

Government & Public Affairs

Equality may come at a cost for both public and private sectors



Morag Hutchison

THE UK government's Equality Bill could be the biggest overhaul of employment law in recent times.

The government wants to harmonise discrimination legislation and strengthen the protection offered against discrimination. But what does the shake-up mean for businesses already struggling to cope with the burden of the economic downturn?

One of the changes for business is the surprise inclusion of a power to force private sector organisations with more than 250 employees to publish details of pay rates.

With the Equalities and Human Rights Commission (EHRC) putting the pay gap between male and female full-time employees at 21.7 per cent in the private sector, the government is hoping that this will encourage greater transparency.

For the time being, the reporting will not be

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mandatory, as the government has promised not to introduce this power until 2013. Some may say it is unlikely that the current government will be in a position to introduce the provisions in 2013 and, therefore, it is unlikely that they will be introduced at all – the Conservatives have indicated that they would require employers to report on their pay rates only where they have lost an equal pay claim at a tribunal.

However, assuming we still have a Labour government in 2013, ministers have said that businesses publish sufficient information, the reporting provision will not be activated at all. It is unclear what information the government will require business to disclose before 2013 to avoid the introduction of compulsory reporting. This is to be determined by the EHRC at a later date.

The bill has also introduced controversial "positive discrimination" provisions that will allow an employer to recruit or promote an

individual from an under-represented group, where that individual is at least as qualified as their competitor.

This provision can only apply in those genuine tie-breaker situations, and the two candidates in question must be "as qualified". This means, for example, that an employer cannot choose a woman over a man where the man in question is better qualified.

It is not clear what the term "as qualified" means and, as positions become more senior, the more subjective the evaluation will be required to be. It will be a risky call for employers and one they may not be prepared to take for fear of a claim.

This provision does not require businesses to take positive action, and a person cannot take action against an employer for not doing so. On the other hand, this does not mean a business is free from the threat of litigation from vexed applicants and employees. Employers will need much further guidance and, while confusion remains, businesses are likely to be cautious.

Additional equality duties have also been placed upon public bodies, which will impact upon businesses in the private sector. There are specific procurement duties that will affect those businesses that compete for public sector contracts, as they will need to ensure that they meet new guidelines setting out requirements on contracting authorities.

Again, it is not yet clear how far the public body equality duty will extend to potential suppliers.

One suggestion made by the government is, where a local authority is putting a building contract out to tender as part of a social regeneration project, one of the terms of the contract would be that the successful bidder must employ female plumbers and electricians from the surrounding area if women in the area are at a particular disadvantage. It may mean that small businesses will be put at a disadvantage and therefore unable to compete with large corporations better placed to deal with these demands.

A lack of clarity seems to be a consistent thread and, as much detail is yet to be added to the new provisions, it is impossible to tell how onerous the burden for businesses and local authorities will be.

With uncertainty in the economy, many businesses will be hoping for a delay in legislative change and the inevitable financial burdens that they will incur.

● Morag Hutchison is a senior associate at Pinsent Masons.

Cash up front or right to buy is meaningless

Calum Macleod and Nicole Busby argue that rhetoric on community ownership fails to reflect resourcing

CREATION of a legislative and public funding framework to enable the transfer of land into community ownership in Scotland is arguably the defining achievement of the first decade of devolution.

The "community right to buy" provisions contained in the Land Reform (Scotland) Act 2003, coupled with financial support from the Scottish Land Fund and, latterly, the Growing Community Assets Fund, have given rural communities the means and confidence to purchase the land they inhabit, thereby securing control of the prime asset with which to shape their futures.

In the Western Isles, no stranger to ill-conceived, supersized development "opportunities" – of which a proposed superquarry was surely the most misguided – the North Harris Trust is a notable example of the economic, environmental and social benefits that can flow from collective ownership of land.

It is scarcely alone in that regard.

By the time of its demise in 2006, the Scottish Land Fund had distributed a total of £13.9 million to 188 rural communities.

This amount included a grant of £3.5m to help the Isle of Gigha Heritage Trust – headed by Willie McSparran – to purchase its island in 2001 and £1.5m to help the Assynt Foundation buy the Glencanis and Drumrunnie estates in Sutherland and Ross-shire.

Yet much of the impetus that enabled community land ownership to make such impressive strides over the past decade is threatening to drain away as the financial tap of public funds is gradually turned off.

The omens were not encouraging when the Big Lottery's Growing Community Assets Fund failed to ring-fence money for land purchase.

Last October's announcement that the fund was to close, when the remaining £15m

of its original £50m pot was allocated, confirmed that community land ownership was slipping down the political agenda.

Of course, sceptics may argue that none of this matters a great deal.

There are grumblings in some quarters that the community land movement has largely been the preserve of the Highlands and Islands with comparatively little investment in lowland Scotland.

Others argue that, in a climate of economic uncertainty, the financial case for supporting community buy-outs cannot be reconciled with other competing demands on the public purse.

All of which rather misses the point. The current international direction of travel in rural policy is towards ensuring the sustainability of local communities within the framework of what the OECD somewhat grandly calls "the new rural paradigm".

What this boils down to is an approach to rural development in which competitiveness is driven by local assets and resources; broadly based rural economies; investment rather than subsidy; and the involvement of local stakeholders.

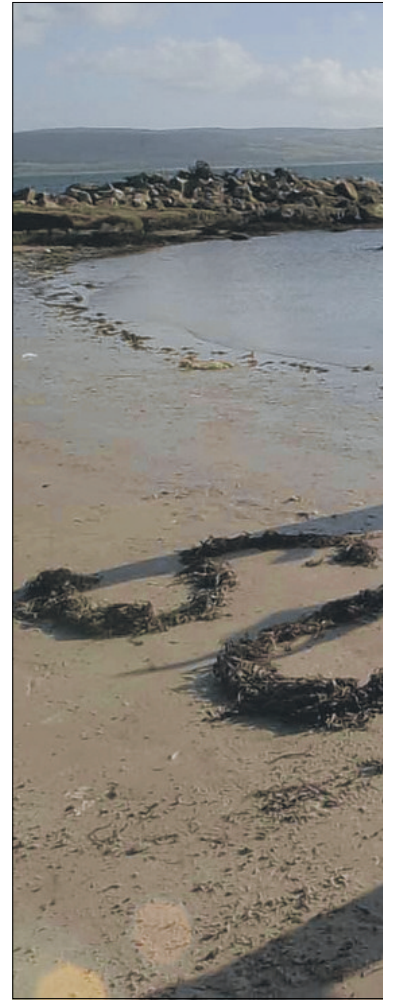
The OECD's approach is one that the Scottish Government, with some justification, can already be already informing aspects of what still remains a frustratingly disconnected rural development strategy for Scotland.

Key proposals contained in the draft crofting reform bill, for example, are aimed squarely at empowering communities to take decisions at the local level.

And a constant refrain from government concerns the need to utilise Scotland's natural resources to simultaneously promote the green agenda and generate sustainable economic growth.

So, it's particularly surprising that a Scottish Government that appears to talk the language of community empowerment and

"Significant budget cuts do nothing to instil confidence an imminent black hole will be plugged soon"



The eight children from Gigha's primary

sustainability hasn't yet seen fit to safeguard dedicated funding for future community land buyouts.

Indeed, if anything, significant cuts to the budget of Highlands and Islands Enterprise in particular, do little to instil confidence that an imminent funding black hole is likely to be plugged any time soon.

Community land ownership doesn't offer a "one-size fits all" antidote to the economic and social disparities that continue to bedevil rural Scotland.

And there is an important seam of longer

German court ruling calls into question



Struan Stevenson

A RECENT landmark legal ruling in Germany has sent the EU integration project into complete disarray. The German Constitutional Court examined the Lisbon Treaty – the successor to the infamous EU Constitution – and

ruled the sovereignty of a member state (in this case Germany), must always take precedence over dictates from Brussels.

The Constitutional Court in Karlsruhe effectively declared itself the highest supervisory body in conflicts between Germany and the EU, thus explicitly placing itself above the authority of the European Court of Justice. As *Der Spiegel* reported: "This borders on a declaration of war on the European Court, which sees itself as the only authority capable of ruling on the

validity and applicability of EU law."

The German judges went further by ruling the German Parliament had been wrong in passing an "accompanying law" to the Lisbon Treaty, which determined the rights of the German parliament to participate in European legislation. By passing the right to monitor the implementation of EU laws to Brussels, the Bundestag was acting unconstitutionally, said the judges, and subjecting people to the "whims of a bureaucracy that lacks suffi-

cient democratic legitimacy". Indeed, the Karlsruhe judges ruled it was clearly not the case that "the EU parliament is a representative body of a sovereign European people" as set down in the Lisbon Treaty. They explained: "After all, EU members of parliament were not elected according to the principle of electoral equality, in other words, one man one vote, but rather according to national contingents, meaning that a Maltese MEP represents 67,000 Maltese, a Swedish MEP has a constituency

SATURDAY Science & Environment: Making the environment a laughing matter



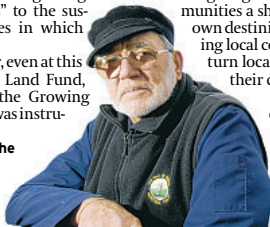
school celebrate the buyout in 2001. Future buyouts hinge on the government's willingness to stump up

Picture: Allan Milligan

term research to be mined regarding the contribution of "buy-outs" to the sustainability of communities in which they occur.

Yet what does seem clear, even at this stage, is that the Scottish Land Fund, (and to a lesser degree, the Growing Community Assets Fund) was instru-

Willie McSparran headed the Gigha bid with the full support of the local community



mental in giving a succession of rural communities a shot at determining their own destinies. They did this by helping local communities in Scotland turn local assets and resources to their collective advantage.

There is a clear and compelling argument for re-establishing a Scottish Land Fund given the appetite that still exists among rural com-

munities to take responsibility for the land they inhabit.

Amid the stampede to pull Scotland out of the current economic downturn, the Scottish Government would do well to ensure that the benefits of community ownership are safeguarded rather than trampled underfoot.

● *Dr Calum Macleod is senior research fellow at the UHI Centre for Remote and Rural Studies in Inverness.*

● *Dr Nicole Busby is senior lecturer in law at the University of Stirling.*

the entire European project post Lisbon

of 455,000 Swedes and in Germany, the ratio is 1 to 857,000."

The court saw this as a clear contradiction to the remainder of EU law, which is constructed around the central idea of prohibiting discrimination based on nationality. According to the court's concluding statements, this contradiction can only be explained by the fact that the EU is not a state but rather "an association of sovereign states" and, consequently, "there can be no sovereign citizens' union as well as no completely representative

organ in the form of the European Parliament, with the result that the Bundestag must receive substantially more rights".

The Karlsruhe interpretation thus demolishes the old European idea that the recognised democratic deficits in the EU would disappear completely of their own accord by enhancing the rights of the European Parliament, allowing MEPs to assume the role of the national parliaments.

All of this has come as a political bombshell to the newly

elected European Parliament, where Europhiles eagerly await the outcome of a second referendum on the Lisbon Treaty due to be held in Ireland on 2 October, praying for a Yes vote. If the highest court in Germany can rule the EU, under the terms of the Lisbon Treaty, is undemocratic, then the project aimed at further and deeper EU integration will be called into question.

UK Conservative MEPs have defected from the large, centre-right, integrationist EPP Group in the European Parliament, to

form their own, more eurosceptic, European Conservatives and Reformists group (ECR).

The ECR sees itself as offering a voice to the millions of Europeans who oppose the concept of an EU superstate and instead wish to see the development of a successful economic, rather than political union.

Now, according to the German judges, national identity must take precedence over integration.

● *Struan Stevenson is a Conservative Euro MP for Scotland*

Briefing Board

PEOPLE

■ **PROFESSOR** Frank Clark has been re-appointed as the convener of the Scottish Commission for the Regulation of Care. A former chief executive of Lanarkshire Health Board, he has been in post since October 2006.

NEWS

■ **A DRUG** that blocks the effects of opiates on the body to help addicts who have overdosed will be made available in East Dunbartonshire after the local council agreed to allow its use.

The council's social work committee has decided to approve the use of Naloxone to help drug addicts to reverse the effects of an opiate overdose. It will now begin a training programme for addiction staff, who will in turn train drug users and their families in the use of the drug in the event of an overdose of heroin or methadone.

Users or families who successfully complete the training will be issued with a single dose of the drug for emergency use.

■ **SCOTLAND'S** beef industry could be given a boost if an application to declare the country free of bovine tuberculosis is approved by the European Commission.

A formal application to recognise Scotland as free of the disease has been made by the Scottish Government to the Commission's Standing Committee on Food Chain and Animal Health, which will be heard on 8 September.

Rural affairs minister Richard Lochhead said: "TB-free status would be a big

feather in the cap for Scotch beef producers and will further improve access to new and existing markets.

"Full consideration has been given to the potential impact of TB-free status on the industry and any subsequent checks which would need to be imposed on cattle being brought into Scotland. We are confident that we can minimise any potential impact on the industry."

■ **THE** number of people on National Park Authority Boards will be cut, after the Scottish Government announced plans for a shake up of the management of Scotland's open spaces.

Under the plans, the number of elected members will be retained but the number of council representatives and ministerial appointments reduced. At the same time, a National Parks Strategy Group, chaired by environment minister Roseanna Cunningham, will be set up to direct policy for these areas.

EVENTS

■ **"IS THIS** the end of newspapers?" will be the question posed at the next Exchange event run by the Association for Scottish Public Affairs (ASPA) in Edinburgh on 3 September.

Led by the director of allmediascotland.com, Mike Wilson, the discussion will also consider what is next for online media.

The event begins at 6pm at the offices of McGrigors LLP at Princes Exchange. It is free to ASPA members, and there is a £5 fee for non-members.

For further information, contact Gordon Robertson at gordon@mediahouse.co.uk

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