

EQUAL OPPORTUNITIES COMMITTEE

Tuesday 11 December 2001
(Morning)

Session 1

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EQUAL OPPORTUNITIES COMMITTEE

20th Meeting 2001, Session 1

CONVENER

*Kate MacLean (Dundee West) (Lab)

DEPUTY CONVENER

*Kay Ullrich (West of Scotland) (SNP)

COMMITTEE MEMBERS

*Mrs Lyndsay McIntosh (Central Scotland) (Con)

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

*Mr Gil Paterson (Central Scotland) (SNP)

Cathy Peattie (Falkirk East) (Lab)

Tommy Sheridan (Glasgow) (SSP)

Elaine Smith (Coatbridge and Chryston) (Lab)

*Mr Jamie Stone (Caithness, Sutherland and Easter Ross) (LD)

*attended

WITNESS

Alex Neil (Central Scotland) (SNP)

CLERK TO THE COMMITTEE

Lee Bridges

SENIOR ASSISTANT CLERK

Richard Walsh

ASSISTANT CLERK

Roy McMahon

LOCATION

The Chamber

Scottish Parliament

Equal Opportunities Committee

Tuesday 11 December 2001

(Morning)

[THE DEPUTY CONVENER *opened the meeting at 10:04*]

Items in Private

The Deputy Convener (Kay Ullrich): Good morning. I will take the chair until Kate MacLean arrives. She will probably be here about quarter-past 10. We have apologies from Tommy Sheridan, Elaine Smith and Cathy Peattie.

Do members agree to take items 2, 4 and 5 in private?

Members *indicated agreement.*

10:05

Meeting continued in private.

10:20

Meeting continued in public.

Public Appointments (Parliamentary Approval) (Scotland) Bill: Stage 1

The Deputy Convener: I welcome Alex Neil; David Cullum and Zoé Dean from the Scottish Parliament non-Executive bills unit; and Alison Coull from the Scottish Parliament's legal office. The officials are present to provide technical and procedural support to Alex Neil and all questions on the bill and on policy will be directed to Alex Neil.

I am temporarily in the chair until the convener, Kate MacLean, arrives.

Alex Neil (Central Scotland) (SNP): I do not know whether I should call you convener, acting convener or deputy convener.

The Deputy Convener: Deputy convener—or Kay.

Alex Neil: I thank the committee for agreeing to take evidence on the Public Appointments (Parliamentary Approval) (Scotland) Bill. I also want to place on record my gratitude to the non-Executive bills unit and the Scottish Parliament's legal office for the services and assistance that they have provided. Their service has been second to none—I cannot praise the quality of the service highly enough. Of course, I take full responsibility for the bill and all associated policy and financial issues.

The bill has three purposes. The first is to increase the openness of the public appointments system and put an end to the secrecy that surrounds the nomination and appointment of people to quangos. There have been major improvements since the Nolan report five years ago. We have a more open process than we had before—people now apply for the job rather than getting the tap on the shoulder—and we have a commissioner for public appointments to monitor the process and ensure that it is fairer. However, I do not believe that the situation is satisfactory. We need to open up the process further. Recently, for example, nominees for public appointments have been accused of cronyism without necessarily having the opportunity to reply. The open procedure that I propose will go a long way towards satisfying the need for greater public confidence in the public appointments system.

The second major objective of the bill is to increase the accountability of the Executive's non-departmental public bodies—quangos—to the

Scottish Parliament. About 40 per cent of the Parliament's budget is spent by the bodies that are listed in the bill. It is part of our public duty and our responsibility as parliamentarians and guardians of the taxpayers' money to ensure that the people who are appointed to head the bodies that are responsible for spending that money—which, next year, will total around £8 billion—are the right people.

The third major objective of the bill is to increase democracy in Scotland. We have heard a lot about the new politics and the need for modernisation. The bill will help to modernise the public appointments system even further. It will establish a better balance between the Parliament and the Executive. It is designed to increase openness and accountability and improve the quality of our democracy.

I am more than happy to go into further detail but, rather than spending a lot of time repeating what is already in the policy memorandum and associated documents, I prefer to open myself up to questions.

The Deputy Convener: How many appointments are made annually by Scottish ministers and related bodies? How many of them would fall within the scope of the bill?

Alex Neil: The schedule to the bill lists 114 bodies that would fall within the bill's scope. That list represents about 940 public appointments. The average length of a public appointment is three years. Even with your arithmetical ability, Kay, it is possible to work that out at the appointment of 38 quango chairmen each year. Given the number of committees in the Scottish Parliament that would have responsibility for confirming such appointments, each committee would have to approve an average of three appointments a year.

The bill makes a distinction between the chairmen or conveners of quangos and the ordinary board members. It would be a requirement that nominees for the chairmanship of a quango would be subject to a confirmation hearing. Other nominees for board positions would be subject to a hearing only if the committee so decided. Based on experience elsewhere—in the United States Senate, for example—I think that only 0.01 per cent of other appointees are likely to be brought in front of a committee for a confirmation hearing. I estimate that there would be a maximum of around 40 hearings in any year, among 12 or 13 subject committees.

The Deputy Convener: You said that you feel that the current process is unsatisfactory. What changes to the system would reassure you and mean that the bill was not necessary?

Alex Neil: I am not the only person who thinks that the current system is unsatisfactory. In

January last year, Henry McLeish, speaking as First Minister, said that he was unhappy with the process and was in favour of parliamentary committees being more involved. Similarly, on 17 November, Jack McConnell stated that there was a need to be much more

“open and transparent in all that we do”;

that there was a need to

“enhance rather than avoid parliamentary scrutiny”;

and that we should

“welcome participation from those with something to give.”

From the recent criticism of the appointments system, it is clear that we have not achieved the desired level of public satisfaction with the system. The commissioner for public appointments, Dame Rennie Fritchie, commissioned research to find out what the impact of the Nolan changes had been. The summary of the findings runs to three pages, so I will not quote them all.

The report states:

“The majority of the public know very little of the ministerial public appointments process. Only seven per cent say they know a great deal or fair amount about the way in which public appointments are made. Knowledge of the appointments process is far higher among those in social class AB - professionals and members of senior management - than among other groups of the population.”

As a result of that, people from minority groups are not applying for public appointments to the extent that they should be.

The report also states:

“The lack of knowledge surrounding the appointments process means that the public hold very vague - but overwhelmingly negative - impressions of how the process is currently conducted. There is a widespread assumption that the process is based on personal connections, with a recurring theme that it is who you know ‘at the golf club’, rather than a proven track record that is most influential. It is also assumed that appointments are circulated within a small section of white, middle class society.”

I would think that the Equal Opportunities Committee would be concerned by the fact that the report also points out that

“Only one in six describe the current appointments process as merit-based.”

The Deputy Convener: Women are under-represented in executive and advisory bodies. The 1999 figures from the Equal Opportunities Commission, which show that women hold 48 per cent of public appointments, mask the fact that the bulk of those appointments are to bodies such as children's panels and tribunals rather than executive and advisory bodies.

How will the bill encourage a better social mix by including women, people from ethnic minorities and disabled people?

10:30

Alex Neil: Three groups are under-represented—women; people from ethnic minority groups; and those affected by alleged political bias. The Parliament needs to address all three issues. It already has a robust equal opportunities policy and, if it were given the responsibility that the bill would confer on it, that policy would go a long way towards rectifying some of the deficiencies.

I am convener of the Enterprise and Lifelong Learning Committee, which is responsible for six major quangos: Scottish Enterprise, Highlands and Islands Enterprise, the Scottish Higher Education Funding Council, the Scottish Further Education Funding Council, the Student Awards Agency for Scotland and the Scottish Tourist Board. Only one of those bodies is chaired by a woman, and none of them is chaired by someone from an ethnic minority. That situation is fairly typical. Because we are accountable to the public and have a robust equal opportunities policy, we would ensure a fairer gender and ethnic minority balance on boards and would still be able to base such appointments on merit.

We must also address alleged political bias. On 31 October, in answer to a question from David McLetchie, Angus MacKay issued the figures for people appointed to bodies who have declared a political allegiance in the past five years. Depending on the period, the proportion of people to declare an allegiance to one political party—namely, the Labour party—has ranged from 60 per cent to about 75 per cent. That has caused major concern in Scotland and, based on statements made by the new First Minister, I think in the Scottish Executive as well.

Mr Gil Paterson (Central Scotland) (SNP): What effect will compulsory hearings have on potential candidates' willingness to apply for jobs with quangos?

Alex Neil: I make several points in response to the criticism that passing the bill would discourage people from applying for such jobs. First, the same people—who are often the reactionaries in some senior sections of the civil service—used the same argument to oppose many of the Nolan recommendations. Before the Nolan committee, many public appointments were made with a tap on the shoulder for people picked from a list of the great and the good. When a process similar to the one used for normal job applications was proposed—the job is advertised; people who are interested apply for the job; and they are then interviewed and go through an assessment process—it was argued that the system would result in far fewer people applying for the jobs, because people such as Lord Nickson, Sir Ian Robinson and others of that ilk would not demean

themselves to do so. The experience of the past four or five years has proved that to be blatant nonsense. As the system has opened up more, more people have applied for the positions. The facts stand in the way of such allegations.

Secondly, the bill specifically outlines the four criteria on which people should be interviewed at confirmation hearings. The people who allege that the bill will discourage applicants for jobs should bear in mind that the criteria are very tight. They relate to the code of conduct, statutory requirements, the process itself and the person's suitability for the job. It would not be possible to question someone about issues such as whom they had sex with in 1945, as that would be totally irrelevant and out of order. The purpose of the hearing is to decide a person's suitability for the job on their merits.

Thirdly, nothing is worse than the current system. For example, the minute that Esther Robertson's appointment to the head of SFEFC was announced, MSPs made major criticisms in the press that the only reason that she had been appointed was because she had been a member of the Labour party. Because of the rules under which she was appointed, she did not have the right of reply. As a result, she began the job under a cloud, because people had been led to believe—rightly or wrongly—that she got it only because she was allegedly a Labour crony.

Such a situation would not have happened if my bill had been in force. No criticism could have been made about Esther Robertson's appointment until she had been to the committee's confirmation hearing. If it had been alleged that her only qualification for the job was that she had been a member of the Labour party, the committee would have dealt with that effectively and, in fact, would have shown that Esther Robertson was the right person for the job. She would not have started the job under a cloud; morale in the organisation would not have been destroyed; and the process would have had much more public credibility.

Finally, if people who are appointed to the chairs of quangos are not up to coming in front of a committee to explain why they are the right person for the job, quite frankly they are not up to the job itself. Part and parcel of the job is the capability to handle that kind of situation. The idea that the passage of the bill will discourage people from applying for jobs is totally absurd.

The Convener (Kate MacLean): Thanks very much. I apologise for being late. I was attending the launch of the equalities challenge unit, which is a full-time body devoted to promoting equal opportunities in employment and higher education. I also apologise if I miss any member who wants to speak or if I call members out of turn. Does Gil Paterson have another question?

Mr Paterson: Yes. I might also come in later if another member does not pick up some of the other questions that I have in mind.

The Executive has made it clear that it intends to create a public appointments commissioner for Scotland. What impact will that have on the bill?

Alex Neil: The proposal simply means that a commissioner appointed by the Executive will take over in Scotland the responsibilities that are currently carried out by Dame Rennie Fritchie, the UK commissioner for public appointments. As a result, the effect on the bill is neither here nor there, because the commissioner's role is to check that the process has been adhered to and that the code of conduct for public appointments has been followed, not to ensure openness or to improve accountability to the Parliament. Such aspects fall well without the commissioner's job description. Although I welcome the appointment of a commissioner who is specifically dedicated to public appointments in Scotland and who is under the control of the Executive, that role is complementary to and not in conflict with the bill.

Mr Michael McMahon (Hamilton North and Bellshill) (Lab): You said that the schedule to the bill lists 114 public bodies that would be accountable under the bill. Do you not wish to include advisory bodies in that list, or is it your intention to restrict the legislation purely to bodies that spend money? As some advisory bodies might have more influence on the spending of public money than bodies that actually spend the money, would not it be better to include advisory bodies in your list?

Alex Neil: My criterion for the list of bodies in the schedule to the bill is the official definition used in the schedule to the Public Appointments Order in Council 1998, which includes a list of executive non-departmental public bodies. I have defined the list of bodies in the bill as executive non-departmental public bodies because they are statutory bodies that have been created by the Parliament and so are responsible to it. Many of the advisory committees to which you refer are creations—some of them temporary—of ministers or other organisations and are not created directly by the Parliament itself. My bill concerns the parliamentary scrutiny of bodies created by the Parliament and whose expenditure is the Parliament's direct responsibility.

There are two other reasons for restricting the definition. First, to include every single committee under the sun would clog up the procedure and make it difficult for the Parliament to operate effectively. Secondly, 40 per cent of the expenditure is fair coverage and will ensure that the Parliament achieves the objective of proper scrutiny of public funds and the people distributing them.

Mr McMahon: I understand that argument but do you accept that advisory bodies could have a greater influence on public spending than some of the quangos that you would like to be scrutinised?

Alex Neil: No. Let me give you an example from the enterprise network. Scottish Enterprise has 12 local enterprise companies, which are responsible for spending about 70 per cent of the total budget allocated to Scottish Enterprise. They are subsidiary companies of Scottish Enterprise, they are responsible to Scottish Enterprise and the membership of their boards is governed by rules set by Scottish Enterprise and approved by ministers. The nominations and appointments to those boards are approved by Scottish Enterprise. Scottish Enterprise is responsible for the local enterprise companies. Scottish Enterprise is a statutory creation; it is not a LEC. You will not find any reference in law to the creation of Scottish Enterprise Lanarkshire or Scottish Enterprise Ayrshire. They are not created by primary statute. The organisation that is created by primary statute is Scottish Enterprise—it is the creation of the Parliament; it is responsible to the Parliament; and so its chair should be approved by the Parliament.

Mr McMahon: We are not getting any further.

I want to follow up Gil Paterson's question. There has been mention of US-style hearings, where scrutiny would come from the parliamentary process. A number of organisations that relate closely to the work of the Equal Opportunities Committee, especially the Commission for Racial Equality and the Equality Network, have raised concerns about that aspect of the bill. The CRE in particular said that it

"fears this would undermine anti-discrimination protection in relation to the selection procedure."

The Equality Network said:

"We are concerned that the Parliamentary hearing system proposed in the Bill may discourage some people from applying for public posts."

It would be wrong of us to take that evidence from organisations and not question you on the issue.

You mentioned Esther Robertson, whom I have never met as far as I am aware. You used the word "cronyism" and said that it had been mentioned by members of the Parliament. Would not someone who subjects themselves to the system that you envisage still have to deal with hostility from political opponents when they came before the relevant committee? Would not that put those people in an awkward position and lead to the types of discrimination that the equality organisations are concerned about?

Alex Neil: No. First of all, both organisations you mentioned are very sympathetic to the bill. In fact the Equality Network is—

Mr McMahon: They are all sympathetic to the bill, but they have raised specific concerns about that aspect of it.

Alex Neil: Absolutely, and they have gone on to say why they think those concerns can be addressed. The system that we have at the moment means that when an appointment is announced, there is a public attack on the person and there are allegations of cronyism. By then, the person is operating under the relevant policies and procedures and is very limited in what they can say in response. That puts them in a difficult position.

If anything discourages people from applying for positions it is the present situation. If you have been a member of a political party in the past five years or, in the case of the chair of Caledonian MacBrayne, you have been a senior civil servant, you are subject to the old-boy network or cronyism attack. Clearly that puts you in a defensive position. The alternative is that everything is done out in the open. The appointee would talk to the relevant committee and would be asked about their political affiliation and whether they were the right person for the job in a civilised manner, rather than having it screamed in a headline in *The Herald* or the *Daily Record*. They could then respond accordingly. In about 90 per cent of cases, the responses will be fairly satisfactory.

The fact that the Parliament has the power will make ministers think about the need for more women and ethnic minorities and make them ensure that there is a better political balance among appointees, with the overriding objective of ensuring that anyone nominated is the right person for the job. From time to time there will be attacks—we cannot eliminate those—but at least the person will be in a position to respond and will not be hounded in the press with no right of reply.

10:45

Mr McMahon: Again, I am not convinced by your answer.

On the scope of the bill, who do you envisage would draft the guidance on the process and whom would you want to be consulted on it prior to parliamentary approval?

Alex Neil: Are you talking about the proposed code of practice or the parliamentary rules governing the bill?

Mr McMahon: The guidance on the process of the system.

Alex Neil: On the implementation of the bill?

Mr McMahon: Yes.

Alex Neil: This is deliberately an enabling bill—it gives the Parliament the power. It does not

prescribe in detail how that power should be exercised because that is the responsibility of the standing orders and the policies of the Parliament. With the passage of the bill, the Procedures Committee—presumably—would initially draft the details in the usual way, for approval by the whole Parliament. I imagine that the Equal Opportunities Committee would play a substantial part in ensuring that the equal opportunities policy of the Parliament was robust enough to ensure that appointments were made fairly and squarely and that the procedure inside the Parliament was undertaken fairly and squarely.

I think that one of the committees would need to take an overview of the appointments, to ensure that we were achieving a reasonable balance overall. That may be the role of the Equal Opportunities Committee, or of the Local Government Committee, which should perhaps become the local government and public administration committee. The processes exist in the Parliament to do that. It is like any other bit of legislation that requires changes to parliamentary procedures. We have seen what happened with the creation of a standards commissioner and related activity by the Parliament. With the passage of the bill, the standing orders would need to be amended and added to. I imagine that the Parliament would do that through the committee system.

The reason for not putting that into primary legislation is that, as you know, things change from time to time, for example when there is a ministerial reshuffle. We would not want to have to go back to primary or even secondary legislation to make changes every time there was a change of ministerial responsibility.

Mr McMahon: As you rightly said, all the organisations welcome the principles of the bill, but they want some changes, for example to standing orders, to address their concerns. The Equal Opportunities Commission said that it would like some sort of register of interests. Obviously, the parliamentarians who would scrutinise the appointments of certain people would have to declare an interest. Given what you said earlier about politicians creating headlines in newspapers by attacking appointees, do you consider that someone who makes a public attack on an appointee should rule themselves out of scrutinising that person when they come before a committee?

Alex Neil: We have a register of interests. Under existing parliamentary rules, if a member was involved in a confirmation hearing and, for example, was related to the nominee, they would have to declare an interest. The member would also have to declare an interest if they had a contractual relationship with the nominee or, for

example, with one of the nominee's companies. The question about a register of interests is already well covered by existing parliamentary procedures.

Secondly, if the Parliament is given the power, parliamentarians will have to take responsibility for that power. It would not be in order for a nomination to be attacked prior to a confirmation hearing, as that could be prejudicial to the confirmation hearing. We would need to examine the procedure for ensuring that no member of the committee, and ideally no member of the Parliament, says or does anything that would be prejudicial to the confirmation hearing. I repeat that with power goes responsibility.

Mrs Lyndsay McIntosh (Central Scotland) (Con): Will you tell us how you intend to extend the provisions of the race equality advisory forum's recommendations to the other groups that are cited in schedule 5 to the Scotland Act 1998?

Alex Neil: Schedule 5 to the Scotland Act 1998 sets out reserved powers. I am not sure what Lyndsay McIntosh is talking about.

Mrs McIntosh: Schedule 5 identifies certain groups. Have you any inkling at this stage of how you want to extend the provisions of the race equality advisory forum's recommendations? Have you seen its recommendations?

Alex Neil: I have seen its recommendations. There are three reasons why I do not believe that it is necessary or relevant to add any of the provisions of the forum's recommendations to the bill. First, the Scottish Parliament is governed by the law of the country—we are governed by the Race Relations Act 1976 and by the Race Relations (Amendment) Act 2000. The Parliament, including its committees, must act within the scope of the race relations legislation and indeed of other relevant legislation, including equal opportunities legislation.

Secondly, the Parliament's own procedures and policies, through its standing orders and its equal opportunities policies, govern the operation of the entire Parliament, including its committees. Those procedures and policies are fairly robust. They ensure that we provide equal opportunities to ethnic minorities, women and to other minority groups.

Thirdly, if additional legislation is required, that has to be the subject of a separate bill. If it were felt that existing legislation did not go far enough, additional legislation would be needed to introduce related provisions to local enterprise companies and a host of statutory and non-statutory bodies.

The purpose of the bill is to enable the Parliament to vet and, in extreme cases, to veto appointments to executive non-departmental

public bodies. That is the sole purpose of the bill. The bill will operate under race relations and equal opportunities legislation and under the policies and procedures of the Parliament.

The Convener: As members have no further questions, I thank Alex Neil for giving evidence to the committee.

Alex Neil: It was a pleasure. Such a civilised hearing is proof that confirmation hearings will work perfectly.

The Convener: We are always civilised on the Equal Opportunities Committee. I cannot say that that extends to the rest of the Parliament.

Alex Neil: I thank the committee.

Kay Ullrich (West of Scotland) (SNP): Alex Neil mentioned someone having sex with somebody in 1945. If that were the case, they would probably like to be reminded of it. *[Laughter.]*

The Convener: We now move into private session.

10:54

Meeting continued in private until 11:27.

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