Scottish Commission for Human Rights Bill

Bill Number: SP Bill 48
Introduced on: 7 October 2005
Introduced by: Cathy Jamieson (Executive Bill)
Passed: 2 November 2006
Royal Assent: 8 December 2006

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Passage of the Bill

The Scottish Commission for Human Rights Bill [SP Bill 48] was introduced in the Parliament on 7 October 2005. Stage 1 began on 30 November 2005 with the Justice 1 Committee as lead committee. The Justice 1 Committee Stage 1 Report was published on 23 February 2006. The Stage 1 (general principles) debate took place in Parliament on 3 May 2006 and the Bill was passed following the Stage 3 parliamentary debate on 2 November 2006.

Purpose and objectives of the Bill

The Bill establishes a body corporate known as the Scottish Commission for Human Rights (SCHR) to promote and encourage best practice in relation to human rights relating to matters devolved to the Scottish Parliament. The Commission may cooperate with other public sector organisations in fulfilling this role. It is expected the SCHR will enter into a memorandum of understanding with the Commission for Equality and Human Rights (CEHR). The CEHR is a UK body established by the Equality Act 2006 that will have the role of considering human rights issues in Scotland in relation to issues reserved to Westminster (the Equality Bill was the subject of a successful legislative consent motion in the Scottish Parliament, S2M-3440 in October 2005).

The SCHR will comprise a chair appointed by the Crown on the nomination of the Parliament, and up to four additional members appointed by the Scottish Parliamentary Corporate Body (SPCB). Office holders may be appointed for up to five years and are eligible for reappointment. Further provision was made for the disqualification, eligibility, pensions, terms and remuneration of officers and for the location of the office of the Commission, sharing of premises and financing. Although funded by the SPCB, the Commission is to be independent of the Parliament, Corporate Body and Scottish Executive.

The SCHR is required to publish a strategic plan covering each 4-year parliamentary term setting out policies, projects and objectives for the period and a timetable for each. The SPCB must be provided with a pre-publication draft of the strategic plan for comment. The Commission is to lay an annual report before Parliament, summarising inquiries and activities undertaken.
Provisions of the Bill

The SCHR will have the general function of promoting human rights through advice, research, guidance and education programmes. For this general purpose, the Commission may review any area of the law of Scotland, having first consulted with the Scottish Law Commission. It may also review the policies and practices of any Scottish public authority.

Unlike the CEHR, the Commission will not have the power to bring legal proceedings in its own name (e.g. test cases). This is because section 7 of the Human Rights Act 1998 requires a person bringing an action to be a victim or potential victim. To allow the SCHR to bring test cases would require amendment to the 1998 Act, which is a matter reserved to Westminster.

Instead, the SCHR will have the power to intervene in certain legal proceedings as a friend of the court, with the purpose of informing the court as part of its deliberations. This may be done only with the leave of the court or at the invitation of the court and applies to civil proceedings, excluding children’s hearings. It may be done only where the intervention is relevant to the Commission’s general duty and where it raises a matter of public interest.

The Commission will have the power to conduct public inquiries into the policies and practices of Scottish public authorities or public authorities generally. There are certain restrictions on the conduct of inquiries, such as not being able to question the findings of any court or tribunal. In undertaking an inquiry, the Commission may take evidence from staff of the authority in question and may take into account evidence gained otherwise than by virtue of having required its production. Information gained by the Commission as part of an inquiry is to be treated as confidential. The Commission may enter places of detention for the purpose of conducting an enquiry and may do so without notice. It must lay before Parliament a report of the inquiry undertaken, including its findings and recommendations.

Parliamentary consideration

There was no majority view within the Justice 1 Committee on the general principles of the Bill at Stage 1, but these were agreed to in plenary. The Bill as introduced, and the Bill as amended at Stage 2, sought to establish a Commissioner for human rights. At Stage 2 the Executive brought forward amendments to change the Commissioner to a Commission but these were unsuccessful. However, similar amendments were laid at Stage 3, this time successfully.

Non-executive amendments at Stage 2, which would have brought the Commissioner within the remit of the Scottish Public Services Ombudsman, were defeated. Similar amendments lodged at Stage 3 were overtaken by the Parliament agreement to establishing a Commission rather than a Commissioner.

Provisions relating to the accountability of the SCHR (through strategic plans and annual reports, for example) were amended through in response to the Justice 1 Committee’s Stage 1 Report, as was the provision allowing access to places of detention without giving (14 days) notice first. The duty to monitor Scots law and the practices of public authorities was amended to become an
authority to do so; the requirement to first consult the Scottish Law Commission was added at Stage 2.

Amendments were proposed at Stage 2 that would have added ‘protection’ of human rights to the Commissioner’s general promotion duty. These were not successful. Similarly, amendments that sought to remove restrictions on the scope of inquiries undertaken, to grant the Commissioner *locus* in criminal proceedings and to grant the Commission the power to institute legal proceedings in its own name, were also unsuccessful at Stage 2.