of the working group's ethos. The group was made up of representatives of the Equal Opportunities Commission, the Scottish Association for Mental Health, Outright Scotland, Capability Scotland, the Equality Network, Stonewall Scotland, Engender, the Disability Rights Commission, Age Concern Scotland and Enable. It also involved Lothian and Borders Police, the Executive's criminal justice division and the Crown Office and Procurator Fiscal Service. The group met eight times in the course of just over a year and took evidence from the Commission for Racial Equality, the Scottish Refugee Council, the Executive's violence against women unit, victim information and advice, the police and the Executive's criminal procedure division. The way in which the working group was constructed shows the breadth of the work that was undertaken.

Following the consultation, the group published a final report with recommendations. I am sure that members have had a chance to familiarise themselves with those. The responses to the consultation were analysed and informed the report and recommendations. Given that it was a relatively recent and very extensive consultation, more than 1,000 copies of which were issued, I do not believe that consulting again would add to what we know about the issues or the opinions of the people who responded. In fact, consulting again would simply duplicate the work of the working group, whose primary recommendation is the basis of my proposed bill.

As well as duplicate the work of the working group, consulting again would require organisations and individuals to spend time on producing responses. Small organisations are often strapped for time and have to respond to many consultations, so consulting again would place an unnecessary additional burden on them.

In line with standing orders, I have given the committee a statement of reasons for not consulting. In short, I believe that the original consultation was well presented, thorough and undertaken in accordance with the Government's best practice. There is also ample existing published material on the subject; the statement includes some links to that material. Responses to the consultation suggest that there is wide support for legislation on the issue, and that there is a clear preference for the mechanism that I am seeking to introduce, which is statutory aggravation on the grounds of disability, sexual orientation and transgender identity.

Given the extent of the original consultation, it would be appropriate to move to parliamentary scrutiny as soon as possible. As well as placing a burden on organisations, an additional consultation might delay introduction of a bill by six months or thereabouts. We should get on to the policy detail as soon as possible and debate the amendments that members may wish to lodge.

I am grateful for having been given the opportunity to speak to the committee and am happy to take questions from members. I have set out my reasons for not wishing to consult further.

Marlyn Glen (North East Scotland) (Lab): You base your decision not to consult on the proposal on the fact that the working group on hate crime has already carried out widespread consultation. Are you content that the consultation methods that the working group used were varied enough to maximise participation by relevant people? For example, did the group rely solely on a written consultation process?

Patrick Harvie: The list of respondents shows significant breadth of involvement among the

voluntary sector, religious organisations, local government and the police. In my view, the consultation maximised participation as well as any member's or Executive consultation could have done. Because the work was grounded in the working group, it probably achieved better input from groups that would be affected by the legislation than have many other consultations.

Marlyn Glen: Did the group rely on a written consultation process?

Patrick Harvie: As I understand it, the organisations that I mentioned—the Commission for Racial Equality, the Scottish Refugee Council, the Executive's violence against women unit, the victim information and advice service, the Crown Office and Procurator Fiscal Service, the police and the Executive's criminal procedure division—gave presentations to the working group. The rest of the responses were written.

Marlyn Glen: Did the working group's consultation cover all the issues that are raised in your proposal or were there any significant omissions? You mentioned the breadth of the work that was done, but I am concerned that that very breadth might be a problem because the consultation might not have focused on what you propose. Is it a problem that the consultation was extremely wide and did not focus on your proposal?

Patrick Harvie: I ask David Cullum to respond to that.

David Cullum (Scottish Parliament Directorate of Clerking and Reporting): That is an interesting point, which I thought about when I read the papers. The consultation was broad. It was very much a policy consultation; it set out the potential issues and asked what we should do about them. However, the responses to the consultation and the working party's final report distilled the issues nicely and picked up on the subject of Patrick Harvie's proposal. I agree that the consultation was broad, but the conclusions were very much in line with what Patrick Harvie proposes.

Patrick Harvie: Section 3 of the consultation paper goes into detail on the legislative options. The earlier sections introduce the concept of hate crime and discuss what it is. The first option that the paper discusses is statutory aggravation, but it also includes alternatives. A member's consultation would also need to consider the alternative approaches that could be taken—most members' consultations do that, but all that I could do would be to replicate the process. I do not think that an additional consultation would add anything.

Marlyn Glen: Thank you. That is helpful.

Did respondents to the working group's consultation—or, indeed, anyone else—express

concern about the way in which the consultation was conducted? Are you certain that it allowed meaningful expression of views?

Patrick Harvie: I am not aware that any direct criticisms were made. In recent months, in contemplating whether to lodge a member's bill, I spoke to a number of the organisations that took part in the process. I understand that several of those organisations have lobbied the committee and provided briefings arguing that further consultation is not necessary, which shows that they were satisfied with the process.

Bill Kidd (Glasgow) (SNP): How did the working group select the list of consultees to whom the consultation document was issued? Are you content that a sufficiently wide range of types of organisation was included? The list of respondents was published on the web, but have you seen a list of the organisations or groups that were invited to participate? Some of those might not have responded.

Patrick Harvie: The way in which the consultation document was distributed was consistent with the previous Administration's best practice standards for consultations. Section 4 of the final report mentions the range of respondents, which included academics, trade unions, political organisations and a significant number of individuals.

Does that answer your question?

Bill Kidd: That is fair enough, but what about those who did not respond? Do you know whether many organisations did not take up the opportunity?

Patrick Harvie: David Cullum points out that 1,000 copies of the consultation were distributed. We can do a simple bit of arithmetic to find out the number who chose not to respond, but I do not have a list of them.

Bill Kidd: Was there an attempt to get back to those who did not respond or was it decided that that was their choice?

Patrick Harvie: I am not aware of a subsequent effort by the Executive to approach those who chose not to respond. I think that that is consistent with general practice for the consultation exercises that have been conducted in relation to pretty much every bill that has been introduced to Parliament.

11:15

David Cullum: One of the most impressive things about the consultation is the composition of the working group and the range of interests that were represented on it. Although some minority interests might not have responded, I am not

aware of another consultation that has received as widespread a response or which had as wide a steering group as this one.

The Convener: I want to press you on how the consultees were selected. I do not think that we covered that point.

Patrick Harvie: I was not personally involved in the consultation, so the situation is unusual because other members who have lodged a statement of reasons for not consulting have themselves previously conducted consultations. The consultation that we are discussing was a Government consultation that was conducted according to the standards that the previous Administration used for all its consultations. If the consultation was defective, we would know that because organisations would be arguing for more time and additional opportunities to respond.

The Convener: Does David Cullum have anything to add to that? You are not in a position either to know how the consultees were selected.

David Cullum: No—but the fact that 1,000 copies of the consultation document were distributed is significant. That is, by a large factor, higher than the number of people whom members normally consult.

Sandra White (Glasgow) (SNP): Good morning. Is the consultation by the working group the only consultation that was carried out? It is not clear from your statement of reasons whether there were other consultations.

Patrick Harvie: The consultation that I mentioned was conducted by the working group on behalf of the Scottish Executive. In addition, I am aware that the Scottish Civic Forum held a number of public events to discuss the issues that were raised by the working group. I can supply the Scottish Civic Forum's report on the process if that would be helpful.

Sandra White: How many consultation documents went out, including not just the working party's consultation but others?

Patrick Harvie: There were 1,000 hard copies of the consultation. In the case of both Government consultations and members' consultations, it is difficult to know how many people have downloaded electronic copies from the internet. There was also an EasyRead version and there was a small number of requests for translations in Urdu and possibly one other language.

Sandra White: So—you do not know how many consultation documents went out in total.

Patrick Harvie: It would have been 1,000 copies of this—

Sandra White: But that does not include the Scottish Civic Forum and the others.

Patrick Harvie: The Scottish Civic Forum held public meetings rather than issue a glossy consultation document.

David Cullum: It is always difficult to give an exact number, because consultations by the Executive and by members are also routinely available on websites. We have no information on the number of downloads from websites. What we can say, from the information that we have, is that well over 1,000 copies were issued. The EasyRead version received a healthy response rate in addition to the 1,000 copies that went out. In addition, there were downloads from the website and any copies that recipients made.

Sandra White: Thank you. I understand that, having been through the consultation process on a bill myself.

Given that more than 1,000 copies went out, are you happy that the 175 responses represent a good rate of return?

Patrick Harvie: As far as I am aware, from comparisons with consultations for other bills including members' bills, that is a fairly good response rate. As we said, a broad range of different organisations was consulted and there was a good level of response to the EasyRead version as well. I believe that the level of response was satisfactory.

Bill Kidd: You note in paragraph 10 of your statement of reasons that the working group

"met with a number of other organisations".

I do not know how many of those there were. Which organisations were they and did the group cover the same issues with them as were covered in the consultation document?

Patrick Harvie: I read out a list of the organisations earlier: they are the Commission for Racial Equality, the Scottish Refugee Council, the Executive's violence against women unit, the victim information and advice service, the Crown Office and Procurator Fiscal Service, the police and the criminal procedure division. I have a note of their having had meetings with the working group and having given presentations. I am sure that there was discussion of the whole range of issues that were covered in the consultation paper including the proposal for a statutory aggravation, which the working group eventually recommended.

Bill Kidd: Those are all statutory bodies. Were no local or civic organisations involved?

Patrick Harvie: They would have taken part in the Scottish Civic Forum's process.

Bill Kidd: Okay—thank you very much for that.

Bill Wilson (West of Scotland) (SNP): To save you turning the page, Patrick, my question is also on paragraph 10 of your statement. You point out that the working group

"discussed in detail legislative and non-legislative approaches."

Were the consultees made aware of those different approaches?

Patrick Harvie: Yes. As I mentioned, section 3 of the consultation paper discussed legislative options including the statutory aggravation that I am proposing, which the working group eventually recommended, along with other options. It went on to consider non-legislative options. I ask the committee to bear with me while I find that in the document.

Bill Wilson: I did not save your turning the page after all.

Patrick Harvie: I have turned several pages. The policy options included changes in the courts service, the Crown Office and Procurator Fiscal Service and the police, the idea being that changes in practice could achieve some of the objectives of the legislative approach. It is probably fair to say that such changes in practice might achieve some of the advantages of the legislative approach; however, as the working group concluded, only legislation would meet the need fully. Although we are straying into the policy, I would say that Parliament, in the past session, concluded that that was the case when it decided to introduce statutory aggravation on other grounds.

Bill Wilson: I have two more quick questions. Have any of the original respondents, or any other group, approached you with a new or updated position on the consultation?

Patrick Harvie: No. The only feedback that I have had from those to whom I have spoken can be summed up as, "Let's get on with it." There is a willingness to see the issue moved forward. It is possible that the commissions—which have merged and are no longer stand-alone bodies—may have changed their view; however, the fact that the new Equality and Human Rights Commission has written to the committee, urging it to allow the proposal to proceed, shows that it is content. I gather that there was also a letter from Stonewall Scotland in last month's *Holyrood* magazine, which stated that the proposal should proceed to the legislative stage.

Bill Wilson: You are pretty confident that none of the respondents has changed its views—they are all of the same view.

Patrick Harvie: I am very confident of that.

Sandra White: I just did a wee bit of maths and found that the consultation had a return rate of 6 per cent. It would be interesting to know what the average return rate is for a consultation. Perhaps David Cullum can tell us.

David Cullum: A thousand hard copies were sent out and there were 102 responses. There were also 73 responses to the EasyRead version, although we do not know how many copies of that went out. The hard copy had a response rate in excess of 10 per cent, which is a pretty good response rate. I suspect that the more that are sent out, the more that the law of diminishing returns kicks in. We know who the main players are, and as long as we get to them we will get the main comments. The more copies that are sent out, the fewer replies are received proportionately. If a consultation has a response rate of 10 per cent plus, it has done pretty well.

Sandra White: I just did my own maths—maybe I am not as good as you at it. The figure came out at 6 per cent, from the 175 responses that I knew about. In the future, it would be interesting to see what the response rate is in consultations on anybody's bill.

How did the working group publicise the fact that it was carrying out a consultation? You mentioned the internet. Is that the only way in which people were told about it, or was there wider publicity?

Patrick Harvie: As I said, the process was carried out to the best standards that the previous Administration used for all its consultations. I argued earlier that there were additional strands to that, in that some of the organisations took part in the Scottish Civic Forum's process, which complemented the formal consultation. As far as my mental arithmetic goes, I make the response rate 17 per cent, but I might be wrong.

Sandra White: I had better check my arithmetic. Thank you, Patrick. I just wanted to know how the consultation was publicised.

Hugh O'Donnell (Central Scotland) (LD): You mentioned that the consultation document was published in hard and electronic copies as well as in an EasyRead version. In your statement, you also made passing reference to other languages. Did you have a request for a Makaton version for those who are unable to deal with British Sign Language? Did you make people aware that a range of options was available, should anyone require the document in a language other than English?

Patrick Harvie: I re-emphasise that I did not conduct the consultation, so I did not receive that kind of request. A small number of requests were received for translations into minority languages, but I am not aware of any other formats being requested. The consultation made clear the fact

that further copies could be obtained in alternative formats and community languages on request. The document was made available as robustly as pretty much any consultation document that has been published since the process began.

Hugh O'Donnell: My next question is probably for David Cullum. Although a downloadable version of the consultation document and a hard copy were available, was it possible for people to give their responses online?

Patrick Harvie: Certainly—e-mail responses would have been accepted. There was an e-mail address for individuals or organisations to send their responses to. Are you asking whether there was a web form to be completed?

Hugh O'Donnell: Yes. Was it possible to complete the consultation document online rather than download it and send it via snail mail?

Patrick Harvie: It could have been sent by e-mail rather than in hard copy. As far as I am aware, there was no web form that could be completed online. I am not sure that that has been standard practice.

Convenor, it is possible that the questions are starting to be about whether consultations in general are effective. I argue strongly that the consultation was conducted every bit as thoroughly and comprehensively—and probably more accessibly, in terms of equality groups—as most consultations that the Scottish Executive, in whatever guise and during whichever session of Parliament, has conducted. It was a thorough and high-quality consultation. The responses that were received were well analysed and gave a very clear indication of the views of the respondents.

11:30

The Convenor: It is worth pointing out that the committee's job is to ensure that the best possible consultation has been carried out. If that means that we must consider things that were not done in the past, so be it. We need to be thoroughly satisfied that everything that should have been done has been done.

David Cullum: That is fair. When I was preparing for today's meeting, I looked at the Government's code of practice on consultation. The code of practice was updated in January 2004, so the consultation that we are discussing was probably prepared in accordance with the 2000 code of practice. The updated code sets out six key criteria, of which four are particularly relevant to the consultation that we are considering. Would it be helpful if I read out the four criteria?

The Convenor: Yes.

David Cullum: They are:

"Consult widely throughout the process, allowing a minimum of 12 weeks for written consultation at least once during the development of the policy.

Be clear about what your proposals are, who may be affected, what questions are being asked and the timescale for responses.

Ensure your consultation is clear, concise and widely available.

Give feedback regarding the responses received and how the consultation process influenced the policy."

From the reading that I have done, I think that all four criteria were comfortably met in the consultation on hate crime. The final two criteria are about departmental effectiveness and better regulation and best practice, which are not relevant to the issue that is under consideration.

The Convener: Thank you. It is good to have that update, but you will appreciate that the committee must be satisfied from an equal opportunities perspective that proper consultation has been done.

Michael McMahon (Hamilton North and Bellshill) (Lab): I want to ask Patrick Harvie about a couple of comments that he made, so that I can be clear about his position.

You said that the working group concluded that there should be legislation, but that does not mean that people concluded what the legislation should do. Is that not why there should be a consultation on your proposal? You think that your proposal reflects the working group's conclusions, but surely only a consultation on your proposal would enable people to confirm that. Groups that support the principle of legislation might want to comment specifically on your proposal.

Patrick Harvie: Your question is valid. The consultation that was done specifically included the mechanism of statutory aggravation, as well as alternative approaches that might be considered—as a consultation organised by a member of the Scottish Parliament would do. The working group on hate crime made 14 recommendations. In recommendation 1, it said,

"The Scottish Executive should introduce a statutory aggravation as soon as possible for crimes motivated by malice or ill-will towards an individual based on their sexual orientation, transgender identity or disability",

and it went on to give details of how the legislation should be framed. That is precisely what I seek to introduce.

Michael McMahon: However, people who chose not to have an input into the working group's consultation might want to comment on your proposed bill, which has emerged from that consultation. David Cullum mentioned a letter in *Holyrood* magazine that called for a move to a

legislative stage, but surely the legislative stage includes a consultation.

Patrick Harvie: I absolutely agree that the process must include consultation. I am arguing that in the consultation that was conducted the first legislative option on which people's views were sought was the mechanism that is in my bill proposal. Respondents overwhelmingly supported that option and gave details about how it should be implemented. The working group's recommendation 1 was that it should be implemented.

As well as more general issues about hate crimes and how they impact on people's lives, the specific proposal to introduce a statutory aggravation for crimes motivated by prejudice on grounds of sexual orientation, transgender identity and disability has been fully consulted on, in a very inclusive way.

Elaine Smith (Coatbridge and Chryston) (Lab): I want to ask David Cullum about the process. We are considering the need for consultation on the draft proposal. If Patrick Harvie had carried out a consultation, he would consider the responses and make a decision on whether to lodge a final proposal. If he decided to lodge a final proposal on the basis of the information from the consultation that had taken place, I presume that a bill would come to this committee, which would consult further as part of the legislative process. Is that the case?

David Cullum: I think that that is right. The committee is considering whether there is a need for consultation on the draft proposal—the basic idea. If the committee were satisfied that there was no such need, or, if not, after further consultation, ultimately Patrick Harvie would lodge a final proposal, which would have to gather support from members from different parties before he could introduce a bill. As you said, I presume that the Equal Opportunities Committee would consider the bill. It is routine for committees of the Parliament to seek wide views on a bill as part of the stage 1 consideration process. It is interesting that the rules allow a committee to recommend that a bill be rejected if it considers that the outcome of the consultation did not support the final proposal.

Elaine Smith: Therefore, it is in the interests of the member who lodges the proposal to be satisfied that there has been robust consultation, because a committee might, after it had considered the finer detail of a bill, conclude that there had not been robust consultation.

David Cullum: That is correct.

The Convener: Thank you for clarifying that point. What steps were taken to evaluate participants in the consultation? For example, did

the 101 individual respondents reply by e-mail? Were responses individually worded or was there a standard response? What were the 52 organisations that responded? Was an attempt made to measure what percentage of respondents commented on sexual orientation or disability issues? I want to get a feel for who responded and how well people were represented.

Patrick Harvie: The working group's final report includes a breakdown of types of respondent, which shows that 5.1 per cent of responses came from lesbian, gay, bisexual and transgender organisations, 7.4 per cent came from disability organisations, 8 per cent came from local authorities, and 4.6 per cent came from gender equality organisations. I can go through the list in full, if you want, or I can provide it for the committee, if you do not have it. The information is in the final report, as is a full list of respondents.

A few respondents might have requested that their response not be made public. That is the case with all consultations and is particularly the case on an issue such as hate crime. However, the majority of respondents are listed and their responses are available, as is the breakdown of the type of organisations that responded.

The Convener: Did the 101 individuals who responded talk about the whole issue or just the disability or sexual orientation aspect? Were they speaking from experience? I just want an overview of where the respondents were coming from.

Patrick Harvie: An individual can respond to a consultation without necessarily giving a great deal of detail about their experience. Anyone is entitled to respond to a public consultation. The information that we have covers the proportion of individuals who responded and the breakdown of respondents into local authorities, disability organisations, criminal justice organisations and so on. I am not sure that it would be possible—

The Convener: Did your analysis show that any groups were underrepresented?

Patrick Harvie: I do not believe so.

The Convener: You think that everyone who should have responded, and whom you would have liked to respond, did so.

Patrick Harvie: I would argue that this consultation reached a broad range of individuals and organisations. There was a high response rate compared to that of many other consultations. The responses were overwhelmingly supportive of the proposal.

The Convener: There are no further questions. Are members satisfied with the reasons that the member has given for not consulting on the draft proposal?

Hugh O'Donnell: I am.

The Convener: We will need to take a show of hands to see whether there is dissent from that view.

Elaine Smith: Are we allowed to have some discussion before we go to a vote?

The Convener: We are under a lot of time pressure, but I will allow a brief, five-minute discussion before we move to the vote.

Elaine Smith: If members want to vote that there needs to be further consultation on the proposal, they should give a reason for that. My view is that consultation has been carried out. The member has shown that it would not be in his interests to proceed with a legislative proposal that had not been consulted on to his satisfaction. If the final proposal comes to the committee, we might find that we do not agree with the member's view on that, in which case we can undertake further consultation. I would like to hear from any members who do not think that consultation has been carried out.

Michael McMahon: I am still not convinced that people were consulted specifically on this proposal for a bill. Organisations that contributed to the consultation might have different views on the proposed bill. If we consult people on one thing, they will come at it from a particular perspective. A particular outcome might have resulted from the consultation, but that is not to say that the consultees think that the proposed bill is correct. The only way that we can test that is to ask for a consultation specifically on the proposed bill. I just do not think that we can apply responses to a wide-ranging working group report to a specific bill proposal. That would be a dangerous precedent for the parliamentary process.

Bill Wilson: The original consultation covered a series of options, including the option that we are discussing. If individuals felt strongly that the option of introducing a statutory aggravation was wrong, they would have been able to say so. Therefore, the consultation did specifically cover the proposed bill. If we were to have another consultation, we would have to ask more or less the same question; we would have to ask whether people wanted a statutory aggravation to be introduced.

Hugh O'Donnell: I hope that I understood what David Cullum said. My understanding is that whichever committee considers the proposed bill at stage 1 would have an opportunity to take evidence on it. At the moment, we are talking about only the draft proposal. There would be an opportunity subsequently to consider and take evidence on the specific proposal. Michael McMahon's point about the specific proposal would therefore be addressed at stage 1.

11:45

The Convener: I ask David Cullum for clarification. Would a committee normally carry out another consultation, or would it just undertake stage 1 consideration?

David Cullum: At stage 1, after a bill has been introduced, it has been the norm for the committee considering it to consult—if I can use that term—and seek views from wider society on the proposal.

Hugh O'Donnell: That clarifies the matter for me. Thank you.

Marlyn Glen: I think that the working group on hate crime did a really good job. I would be disappointed if only recommendation 1 were taken forward, rather than all the recommendations. The proposal that we are considering is basically recommendation 1. I do not see how the member could have made the consultation any better. I am content with it.

The Convener: We can now move to the vote. Are members content with Patrick Harvie's reason for not consulting on the draft proposal?

FOR

Glen, Marlyn (North East Scotland) (Lab)
 Kidd, Bill (Glasgow) (SNP)
 McMahon, Michael (Hamilton North and Bellshill) (Lab)
 Mitchell, Margaret (Central Scotland) (Con)
 O'Donnell, Hugh (Central Scotland) (LD)
 Smith, Elaine (Coatbridge and Chryston) (Lab)
 White, Sandra (Glasgow) (SNP)
 Wilson, Bill (West of Scotland) (SNP)

The Convener: The result of the division is: For 8, Against 0, Abstentions 0. The decision is unanimous.

I suspend the meeting to allow a changeover of witnesses.

11:46

Meeting suspended.

11:47

On resuming—

Budget Process 2008-09

The Convener: The next item is a briefing from the equality proofing the budget and policy advisory group. Given that the committee will begin its formal scrutiny of the Scottish Government's draft budget for 2008-09 very soon, we thought that it would be helpful to have a factual overview of the work that has already been done on equality proofing and the budget process. It is my pleasure to welcome to the committee Philippa Bonella, who is a member of EPBPAG, and Laura Turney, who is the chair of EPBPAG. Would you like to make any introductory comments?

Laura Turney (Scottish Government Public Health and Wellbeing Directorate): I head up the gender and mainstreaming equality team in the equality unit of the Scottish Government. I represent the Government side in the EPBPAG arena.

Philippa Bonella (Equality and Human Rights Commission): I am from the Equality and Human Rights Commission in Scotland. There are a number of members of the advisory group who are from outwith the Government. I am here to show that side of the group's work.

The Convener: Thank you for those remarks.

We know about the role of the finance department with regard to the work of EPBPAG—which is a simpler way of referring to the equality proofing the budget and policy advisory group. How do you see that role developing in future?

Laura Turney: At the moment, Government representation on EPBPAG comes from the equality unit and the finance department. Although the equality unit takes the role of chairing and providing a secretariat for the group, the finance department has a role to play as a member of the group.

With a new Government and a new approach to cross-directorate working that is based around five strategic objectives, we are seeking to broaden the membership of the group to make it more effective internally. The finance department will continue to have a role, but I think that we will also look to what we might call the centre—such as the office of the chief economic adviser and strategy and delivery—to take part in the group.

The Convener: It would be useful to be given an outline of what the finance department's role in EPBPAG has been to date.

Laura Turney: The role of the representative from the finance department has been to provide the finance perspective, just as the equality unit provides an equalities perspective, from the Government side. Obviously, the finance department representatives can deal with the technical issues of finance and the budget. They have been very much involved to date and I assume that they will continue to be involved. Philippa Bonella might have a view on the issue.

Philippa Bonella: Some of the group's most fruitful work has come from the interlinkage between equalities experts and finance people, as neither set of people has expertise across the board. The finance department has managed to ensure that equalities are embedded in the guidance that is issued to Government departments on the spending review and the budget process so that every department knows what it needs to do to ensure that such issues are considered in the budget process. I think that we have made the biggest impact in those kinds of areas. We have done that by ensuring that finance people are aware of equalities concerns and by ensuring that those are fed in throughout the process.

I think that all members of the group would agree that it would be helpful to have other members from central Government departments to ensure that equalities issues are spread across the board in strategic decisions and spending reviews and so on.

Laura Turney: The finance department takes a lead role when guidance is issued. Finance and equalities have certainly had a role to play in the guidance that has been issued to different portfolios this year.

The Convener: Given that the allocation of resources is crucial, how important is the finance role?

Laura Turney: I think that it is very important. If I may gallop ahead very slightly, I would say that, although the allocation of resources is important, there is a role not just for the finance department but for the individual policy teams that manage the budgets for taking forward particular areas of work. The role of EPBPAG has been to look at the mapping of the connection between evidence, policy and spend. From our perspective in the equality unit, we have focused on things such as equality impact assessments and on taking an outcome-focused approach, which is also enshrined in the public sector equality duties. There is a role for the finance department, but the issues are not confined just to that department; the responsibility lies with the Government's various policy teams, too.

Hugh O'Donnell: Given the various changes to the equality organisations in Scotland—such as

the establishment of the Equality and Human Rights Commission and of a Scottish human rights commission—does the advisory group have any plans to look at the group's current configuration to take account of those changes? Will it consider including other equality groups that it might be pertinent to have involved?

Laura Turney: The group's membership has already evolved in light of those changes. For example, Philippa Bonella was previously our Equal Opportunities Commission representative and we had another representative from the Commission for Racial Equality but, now that those bodies have ceased and have been replaced by the new Equality and Human Rights Commission, Philippa Bonella has taken on the role of representing that body, which covers equality across the six strands plus human rights. However, we probably need to reflect on the group's membership in light of the establishment of the new commission and in light of the changes that have been made to the way in which the Government is organised internally.

Does Philippa Bonella have a view on that?

Philippa Bonella: The group grew out of a gender budgeting perspective so there was much more expertise on how to mainstream gender equality into budget work than there was on other equality strands. As the group has grown, it has tried to take a much broader view of equality than just a gender budgeting approach. I think that that has borne fruit already.

Getting a wide range of views represented on the group is a challenge because the subject is quite difficult for people to grasp and it is quite technical. Over the past two or three years, we have certainly tried to ensure that the group includes representatives from a reasonably wide spread of organisations who are able to attend, but that has been challenging. I think that we could look again at the issue. Certainly, if there are other organisations that have an interest in equality budgeting, it would be great to have them on board.

Hugh O'Donnell: I anticipate that the chair of the Scottish human rights commission will be announced in the near future. Will that individual's name be somewhere on the radar when the group is considering any proposal for additional members?

Laura Turney: We can certainly consider it.

The Convener: Will someone from the office of the chief economic adviser be invited to participate in the group?

Laura Turney: We have invited people from the centre to join, but we are still in discussion on who would be the best person. Because everyone is

very busy in the run-up to next week, we will probably get an answer in the next few weeks.

The Convener: So there has been no invitation specifically to the chief economic adviser.

Laura Turney: No.

Marlyn Glen: Has the advisory group's work followed the budgetary cycle in Scotland?

Laura Turney: That would not necessarily be appropriate, as the equality proofing budget and policy advisory group's more recent work has not focused only on the budget. One reason why the group's title was changed to include the words "and policy" was that we sensed that the best focus was provided through using on-going impact assessments. Whereas the budget is very much focused on high-level spend within a particular timetable and cycle, work on delivering new strategies or bills or policies is very much on-going and, we believe, needs to be followed through all the time. That is why we have focused on pulling together an effective equality impact assessment tool that should be part of the Government's policy-making process as a matter of course rather than just on an annual cycle.

Marlyn Glen: Is the group's focus really on the spending review and—given the name of the group—on advising? The group sounds good and I am glad that we have such a group to provide advice, but who in the Government heeds its advice and acts on it?

Laura Turney: We have Government representation from both the equalities side and the finance side. In providing advice, we pull together the notes, minutes and action points—all of which are published on the internet—from the group's meetings. We then punt out—for want of a better phrase—that advice across the relevant parts of the organisation. It has certainly been passed on by us and by the finance people to the various people who have worked on the budget process this year.

Philippa Bonella: From my perspective, the value of the group is that it works as a cohesive whole that includes both civil servants, who represent the Government, and representatives of external organisations that have an interest in equality budgeting. That means that we can work together to work out what is realistic and practical within the processes that the Government uses for both the spending review and for its ordinary policies, so we tend to end up with recommendations that fit the way in which the Government works. Those can then be fed through the usual channels by the Government representatives. The recommendations tend to be about the guidance that goes out around budget time and the equality impact assessment process, which all officials must now use. The group seeks

to influence those standard processes and we have had a degree of influence. We do not tend to produce formal advice or recommendations that the Government then considers—the process tends to be more organic.

12:00

Laura Turney: I will follow up with an example. The recommendations and guidance that were pulled together during the pilot projects last year fed into the equality impact assessment toolkit process. The group's work had a positive impact on the process that was under way in the Government at the time to develop, finalise and roll out the tool and then to brief people on its use and provide them with support to equality impact assess their policy areas accordingly.

Marlyn Glen: The group's work, although perhaps subtle, is extremely important. However, I would like to think that it did not need to work subtly and that it had real influence on the spending departments at an early enough stage to make a difference. Do the spending departments listen and react to your advice?

Laura Turney: A bedding-in process is required for the new structure, but it should help us to do that work better, because there is a cross-directorate and more cross-cutting approach to making progress on any agenda. The new structure, which is based on the five overall objectives and the common purpose, should enable the group to have a stronger voice in the coming period.

Philippa Bonella: I echo what Marlyn Glen said. All the external members of the advisory group are clearly in it to make a difference. We are waiting until the budget is announced to see whether we have achieved that because, as yet, we do not entirely know. It will be interesting to see the extent to which equalities are embedded in the next spending round.

Hugh O'Donnell: I was interested to hear Philippa Bonella say that the group fits into the way in which Government works. If the focus is on equal opportunities, should not one recommendation be for a review of how Government works to ensure that equal opportunities are mainstreamed? If mainstreaming is not happening, how can we go about making it happen?

Philippa Bonella: That is an interesting point. I argue that a lot of legislation is now in place to require the Government to mainstream equalities. Particularly on gender, race and disability equality, there are now duties on the Government and other public bodies to show how they are making a difference in everything that they do. The group's role is not really to review how Government goes

about meeting its legislative requirements. However, the Equality and Human Rights Commission is certainly interested in that.

Hugh O'Donnell: My main question is on the draft budget and the budget. If, as we have heard, the process is in future to be framed around the Government's stated strategic objectives, how do you foresee a sustainable link between overall mainstreaming and the budget or draft budget?

Philippa Bonella: I have one answer to that. Equality impact assessment is the key issue, as the advisory group has said consistently. That is terribly jargon based but, in essence, we mean that if a measure—whether it is the Scottish budget or a small piece of policy—impacts on people, those who are setting it need to know what they are trying to achieve, who could be affected, whether there are barriers and whether more money needs to be put in certain places to ensure that everyone gets the same outcomes from the policy or budget. We are keen to see that happening throughout the Government, from low-level policies right up to the budget.

As part of the impact assessment process, there are questions on whether the person who sets the policy has considered the budgetary implications and, if not, what they will do to ensure that the policy or service meets the needs of a wide range of different groups of people. For me, that brings everything together and makes it clear that everybody, whether they are setting a national budget or creating a new policy, needs to be clear about who it will impact on, how they will ensure accessibility for everyone and how they will meet and resource particular needs.

We need to ask how we can ensure that that approach happens in practice and how we will review things if it is not happening so that it happens in the future. The Government is in the early stages of using the tool, so we are not yet in a position to say for sure that it makes a difference, but that is its aim.

Elaine Smith: In your answers to Marlyn Glen, you referred to the role of the pilot studies in health and sport and you mentioned using those in making progress with the commitment to equality proofing. Previously, there was a commitment to report on the work of EPBPAG in the formal budget documents. Can you confirm that future budget documents will contain reports on the work of EPBPAG and/or developments in promoting a more equality-focused approach to the Scottish budget, or will that not happen?

Laura Turney: With the new Government and the new approach, there has been a change. The previous commitment to report on the work of EPBPAG in the budget documents has not been taken forward. What we were trying to do,

particularly in the last period, was to broaden out the different spaces where reporting on equality work is undertaken, such as our equality schemes and the various reports that the Government produces during the year. It is not as if EPBPAG's work is not reported on or covered in other areas, but it will not be taken forward in the way that you mentioned.

Elaine Smith: The committee might want to reflect on that.

The findings from the pilots highlight the need for formal mechanisms to link policy teams to finance teams in the preparation of departmental bids. Laura Turney talked earlier about trying to create that link. Have steps been taken to act on that finding? If so, what are they?

Laura Turney: That takes us back to the equality impact assessment approach, which Philippa Bonella and I have talked about today. That is the key tool for mainstreaming, and the important links between evidence, policy and spend need to be made through that process. We all agree that the advisory group can help us to fine-tune that. I am not sure that we have got the questions exactly right or that they are helpful to everybody throughout the organisation, so we look forward to having dialogue with the group and fine-tuning things to ensure that the approach works appropriately.

Elaine Smith: Paragraph 12 of your submission states:

"If the EQIA process highlights that the policy could fail to meet the needs of specific groups or has discriminatory outcomes, the policy developer must consider what changes they will make to mitigate the adverse impact."

How is that monitored? Are there records of where changes have to be made? Are you learning from that?

Laura Turney: It is too early to say. Although the tool has been in use for a number of months, the process of undertaking an impact assessment is completely dependent on the piece of work in question—it can take a few months or a year, depending on the development time for the policy or strategy that is being assessed. The impact assessment needs to run alongside the development of the policy or strategy, to help get it right when it is finalised. We are putting together monitoring tools around the impact assessment per se. The tool, which is an on-line tool, can be accessed via the Government website—people can work through all the different questions. Once an impact assessment is published and a policy area is signed off, the assessment should be available on the published database. It is too early for us to say anything conclusive about that aspect of impact assessments. It is something that we will consider in the longer term.

Elaine Smith: If it is not built in from the beginning, how will it work?

Laura Turney: I am sorry. I am not sure that I understand your question.

Elaine Smith: Recording where changes have been made can help to inform processes.

Laura Turney: That is included in the impact assessment tool, which asks specific questions, such as who is going to make the change and when are they going to do so. Given that every impact assessment is different—because all the policy areas are different—where possible we have tried to include a few tick boxes. We have tried to avoid the tick-box approach, but tick boxes on a technical database make it easy to analyse information.

Elaine Smith: Will you be able to monitor what is happening?

Laura Turney: Yes, but it is too early to tell you the results of that monitoring.

Sandra White: I want to pick up on what you said about previous commitments to report back on EPBPAG in the formal budget documents. I have been on the Equal Opportunities Committee for only a couple of years, so I do not know whether such reporting has taken place. I am concerned that if the necessary information is not included in the formal budget documents, that will impact on how you are able to carry out monitoring. Have you been given a reason why the information is not going to be included in the budget documents?

Laura Turney: There is a distinction to be made between monitoring via impact assessment and the overall budget documents. There is a continuum that links the two, but they are different beasts.

Sandra White: My point is that if we cannot see where equality proofing is put forward at the beginning, we do not know what is being targeted. Do we have evidence of previous commitments coming to fruition?

Laura Turney: I do not want to pre-empt what is going to be said next week from an equalities perspective. I am not sure that I feel comfortable discussing that just now.

Philippa Bonella: I have not seen what is going to be published next week. In previous budgets, there has been a short summary of what the advisory group has done. My opinion—I have not spoken to other advisory group members about this—is that it is fairly hard to see what impact the advisory group has had on the process from that summary. However, the impact that the group has had in previous budget documents can be seen in the equalities section in each portfolio section.

That came about only because of the work of the group and its attempts, through working with the equalities and finance civil servants, to get a consistent level of quality in the budget documents. I do not think that we achieved entirely consistent quality, but we certainly got an equalities section in each portfolio area. From my perspective, that was a more useful way of showing the equalities work that was on-going than reports of meetings and so on. I have no idea how equalities will be represented in the documents that we will see very soon, but I hope that that every portfolio area will set out clearly and consistently what it is planning to do around equalities.

Sandra White: As Elaine Smith said, we will need to keep an eye on that.

Bill Wilson: The witnesses have partly answered this question, but perhaps they would like the opportunity to expand on how the budget work relates to the commitment to mainstream equality across all Scottish Government activities and functions.

12:15

Laura Turney: Following an earlier question, I became curious about whether members have a sense that there is somehow a conflict between the Government's structure around the five strategic objectives and the mainstreaming approach. I do not see any such conflict. From the smallest policy areas or approach to engagement with anybody about anything, all the way through to high-level, big documents such as the budget, our mainstreaming work should take place. We see the budget as part of a continuum that is underpinned by our commitment to equality impact assessments and other approaches to mainstreaming equality across a range of areas while keeping the equalities focus—which the equality unit supports—across Government.

I am sorry—I am not sure whether I answered your question particularly well.

Bill Wilson: No, that is okay. I think my next question has been answered as well.

The Convener: Okay—if you are satisfied, Bill.

There are no other questions, so let me say how helpful the briefing has been. I thank the witnesses for attending the committee. I am sure that your evidence and answers to our questions will help us to scrutinise the draft budget.

European Union

12:16

The Convener: Agenda item 4 concerns the European Union. We have a detailed paper, which contains a lot of information. Do members have any comments or questions?

Marlyn Glen: The paper was very helpful. It is detailed and complicated, and it is important that members of all committees are aware of the subject. There may be nothing on which the Equal Opportunities Committee can contribute at the moment because there are no green papers that we could feed into, but I wondered whether we should timetable a session to look at the annual reports, such as the annual report on equality between women and men, which is coming out in spring, and the gender road map. It might be useful for us to be aware of those reports and consider them.

Sandra White: I have an observation on the areas that are highlighted in Europe. We had a big inquiry about disability, but it does not seem to be top of the agenda for the European Commission. I thought that we could perhaps help out the EU because we have done such a huge inquiry. It seems that sexual orientation, disability and age are less well covered than other strands.

The Convener: That is a point well made, and there is an opportunity to proffer best practice and put proposals to the EU. As we progress with our assessment of the recommendations, we could consider that.

An official from the European Commission has been asked to attend our round-table discussion on 27 November. Some of the content of the paper and the issues that are highlighted in it could be put to him then. In the meantime, with the proviso that we note members' comments, are we content to note the paper?

Members *indicated agreement.*

The Convener: That concludes the public part of the meeting.

12:19

Meeting continued in private until 12:58.

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