



OFFICIAL REPORT
AITHISG OIFIGEIL

Equalities and Human Rights Committee

Thursday 20 February 2020

Session 5



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EQUALITIES AND HUMAN RIGHTS COMMITTEE

3rd Meeting 2020, Session 5

CONVENER

*Ruth Maguire (Cunninghame South) (SNP)

DEPUTY CONVENER

*Alex Cole-Hamilton (Edinburgh Western) (LD)

COMMITTEE MEMBERS

*Angela Constance (Almond Valley) (SNP)

*Mary Fee (West Scotland) (Lab)

*Fulton MacGregor (Coatbridge and Chryston) (SNP)

*Oliver Mundell (Dumfriesshire) (Con)

*Annie Wells (Glasgow) (Con)

*attended

THE FOLLOWING ALSO PARTICIPATED:

Emma Harvey (Scottish Government)

Dr Andy Hayward (Durham Law School)

Dr Kelly Kollman (University of Glasgow)

Martin Loat (Equal Civil Partnerships)

Christina McKelvie (Minister for Older People and Equalities)

Professor Kenneth Norrie (University of Strathclyde)

CLERK TO THE COMMITTEE

Claire Menzies

LOCATION

The Mary Fairfax Somerville Room (CR2)

Scottish Parliament
Equalities and Human Rights
Committee

Thursday 20 February 2020

[The Convener opened the meeting at 09:01]

Decision on Taking Business in
Private

The Convener (Ruth Maguire): Welcome to the third meeting in 2020 of the Equalities and Human Rights Committee. I ask everyone to switch off their mobile devices and put them away. The first item is a decision on whether to take agenda item 5, which is consideration of budget evidence, in private. Do we agree to do so?

Members indicated agreement.

Civil Partnership (Scotland) Bill:
Stage 1

09:02

The Convener: Agenda item 2 is an oral evidence session on the Civil Partnership (Scotland) Bill at stage 1. I welcome Dr Andy Hayward, associate professor in family law at Durham Law School; Dr Kelly Kollman, senior lecturer in politics at the University of Glasgow; Professor Kenneth Norrie, professor of law at the University of Strathclyde; and Martin Loat, chair of the Equal Civil Partnerships campaign.

Morag Driscoll, convener of the child and family law committee of the Law Society of Scotland, will join us shortly. We have received apologies from Professor Elaine Sutherland, who is unfortunately unwell.

I ask the witnesses to spend a couple of minutes telling the committee about their knowledge and interest in civil partnerships, and also to tell us whether they support the principles of the bill.

Dr Kelly Kollman (University of Glasgow): I am a political scientist, and I have studied same-sex unions for a number of years, largely in Europe and North America—in western democracies, broadly defined. I have looked quite a bit at the civil partnership laws in the United Kingdom and Scotland, from a comparative perspective. What I can offer to the committee is an insight into what other liberal democracies have done.

As I stated in my written testimony, I support the bill's approach. I want to end the discrimination that has been highlighted by the UK Supreme Court's decision. I like the option of addressing discrimination by extending civil partnerships to mixed-sex or different-sex couples, because we need not only to address human rights and discrimination issues but to pluralise family policy and offer couples, of the same or of different sex, more choice. Civil partnership does that.

Dr Andy Hayward (Durham Law School): I am a lawyer with a background and interests that are similar to those of Dr Kollman. I look at the issues slightly differently. I am based in England, so my specialism is around the long journey that we took when introducing equal civil partnerships there, and I use a comparative perspective, drawing on different models for civil partnership reform.

I support the Scottish bill, just as I supported the equal civil partnerships campaign and the legislation that was introduced in England and Wales. The basis for that support was twofold. From a lesbian, gay, bisexual and transgender

perspective, it was to ensure that same-sex couples who were in a civil partnership—and did not convert it but chose it, when they had the option of marriage or civil partnership—should not have a relationship status that had diminished validity. I also welcomed it from the perspective of equality and choice, so that people were able to formalise a relationship in the way that they chose.

Martin Loat (Equal Civil Partnerships): I am the chair of the Equal Civil Partnerships campaign south of the border. I have been involved for five years, the past two as chair. I have been supporting Rebecca Steinfeld and Charles Keidan, the couple who won the Supreme Court ruling about 20 months ago, as members will know.

I, of course, support the bill. Our campaign has 140,000 registered supporters, and the anecdotal evidence is that about 400 to 500 couples have already entered into mixed-sex civil partnerships in England and Wales since they were introduced on 31 December. I congratulate the Scottish Parliament on the terminology around different-sex and mixed-sex partnerships. The Westminster Government's documentation still says "opposite-sex civil partnerships", which does not allow for any gender or transitioning that may be involved—Scotland is ahead on that.

I am not an academic but a practical campaigner, and, in practice, a number of the couples who have got involved are in middle or later life. They may be divorcees or widowed or have lost a partner, and it has been moving to see the outpouring of emotion and joy on our Facebook and other social media pages when they have found that they are able to have a valid legal union with their partner due to the law change in England and Wales. Scotland should not underestimate that group, because people in their 50s, 60s and 70s have thought about the issue for a long time and know what they are doing. They are not dabbling; they have waited 20 or 30 years and now they can have a mixed-sex civil partnership. It would be tremendous if Parliament could bring that to an equivalent number of couples in Scotland.

Professor Kenneth Norrie (University of Strathclyde): I have taught and researched Scottish family law for almost 30 years. In the past 15 years, the major legal development in family law across the world has been dealing with LGBT people, in particular, with regard to civil partnership and then the opening of marriage to same-sex couples. That has been a major focus of my research for a long time.

I support the bill, but my support is possibly a little more ambivalent than that of my colleagues here today. It is far better than the current situation; it was clear even before the Supreme Court told us so that giving same-sex couples

more apparent choice than opposite-sex couples was unsustainable. It is a good bill in the sense that it tackles that issue. I would have preferred it to do something else, but I can live with the fact that it is not doing that—I am perfectly happy with that. As the parliamentary process progresses, details may need to be tweaked a little, particularly in relation to gender recognition.

The Convener: We will certainly have the opportunity to explore all the detail as we go on.

Alex Cole-Hamilton (Edinburgh Western) (LD): I thank the witnesses for their introductory remarks, which were very interesting. Before I ask my substantive question, I will follow up with a brief supplementary question on Professor Norrie's statement. You said that you would rather the bill had been something else. For the benefit of the committee, can you define what that something else might look like?

Professor Norrie: Given that the status quo was unacceptable—that is clearly the case—the options were to either follow the Scandinavian or Irish approach, which effectively involves winding down civil partnership, or to adopt the approach that has been taken by countries such as New Zealand and England, which is to open civil partnerships to mixed-sex couples. Purely from a legal perspective, it seems to me that it is inefficient law to have two institutions to do the job of one, which leads me to a preference for having one institution. Personally, I do not terribly care what it is called.

It is efficient law reform to have one institution to which everyone can have equal access—although I must keep emphasising that the bill is much better than the status quo. We currently have two institutions and the bill will make those two institutions virtually indistinguishable, except in name and the social and emotional values that the name carries.

Alex Cole-Hamilton: You referred to two institutions and, obviously, the other one is marriage. Do you accept that, for many people, the term and concept of marriage carries with it a great deal of baggage and even stigma that they would wish to avoid, although they would still like to unify in the eyes of the law and the people who care about them, and that those people would rather have two options? No one in the political universe is going to suggest that we wind down the institution of marriage.

Professor Norrie: Hmm.

Alex Cole-Hamilton: Okay—you can plead the fifth amendment on that.

My substantive question is for the whole panel. From the English experience and in the Scottish context, when we first created civil partnerships, it

was obviously a political answer, as much as anything else, to meet the desire of same-sex couples for their unions to be recognised in law. What are your reflections on why, when the original civil partnership legislation was introduced, the inclusion of mixed-sex couples was not considered?

Martin Loat: Perhaps I can answer that question, having been involved in the campaign in England and Wales for a few years. My understanding is that David Cameron, who was Prime Minister at the time of the introduction of same-sex marriage, insisted that it was all about promoting marriage and rejected all ideas that were put to him in favour of full equalisation. So, the Marriage (Same Sex Couples) Act 2013 in England and Wales was passed without the fourth component—the full equalisation of mixed-sex civil partnership.

Alex Cole-Hamilton: My question was not really about the legislation that brought in same-sex marriage; it was about the precursor legislation that introduced civil partnerships. Right out of the traps, civil partnerships were only for same-sex couples, but was the inclusion of mixed-sex couples considered at the time?

Martin Loat: I do not know for sure, but that was in 2004, which is 16 years ago. My sense is that a desire for a civil partnership option for mixed-sex couples is a more recent movement. There was no campaign for it and there are no records that we can find of anyone in 2004 doing what we have been doing for the past two years. I do not know for sure, but I think that it was just not a talking point.

Dr Hayward: Before the Civil Partnership Act 2004, there were two private member's bills on the subject: Lord Lester of Herne Hill introduced one and Jane Griffiths MP introduced one in the House of Commons. Those bills included mixed-sex civil partnerships. It was felt at the time that it would be better to tackle the issue for same-sex couples directly, because they did not have any access to any method of formalisation. It was felt that addressing the detriment that same-sex couples suffered was a greater priority than the need to find an alternative to marriage.

The bills had some support—particularly Lord Lester's bill. However, Lord Lester decided to withdraw his bill in order to pave the way for the bill that became the 2004 act.

Alex Cole-Hamilton: Given that there was a body of support for that approach in Westminster, were there no attempts during the passage of the 2004 act to introduce amendments to make such civil partnerships available to mixed-sex couples?

09:15

Dr Hayward: There were attempts, which you can read in *Hansard*—the issue was raised in Parliament—but it was felt that that bill did not provide the opportunity to deal with the issue and that it was not right to use it as a method of protecting mixed-sex couples. It was felt that the Law Commission should review cohabitation and should focus on mixed-sex couples in that arena. We adopted a similar approach to that of the Scandinavian and Nordic countries by focusing on a functional equivalent to marriage at a time when same-sex marriage was not politically viable.

Professor Norrie: In 2004, when the Civil Partnership Bill was going through Parliament, the major political imperative to ensure the passage of the bill was to insulate it from marriage. There were comments from Jacqui Smith, who was the lead minister at Westminster, that the bill was not about marriage and that it did not attack that ancient and wonderful institution. There was a political imperative at the time to say that same-sex couples were different to mixed-sex couples. That argument was used to glean support for the bill. However, that was 16 years ago and the world, particularly in this area, has been transformed. Those debates would have far less purchase today, but they were important at the time.

There were attempts to amend and widen the bill. Generally, those came from people who were opposed to the whole idea: they were wrecking amendments. For example, there was an amendment calling for any two people, such as brothers and sisters, to be able to have a civil partnership. People talked about spinster sisters. Why should spinster sisters not get an inheritance tax benefit when all those gay people are being given it? That was the sort of argument we heard. That was all peripheral to the main issue of allowing same-sex couples to access all the legal rights, remedies, obligations and responsibilities that opposite-sex couples have had for centuries.

Mary Fee (West Scotland) (Lab): Professor Norrie, your answer to the last question leads on to my first, which is about the legal and social differences between marriage and civil partnership. You touched on survivor benefits, which is one key difference that we have heard about. Can you expand on the legal and social differences between marriage and civil partnership?

Professor Norrie: When it comes to issues such as survivor benefits, the major difference is not between the institution of marriage and the institution of civil partnership. The problem is that the Civil Partnership Act 2004 and the Marriage and Civil Partnership (Scotland) Act 2014 were not retrospective. That meant that, when same-sex

couples who had been living for decades as if they had entered into one of those institutions were finally able to do so, any benefits that they had built up—for example in pension contributions—were not counted. It took a Supreme Court decision—using European Union law, by the way—to say that that approach was unlawful. That retrospectivity is an issue.

If I can give a personal example, I have been in a partnership for 31 years. If one of us dies, or if we separate and there is a divorce, the law will only recognise 10 years of togetherness. That is a much more important issue than the differences between marriage and civil partnerships.

In relation to the legal differences between marriage and civil partnership, the two institutions have been designed to be as close as possible, which is good. One major legal difference—but, really, who cares?—is on the grounds for divorce or dissolution; for mixed-sex and same-sex marriage, adultery is one of the grounds, but it is not a ground for dissolving civil partnerships. However, you can get round that by other means.

The other major difference—which I would much prefer was tackled in the bill, because the issue has a real effect rather than an emotional effect—involves access to religious marriage. The 2014 act opened religious marriages to same-sex couples, and we thought that that gave us equal marriage. However, it did not, because each religious organisation has to opt in. There are something like 25 religious bodies in Scotland that have registered with the registrar general for Scotland as being willing to offer mixed-sex marriages; same-sex couples have the choice of about three. That approach is written into the 2014 act and it really limits the choice that same-sex couples have compared with mixed-sex couples. That is the sort of thing that I would much prefer to be tackled in the bill, instead of having a good bill that simply allows people to call their relationship what they want to call it.

Mary Fee: That is interesting. We will come to the issue of adultery later. On the issue that you raised on retrospective rights, do you foresee a time when that will be addressed? Would that be done through a stand-alone piece of legislation? Would there need to be lots of tweaks done to existing marriage laws to fix that?

Professor Norrie: It is not to do with marriage laws; it is in the Equality Act 2010. It would be a simple and relatively straightforward process to amend that. There are jurisdictional issues between the two Parliaments, but there is no need to go into the marriage legislation or the civil partnership legislation, except that the Marriage and Civil Partnership (Scotland) Act 2014 contains the provision that says something like, “This is not

contrary to the Equality Act 2010 if we don’t make it retrospective.”

Martin Loat: I will make a couple of points on the experience in England and Wales. I depart from Professor Norrie’s view to some extent. He has stated that the technical legal differences between civil partnership and marriage are very minimal, but I want to focus more on the emotional, cultural and symbolic differences between the two institutions, and the meaning that marriage and civil partnership have for some people.

I appreciate that the Scottish legislation is slightly different to that in England and Wales but, on the point about adultery being a ground for divorce and non-consummation being a ground for annulment, in both cases you are, in effect, entering into an institution in which an outside party is making a comment on the sex lives of the individuals. Civil partnership legislation is silent on that matter, leaving it up to the couple to decide how they want to organise things. Particularly for an older couple coming together for a union, their knowing that if their marriage was not consummated it would not be valid might put them under undue pressure.

Professor Norrie: We do not have consummation in Scotland—well, we have consummation—[*Laughter.*]

Martin Loat: To some extent, yes—

Professor Norrie: —but it is not a legal ground.

Martin Loat: Yes, in relation to the legislation, there is a difference. Thank you, Professor Norrie.

The other point that I will make is that, when same-sex marriage was introduced, many couples who had been in a same-sex civil partnership understandably wanted to change that to a marriage. That means that they must have seen a difference that, to them, made it worth moving from one institution to the other.

If there is another group who are married but see that a mixed-sex civil partnership is the choice for them, I would argue that the emotional differences must work both ways. I do not remember people saying to same-sex couples when same-sex marriage was introduced, “Well, you’ve already got civil partnership. Why do you want to get married then?” and being given arguments about the legal definitions being quite similar. People understood the emotional differences, so I would argue that the reverse should apply.

Mary Fee: Does Dr Hayward or Dr Coleman have any comments to make?

Dr Kollman: I echo what Martin Loat has just said. The legal differences between the two

institutions are not huge, either in Scotland or in England and Wales, but the symbolism matters a great deal; indeed, as Martin Loat just said, it matters both ways. The symbolism of marriage obviously meant a lot for the legitimacy of same-sex couples but, on the other hand, it comes with a history that still has consequences for behaviour today. Some people embrace that history, but others do not. The choice is therefore an important one.

Dr Hayward: I agree with that. The legal distinctions between civil partnership and same-sex marriage are very tight—indeed, they are insignificant. However, the important idea—bearing in mind that formalised statuses are meant to evolve in society—is that the Civil Partnership Act 2004 enables couples to imprint their values on their relationship. Yes, there are some echoes of marriage in terms of the 2004 act, but that act can evolve and give parties the ability to express themselves through that act. I agree with Martin Loat and Dr Kollman that the symbolic values cannot just be sidelined but are quite significant for the couples.

Mary Fee: That is helpful. Thank you. I am conscious of the time, so I will just briefly cover the issue of adultery, because a couple of other witnesses have already touched on it. Do you think that, in order to have true equality across whatever kind of institution couples want to enter into, adultery should be a ground for dissolution of any kind of partnership?

Professor Norrie: I would say the reverse. I completely agree with Martin Loat that the law should not be getting involved in looking at people's sex lives. I would remove the issue of adultery from the legislation. I would remove any interest that our legislation has in the sex lives of adults who are involved in personal relationships.

Dr Hayward: I agree with Professor Norrie that adultery should not be a consideration in relation to marriage or civil partnership. However, I would recommend, as an interim measure, that civil partnerships should not recognise adultery at all for mixed-sex and same-sex partnerships. We should also consider down the line—some of the consultation responses touch on this—an overhaul of divorce law. We have a bill currently before the House of Lords—the Divorce, Dissolution and Separation Bill—that would remove the issue of fault completely from our divorce law and get rid of the issue of adultery completely. There would simply be a statement of marital breakdown, subject to a time period. That would be a much more progressive, modern approach.

Mary Fee: Okay. That is helpful. Thank you.

Oliver Mundell (Dumfriesshire) (Con): I want to come back to Professor Norrie on the question

of legal efficiency and push it slightly further. Is there an element of the law having to take into account the social and emotional feelings of the people that it is meant to govern? Is that a different form of efficiency?

Professor Norrie: Do not get me wrong, because I agree that the law has a symbolic role to play. A really good example of that is the Marriage and Civil Partnership (Scotland) Act 2014, which, in reality, gave to same-sex couples very little that they did not already have under the 2004 act in terms of legal consequence. The party that you have to create the relationship, the involvement of ministers and all those sorts of things are different. However, in terms of actual legal consequences, the 2014 act did virtually nothing. That was not the point of the 2014 act, though; the point of that act was symbolism. It declared very clearly that 2,000 years of discrimination against LGBT people, official disparagement of LGBT people and a status-based assumption in the law were all over. It was a very powerful and important piece of Scottish Parliament legislation.

09:30

There is symbolism in the Civil Partnership (Scotland) Bill but, for me, it does not have the same purchase. Some people reject marriage because it has a patriarchal, religious history—of course, that is true. However, to me, it is a bit like a woman saying, "I'm not going to vote, because the voting rules used to be patriarchal and were designed to keep men in power and women out of power." The world has moved on and marriage has evolved. I dislike the phrase "equal marriage", which was the big, powerful slogan that was used. It served its purpose, but I much prefer the term "gender-neutral marriage". I think that the 2014 act has created gender-neutral marriage.

In my view, marriage has been saved as an institution that is open to everybody as a result of the 2014 act. Because of that, I see the Civil Partnership (Scotland) Bill as being far less powerful. Nevertheless, I acknowledge that it has symbolic and emotional purchase for some people.

Oliver Mundell: From a legal point of view, that would be a legitimate ground for doing something.

Professor Norrie: Yes.

Oliver Mundell: I just wanted to clarify that, for the sake of balance.

The Convener: Before you go on, Oliver, Dr Kollman would like to comment.

Dr Kollman: I agree with a lot of what Professor Norrie has just said. It is true that, from the point of view of symbolism and opening up marriage, the

2014 act had more punch. However, I do not agree completely with the analogy with voting for women. The history of women being excluded from voting does not necessarily impact on women's behaviour today when they think about voting or participating in politics, whereas the history of marriage—of course marriage has evolved a lot; I am not saying anything against marriage today—still has an impact on how people behave today. That is a big difference. That is why the symbolism of the bill is important.

Oliver Mundell: Do you have any concerns about the interim plan to recognise different-sex civil partnerships from the rest of the UK as marriages in Scotland?

Professor Norrie: As I read the bill, the interim plan is that if different-sex civil partnerships come into force in the rest of the UK before they do in Scotland, those partnerships will be treated as marriages in Scotland until such time as our bill becomes effective. I see no conceptual difficulty with that whatsoever. For 10 years between 2004 and 2014, our legislatures were perfectly comfortable in telling same-sex couples who married abroad that, when they came to this country, they were in civil partnerships and would be treated as such. A lot of people did not like that, but the law managed and accommodated the situation. That was a mechanism—a clumsy and unfortunate mechanism—to allow people's legal rights and responsibilities to flow, and that is what the interim measures in the bill will do. In that respect, the bill is simply following a pattern.

Martin Loat: I need to comment, not just because of my role in the Equal Civil Partnerships campaign but as somebody who is in a mixed-sex civil partnership that is recognised in England and Wales. I am in the target group and, given everything that we have been through on a campaigning level, I would have a huge problem in principle with the proposal that, in the interim period, the relationship that I am in would be treated as a marriage if I were to move to or operate in Scotland. That would undercut what I have spent five years campaigning for, to the point that I might not want to come to Scotland until the position changed. I have not gone through all of that just to be treated as married for technical expediency. It is not for me to tell you how to run your laws, but I urge you to either rethink the position or move very quickly through the process so that it becomes a purely theoretical point. It sticks in my throat that the relationship that I am in would be treated as marriage, given that I am a campaigner for mixed-sex civil partnerships.

Oliver Mundell: Following on from that, is there a similar concern about how civil partnerships are seen and whether they are recognised overseas? I know that that is already an issue for some

people. For both forms of civil partnership—mixed sex and same sex—are there concerns about how they are seen in other jurisdictions and what rights extend to civil partners?

Professor Norrie: It is an inevitable problem that, if the Scottish Parliament creates or expands an institution, the Scottish Parliament has no power to tell the rest of the world to recognise that institution. I do not think that we should be hung up about that; we have to do what is right for Scotland and for people who live in and come to Scotland. We cannot influence Iran, Iraq, Saudi Arabia or any other country that is not going to recognise our relationships. I have sympathy for Martin Loat if he feels that his relationship is not properly recognised in Scotland. If I go to half of the countries in the world, not only would I not be regarded as being in a legally recognised relationship that is called something that I do not want it to be called, my relationship would not be recognised at all. I would effectively be divorced every time I got off an aeroplane in some countries. Some years ago, I was told by immigration officers in some countries that I was no longer in a relationship simply because I crossed a border.

No Parliament on this planet can tell every other country what to do—that is an inevitable consequence of different legal systems having different problems. The issue is the reverse one: what we do when people come to Scotland. That is the important issue. Again, I have sympathy for Martin Loat and I understand the issue because, in a sense I have also faced it, although, frankly, in a more severe form. It would not be technically problematic for the bill to be amended to say that mixed-sex civil partnerships that are validly created abroad will be recognised here, even though people cannot enter into one here yet. I would draw an analogy with polygamous marriages. You cannot enter into a polygamous marriage in this country; however, if parties validly enter into a polygamous marriage in a country that allows it, and if the parties are domiciled there or are nationals, and they come here, they will still be married. I see no technical problem with the bill being amended in the way that Martin Loat wants it to be. I would support such an amendment.

Oliver Mundell: That is helpful, thank you.

Angela Constance (Almond Valley) (SNP): I am keen that we distil the benefits surrounding different-sex partnerships. The panel has touched on the benefits, and Oliver Mundell has spoken about the social and emotional aspects. In answer to Mary Fee's questions, some of the more practical benefits for pension rights were touched on. In thinking about the benefits of different-sex partnerships, can we focus on the rights that they give people? I am particularly thinking about the

different rights that people have in comparison to those that they would have if they were cohabiting. Even in Scotland, where rights are enhanced, if people cohabit for a lengthy period of time, that is still not the same as marriage.

Martin Loat: I will leave the detail to the family law academics. In England and Wales, we faced a challenge in educating people that there is no such thing as a common-law marriage. Many couples who were cohabiting thought that they had rights, although that number might be reducing now. In practical terms, that often affects the woman in the relationship more if the man works, has accrued some wealth and has then left. The woman might think that she will get equal shares, but that might not be the case. We have argued that the civil partnership for mixed-sex couples provides a lighter and easier way to get the legal recognition and protection that would apply to both sides of the couple in that example and protect the children.

I will leave it to others to talk about the fine detail but, from the point of view of our campaign, a mixed-sex civil partnership is an easy and doable way to get equal rights. It costs £46.

Dr Hayward: We have touched on some of the legal benefits, but there is also the idea that the mixed-sex civil partnership is a status. There is formalisation. There is a start date and potentially an end date, and that will generate the ability to calculate and accrue benefits. There are the standard benefits of protection on relationship breakdown, which are really important. I note that section 28 of the Family Law (Scotland) Act 2006 allows for a cohabitation claim. I know that the Scottish Law Commission is reviewing that. We do not have that in England. Although I welcome cohabitation reform in England and Wales and think that it is the next area for us to go into, the fact that you have that here is quite important. However, reform is needed.

Civil partnerships will certainly be attractive in protecting vulnerable couples. They will be popular in England and Wales—we will probably have a surge in demand—but they will not remove the pressing need for a broader, blanket safety net for all couples.

Professor Norrie: Andy Hayward is quite right that the approach does not tackle the real issue in England. There is an argument that opening up civil partnerships to mixed-sex couples is more urgent in England and Wales than it is in Scotland because they do not have cohabitation provisions in the way that we do. We have succession claims, claims on separation, and financial adjustments at those difficult periods of people's lives.

The real issue is the choice between a registered relationship—whether that is a marriage or a civil partnership—and an unregistered relationship. One of the real problems in England is that Parliament has consistently refused to deal with the issue of unregistered relationships. If a person does not register with whichever institution, they are left in an extremely vulnerable position.

Martin Loat is quite right to say that all the research and statistics show that people believe that they have a so-called common-law marriage, but they do not: they have nothing. In Scotland, it is quite different. People already have a choice of whether to register their relationship and get the full gamut of rights and responsibilities or not to register their relationship, in which case the law will protect the vulnerable.

The bill is all about registered relationships. It does not address—and it is not the place to address—any further amendments in relation to cohabiting, unregistered couples.

09:45

Angela Constance: Professor Norrie, are there enhanced rights in Scotland for people in a civil partnership or a marriage compared with the situation for people who cohabit? Am I right in thinking that that is because of issues to do with pensions and exclusion orders for perpetrators of domestic violence and that there are other quite discrete nuances?

Professor Norrie: You are right, except in relation to the domestic violence legislation, which is very carefully designed to cover all types of couples. Your fundamental point is absolutely right: if a person is in a registered relationship, they have enhanced protections. In 2006, the Scottish Parliament deliberately chose to keep lesser protections for cohabiting couples in order not to undermine the institution of marriage. That is how the argument went at the time. Therefore, there is a hierarchy with marriage and civil partnership at the top, then cohabitants, and then people who perhaps do not live together but are in long-term relationships.

Angela Constance: Thank you. That is helpful.

Dr Kollman: I will not talk members through the details of the different laws, because the family lawyers can do that. However, on policy needs, it is very clear that family types are continually diversifying and that cohabitants in particular are becoming a much more common family type. The law on cohabitants here is very helpful but, as Andy Hayward has already said, the Scottish Law Commission is looking into whether it is adequate, given that quite a bit has changed since 2006 with regard to how people live their lives and form families. It is worth looking at whether the law on

cohabitants is really doing the job that we need it to do, given how society is today.

Mary Fee: I want to return to the issue of gender recognition, which Professor Norrie touched on in an earlier response. In your submission, Professor Norrie, you questioned whether the full implications have been worked out for the situation in which one party to an existing civil partnership or marriage changes gender. Will you expand on your comments and explain what difficulties you envisage? Perhaps the rest of the panel can then give their views.

Professor Norrie: The practical difficulty is that there are currently two bills before the Scottish Parliament: the Civil Partnership (Scotland) Bill, which we are considering today, and the gender recognition reform (Scotland) bill, which may be just a draft bill—I cannot remember. The situation is a repeat of what happened in 2004, when the Civil Partnership Bill was going through Westminster. That was followed very quickly thereafter by the Gender Recognition Act 2004. The interplay between those pieces of legislation became very clumsy. The Scottish Parliament faces the same clumsiness this year, which is really unfortunate. If you could combine the two pieces of legislation, many of the problems would be resolved. The main problem is that the situation is overly complex. It seems to me that, once marriage—

Mary Fee: If I may interrupt you, is the situation overly complex by necessity, because of the law, or because we have made it overly complex?

Professor Norrie: We have made it overly complex, but the approach was designed to deal with the fact that, in 2004, there was a complete separation of same-sex relationships and mixed-sex relationships and civil partnerships and marriage. Therefore, if one of the parties in either a civil partnership or a marriage changed gender, that relationship had to come to an end because we could not accommodate a different gender mix in either of the relationships. The marriage legislation half dealt with the problem because, with marriage, gender does not matter now. That is why I prefer the term “gender neutral”.

The Civil Partnership (Scotland) Bill will make civil partnership gender neutral, which is good. If we had started from the point that both relationships are gender neutral, the transgender issue simply would not arise, because it would not matter. However, instead, we are trying to replicate the complex provisions of interim gender recognition certificates while people are in a relationship in order to protect the other party and so on. We do not need all that. If a person in a relationship changes gender and the other person cannot accept or accommodate that and no longer wishes to be in that relationship, the divorce courts

can deal with it. That is not a difficult thing. Instead, we are trying to replicate the sensitivities that we created in 2004 in a different world to deal with a different situation.

Mary Fee: What are the views of the rest of the panel on that?

Martin Loat: I broadly agree with Professor Norrie. I have another point to make in a moment, so I will save time by passing on this one.

Dr Kollman: I, too, am broadly in agreement with Professor Norrie.

Dr Hayward: Part 5 of the Civil Partnership (Opposite-sex Couples) Regulations 2019—those are the regulations that brought in mixed-sex civil partnerships in England and Wales—has allowed an individual with a full gender recognition certificate to be able to have a mixed-sex civil partnership without having to dissolve the original civil partnership, provided that their partner consents to that. There is an alignment so that there is no break in the relationship—people can switch between the different types of status, which is welcome.

We are consulting on the issue. I hope that we will be able to change the Gender Recognition Act 2004 through consultation, but that process has stalled. It might be premature to move on that.

Mary Fee: Professor Norrie, are you suggesting that the draft gender recognition reform (Scotland) bill, which is out for consultation, is the means to remedy the issue? If an amendment were made to that bill when it reaches the Scottish Parliament, would something need to be done to the Civil Partnership (Scotland) Bill so that they mirror each other, or would the gender recognition reform (Scotland) bill be the only one that needed to be changed?

Professor Norrie: I do not know. As I said in my written submission, the committee needs to look at the matter carefully. The clean and sensible place to deal with it is probably in the gender recognition reform (Scotland) bill. In that case, the provisions in the Civil Partnership (Scotland) Bill amending the Gender Recognition Act 2004 would need to be reconsidered.

Mary Fee: Thank you. That is very helpful.

Annie Wells (Glasgow) (Con): Good morning, panel. What are your views on allowing married couples to convert their marriage to a civil partnership and vice versa?

Martin Loat: I very much want to come in on that point. The Westminster Government has got itself into knots on the issue, specifically in relation to converting a mixed-sex or traditional marriage to a mixed-sex civil partnership. That is still out for consultation in England and Wales—it was kicked

out of the Westminster bill at the last minute, perhaps because it was seen as controversial and possibly opening the door to objections from the church and other religious groups. There is an opportunity in Scotland to neaten things up and get it all clarified.

There is an argument that couples who find themselves in traditional marriages and realise that they would have had a mixed-sex civil partnership had it been available should be able to convert. The Equal Civil Partnerships campaign position is that we totally agree with that. We do not want there to be any time limit on that—we do not want people to have only two years or 18 months in which to make their decision.

We have two main reasons for saying that, the first of which is practical. A couple might be living and working overseas in a jurisdiction that does not recognise mixed-sex civil partnerships, so they might feel that they have to get married. In five years' time, they might move back here—to Scotland, England or Wales—and find that the ship has sailed on the conversion opportunity.

The other reason is more a social or societal one. We feel that we are on the verge of seeing a new social construct in the mixed-sex civil partnership. Who knows how that might mature or develop? My view is that support for it is silently building and that it will become more popular. In five, 10 or 15 years from now, it could become the norm for many people, who might see others in their peer group entering into such partnerships. If, at that time, a married couple were to decide that they understood the differences and that they would rather be in a civil partnership and wanted to convert to one, the Equal Civil Partnerships campaign would not want that not to be allowed. To me, that would be like saying that we made provisions for veganism 20 years ago but that, if someone now declares that they are vegan, they can be one for evermore. We know that society changes and that things suddenly become more popular and other people want to join in. We would argue for an open-ended ability to convert from a traditional marriage to a mixed-sex civil partnership.

Dr Kollman: I broadly agree. The issue is partly about increasing people's choices in how they structure their lives. Leaving such choices open for as long as we can and making the options as liberal as we can would be good.

I echo what Martin Loat said. It would also be useful to consider examples from other countries. In France, the *pacte civil de solidarité*—PACS—is what we might call a registered partnership-lite arrangement. It has become increasingly popular over the years—so much so that, for every five marriages, there are now four PACs. The form of registered partnership that is available in the

Netherlands, which is open to both mixed-sex and same-sex couples, was previously never all that popular for a variety of reasons, but it has recently become increasingly more so. Things are changing. In other European countries, the direction of travel is similar in that registered partnerships have become more popular for mixed-sex couples.

Professor Norrie: There is a fundamental flaw in the bill that will come back to haunt the Parliament. The idea is to do for mixed-sex couples what we previously did for same-sex couples. That is fine. However, when same-sex marriage came in, what we did for those couples was to give those who were already in civil partnerships the choice of either staying in them or converting to marriage. Conversion could be done through two mechanisms: by a purely administrative one or by getting married. I do not think that the marriage option is available in England. At any rate, the point is that people in same-sex civil partnerships can convert to marriage. I think that, for the first year, all fees were waived on the ground that those people had previously had only one option but now had two and that, if they wanted to take the second option, they should not have to pay for that. That model should have been adopted here.

From my reading of the policy memorandum, I think that the Scottish Government has deliberately chosen not to allow people in marriages to convert to civil partnerships. I presume that that was through fear of undermining the institution of marriage, but it should have done so. If the whole point of the exercise is to do for opposite-sex couples what has previously been done for same-sex couples, we should do it all. We should allow mixed-sex couples who married but would now prefer to have civil partnerships the opportunity to have them. For the first year, we should not charge them for doing that. We should simply follow the model that we successfully adopted in 2014.

Annie Wells: I think that all my questions have been answered. Thank you very much.

The Convener: Oliver, if your supplementary question is brief, we can probably fit it in.

Oliver Mundell: I think that Professor Norrie has captured the point that I was going to make.

The Convener: Okay. That brings our session to an end. I thank our witnesses very much for their evidence, which has been helpful. I suspend the meeting to allow for a change of witnesses.

09:59

Meeting suspended.

10:02

On resuming—

Budget Scrutiny 2020-21

The Convener: Our third item of business is an evidence session on the Scottish Government's budget for 2020-21, in which we will hear from the Minister for Older People and Equalities, Christina McKelvie. Good morning, minister, and welcome. Also present are Sean Stronach, joint head, and Emma Harvey, performance manager, of the Scottish Government's equality unit. I thank all our witnesses for being with us this morning.

I invite the minister to make opening remarks if she wishes to do so, for up to five minutes.

The Minister for Older People and Equalities (Christina McKelvie): I thank the committee for the invitation to appear before it to consider its scrutiny of the Government's draft budget for 2020-21.

I look forward to addressing the committee's questions. I am sure that they will be many and varied, but I especially welcome those on the budget for my portfolio. This budget has seen the largest single increase in the equalities line, which takes it to its highest-ever level, £30.2 million. I hope that the committee will agree that that demonstrates the Government's commitment to delivering equality and human rights for the people of Scotland.

My 2020-21 budget will continue to promote equality and human rights through investment in organisations that work to achieve equality for women and girls, including important work on preventing gender-based violence. It will also remove barriers to positive ageing and will strengthen community engagement. Further, the budget will support the cross-cutting work that is being done to deliver on the recommendations of two major reports from the national advisory council on women and girls and from the very ambitious national task force on human rights leadership. Both of those important groups are providing leadership and challenge to the Government and society. We must be in a position to respond positively, to listen and to make better policy that improves the lives of people across Scotland. I am sure that we can all agree with those ambitions.

My aim is to ensure that we continue firmly to embed equality and human rights across the whole of the Scottish Government's work. As the committee will be aware, a whole range of our activity supports the mainstreaming of equality and human rights.

The equality and fairer Scotland budget statement is now an integral part of the Scottish

Government's budget process, which is very welcome. I am sure that committee members will recall that, when I sat on their side of the table, I agitated for that to be the case. This year, we have integrated the fairer Scotland duty assessment into the equality budget statement. Each portfolio chapter examines the impact of budget decisions on people and places that are experiencing socioeconomic disadvantage. That responds to our legal duties to assess the equality and fairer Scotland impacts of our tax and spending decisions.

The Government is also going further. Last month, responding to a recommendation by her national advisory council for women and girls, the First Minister announced the establishment of a new directorate for equality, inclusion and human rights in the Scottish Government. The new directorate will help to raise the status of equalities and human rights across the Scottish Government's work and it will help to ensure that we have more capacity to embed a greater regard for equality and human rights across all areas of Government, from the very beginning to the very end.

I welcome the fact that the committee chose to look at equality and human rights through the lens of the third sector in its pre-budget scrutiny. The third sector is a key partner in the work that I do. To increase equality and make sure that we have a fairer Scotland, it is essential that national and local government work together with the public sector and alongside our very valued third sector, as well as the private sector. The need for partnership working to ensure that we all drive forward the same targets to reduce inequalities is what has driven the decision to increase the budget, which is in line with the committee's recommendation. That will also continue to be our guiding principle as we make decisions on how the budget will be deployed and how we spend the money.

The majority of the budget line for my portfolio supports the third sector equality infrastructure and builds the capacity of organisations that support equality and human rights. There are various organisations across every protected characteristic. I note that the committee welcomed our move to three-year funding in 2017, and I remain absolutely committed to that principle.

The main equalities funding streams can be broadly split into two areas: one that supports the violence against women and girls sector, and another that supports the broader equality and human rights sector. The funding under those streams comes to an end in the summer, so we have been working very hard to look at how we can organise the funding more effectively. I will shortly announce the details, but I am pleased to

confirm that we are in agreement with the committee about the principles of that funding. There are three main parts to that. First, it should continue to provide multiyear funding. Secondly, it should ensure sufficient time and support for the application process. I think that that is key, and it is also key to the third aspect, which is that it should support partnership working and fair work principles.

There is now an ability to do much more partnership working across public bodies and the third sector as well as other bodies. It will be important to provide the right support in order to do that and we need to make sure that we get that right. The committee's scrutiny raised important questions about how budget decisions are driven by the national performance framework, as you will know.

The NPF is not just the Scottish Government's framework; it is Scotland's framework and it closely ties into our responsibilities as set out in United Nations treaties and the sustainable development goals. It sets us the challenge of working together to create a more successful country with opportunities for all of Scotland to flourish through increased wellbeing and sustainable and inclusive economic growth.

That means that the Scottish Government is putting equality and human rights at the heart of our policy making and delivery, because it is not just about making the policy; it is also about creating the outcomes. As we develop our future funding criteria, I am very clear about the need to ensure that they link absolutely clearly with the national performance framework.

Without a commitment to equality and human rights across Government, we cannot achieve the NPF outcomes, or ensure that we are living those values. The NPF states:

"We are a society which treats all our people with kindness, dignity and compassion".

I thank the committee for the opportunity to make an opening statement and I look forward to your questions.

Alex Cole-Hamilton: Good morning. The committee recognises the 21 per cent real-terms increase in the equalities budget—that is very welcome.

I will loosely use some of the Government's six key questions to ask when making a budget decision, which the Government set out in a document last year. Perhaps you can answer some of those questions yourself. Can you tell us in granular detail how your budget decisions will impact on individuals in our society?

Christina McKelvie: There are lots of areas. The framework of the equalities work that I am

doing in the Government looks at protected characteristics under the Equality Act 2010 and more widely. When I make any decision, I always imagine a human face and consider the person or group that that decision will have an impact on, or how we can make a difference to them. I consider that at the beginning of any decision-making process.

There are a lot of examples—for instance, the work that we are doing on the equally safe programme to prevent violence against women and the work that we are doing with the lesbian, gay, bisexual, transgender and intersex community. We are doing work to tackle gender inequality and issues that face older people, such as ageism and social isolation and loneliness. We have also done work on the Gypsy Traveller action plan, which Alex Cole-Hamilton helped with.

When I make any decision, I imagine the real people who would be affected.

The overarching focus of the budget is in line with the outcomes of the national performance framework, which state that people should

"Respect, protect and fulfil human rights and live free from discrimination".

It is a very lofty aim, but it is noble and we all agree that it is incredibly important. Unless I see human faces when I make decisions, we will not get the outcomes that we want.

Our approach to equalities and human rights is that we want the values to be embedded across the whole of the Government. One very welcome development is that we have formulated a mainstreaming team with the additional money that we received in the budget. The team is led by Jenny Kemp, who many members will know from her work with Zero Tolerance and in other areas—we have all crossed paths. Jenny and her team are looking at how we can use the public sector equality duty more effectively and mainstream it across the Government. All the decisions that are being made in the Government have to be made with that human face in mind and seen through the lens of our commitment to ending inequality and discrimination.

On how the impact of budget decisions will be evaluated, I am considering how we can realign all the current funding streams to the new ones that are coming up. An announcement will be made on that very soon. They will be much more closely aligned to the national performance framework indicators, which will allow us to measure against the outcomes. In that way, I will not only see the human outcome—although that is most important to me—but see at a granular level in data form where we are making progress.

Alex Cole-Hamilton: Thank you, minister. You have swept up one of my subsequent questions. I welcome your very comprehensive answer.

An obvious disconnect exists when realising human rights in our society. The Scottish Government can put money and policy behind them but, ultimately, the deliverers of human rights are in our communities and in our local authorities. We have, rightly, restricted the ability to compel local authorities to act in a certain way. How will the minister ensure that the enhanced investment will make human rights real at a local level and that that will be done in a spirit of partnership with our local authority colleagues?

Christina McKelvie: As I mentioned in my opening remarks, I have been looking at the ability to do more partnership working. The ability to do that has always been there in the Government, but maybe the drive and opportunities were not.

When organisations apply for the new funding, when it becomes available, they will be given some freedom. There will be three-year awards that will allow some protection and sustainability for the work that they are doing and give them confidence in knowing that they are funded for the next three years. Within that, there is the ability to do partnership working. Some of the partnership working that we do is with the Convention of Scottish Local Authorities. I spend a lot of time working with my COSLA counterparts, Councillors Elena Whittam and Kelly Parry, on a number of areas. They co-chair on much of the work that we are doing. Kelly Parry co-chairs the equally safe joint strategic board, along with me. She also co-chairs the implementation group on social isolation and loneliness. Elena Whittam has been a key partner in the Gypsy Traveller action plan and in the continued actions in that area and in the scrutiny of that work.

The budget has allowed me to focus some hard cash—quite serious money—into creating some additional posts in COSLA in order to realise all of the national performance framework's outcomes. In the Gypsy and Traveller action plan, I built in a six-month report-back scheme to ensure that we are making progress on it. In order for that work to happen, we need to have someone who is dedicated to doing it. We therefore funded a post in COSLA to do the scrutiny work. It is the same across the board, because we have posts that are funded via our violence against women and girls work and our equally safe work.

10:15

Alex Cole-Hamilton is absolutely right that, for a lot of people, the delivery mechanism and where they will go to seek support will be local authorities. However, it will be local authorities

working in partnership with other organisations. For instance, some of the work that we are doing on the Female Genital Mutilation (Protection and Guidance) (Scotland) Bill right now requires a lot of specialist input, so we are working with the Multi-Cultural Family Base down in Leith, Saheliya and other organisations that give that type of support.

Some of the work that we do for the people who we hope to support is quite specialised and needs a lot of sensitivity. That partnership work that I do across the board with all those partners, whether they be in public authorities, the third sector or the wider community, is incredibly important because these decisions—to get back to Alex Cole-Hamilton's question—have to be made locally and be influential locally.

We must have that very clear link to those organisations to take the work forward. An example is the implementation group for social isolation and loneliness. I have asked stakeholders to fill that group and tell me what we should spend the money on, and they are coming back with some amazing and innovative ideas. It is therefore about Government giving away some of its power to local people and organisations and saying, "Let's see how we can home in on where we need to make a difference here." That is where local partnership is incredibly important.

Oliver Mundell: Obviously, it is good to see some budget lines go up, but there are also some that go down. Is the minister concerned about the reduction to the third sector budget line, given in particular that the committee had recommended that it increase?

Christina McKelvie: The third sector budget line is a very specific line that affects Ms Campbell's portfolio. I am sure that I can alert her to come back to you on some of the specifics of that. However, you will know that the third sector is funded from portfolios across the Government. I cannot answer for every minister and cabinet secretary about where they have that commitment, but there is a very clear commitment to the third sector across the Government. On your specific point, I will get Ms Campbell to respond to you on the detail behind the decision on the third sector budget line.

Oliver Mundell: That would be helpful. I recognise and I hope that you would recognise—your earlier comments suggest that you do—how integral the third sector is to delivering human rights. Again, I highlight the role that local authorities also play in that. I know that their budgets are very tight. Certainly, my local authority is raising concerns about its ability to fund a number of services that support vulnerable people in our communities.

Obviously, it is good in headline terms to see the specific equalities budget go up, but I worry that there is a potential for equalities to be the first area in other budgets that people want to cut. Sometimes it is the most vulnerable who are forgotten about. Is that something that you have been pushing across the Government ahead of the budget?

Christina McKelvie: It is something that I am very mindful of as well. To respond to your question and that of your colleague Alex Cole-Hamilton, you are right that the issue is how we could mainstream across Government portfolios if we did not have equalities principles attached to everything that we do. Our equality unit and mainstreaming team are taking up that big piece of work.

One of the guiding principles for me around the partnership working ability that we have now built into funding streams is about doing work to address challenges in all portfolio budgets. I welcome having an uplift in my budget, but it is very unusual to have that, and there will be some envy about it. We are being asked to deliver much more and we are asking our partners to deliver more as well. One of the key elements in allowing a partnership approach to that funding is about addressing some local issues. All portfolio budgets are pressured, but we should all recognise that that local partnership work is key. Funding posts in COSLA is part of that. Instead of placing additional pressures on our colleagues in COSLA and in the wider local government area, we hope to support them with the partnership work.

Oliver Mundell: The third sector has raised a specific concern about social care being particularly vulnerable when it comes to local government budget pressures. Is there more that you or the Scottish Government as a whole can do to ensure that that vital sector is well supported?

Christina McKelvie: I have heard that concern. Yesterday, I heard many concerns about the impact that the new immigration system will have. Quite rightly, Donald Macaskill had a lot to say about that. Social care workers have been described as low skilled, but, having spent the six years before I became an MSP training social care workers, I know that they are not low-skilled people. On top of the pressures that are already on budgets, it is pretty bad and unacceptable to have social care workers' professionalism described as low skilled.

Social care work comes under my colleague Jeane Freeman's portfolio, and I am happy to ensure that she comes back to the committee with specifics on the massive amount of money that is being spent. At a community council meeting on Monday night, I spent some time with the health and social care partnership in my area. People

were very positive about their work, because having a partnership between health and social care has made a huge difference. Total resource spending in the health and sport portfolio is now £14.8 billion, which is a huge amount of money, and there is huge demand for it. I am happy to ask Jeane Freeman to provide some of the detail, if that would help.

Oliver Mundell: The points about yesterday's announcement aside, these issues are of long standing. Making political points about immigration will not help the existing workforce and providers in my area, who feel undervalued not because of how their job is described but because of how much they are paid for their work. They are under huge pressure. Often, care workers spend most of their day driving between visits, for which they do not get properly paid. There are a lot of pre-existing issues. There are legitimate questions about the future of immigration, but that does not get away from the fundamental issues that have existed for a long time in the social care sector in Scotland. I do not want that point to get lost.

Christina McKelvie: We should remember that social care workers in Scotland get paid the living wage, which is very different from what happens in other parts of the UK. Value is placed on the work that they do. Is it enough? Maybe not, but we absolutely value our social care workers. We cannot get away from the point that decisions that are made elsewhere have an impact on social care workers' ability to do their job and on how their work is valued. It is up to us to ensure that we value their work. As a former social care worker trainer, I can say that there will never be circumstances in which I will describe a social care worker as low skilled.

Oliver Mundell: I certainly think that social care is treated poorly compared with healthcare.

In relation to local authority decisions, has further thought been given to giving the third sector voting rights on integration joint boards? Would that ensure that the social care sector was more respected?

Christina McKelvie: Again, the decisions of integration joint boards and how they work are matters for the health secretary, and I am happy to ensure that she comes back to the committee on that issue. One of the challenges with my portfolio is the cross-cutting nature of my job in relation to equalities, human rights and older people and the fact that I do not have responsibility for delivery of some of the relevant services—my job would be massive if I did. My job is to influence, so that we take decisions on the basis of equalities and human rights. That involves paying people better, our work through the carer positive scheme and all the things that make people feel valued at work

and that they are doing a good job, which is incredibly important.

Oliver Mundell: It is clear from the work that the committee has done that there is a legitimate argument that, if the third sector does not have a vote on decisions that are taken by IJBs, it will have less of a say and will be treated differently from other partners. Do you recognise that that arrangement does not fully respect the role that the third sector plays?

Christina McKelvie: I am not sure of the detail of that, so I will get Ms Freeman to get back to you. If I were to answer that question, I would be pulling things out of the back of my head, which might not be appropriate. I can get you the detailed information on that.

Oliver Mundell: Did you not look at the point that we made about that in our report?

Christina McKelvie: There are areas of the committee's report that are not covered by my budget area. My budget area is the equalities and human rights budget; it does not extend to how social care is delivered.

The Convener: We have a response from the Scottish Government on that point, which we can recirculate.

Fulton, do you have a supplementary question?

Fulton MacGregor (Coatbridge and Chryston) (SNP): Yes. It relates to the discussion between the minister and Oliver Mundell about immigration. I am glad that—

The Convener: If your question is about immigration rather than the budget, I might bring in other colleagues who have questions about the budget, because we are quite short of time. Is your question specifically about the budget?

Fulton MacGregor: Yes, it is specifically about the budget. I am glad that the issue of immigration was raised. I find the situation that we face quite frightening, and I think that it will have a massive impact on the budget.

Obviously, the UK Government's announcement was made only yesterday, but do you know whether the Scottish Government has done any analysis—this might be another department's area of responsibility—of the potential consequences for the Scottish Government's budget of the UK Government's immigration policy?

Christina McKelvie: My honest answer is that I am not sure; I will find that out for you. I can only give you my gut reaction. Yesterday, the Minister for Public Finance and Migration, Ben Macpherson, said on telly that he had found out about the UK Government's policy through a news release, that it had not been discussed with the Scottish Government and that no contribution from

the Scottish Government had been sought. There is an analysis of the economic impact of the Scottish Government's visa scheme proposal, which is worth looking at in the context of current budgets, but, as far as I am aware, Mr Macpherson had no contact from the UK Government about its policy and saw the press release only when it went out.

The Convener: I want to bring us back to the job in hand. We have half an hour left for scrutinising the budget.

Mary Fee: Let us return to the issue of funding cycles. The move from one-year to three-year funding is welcome. In a previous answer, you talked about the protection and sustainability that three-year funding provides. I absolutely agree, but I would like you to put a bit more flesh on the bones of that. Can you give us some practical examples of the difference that the move in the funding cycle has made to third sector organisations?

Christina McKelvie: Three-year funding provides proper security. I used to run a project that was funded by the European social fund and, every year, we had to issue 90-day notices, because we did not know whether our funding would end. That meant that we would work for only about 10 months of the year, because the other two months were spent preparing to receive funding. These days, 45-day notices have to be issued, but the process is just as unpalatable as it was then.

The move to three-year funding streams has been warmly welcomed, and I know that other parts of Government are looking at that. As a back bencher and when I was the convener of the committee, I pushed for three-year funding for a long time. We have now had the first cycle of three-year funding, from 2017 to 2020, and we are evaluating the benefits and the pitfalls of that. When there is a three-year funding cycle with a set amount of money, it can sometimes be the case that there is not enough flex, so we are looking to enable that flex.

However, it is amazing that organisations such as Rape Crisis Scotland and Women's Aid now have the security to project forward for three years, which helps them to bring about the change that they want to achieve. We all know that cultural change is a generational thing, and more three-year funding cycles will allow such work to be embedded. The greatest benefit of that approach to funding is that it makes people feel secure enough to settle down and have the confidence to move forward over the coming three years, safe in the knowledge that the money will come into their bank accounts and enable them to deliver the transformational change that we want to see.

10:30

Mary Fee: I absolutely agree with everything that you have said.

The committee has had a number of external engagements and has met a number of third sector organisations, with which we have had discussions about the funding cycle. Although they agree that the move from a one-year to a three-year funding cycle is good, we have heard concerns that, despite the move to three-year funding, they still have to justify the funding on a yearly basis and give a projection of what they will do for the next two years. In theory, they have moved from a one-year to a three-year funding cycle, but they are concerned that, in practical terms, they are doing the same thing annually. Do you recognise that? If it is happening, will you remedy it?

Christina McKelvie: There is a balance to be struck. We want to track positive progress and see that the money is being spent on what organisations told us it would be spent on and is making a difference. We must balance the need to monitor and audit with not imposing onerous reporting mechanisms. I will have a look at that.

We have been looking at the situation, because there are about five funding streams across the equalities portfolio, which I am trying to consolidate into something more rational—possibly just two funding streams. The funding stream for dealing with violence against women, which will be announced soon, will show you the work that is being done.

We have not done that in isolation; we have spoken to the same stakeholders that you have had conversations with, because we value their front-line experience. The last thing that we want to do is create burdensome or bureaucratic processes, because those cost money and mean that the funding is not being spent on delivering the front-line outcomes that we want to see. We are mindful of the issue, and we have applied what we have learned from third-sector organisations and charities that have supported us with their comments. If there is any other work that you think we can do, I am happy to look at that.

Mary Fee: It would be helpful if you could, because real concerns were raised about the fact that there is still a responsibility to go through the process annually.

Christina McKelvie: There is, so that we can monitor and audit to ensure that public money is spent appropriately, but we will try to strike a better balance.

Mary Fee: You said that other parts of Government are looking at how they use their funding cycles. Do you see all departments of

Government moving to a three-year funding cycle in the future?

Christina McKelvie: I do not know. That might not be appropriate in some cases—for example, if a department wants to run a quick, one-year, project. It is about having sustainability, confidence and security but also about having flexibility and opportunity. Over the past three years, we have found emerging issues after all of the budget has already been committed, which has meant that we have had to go back and chap the finance minister's door, or we have needed to re-prioritise. Over the past 18 months, I have continuously re-prioritised within my portfolio in order to squeeze out pennies to respond to issues that have flared up. Most recently, the issue has been post-Brexit race relations and hate crime.

Mary Fee: Have you had discussions with public bodies about how they use funding cycles?

Christina McKelvie: That conversation is ongoing. Much of our work is done in partnership, and we want to get better at partnership working. I cannot speak for COSLA and other organisations, but there is a drive to build more funding security into the system. Many organisations have a varied funding pot that comes from lots of different areas, and some of the national lottery funding is changing or ending, which is creating pressures, too. So, the pressure on an organisation does not always come from the ending of our funding or local government funding; sometimes, it comes from another part of its funding basket being under pressure. We are mindful of that. We want organisations to be secure and sustainable as well as to achieve the outcomes that we want to see.

Angela Constance: I am aware that different ministers are responsible for different budget lines, but the equalities portfolio cuts across a range of other portfolios and the committee has not yet requested the attendance of any other minister, so I am afraid that you are the Scottish Government's sole representative here today. Fortunately, I know that you would be the last person to want to operate in a departmental silo.

I want to ask some questions about equalities and human rights vis-à-vis third sector funding. It is welcome that the equalities budget line has increased—you may want to say more about what you intend to do with your extra money—but is there not a danger that, in giving with one hand, we are taking away with the other, which may have an impact on the work that you are trying to do? Alternatively, you may feel that your increase compensates for a decrease elsewhere—I do not know.

Also, you said earlier that the third sector budget line represents only a small proportion of the overall funding that is available to the third sector,

but how small is it in comparison with the overall cake that is available? What is the added value of the third sector fund if it is only a small part of the overall funds that are available?

Christina McKelvie: I believe that the change in that specific funding line is about 1 per cent, which is a tiny amount compared with what is being spent across the board.

Angela Constance: Are you saying that the third sector budget line accounts for 1 per cent of the funding that is available to the third sector overall?

Christina McKelvie: Yes, and the change is a similar percentage.

Angela Constance: Is the 1 per cent reduction in the third sector fund a cash decrease or a real-terms decrease?

Christina McKelvie: I will pass that question to Emma Harvey, because she is the person who does all the detailed money stuff.

Emma Harvey (Scottish Government): It sits in Ms Campbell's portfolio, but our understanding is that it is a real-terms decrease that is due to one of the funding streams within that pot coming to a natural end. We would need to get some information for you on the details of which funding stream that is.

Angela Constance: My question was about the percentage decrease. What is the percentage decrease, and is it a decrease in real terms or in cash terms?

Emma Harvey: In cash terms, I think that it is a £300,000 decrease in that budget line of almost £25 million, so it is a relatively small decrease. As I said, it is due to one of the funding streams coming to an end.

Angela Constance: Okay. Will you remind me of the increase in Ms McKelvie's budget in cash terms and in real terms?

Emma Harvey: It is just over 21 per cent, which is about £5.5 million.

Angela Constance: Thank you. What is the added value of the third sector funding line, given that it represents 1 per cent of the overall cake?

Emma Harvey: I am not sure that I could put a figure on that, but the funding line supports the infrastructure for the third sector—things such as the third sector interfaces and the Scottish Council for Voluntary Organisations. It is less about the individual projects and budget lines.

Angela Constance: Are the third sector interfaces funded according to population or are standard payments made to the 32 interfaces?

Emma Harvey: I am afraid that I cannot give you the detail on that, but we can get it and provide it to the committee.

Angela Constance: Okay. The committee has heard a lot of evidence, particularly from smaller organisations, about the competitive nature of the funding environment and how that can sometimes undermine co-operation and cause smaller organisations to feel somewhat disadvantaged. What is within the Scottish Government's gift to support collaboration and, in particular, help smaller organisations to win more contracts and grants?

Christina McKelvie: You will not be surprised to hear that that competitiveness and the application process have probably been raised with me by everyone who has ever been funded by the Scottish Government. Sometimes, people need to apply to numerous different funding pots. That is why I have looked at how we can streamline the five funding pots that I have a bit better, link the application process much more closely to the national performance framework outcomes and get more money to the front line.

The ability to create partnership funding bids has always been there, but people did not take advantage of it. Some of the work that we are doing with our partners—those who are currently funded as well as those who are interested in being funded in the future—is about how we can support them in the application process. Officials have been gathering all the information that they need to do that. That is a key issue.

Interestingly, one of the ideas that the social isolation and loneliness implementation group came up with involved a number of small organisations partnering with a local authority to deliver something. That is pretty unheard of and quite innovative, considering the pressures that everybody is facing. That work is being undertaken now.

There is a lot of learning out there, because many organisations, including some of the bigger organisations, do collaborative funding bids. We need to apply that learning to smaller organisations. For instance, Age Scotland might have a social isolation project, but the delivery mechanism for it might be a wee local organisation that already does work in that particular area. We need to think about how we can bring such organisations together as partners to access that funding, rather than being in competition for it.

Angela Constance: Is there a role here for the third sector interfaces, which are funded via the third sector fund, in facilitating such partnership and collaboration and leveraging in other funding and opportunities, in particular for small organisations? What are the Scottish ministers

doing to ensure that the funding that they give to third sector interfaces delivers on those opportunities at a local level for smaller organisations?

Christina McKelvie: You have touched on the crux of why I cannot sit in a silo. The work that I need to undertake with Ms Campbell around the work on the third sector that she does, as the budget holder for that bigger pot of money, is on how to bring about additionality and greater inclusion.

You are right in what you said about third sector interfaces. I have a great one in my local area that knows all the organisations, including tiny wee one-person organisations. We need to bring those people together in a much more collaborative fashion, instead of saying, "Here's a pot of money," which everybody then wrestles for. We need to be more thoughtful about that.

It is a question of looking at what can be delivered, what needs to be delivered and what demand people have been experiencing. The only people who can tell us that are those who are on the front line. That is why the TSIs and others that do such networking work for all the organisations are incredibly important.

With regard to the main point of your question, I will look at what we are doing at the moment in conversation with Ms Campbell and how we can do more work in that area, which is a perfect example of how the influence of the equality team's work across other portfolios can really make a difference and provide additionality.

The Convener: Minister, in your opening remarks, you mentioned the national performance framework. The committee would be interested to hear of any examples that you can share with us of occasions when evidence or information in the NPF has caused you to take a different decision in your budget or to change things. You spoke about reprioritising.

Christina McKelvie: Do you have an example of what you are thinking of?

The Convener: No—I was hoping to be given one. I suppose that I am asking you to make the national performance framework real by giving an example of how the information and evidence that are contained in it are used.

Christina McKelvie: We do that in lots of ways. We have a piece of work coming up soon in the race equality sector in relation to the UN decade for recognising people of African descent. We are about to look at funding projects to do some of that work.

Although some of that work is about the UN decade, some of it relates to the background of the flare-ups that we have had over the past

couple of years to do with race and race equality and the rise in race-related hate crime. Much of the work that will be done by the projects that we are hoping to fund will be about how we raise profile and how we understand, for example, the genesis of racism in the slave economy—I do not like calling it "the slave trade", even though that is the normal parlance—and the impact that that has had on racism now, especially that involving the African community. We are working closely on that with some of our main partner organisations.

10:45

That links in clearly with the national performance framework. We want a country that is free from discrimination and that upholds human rights. I see the link with the NPF, which is incredibly important to me. That is one pillar. The other pillar is how we end that discrimination and ensure that young people and people of African descent who currently live in Scotland have better life chances and can go about their everyday business.

Our work on the Gypsy Traveller action plan is a perfect example of how lots of talk needs to be followed by action. Accommodation was the pivotal issue for Gypsy Travellers, and employment, welfare, health, education and participation in community outcomes cut across every portfolio. In the joint ministerial committee, we quickly realised that institutional racism and the fact that Gypsy Travellers were invisible in policy were a perfect example of the work that we needed to do to change outcomes for that community right across the board. That tied in clearly with the national performance framework outcome of ending discrimination and increasing equality for a discrete group of people.

I am incredibly proud of the Gypsy Traveller action plan, and I will be even more proud of it when it starts to create real changes in outcomes. Mary Fee is nodding; I know that we share the same ambition. There will be a six-month review soon, and I hope to see a real difference there. There is also the new post in the Convention of Scottish Local Authorities.

The hard data in the national performance framework outcomes is incredibly important, as it allows us to map the process. I want those in the Gypsy Traveller community to come back to me and say, "I can see a difference there. That's made a difference to my family and my life." We always have to think about the human face. Maybe Davie and Charlotte Donaldson and others will be able to tell the committee that they have seen a difference. That is incredibly important.

The Gypsy Traveller action plan framework applies to a small but valued part of Scotland's

community. We need to think about how we can scale up that approach across the whole of Government for all the other equalities action that we need to take. I can give the committee loads of examples, but I know that you are short of time.

Annie Wells: Good morning, minister. I want to go over the role of advocacy organisations. Third sector advocacy organisations have a role in holding public bodies to account, especially in respect of achieving better outcomes for groups that have equality needs or require support to access their rights. Is there a risk of conflict if advocacy organisations are funded by those public bodies?

Christina McKelvie: I have talked a lot about partnership working with the third sector and advocacy organisations, their work, and the important role that they play in scrutinising the Government and holding us to account. I see many of the advocacy organisations as our critical friends. They often challenge us, but we see that their role involves doing work that needs to be done to end inequalities across Scotland. They are key partners in that work, so funding them is incredibly important. However, just because they get money from us does not mean that they do what we want them to do and say what we want them to say. They certainly do not do that. They hold us to very high standards in their scrutiny, which is right, because we can make progress only by ensuring that what we do, what difference that makes, what outcomes we achieve and whether those are positive ones are always under review.

The Convener: Finally, I want to ask about the human rights indicator's influence over local decisions. Since 2007, performance on that has fallen. What information is the Government collecting to understand why that is the case? It would be interesting to hear about that.

Christina McKelvie: Obviously, my role involves mainstreaming across the whole of Government. The Minister for Local Government, Housing and Planning, Kevin Stewart, has responsibility for that work in local government. I have worked closely with him on a number of areas, including accessible housing, the Gypsy Traveller action plan, how we can work closely with COSLA and local government, violence against women and barring orders. I have a close working relationship with him, and he is responsible for that indicator. I want to make sure that I am not taking responsibility for other ministers' work. That is what mainstreaming involves. Responsibility has to be taken.

We are doing work across Government with our leaders forum to ensure that there are leaders in every portfolio area who take up the work around that indicator. I am sure that Mr Stewart can

respond to the committee specifically on the impact that that indicator has had and the changes that are being made.

The Convener: Thank you very much for joining us, minister. We will now move into private session.

10:51

Meeting continued in private until 11:15.

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