

LOCAL GOVERNMENT COMMITTEE

Tuesday 15 January 2002
(*Afternoon*)

Session 1

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LOCAL GOVERNMENT COMMITTEE

2nd Meeting 2002, Session 1

CONVENER

*Trish Godman (West Renfrew shire) (Lab)

DEPUTY CONVENER

*Dr Sylvia Jackson (Stirling) (Lab)

COMMITTEE MEMBERS

Mr Keith Harding (Mid Scotland and Fife) (Con)

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

*Tricia Marwick (Mid Scotland and Fife) (SNP)

*Iain Smith (North-East Fife) (LD)

*Ms Sandra White (Glasgow) (SNP)

*attended

WITNESSES

Dame Rennie Fritchie (Commissioner for Public Appointments)

Alex Neil (Central Scotland) (SNP)

Peter Peacock (Deputy Minister for Finance and Public Services)

CLERK TO THE COMMITTEE

Eugene Windsor

SENIOR ASSISTANT CLERK

Irene Fleming

ASSISTANT CLERK

Neil Stewart

LOCATION

Committee Room 2

Scottish Parliament

Local Government Committee

Tuesday 15 January 2002

(Afternoon)

[THE CONVENER *opened the meeting at 14:00*]

Items in Private

The Convener (Trish Godman): Okay comrades, we can start. It is 2 o'clock and we have a busy afternoon ahead. I welcome Alex Neil and his officials to the committee. I will introduce them in a minute, but first I ask committee members to agree to take items 4, 5, 6 and 7 in private.

Members *indicated agreement.*

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

The Convener: Alex Neil is here today to talk about his member's bill—the Public Appointments (Parliamentary Approval) (Scotland) Bill. I think that this is the first time that he has attended the Local Government Committee. He will make a presentation, after which we will ask questions. I believe that he will then join the committee to hear the evidence of other witnesses.

I also welcome both the officials who are with Alex. They are David Cullum, who is the head of the non-Executive bills unit in the Scottish Parliament, and Alison Coull, who is the unit's senior legal adviser.

Members will have received under separate cover a package that contains all the evidence—it is a large amount—that the committee has received on this issue. That evidence has not been published in the papers for today's meeting but will be included in the committee's stage 1 report.

Alex, you have experience of committees both in this Parliament and in another place. I will hand over to you to talk about your bill. Then I will open up the meeting for questions.

Alex Neil (Central Scotland) (SNP): I will take four or five minutes, if that is okay.

The Convener: That is fine.

Alex Neil: First, I want to say that I carry the entire responsibility for any political comments that I may make on the bill. David Cullum and Alison Coull are here to help me with technical matters, but they carry no responsibility for my political comments. I would like to place on record my gratitude to the non-Executive bills unit for the very considerable assistance that I have had in drawing up the bill. One of the Parliament's successes has been the non-Executive bills unit and the service that it provides to members.

I want to do two things in my introduction: first, to reiterate the purpose of the bill; and secondly, to deal with what I regard as fairly spurious scaremongering about the implications of the bill. I begin to wonder if some of the people who have commented on the bill have read it let alone understood it.

The purpose of the bill is straightforward. First, it aims to increase the accountability of the Executive to the legislature in respect of public appointments. The Executive is under a great deal of scrutiny by the committees and in the chamber on everything else that it does. Some public

appointments are important, as some of the people whom we appoint are responsible for spending up to £800 million a year of public money. It is correct that the Parliament should have a role in ensuring that the appointment process is right and that the right people are appointed through that process.

The bill's other important objective is to put an end to the perception of political cronyism and old-boy-network cronyism. In the past year, a number of accusations have been made about some of the more controversial public appointments. It has been alleged that people have been nominated to public bodies as a result of political cronyism or because of friends in high places. Some allegations have been substantiated, but others have not. It is important to enhance transparency and accountability and get rid of the culture of cronyism in Scotland.

I want to deal with the three main objections to the bill that I have heard. First, it has been said that the bill will act as a deterrent to a person who wants to apply for a public appointment to a quango. No written evidence that has been presented to the committee, and no evidence in any public comments that I have heard, substantiates that claim. Indeed, the current system is the worst of all possible worlds. Many people who have been nominated to chair quangos have then been attacked—sometimes by MSPs—with the allegation that their appointment was the result of their membership of a political party. Such people will start in their jobs without being able to reply to such criticisms because they will be governed by the codes. Joe Public will then start to believe that the appointee got the job because they were a member of a particular party or the New Club in Edinburgh, for example, irrespective of whether they were qualified for the job. The effect of trial by media on such appointees—which is what currently happens—is to lower morale substantially in the organisations that are affected. My bill would build in protection for people so that such attacks could not be made. A system would be in place to ensure that they are appointed on merit and not because they are a member of the New Club or a political party.

One of the biggest deterrents to people applying for public appointments in Scotland is that there is a perception—whether it be right or wrong—that, if a person is not part of the old-boy network or a member of a certain political party, there will be no point in applying because they will not be considered seriously. We all hope that the improvements that have been made over the past four or five years have more or less put an end to that, but the existence of that perception has been confirmed in surveys undertaken by Dame Rennie Fritchie about political and old-boy-network cronyism.

That perception was reinforced in the parliamentary reply that ministers provided just before Christmas, which showed that, in the past five years, when there has been a commissioner for public appointments, two thirds of those who indicated a political affiliation came from one political party. Indeed, the three chairmen of the three water authorities in Scotland have all had some political affiliation with one political party in the past five years. There is therefore a strong feeling out there—whether it be right or wrong—that cronyism still rules the waves in public appointments in Scotland.

People are saying that, under the bill, the system will end up like the American system, in which a person can be questioned about their sex life and peccadilloes that they might have had in the past. Those people should read the bill. It spells out the four criteria for questioning a person about their nomination and makes it clear that people cannot be questioned about their private lives. The four areas are

“any statutory requirements concerning the person appointed”,

any code of practice that is applicable to the appointment, the procedure itself and the person's qualifications, experience and expertise for the job. If it is thought that those criteria need to be tightened up during the bill's passage, let us tighten them up. I am not in favour of the American system, in which people can be quizzed about whom they had sex with in 1945, for example. That is not the bill's purpose and those who allege that are entirely wrong.

The second big complaint is that, allegedly, the bill will clog up the system. Let us be clear what the bill does: it places a duty on the Parliament—probably through the committees—to have a confirmation hearing for people who are nominated to the chair of quangos; and it gives the Parliament the power to interview, but does not make the Parliament interview, all other members of public boards. The experience in the US Senate is that only 0.01 per cent of those who are not being appointed to the position of chair—only 0.01 per cent—are ever called in for a hearing because of a controversy. The reality, based on the Executive's own figures before it fiddled them in its evidence, is that we have 114 public bodies and that just over 900 appointments are covered by the bill. That works out on average at three appointments per year per committee in the Parliament. There is no way that three interviews of perhaps 40 minutes in the course of a parliamentary year will clog up the system—that is a red herring.

The final accusation is that the bill will politicise the appointment process, but the appointment process is part of a political process, because the

appointments are made on the nomination of ministers, who are politicians in the Executive. I am arguing for the legislature to have the power of scrutiny over the work of the politicians in the Executive in respect of appointments. I return to the issue of trial by media. Even if someone who is a member of a political party is the right person for the job, they only have to declare a political interest and they find themselves on the front page of *The Herald* or *The Scotsman* being attacked by members of other parties. That is chiefly where party politics come into the current appointment process. The bill will stop that happening, because it is damaging.

I argue strongly, in the words of the Scottish Liberal Democrat manifesto for the 1999 Scottish election, that the bill will

“Raise standards and accountability in public life by”

among other things having

“a system of open nomination and confirmation.”

The bill also helps to implement a part of the partnership agreement, which stated that the partnership would

“encourage the Parliament to review and monitor public appointments to ensure the highest standards and accountability in public life and the effectiveness of appointees.”

The Executive should be grateful that I am using up my time as a private member to help it to get through its own policy.

The Convener: Before members catch my eye, I will ask Alex Neil three questions. First, have you ever raised a concern about a public appointment with the commissioner for public appointments? If so, what was the result of that action? Would you have raised that concern had your bill been in force?

Alex Neil: I raised the issue of the nomination of Lesley Hinds for the position of chair of the Health Education Board for Scotland a few months ago. I asked the commissioner whether she could reassure me that that appointment was not made on the basis of a political affiliation. The reply that I received from the commissioner's office emphasised my dissatisfaction with the present system. The commissioner's office wrote back and said that I had to make a specific complaint. The commissioner's powers in any case are retrospective, so the damage is done before the commissioner's powers kick in. The office also sent me a form on which to put down the specific complaint. Of course, I had already submitted a specific complaint. The bottom line is that she was powerless to do anything about it, at least on that occasion.

The second question was whether, if the situation arose again and the bill was in force, I

would raise the matter with the commissioner or with the committee. The answer is very clear in my mind. The role of the commissioner is to ensure that the process as laid down in the code of conduct is adhered to and that the system is fair—that interviews are conducted fairly and so on. The role of the committee would be to ensure that no appointment was made on the basis of political affiliation or, as was allegedly the case with Caledonian MacBrayne, through the old-boy network. The procedure would depend on the nature of the complaint. The Lesley Hinds complaint would have been made at the confirmation hearing. A complaint about process would be made to the commissioner.

14:15

Iain Smith (North-East Fife) (LD): You express concerns about the culture of cronyism, but you have not given any examples of appointments where that has been a factor. Can you identify any appointments in which cronyism was a factor and that were not made in accordance with the seven Nolan principles? Those principles stipulate that the person appointed should have the qualities necessary to do the job to which they have been appointed.

Alex Neil: I dispute what Iain Smith has said. In my opening remarks, I gave two examples of how the culture of cronyism operates. I quoted the Executive's reply to a parliamentary question that was asked just before Christmas, which showed that, of those who declared that they had been engaged in political activity in the five years prior to their appointment, two thirds were from one political party: the Labour party. The Labour party has never achieved 50 per cent of the vote in Scotland—indeed, the only party ever to manage that was the Tory party. It is incredible that a party that represents substantially less than half the electorate should end up with two thirds of appointments.

Iain Smith: I am sorry, but—

Mr Michael McMahon (Hamilton North and Bellshill) (Lab): On a point of order—

Alex Neil: The appointments to which I refer—

The Convener: Just a minute.

Alex Neil: Will you let me finish?

The Convener: Michael McMahon has a point of order.

Alex Neil: The appointments to which I refer were two thirds of the appointments in which political affiliation was declared.

Mr McMahon: On a point of order. Earlier Alex Neil stated that two thirds of people appointed to public bodies came from a particular political party.

For the record, will he clarify what he meant by that?

Alex Neil: I have already clarified it. Two thirds of the people appointed since 1997 who declared a political affiliation had in the previous five years been politically active on behalf of the Labour party. That information was given in response to a parliamentary question—it is the Executive's own answer. I believe that if we went back further than five years, we would find that an even higher percentage of people appointed had been politically active on behalf of the Labour party. However, that is by the way.

Iain Smith asked for examples of appointments that had been affected by the culture of cronyism. One such example is appointments to Scotland's water authorities. The current chairmen of all three water authorities in Scotland have some affiliation to one political party—again the Labour party. If Iain Smith does not believe that that is political cronyism, he should think again.

Iain Smith: Alex Neil has not answered the question that I asked. I will come back to that, but first I would like him to clarify what he said about two thirds of those who declared political activity having been politically active on behalf of one party. How many people made such a declaration, and what was the total number of appointments made?

Alex Neil: Just over 10 per cent of those appointed declared that they had been engaged in political activity over the previous five years. It is interesting that that percentage nearly doubles for those appointed to chairmanships.

The Convener: Would Iain Smith like to ask his original question again?

Iain Smith: It is clear that two thirds of 10 per cent of all those appointed declared a political affiliation to the Labour party. It is important that we get the figures accurate. I asked Alex Neil whether he had evidence that any appointments had been made outwith the criteria laid down in the Nolan principles, which include merit—that is to say, having the qualities to do the job. Does he believe that in any of the cases to which he has referred people were appointed who did not meet the criteria set out in the Nolan principles?

Alex Neil: Until recently, the Office of the Commissioner for Public Appointments covered only a proportion of all public appointments—I think that I am right in saying about a third to 40 per cent. I believe that the office of the commissioner has been effective in ensuring that the process from interview to shortlisting has been carried out properly. I have not come across a specific complaint against the role of the commissioner.

My point is that the commissioner cannot turn someone down on the basis that there are too many people from one party. As long as the process is adhered to, she does not have the power to do that. In any case, if something has gone wrong and a complaint is made, that is usually investigated after the event—as in the case of Caledonian MacBrayne, where the commissioner cleared the people involved. However, the damage had been done. The commissioner's report came out about six months after the complaint and the appointment had been made. By that time, the reputation of the poor chairman of Caledonian MacBrayne had been torn to ribbons in the papers. Everybody in the street believed that he had been appointed only because his pals in the Scottish Office—as I think it then was—made up the interview committee, which is very unfair. That is not the right way for somebody to start a new job.

Iain Smith: If we adopted your system of having confirmatory hearings for that type of appointment—

Alex Neil: It is your system as well, according to your manifesto.

Iain Smith: I am sorry, it is not. Our manifesto does not say anything about confirmatory hearings.

Alex Neil: It does, I am sorry.

Iain Smith: It does not.

The Convener: Let us stop this argument. Please ask your question, Mr Smith.

Iain Smith: The word "hearing" does not appear.

Alex Neil: There is reference to confirmation—open confirmation.

Iain Smith: Liberal Democrats will interpret Liberal Democrat policy, not the Scottish National Party, if that is all right with you, Mr Neil.

If, under standing orders, the chairman—or any member who was being appointed to a quango—could be challenged and made the subject of a confirmatory hearing, is there not a danger that those who wish to use the system for political purposes could abuse it? How would you prevent the system from being abused in that way?

Alex Neil: I want the system because of the current abuse. There is no system in place to prevent the abuse that is happening at present. My point is that if the bill is enacted, the Parliament will have to introduce the procedures necessary to make the bill work day to day. I am sure that one of the provisions will be that to live up to our code of conduct, members will not be able to make attacks on nominees who are the subject of a confirmation hearing. There will be a

time and a place to air such an accusation properly—the confirmation hearing.

For example, if an MSP made an attack on someone who had been nominated, but not confirmed, that would be prejudicial to the confirmation hearing. In my view, the MSP would be in total contravention of the standard of conduct by which we are governed. That system would provide built-in protection for nominees, which they do not have at the moment. They can find themselves being slated for being a member of a political party on the front page of *The Herald* or *The Scotsman* or the *Daily Record*, even though they might be the right person for the job.

The Convener: I want to establish what you mean by a hearing. Who will decide whether it will be a hearing before a relevant committee or the Parliament as a whole? Could one back-bench MSP request that the hearing be before the whole Parliament? What would that mean for the person concerned?

Alex Neil: In essence, the purpose of the bill is to give the Parliament a power and—in the case of conveners of listed public bodies—a duty. Once the bill is enacted, it will be up to the Parliament to decide in detail how it exercises that power. In my opinion, two models could be employed. There could be a public appointments committee, as is suggested in the Liberal Democrat manifesto, or individual subject committees could deal with appointments that come within their ambit. As you know, I am the convener of the Enterprise and Lifelong Learning Committee, which is responsible for six quangos. If someone was nominated for the chair of one of those quangos, the hearing could come to the Enterprise and Lifelong Learning Committee.

Alternatively, there could be just one committee. It will be up to the Parliament, when the bill goes through, to decide the exact mechanics to employ. I deliberately avoided those issues in the bill because sometimes the devil can be in the detail and I did not want people to be arguing about detail. We need to establish the principle of parliamentary scrutiny. Once that principle has been established, when the bill is passed, the Parliament can then work out the nitty-gritty of practice.

The Convener: I understand that, but I am unsure how we get a debate in Parliament on a proposed appointment. Would a committee bring it to the Parliament? Would it be a parliamentary debate on a committee report on a particular proposed appointment? Alternatively, would the person who might be appointed have to come to the Parliament?

Alex Neil: Section 5(1) of the bill states:

“Standing orders shall provide for the procedure to be

followed by the Parliament”.

Once the bill was passed, standing orders would establish the procedure. I envisage that the procedure would be as follows. A minister might want to nominate someone for the chair of one of the funding councils, for example. The minister would formally notify the relevant committee of the Parliament. I believe that it would be better to spread the procedure through the subject committees rather than have a dedicated committee—that is a personal opinion. The committee would have up to 28 days in which to hold a confirmation hearing. If that hearing were not held within 28 days, the appointment would go ahead. However, the committee would be under an obligation to hold a confirmation hearing within 28 days.

The convener would then interview the nominee. The minister could also interview the nominee if there was controversy about the appointment. The nominee could also be interviewed by the existing commissioner, if she has responsibility, or the new commissioner, if he or she has responsibility.

The interviewers would be entitled to ask questions in relation to the four matters I have mentioned—statutory requirements, code of conduct, the process and the person's suitability for the job. A recent example of an appointment that was attacked was an appointment to one of the funding councils. Any member of the Parliament could come to the committee and, through the convener of the committee, ask questions about the person's suitability for the job. It would then be up to the committee to confirm that nomination.

Experience elsewhere shows that the percentage of nominees who are turned down is almost non-existent. Apart from anything else, the fact that the Parliament would have that power would make ministers think about a nomination and decide that they had better not appoint anyone on the basis of cronyism or the old pals act, because they would want to avoid a stushie in the Parliament. Thus, the procedure itself would prevent the problem.

Mr McMahon: Regardless of how one considers the question, there is no way of avoiding political attitudes. As a nationalist, you will be disappointed that equalities legislation is not devolved to the Scottish Parliament. However, the reality is that, when you introduce the bill, all equality legislation is reserved to Westminster.

When making appointments, the Scottish Executive is subject to the Race Relations Act 1976, the Disability Discrimination Act 1995 and other equality legislation. The bill would create a situation whereby the Parliament, which is not subject to that legislation, would become an arbiter

in the appointments process. Equality issues would therefore be taken out of the remit of the legislation. Do not you think that that is a major flaw in the bill?

Alex Neil: As you know, the Commission for Racial Equality supports the bill and wants to see it passed. The CRE thinks that it is a good bill and it did raise that issue. However, when one considers the matter more closely, no additional legislation is required. The Parliament is governed by its own equal opportunities policy, which is very comprehensive. The Parliament is also governed by some of the other general issues. We have our own Equal Opportunities Committee. We would come down heavily on any committee of the Parliament, or on the Parliament itself, if it did not stick to the letter—let alone the spirit—of our equal opportunities policy.

I do not think that further legislation is required. Section 2 is already wide enough to enable the Parliament to consider equal opportunities issues. Under that section, the Parliament must consider

“the procedure followed by the Scottish Ministers”,

as well as

“any statutory requirements concerning the person appointed”.

One of the statutory requirements of Scottish ministers is that they adhere to race relations legislation, so the bill would effectively ensure that ministers adhere to the statutory requirements of the Race Relations Act 1976, as well as to the requirements of other acts.

14:30

Mr McMahon: To be fair, that question was put to you by the Scottish Parliament Equal Opportunities Committee, and you gave an answer. Unfortunately, you did not convince me then, and you have not convinced me today. If a parliamentary committee made a decision that was contrary to the appointment that would have been made under the eventual legislation, there would be nothing in the law—no matter what people might wish—to prevent that committee making a decision that was against the spirit or letter of race relations, disability discrimination or other equal opportunities legislation. There does not have to be legislation to correct that, but the Parliament is not, in fact, subject to that legislation.

Alex Neil: I am sorry, Michael, but I think that you misunderstand. The parliamentary committee would not nominate; it would either approve or not approve the nomination that was made. In the bill, there is a clear, statutory requirement on the parliamentary committee to ensure that ministers meet their own statutory requirements. Their statutory requirements include those under the

Race Relations Act 1976. If the nomination did not meet that statutory requirement, the committee would therefore be duty-bound to turn down the nomination.

Mr McMahon: However, if the appointment did meet that statutory requirement, and if the committee went against that appointment, the person who was being challenged by the committee would have recourse to the law, but only to challenge the Scottish Executive, not the parliamentary committee.

Alex Neil: That person would have recourse under the Race Relations Act 1976 if they felt that they had been unfairly dealt with on the basis of race. If somebody was turned down by the committee, the relevant minister would then have to submit a second name. The statutory requirements for that second name are exactly the same as for the first one: the minister must adhere to the statutory requirements of the Race Relations Act 1976 and the committee, as part of its function under the bill, would have to ensure that that minister met those statutory requirements. Quite frankly, I think that you are trying to introduce a red herring.

Mr McMahon: I want to reply to that, because I think the point must be made—I think that this is a fundamental flaw in Alex Neil's bill. Someone who was made an appointee within the law would have the right to challenge opposition by the Executive to that appointment. If, however, the appointment were challenged by a parliamentary committee, the appointed person, although he or she might be a good candidate, would have no recourse under the law to prevent the committee from stopping them being the appointee. That, in effect, takes people out of the scope of the legislation.

Alex Neil: Not at all. It would be inconceivable for the Scottish Parliament to turn someone down for a job on racial grounds. All hell would break loose if that were to happen.

Mr McMahon: But how would someone prove those grounds if they were not entitled to a challenge under the law?

Alex Neil: Under the Parliament's own policy and procedures—

Mr McMahon: That is not the law.

Alex Neil: The committees are subject to the Parliament's own standard of conduct. If a job was allocated on racial grounds, I am sure that everyone who voted for it could be reported to the Scottish Parliament Standards Committee and dealt with by that committee. If any member of any party in the Parliament were to vote to turn someone down for a post on racial grounds, I am absolutely sure that the rest of us would want the Standards Committee to recommend severe

disciplining of that member. It is an inconceivable situation.

Ms Sandra White (Glasgow) (SNP): I am sure that Michael McMahon was speaking with the best of intentions; I would be very angry if he was implying that members of the Parliament would vote on racial grounds.

Mr McMahon: No.

Ms White: I would like that—

The Convener: Can we—

Mr McMahon: I want to clarify this.

Ms White: I would like my point to be put on the record.

The Convener: We will let Michael McMahon clarify his point in a minute. I know what you meant, Michael.

Ms White: I would like to put my comment on the record, because I am annoyed about—

The Convener: Will you wait for clarification, Sandra? I think that you picked up Michael's point slightly wrongly.

Ms White: I would like to ask Alex Neil about the candidates. You said that the bill was about accountability, but it must also be about fairness and equity. There has been a lot of talk about the personal lives of candidates being made public, which happens in the American Senate's system. Will the bill contain provisions—perhaps in the form of Executive amendments—to prevent that from happening?

Alex Neil: The bill lays out the four criteria under which nominations would be considered. Let us assume that the committee will consider nominations. If so, it would be able to entertain only those four criteria. I am quite relaxed about members lodging amendments to tighten up the criteria. At the end of the day, we are considering the bill at stage 1, and no bill—not even one that has been supported by all the expertise and advice that this bill has received—is perfect at stage 1. If members think that the criteria should be tightened up at stage 2, I am quite relaxed about that. Similarly, when it comes to implementation and to the standing orders, I am absolutely sure that the standing orders would ensure that the hearings were conducted properly. The same applies to the way in which we must conduct ourselves when committees interview people as part of our regular scrutinising responsibilities—we must ensure that witnesses get a fair hearing and that they are dealt with equally and fairly.

Ms White: On fairness and equity for women and ethnic minorities, would appearing before a parliamentary committee put people off applying

for public office?

Alex Neil: I will make two points in response to that question. First, anyone who applies to become the chair of one of the 114 bodies that are listed in the bill might have to come before parliamentary committees—sometimes regularly—as part of their job. The chairs of the funding councils, Scottish Enterprise and Highlands and Islands Enterprise regularly appear before the Enterprise and Lifelong Learning Committee, of which I am convener. There is no substantive evidence to back up the assertion that appearing before a committee would put people off.

Secondly, a confirmation hearing is much less of a disincentive than the current system. At present, a nominee who happens to be a member of a political party ends up being trailed through the papers and hammered simply because he or she is a member of a political party, whether or not he or she is the right person for the job. At present, we have the worst of all possible worlds—the system is very unfair to the process, to the candidate and to the organisation that a person is applying to chair.

The Convener: May I clarify a point that you made when you answered Sandra White's question about candidates appearing before a committee? I think that I understood your answer, but are you saying that candidates would never appear before the Parliament?

Alex Neil: No—at least, I do not anticipate that that would ever happen.

The Convener: That was the part of your answer that I did not find absolutely clear. That is fine.

Alex Neil: I do not think that anyone would seriously suggest that a candidate should appear before the whole Parliament.

The Convener: Making a speech is bad enough.

Tricia Marwick (Mid Scotland and Fife) (SNP): I would like Alex Neil to comment on a couple of phrases from the Executive's memorandum to the Local Government Committee. First, I give a couple of health warnings. The memorandum is dated September 2001, which is before the publication of the written answer that said that two thirds of all appointees who declared a political interest came from one political party. It is also obvious that the memorandum was written before this week's leaks that told us that the minister is to come before the committee and tell us something quite new.

The memorandum states that the Executive's view was that it

“believes that responsibility for making appointments to

public bodies who are accountable to them must rest with Ministers who are in turn accountable to Parliament for their actions. The Bill”—

that is, Alex Neil's bill—

“threatens to muddy this clear and clearly understood line of accountability.”

Do you have any comments about that?

Alex Neil: The committees give the lie to that statement every day of the week. Each committee that covers an area of policy in which a quango is involved regularly takes evidence from members of those quangos in order to scrutinise their work. Next month, we will go into the final stages of the budget process. Very few big quangos will not come before the relevant committee to be questioned about their budgets for next year and the two following years. The idea that quangos have no accountability to the Parliament is, in my view, absolutely absurd.

I agree with the Executive that because quangos are extensions of the Executive, appointments and nominations must remain a ministerial responsibility. That is why I would never support a system whereby committees were involved with the earlier stages of the appointment process. Committees should be involved only at the confirmation stage because ministers must reserve the right to nominate people to the boards of quangos. The legislature would scrutinise appointments to ensure that they met the criteria that are laid out in the bill. I agree with the Executive to that extent.

I know of one quango chairman who will be responsible next year for spending nearly £800 million of public money—fortunately, he is an excellent chairman. As convener of the Enterprise and Lifelong Learning Committee, I want to ensure that he has the intellectual equipment, experience and expertise that are needed to ensure that we get value for every penny of that £800 million.

Tricia Marwick: My second question is about paragraph 16 of the Executive's memorandum, which states:

“The current appointments system has built-in mechanisms for ensuring that it is fair, open, transparent and delivers a quality outcome, which is subject to independent scrutiny. The Bill's proposals would place the appointments system firmly in the party political arena”.

What is your response to that charge?

Alex Neil: There are two points in that paragraph. In relation to the party political arena, the committee system has been one of the successes of the Parliament and it is fair to say that, by and large, it operates in a fairly non-partisan way. With power comes responsibility; I trust that, although we have incidents from time to time—there always are in politics—the committees will operate responsibly and will not divide down

party lines. Although the Executive has a built-in majority in the committees, no single party has a majority on the committees, which means that people must give and take to persuade committees to take a particular line of argument. That would be no different with the consideration of appointments from what it is with the consideration of legislation or other committee responsibilities.

What was the other point?

Tricia Marwick: It was about the fact that the memorandum states:

“The current appointments system has built-in mechanisms for ensuring that it is fair, open, transparent and delivers a quality outcome”.

Alex Neil: The present system is based on the role of independent assessors. I do not want to cast aspersions on the independent assessors, but I have two points of principle to make. First, at least four of the people on the list of independent assessors sit on the board of a quango and, as such, were appointed by a minister. If those people are beneficiaries of the appointments system, are they really independent?

Secondly, some of the independent assessors were nominated by political parties, which makes nonsense of the idea that the system is in any way non-political. Of course the system is political. When Jack McConnell was the Minister for Finance, he asked other parties for nominations for independent assessors. To the best of my knowledge, most of those who were nominated by the Scottish National Party, by the Liberals, by the Labour party and by the Tory party were appointed as independent assessors. There is party politics in the existing system.

14:45

Dr Sylvia Jackson (Stirling) (Lab): My point is similar to Tricia Marwick's, but I will build on it. How will the bill stop attacks by the media? I still do not understand why a group that disputes the appointment of a candidate cannot approach the media to prompt an attack. I see no way of preventing the media from playing up against an appointment.

My second question will build on what Tricia Marwick started to talk about. I considered what the bill would add to the appointments system. I thought about the critical parts of the bill, one of which is the criteria that are specified. I guess that the criteria in the bill are not so different from the current criteria—perhaps Alex Neil can tell me whether they are.

As I understand it, under the bill, candidates will be selected in the same way as they are at present, which is by the minister. The next stage is

the interview stage, which the bill would change. The bill proposes that a committee conduct the interview, instead of the independent assessors and a panel. What are the exact differences?

It is likely that Alex Neil knows more about the process than I do. What expertise do assessors in the present system have in interviewing a prospective chair? That expertise could be used in argument against the bill—MSPs might not have great expertise in the specialisms that someone whom we interview might have.

The decision-making process is a yes-or-no process. What I said about the media could apply to that, if the decision went against a group.

Alex Neil: I will try to answer all those questions as best I can. After a minister makes a nomination, my bill will not be able to prevent the editorial column in a national newspaper from attacking that nomination. If we analyse the attacks on nominees, we see that they have occurred not only during the current Administration, but during the previous Tory Administration. I remember that when Jim Sillars was appointed to the board of Scottish Enterprise, John McFall—the Labour MP for Dumbarton—made a terribly big political attack, which hit the front pages of the papers. Such attacks have happened under various Administrations and every party engages in them.

Analysis of media attacks shows that 80 or 90 per cent are the result of political attacks. They are not generated by the media, but are stirred up by one or two politicians. When a nominee is attacked, that person has no protection, because they are in situ and are therefore governed by all the codes that prevent them from making political statements. The nominee starts from a position in which Joe Public believes he or she obtained the appointment because of his or her politics rather than because he or she is the right person for the job.

If we had a confirmation hearings system, the Parliament's rules might need to be tightened up, but the Parliament's standards would require MSPs not to prejudice the outcome of a confirmation hearing by making any such public attack. An MSP who was concerned about a political appointment would attend the confirmation hearing and try to show their colleagues that the nomination was wrong because it was political and not based on merit. A nominee who was attacked would have the right of reply and would be able to answer questions. At present, they cannot do that. Such nominees are hammered in the press. That is bad for them, for morale in their organisation and for the process. If my bill is not passed, that situation will continue.

Up to the ministerial nomination, my bill does not interfere with existing practice or with the

proposals that were made initially by Jack McConnell and subsequently by Angus MacKay, which I have no doubt will be reiterated by Peter Peacock in about an hour. The system has already been the subject of substantial reform. The irony is that the more the system has been opened up and reformed, and the more people have been subjected to independent assessors, the more people are applying for positions. The idea that additional scrutiny has acted as a disincentive has been disproved by the facts. Before Nolan, it was probably the case that many appointments were made on the basis of a tap on the shoulder from the minister or a senior mandarin saying, "Why don't you apply for this job, old boy? It would be quite nice to see you in that position." That cannot happen—or should not happen—under the current process.

I am not in any way denigrating or criticising the process up to the point of the ministerial nomination. What the bill would do is put in a final check to ensure that the process had been gone through. At the moment, there is no procedure in the Parliament for checking the process to ensure that it has been adhered to in each case, or for ensuring that someone who is appointed to spend £800 million of taxpayers' money is the right person for the job. It would not be the job of the parliamentary committee to nominate—it would only confirm the appointment. That adds to the democratic process and to the transparency that I hope will help to get rid of the perception of and the culture of cronyism.

The Convener: I have one or two questions to ask, but I see that Iain Smith would also like to comment.

Iain Smith: I am a little concerned about the implications of the bill for the line of accountability. Tricia Marwick referred to that in her comments about ministers being accountable to Parliament for their actions, including the actions of the public bodies for which they are responsible. If there is a system of confirmation hearings for the chairmen or chairwomen of public bodies, and if the Parliament turns down a minister's nomination and somebody else has to be appointed who is not the minister's first choice, is there not a danger that, if things go wrong, the minister could then say to Parliament, "That was not the person I wanted to chair the body in the first place and it is all Parliament's fault that it has gone wrong"?

Alex Neil: That would happen very seldom indeed, especially once the Parliament gets the power. Let us suppose that somebody was turned down by the committee because the process had gone wrong for some reason, because the statutory requirements had not been adhered to or because it had become clear that they had been tapped on the shoulder by the minister and told to

apply for the job. They might perhaps have been promised the job even before going through the process, although by the time the committee considered the appointment they would have gone through it successfully. If any of those things had happened, it would be legitimate for the committee to refuse to confirm an appointment.

A minister may come to a committee with a proposal, such as a bill, which that committee will handle at stage 2. If the minister is not able to persuade members that the bill stands up to scrutiny, he or she must drop that bill and redraw it. We had such an experience on the Enterprise and Lifelong Learning Committee. The original Education (Graduate Endowment and Student Support) Bill had to be withdrawn by the minister because it was not up to scratch. He had to go back to the drawing board and then submit a revised bill to Parliament.

In the same way, if a minister makes an appointment and there is something wrong with it, based on the criteria in the bill that we are considering now, and the committee turns it down, that is the outcome of parliamentary scrutiny. There is no point in having the power if one is not prepared to exercise it, provided that it is exercised objectively and fairly.

Dr Jackson: Under the present system, would the commissioner not be able to pick up the fact that the criteria had not been fulfilled?

Alex Neil: The commissioner is responsible for the process as opposed to the individual appointment. The commissioner ensures that the appointment is advertised properly, that applications are processed properly and that interviews are held fairly and squarely.

However, if the minister at the end of that process gets three nominations, which will effectively form a short list, he or she will then decide which person from the short list is to be nominated for the position. That would not change under my proposed bill, which would just build in Parliament's power to ensure that the processes had been duly gone through.

The important difference between that power and the commissioner's power would be illustrated by a case where something had gone wrong. Many of the commissioner's powers could be exercised only retrospectively, whereas the purpose of this measure is to avoid a catastrophe before it happens.

Dr Jackson: So it is not the commissioner's role to check that the criteria have been met.

Alex Neil: It is the commissioner's role to check that the criteria have been met, but the commissioner does not issue a report. The commissioner has been up and running for five or

six years. During that time two thirds of those who were appointed declared that they had had a political affiliation in the previous five years. That means that two thirds of the appointments in Scotland have been from one political party. It is clear that the commissioner has not been able to change that.

Iain Smith: That might have as much to do with the people who were nominated as with anything else. I want to follow up that point. Do you accept that one of the present criteria that the commissioner must monitor is that the people who are nominated, as you put it, and whose names go forward to the minister to choose from must be able to do the job for which they have been nominated? They have gone through the merit tests and have the qualities and the ability in accordance with the seven principles that the process must monitor.

If you accept that that is part of what the commissioner is there to monitor, would it be a way forward if the commissioner could draw Parliament's attention to concerns before an appointment was made rather than retrospectively, which is your main concern at present?

Alex Neil: The commissioner has completed her job by the time that the minister is asked to make the appointment, so the answer to the last question is no.

Iain Smith: But if the minister has been given, say, the three nominations by that stage, provided the process has gone through the seven principles correctly, the three nominated people have to be capable of doing the job.

Alex Neil: The confusion arises from the commissioner's responsibility to police the process. The commissioner or her office is not directly involved in interviewing people.

Iain Smith: The independent assessors are.

Alex Neil: The independent assessors and others are.

Iain Smith: The independent assessors who, under the proposals published by the Executive, will be appointed by the proposed Scottish public appointments commissioner.

Alex Neil: That is right.

Iain Smith: So the commissioner's office will have that role right through to the point where the nominations are made to the minister.

Alex Neil: No. The commissioner will appoint the independent assessors but will not be involved directly in the interviews.

Iain Smith: I did not say that. However, the commissioner's operation in the broad sense, which includes the independent assessors, will

include the assessments and will therefore be monitoring the process up to the point where the minister gets the two, three, four or however many nominations of people who are deemed by the process to be capable of doing the job.

Alex Neil: I am not criticising the existing system or the improvements that are suggested, but I think that there should be a parliamentary check at the final hurdle to ensure that the Parliament—ideally through the committee system—is satisfied about the four criteria that are laid out in the bill. I have quoted the example of there clearly appearing to be a built-in bias for people with a particular political affiliation. It is clear that the commissioner has not been able to deal with that. Had she done so, that figure of two thirds would not have arisen. There is nothing in the Executive's current proposals that would allow her to deal with that.

Iain Smith: But 93 per cent of appointments are of people who do not have a political affiliation.

Alex Neil: I am sorry, but you must get the figures right. The question is about political activity over the previous five years only. If the analysis went beyond five years, I think that you would find that the figure of 93 per cent, which applies only to one short period, would change to a very different figure.

Iain Smith: If we go beyond five years we go pre-Nolan, Alex. Let us be honest here.

The Convener: And we miss the whole thing.

Tricia Marwick: Iain Smith prefaced his first series of remarks by suggesting that the reason why two thirds of those who were appointed had declared an affiliation to a political party in the past five years—all had come from the same political party—was that those were the people who were nominated. He suggested that that was why the figure was so high. Will your bill encourage or discourage suitable applicants from coming forward? Does the present system discourage people who do not belong to a political party or who belong to other political parties from putting themselves forward for public appointment?

15:00

Alex Neil: Absolutely. The survey that the commissioner commissioned in, I think, 2000 showed that 65 per cent of the people surveyed still believed, rightly or wrongly, that unless they were attached to a political party or part of the old-boy network, they would not get appointed. The recent controversies in Scotland over cronyism have tended to reinforce that perception. Those who oppose the bill are playing into the hands of the cynics. If they are serious, as opposed to paying lip service in their manifestos or elsewhere,

about changing the system, they must either support the bill or put something better in its place. So far, I have not seen anything that is better than the bill.

The Convener: I want to ask a couple of questions to wind up, then I will ask Michael McMahon to clarify what he meant earlier. I think I know what he meant—I did not think that it was a red herring.

I understand that the Executive is proposing that the annual report of the commissioner of public appointments would go to the Parliament for debate. What do you think about that? Would that be in place of your bill?

Alex Neil: No, that facility already exists. It is not new and it is certainly not radical. I am not against it. It would be nice to have a debate on the commissioner's report—it would be more interesting than some of our debates—but it is in no way a substitute for proper parliamentary scrutiny of the system and ensuring that appointments are made using the proper criteria. It would be useful to have a debate. The commissioner's report might show certain trends or highlight issues that still needed to be addressed. It could be a useful exercise, but nobody in their right mind would suggest that it is a substitute for proper parliamentary scrutiny.

I note that in its evidence the Executive started off attacking the principle of parliamentary scrutiny. Apparently the minister will come here this afternoon proposing a system of parliamentary scrutiny. I wish the Executive would make up its mind whether it is for or against parliamentary scrutiny.

The Convener: I am sure that it is for parliamentary scrutiny.

Alex Neil: Today.

The Convener: In your opening remarks you talked about the amount of parliamentary and committee time that your proposals would take up. I suppose that you have answered my question there. You made it quite clear in your explanatory notes that you do not want to have the same kind of system as the United States Senate has. One of the things that has come up about that is that the Senate is allowed to go into personal matters. You have said that your four criteria would not allow that. The bill says that the nominee's abilities, experience and qualities would be taken into account. We have written evidence—certainly from the Royal Society of Edinburgh—to say that there is a possibility that consideration of the nominee may move into a personal area. Do you consider that personal matters should be taken in private if they arise, or should they never be considered relevant?

Alex Neil: A definition would need to be included in the standing orders. Someone might be nominated to be the chair of a quango and it might come to light—because of the publicity surrounding the nomination—that they had a criminal conviction for fraud or corruption that they had not declared. In those circumstances, the committee might well decide, within the Parliament's standing orders, to take a meeting in private. I hope that such occasions would be rare, because the bill's whole purpose is to improve transparency and accountability and get things out in the open. That said, if that situation arose, it would have to be dealt with.

I must emphasise that the purpose of the bill is not to pry into or snoop on people's private lives; it is to meet the four criteria that it outlines. I have already said that if people feel that the criteria need to be tightened up during the bill's passage, I am very relaxed about that. No bill is perfect, and this is only the first draft. I would never support the situation that exists in the US where there is a totally unacceptable level of prying and snooping. That is not the purpose of the bill.

The Convener: Do any other European countries of comparable size have similar procedures to those that you are proposing?

Alex Neil: Interestingly, the European Parliament is currently considering similar proposals. Furthermore, the Public Administration Committee at Westminster has decided in principle that there should be parliamentary scrutiny of public appointments, although it has not yet decided on the format of that scrutiny. The issue is on the agenda across a number of legislatures because everyone recognises the spread of quangos. A fantastic share—about 40 per cent—of the £20 billion that the Scottish Executive will spend next year will be spent by quangos. As we were elected to be the guardians of the taxpayers' money, we want to ensure that the people who spend the money are qualified to do so.

The Convener: I will allow Michael McMahon to clarify his earlier comments.

Mr McMahon: I just want to put these comments on record, convener. As with every other committee, the committee's remit makes it incumbent on us to mainstream and equality-proof every piece of legislation that comes before the Parliament. In its written submission, the CRE raised the question that I asked Alex Neil, and the Equal Opportunities Commission and the CRE made the same points to the Equal Opportunities Committee.

Not only was it right for me to ask Alex Neil that question, it was the committee's duty to do so. How Alex answers the question is entirely up to

him, but it would be remiss of us—indeed, it would be a dereliction of our duty—not to question the possibility that someone's right in Scotland to challenge a decision made by the Executive would be taken from them because the process had been passed to the Scottish Parliament, which is not subject to the same legislation. I do not believe that the issue is a red herring, and for Alex to suggest that I said that a parliamentary committee could make a racist, homophobic or sectarian decision says more about his inability to answer the question than about my right to ask it.

Alex Neil: Can I—

The Convener: That was just a point of clarification, Alex. If you wish to take it up further, I suggest that you do so outwith the committee.

Alex Neil: Can I just make a quick point of clarification?

The Convener: No. I sought only a point of clarification from Michael McMahon, thank you very much.

Alex Neil: I also have a point of clarification.

The Convener: Well, go ahead, but I might stop you.

Alex Neil: I just want to point out that anyone who felt that the Parliament had dealt with them in such an unfair way would have the right to a judicial review. That would also cover the other points that were raised. I do not question Michael McMahon's right to ask the question at all.

The Convener: That is fine. The matter has been clarified. I thank you and your officials for attending this afternoon.

Okay, comrades, we now move to take evidence from the Office of the Commissioner for Public Appointments. I welcome Dame Rennie Fritchie, who is the commissioner for public appointments, and Alistair Howie, who is her policy adviser.

Dame Rennie Fritchie (Commissioner for Public Appointments): I do not want to make a long formal statement, but it might be helpful if I set out some information about my role as commissioner and gave examples of some of my work that is relevant to the Public Appointments (Parliamentary Approval) (Scotland) Bill.

The post of commissioner for public appointments was created in 1995, as a result of the Nolan report, to regulate, monitor, advise on and report on ministerial appointments to public bodies. I have been the commissioner for Scotland, England and Wales—and, under a separate order in council, the commissioner for Northern Ireland—since March 1999. More than 12,000 appointments fall within my remit, of which nearly 1,000 are in Scotland. The majority of the posts are unpaid and part-time.

My remit covers executive non-departmental public bodies, such as Highlands and Islands Enterprise; advisory non-departmental public bodies, such as the Historic Buildings Council for Scotland; nationalised industries, such as Caledonian MacBrayne; public corporations, such as the water authorities; and national health service bodies.

Scotland is due to appoint a separate commissioner on 1 April 2003, subject to legislation being passed. At that time, I will relinquish my responsibility for Scottish appointments. A similar arrangement is happening in Wales. Meanwhile, I am working closely with the Scottish Executive and the National Assembly for Wales to ensure that the new commissioners can take over going concerns. I recognise that new commissioners will want to adopt their own policies and procedures, but I hope that they will find the work that I have been doing a useful starting point.

The code of practice that has been referred to several times today sets out the principles of ministerial responsibility, merit, independent scrutiny, equal opportunities, probity, openness and transparency, and proportionality.

I have three broad aims. The first is to ensure that there is a fair and open process that is easy to find and smooth to travel through for anyone who wants to be considered for a public appointment. That process is effective only if it delivers a quality outcome, which is my second aim. Such an outcome is one where the people who are appointed are fit for the purpose and can do the job, are able to visibly demonstrate their performance and, where appropriate, broadly reflect the communities that they serve. My third aim is public confidence and perception. The public appointment process and the subsequent performance of those who are appointed to serve must be able to meet public scrutiny and expectations and earn the confidence of ministers, Parliament and the general public.

Since taking office, I have undertaken a number of initiatives. I have revised my code of practice in order to simplify the process. For example, I have grouped all the bodies within my remit into two tiers rather than three, as had previously been the case. In doing so, we have built in greater proportionality to the appointments process. Proportionality is important. It would not be a good use of public money to put as much time and effort—including large advertisements and so on—into an unpaid appointment that will occupy one day a month of the appointee's time as into the kind of public posts that Mr Neil was talking about, which involve the appointee being accountable for large sums of money.

I have examined the perceived tension between

appointment on merit and the need to achieve greater diversity on boards. As a result of some research and consultation, I have adopted a broader definition of the term “merit”, which is in line with the Nolan committee's recommendation that criteria for selection should take account of the need to appoint boards that include a balance of skills and backgrounds without trading down.

I have introduced new quality assurance measures, which are designed to ensure that the independent assessors who are selected have the right skills. The new measures will ensure that the assessors are engaged at the key stages of the appointments process and that the assessors are confident in their role as guardians of the process and of my code of practice.

15:15

I have set up a new OCPA central list of independent assessors. My office has advertised for, interviewed and subsequently appointed those assessors. The list is primarily for departments that cannot draw on their own lists, but the list may be used by other departments. The Scottish Executive and the National Assembly for Wales may also use the list to fill particularly high profile jobs, for which they want to demonstrate that the assessor is as independent as possible.

I employ external auditors to audit departments on a three-year cycle. This year, I have asked them to audit departments' use of proportionality. There is a danger that departments that make few appointments may introduce so many hurdles and loopholes that they make it difficult for people to move through the process. Often, departments do that to cover themselves and to ensure that they are doing everything that good governance requires, but the addition of extra hurdles can sometimes make things difficult. I therefore encourage departments to be flexible and pragmatic as long as the principles of my code are not breached.

I am personally committed to opening up the appointments process. I regularly—on average once a week but sometimes more often—give talks to or meet targeted groups to encourage a wider range of people to consider applying for public appointments. For example, I spoke about public appointments to the Network Scotland annual conference for women, which took place in Edinburgh in December. Last week, I looked at our strategy for the next few months in a meeting with the Equal Opportunities Commission, the Disability Rights Commission and the Equality Network. Sadly, the Commission for Racial Equality was not able to attend that meeting. On 27 February, I shall be in Inverness to address a women at work project that operates throughout the Highlands. I am very keen to encourage more people to come

forward.

Last year, recognising that it is important that people from all walks of life are aware of public appointments and that such opportunities are available to them, I suggested the idea of a public service week. As part of that, a board-shadowing scheme was arranged so that people with interest and potential could meet and shadow serving non-executive directors. That proved to be successful and we intend to repeat it.

I recognise that it is important that Parliament has confidence in the public appointments system and that Parliament has a part to play. I recognise that ministers must have full confidence in those who are appointed. However, one of my concerns about the Public Appointments (Parliamentary Approval) (Scotland) Bill is that the inclusion of additional and somewhat daunting processes could deter those who come from a less traditional background from applying for public appointments. I have tested that and am happy to talk about whom I have listened to and what they have said.

The bill could reverse some of the useful and important work that has been done to give boards a better balance of skills and backgrounds. In my view, the bill would also add to the time taken to complete the public appointments process. The process has gone through endless additions and I have been working hard to streamline it. The bill could certainly affect that. There is anxiety in some quarters—certainly, among applicants—that the process is too long and needs to be streamlined further.

Another of my worries is that confirmatory hearings could mean that committees might divide along party lines, which could be perceived as politicising public appointments. That would impede the principle that people are appointed on merit, which is the cornerstone of a fair public appointments system, and could lead to a lack of public confidence in the system.

A major concern is that ministerial accountability might be compromised. For example, how could Parliament criticise the chair of a public body for lack of leadership if Parliament had been involved in confirming that person's appointment? In addition, there could be difficulties with cross-border appointments if different systems apply.

I am deeply worried that the bill could undermine some of the developmental work that I have done with a whole range of people over time. In many cases, we have been addressing the very things that Mr Neil is concerned about. We have tried to ensure that the pool of candidates that could be attracted to public appointments is as wide as possible and that we have more women, more people from different ethnic groups, more disabled people, more young people and more people from

different geographic regions.

I am challenged constantly by people who say that those who are appointed are pale, stale males from the central belt. We need to encourage a wider range of people to present themselves for appointment. However, to take account of the background and skills of the board could undermine the Nolan principle of appointment on merit. I am concerned that the bill could have the effect of undermining confidence in independent assessors. It might do that if their work is done again by another group.

I recognise the importance of the Parliament having confidence in those who are appointed. As I suggested in my written evidence, committees of the Parliament could consider inviting new chairs of public bodies to appear before them to say what they plan to do. That could be done after the chairs have got their feet under the table—say after three months of being appointed. The chairs could be invited back a year or so later to see whether they have delivered. In that way, the committees could satisfy themselves that the public appointments process is delivering the right person for the post. The committees might also wish to invite chairs to appear before them six months before the person's appointment expires. If the chair is being considered for a reappointment or an extension to their appointment, the Parliament would have a valuable role to play in ensuring that the public appointments process continues to deliver the best candidates for the job.

Those are some of the things that I wanted to say before I heard members' questions. I am delighted to answer any questions and would be happy to comment on some of the issues that were discussed earlier.

The Convener: Thank you. Having read your paper, I suspected that you would not give 100 per cent support to the bill. Your oral evidence has more or less confirmed my suspicion. At one point, you said that you would be happy to tell us whom you had listened to and what they had said. Would you give us a couple of examples of those concerns about the bill?

Dame Rennie Fritchie: I meet people who do not present themselves for public appointments. I meet groups of people who do not know that there are such things as public appointments. Work needs to be done to get out and about and to tell people what is done and how they would apply. Even if people do not want to present themselves, it gives them comfort to know that things are done in a proper way. Work needs to be done in that respect.

There is also work to be done with people who know about public appointments. Those people

might say, "Is it worth my applying?" or, "Is it one kind of person that is being sought? If so, I am not that kind of person."

I go out and about and talk to groups. I spoke recently to the Equality Network. I ask groups why, if people know about public appointments, they do not present themselves for appointment. Some groups, in particular those from different ethnic minorities, say that they have been in family businesses and have never been for an interview. They say that they might be able to do the job, but they have no track record, experience or training to show in the interview process. That might mean that they would not perform as well as someone else, although they would be able to do the job.

I tell women, in particular, that filling in application forms is not about showing that they have a traditional business background. The range of skills that women have acquired in their voluntary experience matters—for example, they might have been a school governor. In the interview process, the first question that people are asked after "What is your name?" is "What is your job and what was your previous job?" People get as far as that and think, "They clearly do not mean me." People tell me such things; they are a deterrent to what might be done. I have spent a great deal of time trying to do something about that.

When I heard about the bill, without trying to prejudge the matter, I talked about it to individuals and groups of people—I did so as recently as last Friday. As part of developing strategic thinking to achieve diversity with the Equality Commission, the Disability Rights Commission and the Equality Network, I asked them their views on the bill—whether it would be helpful and how it would work. I have not heard anyone say that the bill gives them greater confidence or that it would make them present themselves for appointment. They see it as another hurdle—something that might get in the way. I see Mr Neil is looking surprised, but that is what people are saying to me. If they have worries, I have to listen and I have to share those worries with the committee.

Whether it is a perception or a reality, that is another reason why some people may not come forward. I am testing it. I ask my independent assessors how the interview process can be made fair and what their perceptions are of how it should work. So far, I have heard no independent assessor say, "What a good idea." People raise real worries and think that, if we have now got a system that is fair and open, with appointment on merit, and we are trying to make it work, adding in something else negates part of what I am doing, part of what independent assessors are doing and part of what ministers are doing.

Tricia Marwick: Welcome to the committee. I

listened carefully to what you said. You said that you want the process to be fair and open, with a quality outcome. You are also extremely concerned about public perception. Research that was carried out for your office has shown that 63 per cent of people who were questioned considered that the ministerial appointment process was politically influenced, despite the fact that your office has existed since 1995. The majority of people in the UK still think that appointments are politically influenced and I am sure that that figure would be higher if a similar survey were carried out in Scotland.

I was especially interested in your comments about people who might not come forward. Alex Neil made it clear that, of all the people who are appointed to public bodies, only a tiny percentage would have to go through a confirmation hearing. That does not equate with your concern that people would not put themselves forward for public bodies because of the hearings. Would you like to comment on those two points?

Dame Rennie Fritchie: When I was appointed in 1999, part of my remit was to make the appointments process more visible. Although the process had been in place with the previous commissioner, it was not visible. I wanted to listen to the public and benchmark their views and concerns.

We asked the views of groups in Scotland, England and Wales—but not Northern Ireland—and most knew nothing about it. They mixed everything up—public appointments, political special advisers and all sorts of things—and assumed that they were the same. One benchmark that I had was to say that most people have perceptions based on very little information. I had to consider what job I and others had to do to make visible the public appointments process and public appointments. That is why we held a public service week last year. We tried to make visible public appointments and the way in which the process works.

I agree that people did not know about the appointments, although they need to know, and got their information mainly from headlines in newspapers. There is a big job to be done to change the public perception.

What was your second question?

Tricia Marwick: It was on the point that Alex Neil stressed. Of all the people who apply to be members of public bodies, only a tiny percentage would be called to the confirmation hearings. How does that square with your suggestion that all the diverse groups that you have been encouraging to come forward would be put off from doing so? The reality is that they would never be called anyway.

Dame Rennie Fritchie: The reality is that they might not be called. The bill does not specify only chairs. It does not say that only a certain number of people will come forward. It is quite broad and does not specify only the chairs of particular bodies. Therefore, even though only a few out of the many might be called for confirmation hearings, people might still think that it could be them. It is a bit like the lottery: those who buy the tickets hope that, out of all the participants, it might be them. With the appointments system, those who are part of a larger group fear that it might be them. They are concerned because they do not know that only a few people will be called to a hearing—it could be them.

It is like filling in application forms. If you sit someone down and take them through an application form, they find that it is not as daunting as they thought. If they perceive it to be daunting, that is where they stay. If they do not move from that point, it is difficult to persuade them otherwise.

15:30

Tricia Marwick: I have one more question. You heard Alex Neil say that, in response to a parliamentary question, he was told that two thirds of all those appointed who had declared a political affiliation came from one political party. Do you agree that that shows that, while you are concerned that the processes are right, there is some distortion in the public appointments system in Scotland?

Dame Rennie Fritchie: No, I do not agree. In the work that I have done, something like 13 per cent of people declared that they had been politically active. They are not asked about political affiliation. A person's political affiliation and whom they voted for is their business. They are asked whether they have undertaken activity on behalf of a political party within the last five years. That is to assure the public that appointments are being made openly and fairly, as well as to ensure that the skills that they bring from that activity are recognised. We are talking about only two thirds of 13 per cent. Not everyone understands that it is such a small number.

The second point concerns the two thirds being affiliated to one party. When I consider a complaint, I examine how many people applied, how many of those who applied came from different political groups, how many of those who applied met the basic criteria for the post and at what point they dropped out or went forward. I have had conversations, particularly in England, with the Conservative party in which a number of people said to me, "Something is not fair." I said that I would examine it. I came back and said, "No one is applying. If they apply and have merit, they will be treated equally." That is about encouraging

more people to apply.

I am not worried about the fact that someone who is appointed may have been politically active as long as they have been through a fair and open process, have come in with everyone else, have been treated the same as everyone else and have been through a process that has been overseen by an independent assessor to ensure that there have been no unfair leanings. You may know, although it is not relevant here, of my work in relation to the national health service in England. I produced a major report on the alleged politicisation of the recruitment process. There had been particular leanings towards people with a particular background.

If someone is treated fairly and equally and has got to where they are on merit, good for them. More people coming in with the right abilities and being measured against others from the beginning of the process means that whoever is appointed is appointed on merit. Political affiliation should never be part of the appointment. Political activity should be declared but is not a criterion for the job.

Mr McMahon: Everyone seems to agree on the need for greater scrutiny. You have commented on that. Alex Neil's bill is his contribution to that debate. As an alternative to the bill, the Executive is indicating that it would like to publish a public appointments annual report and hold an annual debate on public appointments in Parliament. Do you consider that to be preferable to the bill? Do you have any comments about the acceptability of that as a form of scrutiny?

Dame Rennie Fritchie: It is not for me to say whether one option rather than another should be adopted. I can only consider each. I already produce an annual report, which I place before members. I send it out and summarise what it says. As you know, I am independent and guard that independence jealously. I am appointed by the Queen and the Privy Council so that I have the freedom to speak to the public and put information into the public domain.

I am happy to be questioned properly and challenged by the Scottish Parliament, the National Assembly for Wales, the Northern Ireland Assembly and the Public Administration Committee chaired by Tony Wright, and to explain to those bodies the work that I do and what it means for them.

I see no reason to choose between the two options you mention. It seems reasonable for you to ask me questions about what I am doing and how I am doing it. It is reasonable for you to have me explain patterns and themes that are emerging, ask me to outline concerns that I have and make suggestions about what I think the Scottish Executive and others should do to help to

improve matters.

Mr McMahon: I may have asked an unfair question and I may be about to ask another one, but I will ask it anyway.

We have had complaints that the political process at Westminster means that the independent parliamentary commissioner for standards was undermined by the fact that her decisions had to be scrutinised by a committee of the Parliament. Do you feel that your decisions would be questioned in the same way if appointees had to come before committees of the Parliament to justify their position?

Dame Rennie Fritchie: You are right; the question is difficult and I must answer it carefully.

The parliamentary commissioner for standards is appointed by the House and reports to a committee, which verifies decisions. I do not go through any political process. If I stand on a platform and someone asks me whose pocket I am in, I can say genuinely that I am not a member of a political party and I cannot be got at by another route. I can say that no one hampers me in any way when I speak out about any of the things that I find.

I can stand on a platform and say, "There is a fair and open process. It is regulated and this is what happens. We investigate complaints and this is how we do it." The feedback that I get is that people value the fact that I have that independence. I certainly value it; it gives me, the public and, I hope, the committee great confidence.

Ms White: Good afternoon. It was interesting to hear that you were appointed by the Queen and Privy Council. I congratulate you on that. Did anyone recommend you for the post?

Dame Rennie Fritchie: No. There was an advertisement in the public domain, which I answered before going through the process and being shortlisted.

When I talk to people who are discussing public appointments, I say that, when I applied for the post in 1998, I wondered whether they had anyone lined up. I then thought that I did not know who "they" were. I thought that, given my track record, I could do the job well and would like to do it. I thought that if anyone was in the frame, I would give them a run for their money.

At each stage of the interview process, I was surprised and delighted to get through. I can say genuinely that no one nominated me, other than myself—I can stand on a platform and say that to people who think that I have a particular connection.

People do not need to know my whole

background, but it helps for me to say that I was born on a council estate in Burntisland in Fife and was brought up partly here and partly in England. I was a single parent and a carer of my grandmother and did not have much formal education. Despite all that, I have got to do this job and it matters to me that people do not make assumptions that I somehow came through an old-girl network to get here.

Ms White: Thank you. I am sure that there are not many old-girl networks, just feisty women who fight to get somewhere.

The reason why I asked the question is that you said that you saw a newspaper advertisement. Do you think that the proposal for the bill has put public appointments in the public eye more than the commissioner has? I listened to your explanations about advertising and filling in forms. This question might be unfair, but would you say that the reason why people from all backgrounds do not come forward is that posts are not advertised properly and not enough work is done to tell people not to be afraid of applying?

Dame Rennie Fritchie: I agree that much more needs to be done. Advertisements are often put in Sunday newspapers, which people might not read. They are sometimes put on the internet, which is a problem if someone does not have access to computers and would not think of looking there. If a person is not looking for a job, it is unlikely that they will turn to the appointments section, unless they think that they would like a public appointment. Much more needs to be done to have stories about people who hold these jobs—ordinary people doing extraordinary jobs—in features.

Perhaps I can give an example. At the moment, I am working with an Asian quarterly magazine, "Asian Woman", to produce a series of articles. The first issue will feature an interview with me, the second issue will have stories of Asian women who hold appointments and will include a competition to shadow someone who holds a public appointment and the next issue will have the stories of those who shadowed. In the final issue, there will be a feature on courses for people who want to know more about how to do well at interviews, how to challenge constructively and so on.

We need to connect with more people who want to participate and to broaden the perception of public appointments—public appointments are part of much wider public service. We must ensure that as many people as want to and as are able come forward and contribute to local, regional and national communities through public service.

Much more needs to be done. We are trying to do something about appointments that people

might suggest are political. My concern is that if we add a process to address 13 per cent of appointments and the public do not know that and see the headlines, they might believe that all appointments are political and may choose not to come forward. People have come to me to ask whether they have to join a political party if they want to be considered for a public appointment.

Ms White: That is the crunch point: the public see appointments as being politically motivated. Of the people you surveyed, 63 per cent said that the perception was that appointments were politically motivated. The statistics from the Scottish Executive—I have them here—show that, from 1996 to 2001, of 137 people who were appointed and declared their political activity, 84 were Labour and 23 were Conservative. Any lay person—or anyone else for that matter—looking at the figures would conclude that the appointments were political. Although 63 per cent of respondents believe that, you say that you believe that it is not true. How can you come to that conclusion faced with the figures that I have just given?

Dame Rennie Fritchie: I would go back to the number of people who applied in the first place. If people do not enter the system at the beginning, they cannot go through it and come out the other end.

I consider the statistics every year to find out whether something odd is happening to the number of people who apply and to ask whether one group with the necessary ability is getting through more than another group. I have not found that to be the case. However, I have found that more people from a particular group come forward, either because they believe in the policies that are being enacted or because they have been encouraged by others. Whatever the reasons are, we need to encourage more people to come forward. I am concerned that more political scrutiny would add to people's perception that public appointments really are political.

Ministers make the appointments and that makes it political—I take that point. However, ministers are held accountable for the performance of the body under them and they must ensure that the person who is appointed is fit for purpose and can deliver. I examine appointments as they go through, so if there is a problem, I do not have to wait until someone is appointed before I jump in—I can be involved in the process. I want people to be confident that a proper system is in place.

Ms White: You mentioned the situation regarding political appointments. Surely, if appointments were accountable to the Parliament it would have a converse effect? People would know the exact background. You mentioned five-year political activity—that is five years of being

active and does not include people who simply have a party card. The bill might give people the confidence to come forward, knowing that they are not pitted unfairly against people from a political background, who—as the figures I gave clearly show—are favoured.

15:45

Dame Rennie Fritchie: I challenge the claim that such people are favoured. I consider the number of people who come in and the number of people who come out the other end, whether they are treated the same and whether they have the same kind of qualifications. Considering the number of people who are appointed is not enough on its own; one must also consider the number of people who apply.

I appreciate Sandra White's view, but I have another view. If people are already concerned that something political is going on and they do not quite understand what it is, adding more involvement by politicians before the appointment is made would suggest that the politicians are doing something because they are so worried about the percentage.

The process should include a properly convened panel. When an appointment comes up, the minister who is responsible must ask a series of questions, such as, "What is the purpose of the body?" and "What is the role and purpose of the board?" The board has a mix of purposes, from addressing issues of governance and ensuring that things are done properly, to tackling performance and adding value to strategic thinking. The minister must ask what balance is needed on the board to undertake those tasks, what the role specification is and what the person specification is. An independent person must ensure that all that is done properly.

If all that has been done properly, adding in another process—given that all those questions have been asked about whether a person is fit for purpose, the fact that they have been tested for conflicts of interest and that their whole background will be made available on appointment—may have unintended consequences. What if someone is not appointed and yet, on merit, they came through the process as the best? What if the team saw that person as the best and the documentary evidence confirmed that? Do they complain to me that Parliament has not appointed them on merit? What if—

Ms White: We had Rod Lynch and VisitScotland—

The Convener: Will you let the witness finish?

Dame Rennie Fritchie: I am concerned about where the process would lead. What if someone

from a particular background was not appointed? There may be no suggestion of discrimination, but someone might feel that they were discriminated against and then come forward. Then no one would be appointed for ages.

Ms White: I understand.

Iain Smith: Dame Rennie Fritchie has touched on some of the points that I wanted to raise. One of the concerns that Alex Neil raised in support of the bill is the fact that the commissioner's role is retrospective. A few moments ago, she suggested that that is not the case and that she can be involved in the process. Will she tell us more about the circumstances in which she would become involved?

Dame Rennie Fritchie: I can give a couple of examples of where I can intervene during the process. I am talking generally. Someone might tell me that there was a closing date for an application, that they faxed their stuff through and that the body has refused to see them because the closing date had passed. That person might ask me whether they had a right to be seen. I would consider and say that, in the particular circumstances—perhaps the date was not clear in the advertisement—the person had a right to be considered. I might also intervene if the independent assessor said that the role specification and selection criteria for an appointment were clear, but that new criteria were being added that might benefit one person rather than another. I would tell the body that I must consider the process and would instruct the body that it must not introduce new criteria. I would affect the process in that way.

The complaint must indicate that the principles are being breached. People may have general concerns and think that something is unfair. I appreciate that, but I have limited resources and time. They must demonstrate to me why they think it is unfair. If that connects to any of my principles and there is a remit for me to investigate it, I will. However, it would not be a good use of public money for me to investigate in detail every concern when there is no evidence to demonstrate that I should do so.

Iain Smith: If you were concerned about the process that led to the nomination of a person who may or may not have met the criteria, would you be able to delay the appointment until you were able to investigate the matter fully and satisfy yourself that the criteria had been met?

Dame Rennie Fritchie: I ought to answer the end of your question first. If someone has been appointed, I cannot unappoint them. Prior to the appointment being made, I can say, "I have severe concerns about this appointment," and ask for explanations. Since I have been in post, I have

required Government departments to inform me whenever a minister rejects a whole list of people. People might have gone through the process, but the minister might look at the list and say, "I don't like any of them. Find me someone else. What about so and so?" The Executive cannot do that without saying to me, "We have gone through the proper process, but the minister doesn't like any of the people." My point is that there is something wrong with a process that does not give the minister either clear guidance in advance about what is required or a system that is designed to deliver that clarity. If I want to know why a minister has changed their mind at the end of the process, I might well have a conversation with the minister.

Iain Smith: I will pursue that point slightly further. Is there any role for the Parliament, given that the independent assessor and you monitor and establish whether the criteria are met? As far as I can work out, the four criteria in Alex Neil's bill are covered by the criteria in your code. Is there a role for the Parliament to become involved at any point, or would such involvement be covered by the work of the commissioner?

Dame Rennie Fritchie: I see why the Parliament wants to ensure that the people who do a job do it properly and well, but my strong preference is for such involvement to come after the appointment, for all the reasons that I have given. You should have confidence in and be able to ask questions about the process, and we should be able to satisfy you. You should be happy with the process, with whether it is being run properly and with whether I am monitoring it properly. When someone is appointed to chair an organisation, they should be able to come before you and say what they came into that organisation to do and what they found. A year later, they should come back and tell you what they have done.

Prior to the appointment being made, my personal view is that there is no missing link, as the work is being done elsewhere. If we are not doing it well enough, you should challenge us to get it right. For my part, I will listen carefully and do my best.

Iain Smith: I do not want to create hypothetical examples, but let us say that, before an appointment is finalised and agreed, you become concerned that the appointment process has not been carried out properly. You might say to the minister, "I am not happy about this," but the minister might say that the appointment is going ahead anyway. At that point, should your office be able to alert the Parliament that the commissioner is unhappy with the process?

Dame Rennie Fritchie: That is an interesting question and I would have to consider it. If a minister chooses to appoint someone in a way that

goes beyond my processes, I have the right to insist on the insertion in the press release of a phrase such as, "This appointment has not been done in accordance with the commissioner's guidance." I would include such cases in my report and speak publicly about them. Those cases would be rare, but rare things happen occasionally, and we must be careful about them. I do not feel shackled in any way.

The Parliament might take an interest in and suggest an alternative way of doing things. For example, it might set up a way for me to share the themes that come up or the support that I receive—or do not receive—from the Executive with the committee, once I got to know the members. I would certainly feel that I had someone else in my corner, both to challenge me and to back me up. However, discussions should not take place before an appointment is made.

Dr Jackson: Iain Smith has already asked many of the questions that I was going to put to you—he followed the line that I was going to go down—but I would like to raise a couple of other points. You said of the present system that you have already started to make changes, which sounds useful.

I want to ask about two things, apart from your role. The first is the role of the independent assessors, who obviously look carefully at the criteria and ensure that people are put forward on the basis of merit. What type of people would be assessors? What sort of expertise should they have? What is the role of interviewing, which is linked with that? In particular, I am thinking about the chairs of public bodies with whom Alex Neil's bill essentially deals. Can you anticipate how you might make some changes to improve the present system even more in the future?

Dame Rennie Fritchie: If I may, I will start with what I discovered when I was appointed. I knew of the existence of independent assessors, whose role was to stop people being tapped on the shoulder and offered a job without any criteria. The first thing I did was survey all independent assessors. I asked simple questions such as how long they had been assessors, how they became assessors, whether they were paid or unpaid, what they found out, whom they thought they served and what they thought their purpose was.

I found out some interesting things. In general—in all four countries—the people whose role it was to stop people being tapped on the shoulder had themselves been tapped on the shoulder to do the job. Some of the assessors were civil servants whose job it was to scrutinise independently the department that they had just left. I do not suggest that there were any shenanigans, but clear independence was not the perception.

If we are to look for boards that broadly reflect

the communities they serve, independent assessors must be a diverse group—they must come from a wide range of backgrounds and meet the key criteria. I set about considering what should be done. My belief is that independent assessors should be recruited, appointed and trained by—and should report to—the commissioner for public appointments. That process takes assessors out of the political arena altogether. I believe that that will happen with the separate Scottish commissioner.

As a result of some of the work that I did and the Scottish Executive's desire to broaden the range of independent assessors, I have taken part in the appointments process in Scotland. The adverts for assessors have gone out to much wider groups. The criteria are that potential assessors do not need to be experts in recruitment, but must understand the point of such processes and how to go about them. They must also know how to ask questions, how to balance issues and how to challenge senior civil servants if they feel that things are not being done properly.

We have tested people against those criteria and made the selection and the recommendations for appointment. In two weeks' time, I will take part in running induction courses. After that will come follow-up courses on such areas as data protection, equal opportunities and the proper process of interviewing. The public appointments unit produced a best practice guide for departments. The guide states that many of the officials involved in the interview process might not be good interviewers—they might not have the best process—and advises them how to get the best out of the candidates and test them against the criteria, so that people who are fit for purpose and able to do a good job are recommended. We have embarked on ensuring that the process does that. The plans to bring independent assessors under the separate Scottish commissioner will only add value to that.

You asked about the role of chairs—do you mean the person chairing the interview panel?

Dr Jackson: No. Sorry, I was not clear. I mean the role of interviewing in selecting chairs, which—in Alex Neil's bill—would be done by the committee. I was thinking of what happens in the present procedure. How does that operate and how could it be improved? That would be an alternative to Alex Neil's proposals.

Dame Rennie Fritchie: I talked about ministers, departments and the Executive being clear about the purpose of the body, the role of the board and the kinds of things that they require from the chair of the body—what they are supposed to do. The context needs to be considered: is someone who will shake things up needed, or is someone who will keep things steady required? What

background and skills should the chair have? We need to be clear about the range of skills, abilities and qualities that are required.

The thinking needs to go in before people are found. Criteria should not be added in later. I do not think that this happens often, but occasionally someone says, "We didn't think of this. Maybe we need a bit more of that rather than a bit more of this." More thinking needs to be done ahead of schedule.

People need to be able to demonstrate that they have more than the competence to do the job. Competence is about can do, performance is about does do. Someone might have the competence to do the job, but they should have to give examples of where they have delivered. We should test that, rather than just look at someone's curriculum vitae. We should be able to ask, "You were here this long and there that long; what have you delivered?"

I have put in my new code of practice an appraisal system so that people are appraised every year and have some idea of how they are doing and where they can improve their performance. They know that they can have training and support to do that.

People often come from wider backgrounds, are dumped in the deep end and are expected to swim. Induction, training and development and ensuring that people are equipped to deliver are beyond my remit. My remit stops when someone has been appointed.

Interviews have to test someone's ability to perform and deliver and to find out whether there is a conflict of interest, what it might be and how it might be dealt with.

16:00

Dr Jackson: Who was present at the interview of the last chair who was elected in Scotland?

Dame Rennie Fritchie: Are you referring to the last chair of any particular body?

Dr Jackson: I meant the last chair who was elected to a public body.

Dame Rennie Fritchie: Although I scrutinise panels, I do not sit on them and cannot tell you precisely who was on the panel for that interview. There would have been officials and an independent assessor. I could certainly find the information.

Dr Jackson: I just wanted to get an idea of what kind of expertise the other people on the panel would have in selecting that chair.

Dame Rennie Fritchie: I want independent assessors to be experienced in overseeing the

process and knowing that it is a fair process. In the past, people have said, "This is quite a technical job, so our independent assessor is a scientist with this, this and this, and that, that and that." That might apply to an expert questioner, but the independent assessor is there to oversee the process and ensure that it has been proper. If that person is a scientific expert, but does not understand the process, they do not meet my criteria for an independent assessor.

The independent assessor needs to be the person who can ensure that things have been done properly at a proper time. They can sign the appointment off and give it their stamp of approval. They can say that people were treated fairly and that things were written down, and they can justify the appointment. Someone who is experienced in media, science or finance might also be on the panel, but as an expert questioner, not necessarily as an independent assessor.

Alex Neil: I will begin by asking a factual question, which has not been mentioned so far. What role do civil service officials play in the process at present?

Dame Rennie Fritchie: I can give my view, but the question would be answered best by a civil servant.

Each area of government includes a number of bodies for which a minister is responsible. Quite junior civil servants, who are often responsible for a range of other things, such as honours, are responsible for administering the process.

More senior officials will be able to plan ahead. They will see what appointments are coming up and plan when to go and talk to the minister about whether they want to consider for reappointment someone who has done the job for only four years—their first term—and is coming up for their appraisal. They can show the minister what the performance of that person is and ask whether they want to advertise the job more widely. The officials might say that the person cannot be reappointed because they have come to the end of their term. They might ask to talk to the minister about what the relevant body is facing, what it needs to be able to do and what the minister wants.

The officials might bring forward previous person specifications. They talk to the minister to get a view about the kind of thing the minister is looking for. That information is taken back and the person specifications, job descriptions and advertisements are dealt with within the civil service. They manage and administer the entire process. Generally speaking, a senior civil servant is on the panel that makes the appointment.

Alex Neil: Exactly. The influence of senior civil servants worries me tremendously. It is possible

that they appoint some of their friends, which is a matter for investigation and one reason why there is a problem. You mentioned that you met some people last Friday on one of your occasional visits to Scotland, but there is a list of organisations—including Glasgow City Council, the Scottish Civic Forum and the Commission for Racial Equality—that disagree with you and think that the bill is essential.

How do you rate the level of public confidence in the public appointments system in Scotland?

Dame Rennie Fritchie: How can I answer that? How can I say what the public in Scotland think? The groups that you mention may have given unreserved support for the bill, but I must speak from my perspective and mention the matters that concern me. My experience of public appointments—to which, as my title shows, I devote my time—is that many people have no understanding of the current process and no understanding that there are regulations and proper processes that contain safeguards. I can talk about the system, how it works and what must be improved. Some people do not know that public appointments are generally open; others do, but do not come forward; and others come forward, but are not appointed and want feedback as to why.

I can only say about people's perception of public appointments in Scotland that more needs to be known and that we must spread the net wider. We must make the system more open and transparent and encourage more people to have confidence in the system so that they come forward to be considered. I am willing and play my part, as do others who are present today.

Alex Neil: So you say that the public are against the bill, but you cannot say what their level of confidence in the system is.

Dame Rennie Fritchie: That is not true. I told the committee what the people I talked to said, but I did not say what all of Scotland thinks. I simply shared the feedback that I received when I asked groups of people—whom I speak to because of public appointments—whether the bill gives them confidence, whether it would be helpful and whether they have any concerns.

Alex Neil: From your survey in 2000 and subsequent press coverage, is it fair to say that there is not a high level of public confidence in the public appointments system? Rightly or wrongly, the public perception is that the system is politically biased. Given that proven fact, is not one of the reasons for the public perception that the whole process takes place behind closed doors?

Dame Rennie Fritchie: The whole process does not take place behind closed doors. I agree

that people have concerns, but I believe that the bill would not relieve, but worsen, those concerns. You said that the process takes place behind closed doors. In the present process, positions are advertised and independent people oversee the process or sit on the panel. My auditors and I scrutinise appointments in an ad hoc way and investigate complaints. I produce an annual report that gives chapter and verse about what has happened in the year—including the trends, what is up or down and my worries. That is pretty open. When someone is appointed, I—and others—put information about the process into the public domain. That includes information about how many people applied and how many were interviewed. That information is not secret.

Alex Neil: I realise that the statistics are not secret, but the process that takes place after the advertisement takes place behind closed doors. It is not open to Joe Public to see what is going on. There is a group of public appointees in your office who allegedly make sure that other public appointees are picked fairly. I accept that that is a big improvement on the previous system, but do you agree that bringing more of the process into the public domain—particularly through parliamentary scrutiny—would help to raise the level of confidence in the public appointments system? For example, when nominees for the chair of Scottish Enterprise or HIE are interviewed, that approach would help to build up the general public's confidence that the system is both fair and seen to be fair.

Dame Rennie Fritchie: No.

Alex Neil: Why not? Do you want the whole process to continue behind closed doors?

Dame Rennie Fritchie: No.

Alex Neil: That was the implication of your answer.

Dame Rennie Fritchie: No. I am speaking about the interview process. If someone sees an advertisement for a job and applies for it, they do not expect to have their name splashed across the papers as a person who is being considered—

Alex Neil: That is what happens now.

Dame Rennie Fritchie: They also do not expect people to say, "We want this or that person," and they do not want the whole world to know if they do not get the job.

As I said earlier in response to Dr Jackson, interviews are about helping people to give of their best. I often ask during interviews, "Have we had the best of you? When you go out of here today, will you think, 'They really know who I am and what I am about. They have had a good sense of what I can do'? Or will you go away thinking, 'Gosh. They didn't ask me about this,' or, 'I could

have told them about that'?" The interview process is about making sure that we find the best people and enable them to give the best of themselves. It seems to me that undertaking a properly constituted and noted interview process is a way of ensuring that we get the best people. Interviewing people in public will not enable them to give of their best and will not necessarily produce the best people for the job.

Alex Neil: Why are other Parliaments expressing the same concern about the principle of parliamentary scrutiny? Why are they going down a route that is similar to that which is proposed in the bill? In your paper, you say that your alternative to the bill is for the committees to bring someone in three months after their appointment. That would make the Scottish Parliament the only place in the world where someone would be interviewed for their job three months after they had been appointed. What is the benefit in that approach?

The committees regularly bring in people to speak on a range of subjects—we do not wait for a year to pass. We apply a level of scrutiny to their work to ensure that they are doing the job in accordance with how the Parliament wants the work to be done, but we do not apply that degree of scrutiny to ensuring that the right people are in post to spend a budget of, say, £800 million of public money, which at least one quango chairman will have next year. Surely we, as democratically elected guardians of taxpayers' money—which you are not—should have a final say.

Dame Rennie Fritchie: I will respond briefly to that point. I have been involved in different roles and have chaired a number of organisations, although I have never been able to spend £800 million. Along with the chief accounting officer, I have been held accountable for £2.3 billion a year, but I was never able personally to sign off anything more than £5,000, and even that expenditure had to be countersigned. The board is responsible for expenditure, although I recognise that the chair of the board has a part to play. However, it is not just about someone coming into an organisation and spending money without all the checks and balances, such as audit committees, being in place.

I think that we disagree fundamentally—

Alex Neil: I agree.

Dame Rennie Fritchie: That is good.

I am not suggesting that someone should be interviewed again by a committee three months after their appointment. My point is that the work that I—and all the others—do in the appointments process is done to a standard and in a way that you should have confidence in. If we can make improvements to make you more confident, of

course I am open to considering that, but adding an extra step to the system—I refer to the points that I made at the beginning of my evidence—would delay the process. In my view and from my experience, that approach would not give the confidence in the process that you are suggesting it would, because that is not the feedback that I have been receiving.

16:15

Alex Neil: I will ask a quick final question. Let us suppose that we used your system and interviewed a chairman three months after he had been appointed. What would we do if we were totally dissatisfied with his performance and his answers to the questions? Would we pass a motion of no confidence in him?

Dame Rennie Fritchie: I would be surprised if you were able to make an assessment that that person did not have the capability to do the job. The chairman would have gone through a lengthy testing and appointment process and been appointed on merit as fit for purpose. They would have come to the committee to tell you what they had found and what they planned to do. I imagine that you would have serious questions for them and would tell them what you would be looking for from them the following year. You might also tell them what needed to be different or highlight the fact that they did not mention particular issues. You would also challenge the responsible minister to ensure that the person did a good job, because you would hold the minister accountable for that.

Alex Neil: The horse would have bolted by then.

Mr McMahon: I want to pick up on a point that Alex Neil raised. When I was elected an MSP, I did not automatically gain the ability to become a competent interviewer. Dame Rennie, you said that the people who conduct the interview process go through training and that other steps are taken in the background. Would it help the perception of the process if the people who took the final decision about an appointment were not qualified to interview the candidate sitting in front of them? Would that enhance the process?

Dame Rennie Fritchie: No.

The Convener: We have exhausted all our questions. I thank you for your answers—I found it interesting to listen to them—and for your attendance.

We will have a five-minute comfort break.

16:16

Meeting adjourned.

16:23

*On resuming—***The Convener:** Okay comrades, let us start.

I welcome Peter Peacock, the Deputy Minister for Finance and Public Services, to the committee once again—he is almost a member of the committee. I also welcome Fiona Robertson, the head of public bodies review, and Donnie Jack, head of public appointments, of the corporate services department. Craig Higgins, a member of the ministerial private office, is here to press the buttons.

Minister, we have invited you to the committee to give us the Executive's response to Alex Neil's member's bill on public appointments. I know that over the weekend there have been some comments about issues that the Executive wants to pursue in respect of public appointments. I accept that you will have to talk about that response because of the procedures of the bill, but I will call you into line if I feel that you are making statements that are outwith the reason that we have invited you here today. I am sure that you understand that.

The Deputy Minister for Finance and Public Services (Peter Peacock): Unusually for me, I will take some time to set out a position for you at the beginning, after which I shall take questions from the committee. What I am going to say confirms what is in the memorandum that we submitted previously and supplements that memorandum significantly. Within a week, we will circulate a further memorandum to the committee, which will confirm the points that I shall raise today.

I want to cover three issues. The first is what actions the Executive has taken, following the setting up of the Nolan committee. The second issue is what further actions the Executive plans to take, the consultation process for which we will start within a month as part of the procedures for the public bodies bill to which we are already committed. In that context, we will consider what Alex Neil's bill offers by way of change in the system. In the light of your earlier comments, convener, it is important to stress that that bill cannot be considered in isolation but fits into a much bigger picture of what is happening. Thirdly, I want to make clear to the committee the fact that some of the things that I shall say today overtake issues that were commented on in Alex Neil's second piece of written evidence to the committee. It is only fair that the committee should understand exactly what the Executive is proposing, as that will have an impact on some of the proposals that Alex Neil makes in the bill.

Since the Nolan exercise of the 1990s, the

Executive has adopted the Nolan road. Dame Rennie Fritchie set out clearly what that means. The establishment of the Nolan committee was a major watershed in the way in which ministers and public officials go about the public appointments process. To a significant extent, the Nolan committee's recommendations have resulted in the depoliticising of that process. They have also substantially narrowed the ministerial discretion that existed previously. We should not underestimate the seismic change that the Nolan rules changes represented.

Under the Nolan rules, there is a code of practice and independent assessors, of which you have just heard quite a lot. There are also auditing procedures—we now record political activities—and an annual report from the commissioner that can be debated in Parliament. A range of new measures have been taken to promote diversity initiatives. Dame Rennie Fritchie covered that work fairly fully. Raising awareness among groups that do not normally apply for public appointments is a big part of that work. The work-shadowing initiative—the one instance of which in Scotland involved some 36 people—is encouraging people who would never otherwise apply for posts to gain the confidence to do so and is thereby widening the pool. There is now a guaranteed interview for people with a disability who meet the criteria for a post.

That is not all that the Executive has been doing. A wider canvas of things have been happening to open up public appointments generally. The Ethical Standards in Public Life etc (Scotland) Act 2000, which was scrutinised by the committee during its passage through the Parliament, created a Standards Commission for Scotland. There is also a statutory code of conduct for people who are involved in public bodies and for councillors, under which there is a requirement for people to register their interests and declare them at meetings. Anybody who breaches those codes is subject to fairly draconian sanctions, which include the censure, suspension or disqualification of members.

In addition, the Scottish Public Sector Ombudsman Bill, which has now been published, attempts to streamline access to a complaints system in relation to public performance. The bill proposes a one-stop shop for most public services by way of a complaints system, increased independence for the ombudsman—in whose appointment the Parliament will have a role—and much more openness in the ombudsman's findings on who is or is not following the codes of practice.

The Freedom of Information (Scotland) Bill, which is about to be scrutinised by the Parliament, will establish a right of access to public information

and an independent commissioner, in whose appointment the Parliament will have a role, who will adjudicate on what public information can and cannot be accessed.

Post-Nolan, the Executive has been trying to improve the system of appointing people on merit—which Dame Rennie Fritchie mentioned—and to give the whole system more openness, transparency and independence through increased scrutiny. However, we want to go significantly further than that. When the First Minister was appointed, he made it clear that we want to be open and transparent in all that we do. We also want to enhance, rather than avoid, parliamentary scrutiny. That is what underpins our policy in this area.

What are the Executive's further proposals? We are committed to consultation on a public bodies bill, in which context we have four objectives. First, we envisage that there will be new roles for the Parliament in the appointments system. Secondly, as the committee has already discussed, there will be a new commissioner for public appointments. Thirdly, new funding arrangements for the commissioner's office will be put in place. Fourthly, we envisage that ministers will have new duties in reporting to the Parliament. Beyond those objectives, we propose to establish a new, central register of interests.

Under the Ethical Standards in Public Life etc (Scotland) Act 2000, people have to declare their interests. We want to create a central website on which all those interests are held, so that any member of the public can inspect them at any point. Finally, we want to introduce a new procedure for reporting on political activities, to make the issue more open. From next year, that will form part of the annual report on the whole procedure that the Executive gives to the Parliament. We have been recording that information and we want to make it public.

16:30

Tricia Marwick: On a point of order, convener. In your opening remarks, you made it clear to the minister that the purpose of his visit to the committee was to speak about Alex Neil's bill. The minister is now talking about consultation on a bill that the Executive is to introduce in the future. At some point in the future, according to the proper processes of the Parliament, the minister will have the opportunity to talk about the Executive's proposed bill, but now is not the time for that.

The Convener: I shall decide whether now is the time. I do not consider that a point of order. Before he began to give evidence, I laid out clearly to the minister what I would and would not accept. I am content that he is laying out the Executive's

proposals in relation to Alex Neil's bill. We want all that information to be linked into consideration of the bill sooner rather than later.

Tricia Marwick: We have in front of us the slides that the minister is speaking about. The next slides are all about consultation on the proposed public bodies bill. Only the final slide is on Alex Neil's bill. That suggests that the minister has got his priorities wrong.

The Convener: If the minister gets to the end of his presentation and only one slide has addressed Alex Neil's bill, he will have got his priorities wrong. However, I suspect that that will not be the case. Please continue, minister.

Peter Peacock: I plan to speak on that slide for longer than I shall speak on the other slides. The points that I am about to make affect directly Alex Neil's evidence to the committee. It is only fair to him, as well as to the committee, that the committee is fully aware of what the Executive is proposing.

We would like to establish a public appointments committee in the Parliament. An existing committee might sit for that purpose, or a new committee might be created. That would be a matter for the Parliament to decide.

We envisage a three-part role for that committee. First, it would carry out interviews and recommend someone for the post of commissioner: following an open advert for the post, the parliamentary committee, aided by senior independent assessors, would conduct an interview, and a recommendation from that committee would be passed to the Presiding Officer. The Presiding Officer would recommend that person to the Parliament, the Parliament would decide whether to accept that recommendation and then the recommendation of the Parliament would go to the Queen for royal appointment. The Parliament, rather than the Executive, would thereby have a clear role in the appointment.

Secondly, the parliamentary committee would be responsible for annual scrutiny of the commissioner's annual report. There would be a committee-led debate—not an Executive debate—in the Parliament on the committee's report on the commissioner's annual report.

Thirdly, we envisage a significant new role for the commissioner as a whistleblower. That proposal has an impact on what Alex Neil set out today and in earlier evidence. The new role would strengthen substantially the powers of both the commissioner and the Parliament, and it would be possible to trigger it at any point in the process.

If an independent assessor believed that the code of conduct that the commissioner had drawn

up was being breached significantly, they would report that to the commissioner. If the commissioner agreed about that breach and regarded it as a significant breach of the code, it would be up to them to decide what to do. Presumably they would speak to the minister, and that would be the right way to seek a solution. If the minister decided not to resolve the matter with the commissioner, the commissioner would then have the power to report that to the committee. At that point, the commissioner would have the power to require the process to be halted until Parliament had considered the position. The public appointments committee would then meet and decide what it wanted to do before the matter was pursued further.

That is a significant set of new proposals, which allows the commissioner to have a more dynamic role. The proposals were not known to Alex Neil when he gave his evidence.

The last point on the slide is about how we envisage the normal scrutiny. Dame Rennie Fritchie picked up that point in the latter part of her evidence. After a person had been appointed, the parliamentary committee would normally seek to bring that person before the committee to talk about the policy and priorities that they would pursue relative to that body.

The next slide deals with the role of the commissioner. There is an extension of the role as it was understood previously in the UK context. Members already understand the points about the commissioner developing the code of practice, governing the whole process and, significantly, appointing and training independent assessors, thereby taking the appointments process away from ministers. I have just outlined the whistleblower role. More traditional aspects of the commissioner's role would include auditing and monitoring the appointments policy and practices; overseeing the commitments that the Executive had made to the voluntary sector to ensure that we sought nominations from that sector; investigating complaints; and promoting diversity in appointments.

We envisage that the office would be funded by the Parliament, not by the Executive. Again, that is trying to put the office at arm's length from the Executive and to give it more independence. Ministers would have new duties to inform parliamentary committees of vacancies that were about to be filled, to give the committees the job advertisement, job description and person specification and to make those available through the Scottish Parliament information centre. SPICe would also hold nomination forms for anyone who wanted to make a nomination for a vacancy.

The last point on the slide is that ministers would be under a duty to inform Parliament, through

committees, of the outcome of those appointments processes. Ministers would be required to give a statement on who had been appointed, why they had been appointed and why they were the best person for the job, and to supply a statement of validation from the commissioner.

That is the context. We have taken a range of initiatives from the past since Nolan, and there are new proposals that we plan to make as part of the bill that the Executive proposes to introduce. The Executive needs to consider Alex Neil's bill and decide whether it has anything to offer. I think that the Executive has decided that that is not the case.

The Executive sees the bill as a throwback—an idea that comes from a past age. It certainly demonstrates a pre-Nolan—back to the mid-1990s—view of the world. It also shows a pre-devolution view of the world, given that I have presented a range of initiatives that have happened or are about to happen. We believe that the bill's view is one that has failed to modernise itself in line with the times. I regret to say such things to such a genial person as Alex Neil. However, that is what the Executive believes—the bill's view of the world is out of time, a dinosaur that is roaming a past age.

The Executive has had consultations on modernising its public appointments system, including arguments about a scrutiny system of the sort that Alex Neil is seeking. There was no support during those consultations for such a system. It is important to make that point.

We believe that the bill would compromise substantially the independence of the system that we are seeking to set up. It would also substantially politicise a process that we are seeking to depoliticise. We think that the proposed system could be abused by any member of the Parliament, who could use it as a delaying tactic in relation to a whole range of public appointments. They could seek to block a system that allowed people to be appointed to public bodies and that operated effectively.

We think that the system would be open to parties operating on a whipped basis in relation to discussions of appointments. There is no reason to suggest that that would not be the case.

I know that my next point could come under Alex Neil's earlier comment about spurious scaremongering. We also think that the bill opens the door to personal questions about what the scrutinising committee would regard to be the qualities of the individual concerned. We are seriously concerned that we could be led into the kind of territory into which Alex Neil does not want us to go. We could get into a range of matters if the Committee of the Whole Parliament wanted to

satisfy itself about the qualities—that is the term that the bill uses—of the individual, and the questions might cover whether someone's qualities for the job were determined by how much they drank, whether they had ever smoked cannabis, or “When did you stop beating your wife?” types of questions.

It seems to me that there would be a tendency within the system to allow those hearings to be used as sorts of show trials of particular individuals whom political parties, over time or at any given moment in time, might choose to target for that particular purpose. With the best will in the world, I do not think that—even if Alex Neil does not intend it—the bill would prevent that from happening.

In addition, the fact that a committee was considering whether to call someone before it under the proposed terms of the Public Appointments (Parliamentary Approval) (Scotland) Bill could become a matter of major political contention. I have been around elected politics long enough to have seen most forms of political behaviour, and I can envisage situations in which we would have a contrived split in a committee to ensure that someone was or was not called to give evidence at a hearing. The fact that they were not called would become a matter of political contention, with Opposition parties accusing Government back benchers of being cronies of ministers to prevent scrutiny of the individual. Equally, that could happen the other way round.

Irrespective of Alex Neil's good motives in proposing this system, we could end up with exactly the kind of political battleground that we do not want in the public appointments process. In our view, other proposals would cover virtually all that Alex Neil seeks to do.

The next point concerns the conflict with the commissioner's role. I know from his evidence that Alex Neil does not envisage the degree of conflict that we envisage. However, we think that the role of the commissioner—who is appointed by the Queen on the recommendation of Parliament—is to say, independently of politicians, whether the procedures are being followed properly. The new whistleblowing procedure that I have outlined would allow the commissioner to intervene actively, if they were concerned about matters not being done properly.

We think that a separate parallel system would conflict substantially with the commissioner's role. The code of practice is there to ensure, in the way that Dame Rennie Fritchie outlined in the latter part of her evidence, that the best candidates come forward and that merit prevails in the system. Given that that is the case, we cannot understand what the merit is in having another system that second-guesses the commissioner's

recommendation. We think that Alex Neil's proposed system would conflict substantially with the commissioner's role and, therefore, with the independence of the system—which is what we all seek to achieve.

I do not want to go into the next point in any depth, because I think that Dame Rennie Fritchie covered it substantially. We share her view that Alex Neil's proposed system would have the perhaps unintended effect of undermining the diversity of initiatives that we seek to undertake, to ensure that a wide range of people come forward for these types of public appointment.

A range of practical considerations also has to be taken into account. There is a potential 56-day delay in the process of appointment, if the full time scale is triggered by Parliament's 28-day consideration period being extended by another 28 days. If a situation arose in which the Committee of the Whole Parliament did not confirm the appointment, there might be a six-month period from the start of the replacement process to the end of that process—assuming that it went smoothly—during which there could be a vacancy for the chair of a national body. Therefore, the organisation would not get the leadership that it might require over that time. However, the minister would remain accountable for that organisation's performance.

Another practical consideration is a serious one. I think that Alex Neil believes that a minister should be accountable for whom they choose to appoint. However, if we had a situation in which the minister's first choice—the person they thought was best for the job after all the evidence had been considered—was not to be allowed to get the job because Parliament had intervened as it felt unhappy with the process, almost inevitably the minister would be obliged to come back with someone who would not be their first choice, but perhaps their second choice.

That fact would be important to the individual concerned, because they would know that they were not the first choice. It would also be known publicly that they were not the minister's first choice. In addition, the minister would remain accountable to Parliament for the performance of the relevant body during the time that it took to appoint the second-choice candidate. The minister would have to work with somebody who, in terms of the interview process, had met the requirements of the job, but the minister would feel that that person was, nonetheless, not the best for the job. That is a difficult position for any minister to be in and ultimately compromises the independence and operability of Parliament.

16:45

We have concerns about a further practical consideration. The commissioner could come to the committee and give their views of the process in a hearings procedure—whether the process had been carried out fairly, whether the criteria had been set out and whether or not people had been selected on merit. If the commissioner said to the committee that they thought that the process had been carried out absolutely to the letter and that the minister was perfectly entitled to make the decision that he or she made, but the committee then took a contrary position, where would that leave the commissioner's credibility in respect of their work and future recommendations? Equally, it is possible and conceivable that the converse could happen. The commissioner could say to the committee that they thought that the process had not been carried out properly—that would happen in advance in any event—but the committee could take a contrary view. Where would that leave the commissioner? Those are practical and principled considerations.

Alex Neil addressed another practical consideration concerning the distribution of work in the Parliament. However, that distribution would not be as he described. If we accept his assumptions, he was good at working out the average hit on committees, but appointments work in the Parliament would fall in a lumpy way—there is not a consistent average. For example, the Health and Community Care Committee might be asked to take 20 interviews in a year, but others might be asked to take none. That is a practical consideration for committees.

Alex Neil's evidence mentions the commissioner's having no direct role in appointments. The commissioner *per se* might not, but the commissioner's office, particularly when the commissioner appoints and trains the independent assessors, has a role in the wider sense in the appointments process—it scrutinises the process. I am sure that the committee is clear about that from the evidence that it has received.

Alex Neil's evidence also states that

"it is for the Executive department concerned to decide when an assessor will be involved in an appointment."

However, that is not the case. An assessor is always involved in the process, albeit in a different way for higher-tier and lower-tier appointments. It is not up to the department whether to have an assessor—an assessor is part of the process.

The next point was adequately made by the commissioner herself. The commissioner investigates complaints only retrospectively. The commissioner illustrated how to be proactive in the current system. We propose that the commissioner can be very proactive if necessary

in respect of Parliament.

Alex Neil also claims that the commissioner is under the Executive's control. That is clearly not the case, for reasons that I have set out. We are trying to put the appointment of the commissioner, the financing of the commissioner's office and the independent assessors beyond the Executive.

We have considered all those issues in the round and believe that the Executive's proposals are more comprehensive, strengthen the independence of the system and give Parliament a central and powerful new role—that is why the Executive will not support the bill.

The Convener: As an alternative to the bill, the Executive has proposed a public appointments annual report and an annual debate in the Parliament. The minister said that that would be committee led. It is better if a minister comes in front of a committee to be cross-examined than to have a debate in the Parliament in which a minister stands up and makes a statement or responds to a motion. In a parliamentary debate, we would get four minutes, there would be a vote and that would, in a sense, be the end of it.

I am not sure what you mean by committee led. I would like ministers to come in front of committees and to be cross-examined by them. The committee would then write a report and take that to Parliament with the annual report—there would therefore be two reports. The cross-examination of a minister in a committee is much more important and comprehensive than the cross-examination that can be carried out in a debate in Parliament. However, I am not sure whether that is what you meant.

Peter Peacock: In the latter part of your question, you picked up the threads of what we would like to happen. Ultimately, it is a matter for Parliament to decide how it handles its procedures.

The commissioner would submit their annual report to Parliament, and the vehicle that the Parliament would use to scrutinise that in the first instance would be the public appointments committee, which would take an interest in the whole appointments process. It would then call the commissioner before it to discuss the report and scrutinise their work. The committee would, if it wished, call the relevant minister responsible for public appointments before it to debate similar matters before completing a committee report.

The committee's report on the commissioner's annual report, together with the annual report, would be the subject of parliamentary debate. The debate on the committee's report and scrutiny of the commissioner is therefore committee led, rather than Executive led. That would strengthen the role of Parliament and subject ministers to

much closer scrutiny of the sort that you described.

Tricia Marwick: The minister said that Alex Neil's bill was a throwback in time. What we have at the moment is "Back to the Future". The minister has come before us with a proposal for a bill with no time scale for consultation, no time scale for introduction and very little for us to look at other than some slides. He expects the committee to agree that the Executive's proposals are a substitute for or an alternative to Alex Neil's bill.

If there is to be a bill to give the powers that the minister is suggesting, will it be enacted by 2003: yes or no?

In the minister's memorandum in September, he said:

"The current appointments system has built-in mechanisms for ensuring that it is fair, open, transparent and delivers a quality outcome, which is subject to independent scrutiny."

When did the Executive decide that the current procedures were not working?

Peter Peacock: I will answer those questions in reverse order, if I can remember them both.

On the current proposals, following the reshuffle at the back end of last year, we have been working on proposals on how to proceed with the public bodies bill. The proposals are simply the product of the discussions that have been taking place. This is the first opportunity that we have had to inform the Parliament, through the committee, of those proposals. The First Minister clearly set out the intention to go further around the time of his appointment.

Tricia Marwick asked whether the bill would be enacted by 2003. In the end, that is subject to the Parliament, but the firm intention is that it will be enacted before the Parliament rises. The First Minister announced in the legislative programme that the consultation would start next month and the bill would be introduced in Parliament in late May. The intention is that it will proceed through Parliament with a view to its having gone through its three parliamentary stages before the next election.

Tricia Marwick: In September 2001, there was no need for the Parliament to be involved in the appointments system. With the elevation of the new First Minister, the Cabinet decided that the Parliament should have a role. Does that have anything to do with the furore that accompanied the parliamentary question that showed that two thirds of the appointees who declared a political affiliation were connected to the Labour party? Are the proposals simply a response to the public furore at that time? Are they an opportunity to

scupper a bill introduced by a member of the Parliament?

Peter Peacock: That is unworthy even of you, Tricia. The Executive's motives are of a much higher order than that.

Tricia Marwick: It does not seem like that.

Peter Peacock: The Executive made it clear that it would introduce a public bodies bill. It has already made clear its intention to have a Scottish commissioner. It made it clear in other publications that it would invite the independent commissioner to appoint the independent assessors. It never made clear the process by which the commissioner would be appointed. We have never made that known; we have been working on those proposals.

We are now expanding the role of Parliament, giving Parliament a much more serious role than that which it has had hitherto. That is entirely consistent with the original indications about the public bodies bill. We are simply fleshing out a lot of the detail that has not been fleshed out before. It seems appropriate, given that Alex Neil's bill is progressing and that our proposals are ready, that we should bring our proposals to the Parliament at the first opportunity.

Iain Smith: I thank the minister for outlining the Executive's latest thinking and welcome the fact that it seems to go further than the previous thinking.

I would like to clarify the point at which Parliament would become involved in the process, as that is a key issue. The level of parliamentary scrutiny in the Executive's current proposals compared with that in Alex Neil's proposals is the crux of the matter.

I understand that the bill says that, if the commissioner or the independent assessors were concerned about

"(a) the procedure followed by the Scottish Ministers for the purpose of making the nomination;

(b) any statutory requirements concerning the person appointed;

(c) the suitability of the nominee for the appointment proposed having regard to whether the nominee's abilities, experience and qualities meet the needs of the listed public body in question;

(d) any guidance or any code of practice from time to time applicable to the appointment or to comparable appointments in Scotland",

or felt that any of those aspects might not be up to scratch, they could ask the Parliament to intervene and the appointment would be delayed until the Parliament had the chance to consider the matter.

Peter Peacock: All of that is founded on the commissioner's code, which covers the points that

you have raised. Every appointments process would be scrutinised by independent assessors. If the code were breached in a minor way, the assessor would speak to the panel and the senior civil servants who were involved to try to sort the problem out. If that failed, they would raise the matter with the minister.

If there were a more serious breach, and that process could not sort it out, the independent assessor would speak to the commissioner who, if they shared the assessor's concerns, would have to decide what to do. I think that, first of all, they would say to the minister that they were concerned about the fact that the code appeared to have been breached. I would expect that, 99 times out of 100, that would result in the problem being sorted out. If the minister refused to comply or if, for any reason, the commissioner thought that the problem had not been sorted out, the commissioner would report the matter to the committee of the Parliament that was charged with examining such breaches of the code. That committee would then have to decide what to do. If the committee felt that there was a case to answer, it would call the minister before it before deciding whether to make a recommendation to Parliament.

I must point out that, if any minister ever got themselves into that position, they would be so far out on a limb that it would scarcely be credible. Nonetheless, ministers would have to know that, as Alex Neil said earlier, the appointments process is a ministerial responsibility and, if they went beyond a certain point, they would be clobbered.

There are a lot of safeguards in the process that I described but, ultimately, the commissioner has the power, at their discretion, to decide whether to refer the matter to the parliamentary committee. However, I doubt that any minister would allow themselves to get into that position.

Iain Smith: An important aspect of that is that the commissioner would be appointed by the Parliament and would therefore be accountable to the Parliament in relation to the effectiveness of their monitoring of the system. Am I correct in understanding that the commissioner would appoint the independent assessors?

Peter Peacock: Yes. We are suggesting that there be an open advert for the commissioner and that the parliamentary committee, in collaboration with an external adviser, sift through the applicants, interview them and recommend to the Presiding Officer that he recommend their choice to Parliament. The Parliament would decide whether to accept the decision of the committee, and the Presiding Officer would communicate the decision to the Queen, who would make a royal appointment. The process is similar to the process for the appointment of the Auditor General. That is

the precedent.

17:00

Ms White: What has come out of this discussion is that the Office of the Commissioner for Public Appointments is not very successful and, basically, should sell itself to the public. As Dame Rennie said, not enough has been done to involve people from so-called ordinary backgrounds. Any improvement to that situation is more than welcome.

I must ask you, minister, whether the changes that you have outlined today would have been made were it not for Alex Neil's bill. Moreover, you mentioned a public appointments committee. Who would serve on it?

I cannot get my head around what you said about the Parliament paying for the office in order to give the ministers more independence. Members of this committee and people who have given evidence have said that the ministers, rather than the Parliament, should be responsible for the office. That is a grey area.

At the moment, the commissioner cannot reverse a decision that has been made. I know that you have replied to this question twice already, but you have still not specifically said whether, if the Parliament objected to an appointment, the new commissioner would be able to reverse that appointment.

When you were talking about the last slide in your presentation—the only one that dealt explicitly with Alex Neil's bill—you said that, during the consultation process, the Executive had received responses that did not support the bill. Who gave those responses? Were they the same people whose submissions to the committee supported the bill?

Peter Peacock: The list of people who responded to our consultation process is a public document. I will supply you with a copy.

I will answer your questions in the order in which they were asked, as there was a certain logic to them. I disagree with your suggestion that the Office of the Commissioner for Public Appointments has not been successful. The public perception that you and others have referred to is disappointingly inaccurate. Nonetheless, progress has been made and I am sure that, as Dame Rennie said, there has been a significant change in the way in which procedures are carried out. Ministerial discretion has been limited in a number of ways. However, the process is evolving and was established only in the late 1990s. Dame Rennie, who has not been in her position for as long as the process has been around, continues to refine the process.

You asked whether Alex Neil's bill caused us to introduce our proposals. The answer is no. To be fair, Alex Neil's bill has added a dynamic to the debate, as any discussion in Parliament would have done. However, the Executive was already committed to introducing a public bodies bill. We said before September that there would be a public appointments commissioner for Scotland, although we had not then set out the full role that we envisaged that person would play or the process by which they would be appointed. All this is part of a continuing process. If Alex Neil had not lodged his bill, the proposals that the Executive has brought to Parliament would not be substantially different.

The method of appointing the public appointments commissioner would be a matter for Parliament. The Parliament adopted procedures for the appointment of the Auditor General and it will have to make similar decisions about the freedom of information adjudicator and ombudsman. To do that, the Parliament might choose to create a new parliamentary committee, whose membership would be agreed by the parties. Alternatively, an existing parliamentary committee could deal with the matter.

On the question of the Parliament paying for the office, there would be a procedure whereby money was taken from the Executive's budget without the Executive having control over the spending of that money. In other words, the money would come directly from the Scottish block grant. I would have to check if you wanted to know whether the money would come from the funds allocated to the Executive or whether there would be a top-slicing mechanism. The key point is that the Executive would not be in the position of setting the office's budget, as that could lead to the quite improper allegation that the Executive was constraining the office by constraining the budget.

We are not suggesting that the parliamentary committee could reverse a decision. We are saying that, if the commissioner believed that the process was not being followed properly and, for example, a person was coming through the system who was not being considered on merit, they would have the power to stop the process and expose what was happening. Halting the process and informing the Parliament that there were major problems with the procedure would be better than reversing a decision.

On the other hand, if the commissioner was satisfied that procedures were being followed, that would mean that people were being appointed on merit. That is the essence of the system. People who passed the interview stage and who were reckoned to be suitable for appointment would be recommended to the minister. It might be suggested that those people's suitabilities were

equally balanced or that one of them was slightly better but they were all capable of doing the job. It would then fall to the minister's discretion to make the decision, which is only right and proper, because ministers are ultimately accountable to Parliament for their decisions.

Ms White: I have two more quick points. First, is it fair for Parliament to pay for an Executive bill? Secondly, although the Parliament has responsibility for the appointments committee, it is not responsible for appointing a person.

Peter Peacock: I am not sure that I understand your second point.

Ms White: Alex Neil's bill argues that the process should be open to scrutiny and that Parliament should be responsible for that scrutiny. You are opposed to the bill because you think that ministers, not the Parliament, should have that responsibility. However, you are going to set up an appointments committee, for which the Parliament will be responsible.

Peter Peacock: No. The key distinction is that the commissioner would not be responsible to Executive ministers for his or her actions. We are trying to make the commissioner independent of ministers to ensure that they can scrutinise ministers' and officials' actions effectively. It seems appropriate to give Parliament a role in that mechanism.

We want to consult on the issue, because other people might have a different view; indeed, some people might feel that such a measure is too political, even for the appointment of the commissioner. We have said what we would like to happen, but we want to hear what people have to say about it.

As I have said, there is a distinction between that process and individual appointments to individual bodies. The minister is accountable to Parliament for the performance of such bodies; for the reasons that I have set out, we do not think it appropriate for the Parliament to focus on such work. Our proposals mean that the Parliament will have a clear role and locus in the appointments process; the proposals give the commissioner and Parliament particular powers to stop the process if they think that it is going seriously awry. We think that that strikes the right balance.

You asked whether it is fair for Parliament to pay for an Executive bill. That misrepresents the situation. We want to give the commissioner's office autonomy from the Executive in budgetary and other matters. The only way in which we can do that is to allow Parliament to pay for the office out of the Scottish block. As a result, there will be a call on that expenditure before there is a call on other expenditures, to ensure that the office is independently funded. We feel that that strikes the

right balance; it ensures that the office is funded and that ministers cannot meddle with or constrain its funding.

Mr McMahon: In the interests of consistency, I want to ask some questions that I raised earlier about minority groups' concerns about the bill. I do not want to follow Tricia Marwick's inconsistent approach of trying to raise a point of order to stop you talking about your proposed bill and then spending all her time asking you questions about that bill and its timing.

Organisations such as the CRE and the Equal Opportunities Commission have suggested that the legislation will have implications for equality issues. Have you examined Alex Neil's bill in light of those concerns and do you have any information on that matter?

Peter Peacock: My direct answer is that I have not considered that. However, I was listening to the questions that you asked Alex Neil. As I understand it, you were suggesting that, if it were felt that the Executive had not properly dealt with a particular point under equal opportunities law, the Executive could be legally pursued; if the Parliament had not followed that code, it could not be pursued in the same way. We will examine that issue for our own interest, although I suspect that the matter will be debated during further consideration. I honestly cannot give you an Executive view on the matter, because I have not looked into it. I will do so, however.

Mr McMahon: We also mentioned the fact that minority groups feel that they are discouraged from participating in the process, although there seems to be only anecdotal evidence to support that perception. Do you have any research on that issue that you can bring to the discussion?

Peter Peacock: I just want to be clear. Are you asking about evidence that minority groups are not participating in the process?

Mr McMahon: Yes.

Peter Peacock: Dame Rennie Fritchie has set out her thoughts on that issue and I have no reason to dissent from her comments. The situation is clear, even when as a minister I examine the appointments process and see the candidates who are coming through it.

A colleague from the Labour parliamentary group asked me today why nobody from a housing scheme tenants association has got through the system of public appointments for the health board, for example. That colleague also asked why black people, other ethnic minorities and disabled people are underrepresented. The fact that that is the case is disappointing. Nonetheless, it is the case. That is why Dame Rennie Fritchie has been so active in the diversity initiatives and

why we support them. We want people who are not the usual suspects to come through the system. They can contribute their experience of life to the boards and committees, which play an important part in national life, but they are put off for a variety of reasons.

Dame Rennie Fritchie made the point that an additional hurdle, as I think she described it, exists for people who do not come forward, if only in their minds. That hurdle is that they may be called—there is no reason why they would not be called—to give evidence to a committee of the Parliament. That is one of our concerns, too. I am advised by my helpful officials that we will commission research in the next few months on exactly such points to try to ensure that we understand better why people do not come through the system and what groups do not come through the system. That will enable us to target our efforts in the diversity work that we are doing to ensure that more people come through.

Alex Neil: I welcome the Executive's proposals as far as they go. I had not realised that there were so many U-turns on the road to Damascus. Perhaps the deputy minister should call himself St Paul rather than Peter.

Last week, the Executive was against any parliamentary involvement in the public appointments system. After *The Herald* and I exposed the weakness of its argument, the Executive has now accepted the need for parliamentary involvement.

The Convener: Can we have a question?

Alex Neil: Is it not true, minister, that you have spent the past few days huddled together with your Liberal Democrat colleagues trying to cobble together a compromise that has been forced on you by the bill? However, I am magnanimous.

I have a few simple, straightforward questions. Will the public appointments committee have real teeth or is it a camouflage? What will the make-up of the committee be? In such a committee, should not the Executive forgo its usual majority to ensure fairness and objectivity?

I urge you to think again about the confirmation powers. Last January, when Henry McLeish was First Minister, he said in *Scotland on Sunday* that he wanted parliamentary committees to have the power to vet and veto appointments. If the public appointments committee decides that that is the way to go, will the Executive change its mind again?

Peter Peacock: I had wondered where the story in *The Herald* came from. Now we know.

As for U-turns, that is not an expression that I understand. Government policy develops. It is a continuum of progress, as everybody knows. The

policy was simply being developed with colleagues, as one would expect. That is how the matter has come to members' attention.

For Alex Neil to say that the Executive had expressed the view that it was against any role for Parliament is wrong. It expressed the view that the Parliament should not be involved in confirmation hearings of the sort that have been described. We have been silent on the matter of Parliament's involvement in the process in the round, which we are now fleshing out.

You ask whether the public appointments committee is a camouflage or has real power. It has very real power—be under no illusions about that. Any minister who chose to abuse the code of guidance under the original Nolan procedures or in future under the Scottish commissioner for public appointments would do so in the full and certain knowledge that the commissioner and the commissioner alone—who is appointed by the Queen, is not accountable to the Executive and has an independent budget—can judge whether to refer that minister's actions to a parliamentary committee. That is an extraordinarily serious sanction. Any minister who played footloose and fancy free with that would be in severe danger. I do not see it happening. The power is real. It is a backstop in the system. As was mentioned earlier, it is a final check to ensure that, if the system is being abused, the Parliament can hold the minister to account. The power is serious and by no means a camouflage.

How Parliament makes up its committees is not a matter for the Executive. Parliament must decide the make-up of the public appointments committee in the fullness of time; it will make a judgment when it has considered the proposals.

Dr Jackson: You said that Executive policy is going down this line—

Peter Peacock: Up this line.

Dr Jackson: Is it fair to say that the bill has done no harm in raising the profile of public appointments, which is what Dame Rennie Fritchie said is required? Do you agree that your proposals—if I interpret them correctly—are an attempt to continue the depoliticisation of the process and to have a strong watchdog to oversee it?

Alex Neil mentioned the public appointments committee. Do you have any thoughts about whether it should meet in public or in private? As the commissioner has an important role, and given Michael McMahon's point about the importance of interviewing skills, will there be adequate training for the members of the committee?

17:15

Peter Peacock: That is a fair point. Anyone who is asked to undertake that role must be offered the opportunity—if they have not done so—to train for and understand the modern appointments process. There is a difficulty in that, but the matter is principally for Parliament.

It would be for the public appointments committee to decide whether a hearing of the commissioner's case against a minister should be held in public or private. In the normal course of events, ministers give evidence to Parliament in public; I imagine that that would be the case with such hearings, as it would add to the sanction. There might be clear circumstances in which ministers could argue that, for reasons of confidentiality, they cannot reveal some information in public. The committee and the minister would have to come to an understanding on how to handle that situation. Essentially, the power would lie in the hands of the committee.

Dr Jackson is correct that we intend to maintain the depoliticisation that began at the time of the Nolan proposals. We do not want to reintroduce a political element. Through the code, we want to prescribe a narrow range of ways in which ministers can work. We also want the process to be subject to independent scrutiny.

It is important that there is an active debate in Scotland about the public appointments process and that people understand more about what Dame Rennie Fritchie and her colleagues do. It is apparent to anyone who listened to what she said that the process has moved forward. This is not a political point, but I wish that politicians spent more of their time pointing to the massive changes and improvements that have taken place in the system. There will be a debate about how the system is fine-tuned, but the system is not as it was in 1995, when a tap on the shoulder to an old pal could get someone on to a quango board. We must say more publicly that that has not been the situation for a number of years. Members should not continue to smear the system in an unjustified way.

The Convener: We have exhausted the questions. I thank the witnesses for their answers and for coming.

Budget Process 2003-04

The Convener: Item 3 on the agenda is the budget process. We must consider the appointment of an adviser to the committee for the budget process. Members will remember that we had an adviser last year.

I will go through the briefing paper on the budget process paragraph by paragraph to get members' agreement on the proposed terms of reference and person specification. I do not think that there are problems with the purpose and background of the report. The Finance Committee decided to have an adviser all to itself, who will probably be Arthur Midwinter, so he is off the list of candidates. The proposed terms of reference and the adviser's duties are given in a list of bullet points in the briefing paper. Do members wish to take anything out of, or add to, that list or the person specification?

Members: No.

The Convener: The final paragraph states that the adviser should be an expert in their field and should not presently be involved with the Scottish Parliament. We guess that the adviser's work will take 10 to 12 days, which is within the 15-day allowance for the fast-track procedure. I ask the committee to consider the content of the report. Do members approve the terms of reference for the adviser?

Members *indicated agreement.*

17:20

Meeting continued in private until 17:58.

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