**Minutes of the extraordinary Wales Committee meeting, 28 February 2023**

**28 February 2023 (15:00 to 16:30)**

**Virtual**

**Attending**

**Committee Members**

Eryl Besse (Chair)

Martyn Jones

Chris Dunn

Mark Sykes

Helen Mary Jones

**Officers**

Marcial Boo, Chief Executive Officer

Melanie Field, Chief Strategy and Policy Officer

Sophie Bold, Director, Legal Policy and Advice (Jobshare)

Kate Spencer, Director, Legal Policy and Advice (Jobshare)

Britta Rinaldi, Chief of Staff

Ruth Coombs, Head of Wales

Megan Cruickshank, Senior Associate, Governance

**Apologies**

Geraint Hopkins

Bethan Thomas

**1. Chairwoman’s welcome and apologies**

* 1. The Chairwoman welcomed attendees to the extraordinary meeting.
  2. Geraint Hopkins and Bethan Thomas had sent apologies for the meeting.

**2. Declarations of interest**

2.1 No new declarations were made further to those already registered by members.

**3. Implications of Equality Act 2010 reform *(EHRC WC 2023-02-28)***

3.1 The Chief Strategy and Policy Officer introduced the paper, advising that the Commission had received a letter from the Minister for Women and Equalities seeking advice on the benefits or otherwise of an amendment to the definition of sex in the Equality Act 2010.

3.2 The Chief Strategy and Policy Officer advised that the Committee was being asked to agree its advice to the Board on how the Commission should respond to the letter, and set out four possible ways the Board might consider responding, all of which would include setting out issues that have so far been identified with the current legislation:

1. Recommending a change to the definition of ‘sex’ in the Equality Act 2010 to mean ‘biological sex’;
2. Setting out a range of options for addressing the issues, including advice on other potential targeted amendments;
3. Advising that the Government’s Equality Hub is best placed to conduct the process of consultation and engagement that is needed to make a robust evidence-based decision on any potential legislative change;
4. Continue with our current activities; including strategic litigation to clarify the law and providing advice and guidance such as the Single Sex Services guidance.

3.3 The Committee acknowledged that there are issues with the current legislation, and that both the Gender Recognition Act 2004 and the Equality Act 2010 are outdated in some ways.

3.4 Members discussed how the conflation of the terms ‘sex’ and ‘gender’ creates serious difficulties for service providers, and that there was a need for more clarity around the terms. However, they noted that legislative change was not the only way in which this could be achieved, advising that the Commission should continue, or increase, its work in providing advice and guidance, such as the Single Sex Services guidance.

3.5 The Committee advised that there is variance between the policy positions of the Welsh Government and the UK Government. In particular, the Committee noted that there would be tension between the recently published Welsh Government LGBTQ+ Action Plan and any proposed change in law that may reduce trans people’s rights, highlighting that the LGBTQ+ Action Plan has trans rights at its heart.

3.6 Members agreed that the Commission needed to act in some way, and that doing nothing is not a feasible option. The Committee strongly recommended that all actions must be handled sensitively so as not to further polarise public debate, and to ensure that the Commission is able to continue providing good practice advice to the Welsh Government (and the UK Government), particularly given the policy direction and the social context of Wales.

3.7 The Committee expressed serious concerns that the proposed change to the definition of sex in the Equality Act 2010 would result in the diminution of the rights of trans people with a Gender Recognition Certificate (GRC). They advised that it is important that any potential changes do not weaken the protections that the Act currently provides to trans people. In the same vein, it is important that any potential changes cannot be perceived to damage the rights of women and girls.

3.8 Members noted that there is much to be done around this subject matter that sits outside of the legal definition, such as guidance on the terminology and application of the legislation.

3.9 Committee members expressed concerns about any potential amendments that may weaken the protections in the Equality Act 2010, particularly in the context of the UK leaving the EU and the concomitant loss of EU protective laws.

3.10 The Committee noted that the proposed definitional change marks a distinct change from our previous policy position, and there was potential for unwelcome legal challenge.

3.11 Members advised that they would welcome targeted changes to the legislation that would provide more clarity around the terms ‘sex’ and ‘gender’, but only if the definition of ‘sex’ remains as ‘legal sex’, as recorded on a birth certificate or GRC.

3.12 Members noted the challenges that public services face when implementing legislation in respect of individuals who identify with gender fluidity, identifying that the Equality Act 2010 does not provide clear legal protection in this area.

3.13 The Committee highlighted that the Commission has, so far, been successful in being a balanced, impartial regulator. The Committee strongly advised that any further action should not alter this position.

3.14 Members acknowledged that obtaining a GRC is a lengthy and complicated process; they would welcome changes that would make it easier.

3.15 The Committee advocated for an evidence-based approach that considers the potential impact and risk of unintended consequences of changing the legislation. The Committee also recognised that the Commission does not currently have the resources available to undertake this work without having an impact on the current strategic plan; they advised highlighting this in the response to the Minister for Women and Equalities.

3.16 Members discussed the Commission’s role as a regulator, advising that our position should be to respond to any legislative changes proposed by the government. They queried whether it was within our remit to make specific proposals about legislative change and were advised by the CEO that under section 11 of the Equality Act 2006, we have the duty to advise the Government on the effectiveness of equality law. The Director, Legal Policy and Advice added that while this is the case, the Commission should be cautious in proactively proposing legislative solutions, given the contentious subject area and lack of evidence base.

3.17 Members asked for further information about option b) and were advised by the Chief Strategy and Policy Officer that this would entail advising the Government about the current issues with the Equality Act 2010 and setting out a range of legislative options, which may include definitional change but also alternative, more targeted amendments. The Director, Legal Policy and Advice, noted that the Commission had not yet conducted a robust process to ensure that we are able to fully advise on all issues in the current operation of the law.

3.18 Members queried whether the Ministerial letter is inviting suggested amendments to other enactments. They were advised by the Director, Legal Policy and Advice that although it seems to be an invitation to advise on other enactments, the Commission has no locus in relation to the Gender Recognition Act.

3.19 The Committee discussed the option of advising the Government to change the definition of ‘sex’ in the Equality Act 2010 to mean ‘biological sex’, agreeing that this was not the preferred course of action due to the points already discussed.

3.20 The Committee agreed that its advice to the Board was to recommend that the Commission responds to the Minister for Women and Equalities setting out the issues with the current legislation and the potential impacts of legislative change. In addition, the Committee believed that the Government’s Equality Hub is best placed to undertake a thorough process of consultation and engagement that is needed to make a robust evidence-based decision on any potential legislative change. This would also support the Commission’s impartial position as a thought leader and statutory regulator.

3.21 CEO thanked the Committee for its steer and advised that its comments and advice on issues relevant to Wales will be fed back to the Board.

**4. AOB**

4.1 The Head of Wales advised the Committee that the EHRC Social Care Inquiry report had been very well received in Wales, with the Older People’s Commissioner for Wales issuing a statement of support.

4.2 The Chair thanked Committee members and officers for their thoughtful contributions and closed the meeting.