

# **LOCAL GOVERNMENT COMMITTEE**

Tuesday 3 September 2002  
(*Afternoon*)

Session 1

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## **LOCAL GOVERNMENT COMMITTEE**

**20<sup>th</sup> Meeting 2002, Session 1**

### **CONVENER**

\*Trish Godman (West Renfrewshire) (Lab)

### **DEPUTY CONVENER**

Dr Sylvia Jackson (Stirling) (Lab)

### **COMMITTEE MEMBERS**

Mr Kenneth Gibson (Glasgow) (SNP)

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

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

\*Elaine Thomson (Aberdeen North) (Lab)

\*Ms Sandra White (Glasgow) (SNP)

### **COMMITTEE SUBSTITUTES**

Robert Brown (Glasgow) (LD)

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

John Young (West of Scotland) (Con)

\*attended

### **WITNESSES**

Dame Rennie Fritchie (Office of the Commissioner for Public Appointments)

Roger McClure (Scottish Funding Councils for Further and Higher Education)

### **CLERK TO THE COMMITTEE**

Eugene Windsor

### **SENIOR ASSISTANT CLERK**

Ruth Cooper

### **ASSISTANT CLERK**

Neil Stewart

### **LOCATION**

Committee Room 2



## Scottish Parliament

### Local Government Committee

*Tuesday 3 September 2002*

*(Afternoon)*

[THE CONVENER *opened the meeting at 14:01*]

**The Convener (Trish Godman):** Okay, comrades, we can start. I welcome you back after our summer recess and hope that you are back fighting fit.

I notice that we have two official reporters who are new to the Local Government Committee—Mark Ewing is sitting at the back and is obviously keeping his eye on them. I welcome the new reporters to the committee.

### Items in Private

**The Convener:** Before we begin item 2—I almost forgot because I have not had the same summer break that everybody else has had—I ask the committee whether it agrees to take items 3 and 4 in private. In item 3, we are considering a draft report and, in item 4, we are looking at an approach to an inquiry. Is it agreed that we will take those two items in private?

**Members** *indicated agreement.*

**The Convener:** Thank you. I can now proceed.

## Public Appointments and Public Bodies etc (Scotland) Bill: Stage 1

**The Convener:** I welcome Dame Rennie Fritchie, who is the commissioner for public appointments, and Alistair Howie, who is her policy adviser. We have your submission, Dame Rennie, and as you have been here before, you know the drill. If you would like to speak to your statement for a couple of minutes, I will then open it up for questions from the committee.

**Dame Rennie Fritchie (Office of the Commissioner for Public Appointments):** I am grateful to the committee for inviting me to give evidence today in support of the written evidence that I submitted last month. I do not wish to make a long formal statement to the committee and I am not going to read out what I sent to you previously, but it may be helpful if I say a few words about aspects of the role of the proposed new commissioner for Scotland and how they relate to the Public Appointments and Public Bodies etc (Scotland) Bill.

There has been a commissioner for public appointments in Scotland since 1995, when my predecessor, Sir Len Peach, filled the post. The post was created together with the posts of commissioners for public appointments in England and in Wales as a result of the Nolan report. I have held the three posts simultaneously since March 1999. Under a separate order in council I am also commissioner for Northern Ireland. If the bill under discussion is enacted, I will of course relinquish my responsibility for Scottish appointments.

Since 1995, improving standards, transparency and openness in making public appointments have broken across the civil service rather like a wave in slow motion. There are currently 116 bodies within my remit in Scotland, which have a total expenditure of some £8 billion per year, 70 per cent of which is for NHS bodies.

With Enron and WorldCom fresh in our minds it is more important than ever to ensure the good governance of boards. It is therefore vital that public bodies have the very best boards and that the process of appointing people to those boards is open, fair, transparent and done on merit.

Ministers are aware that the Government sets national standards for major public services, which are often delivered not by the civil service or local government but by public bodies. After much thought, I decided to identify for the first time in my annual report the organisations that I audited in the past year which on some occasions did not

follow my code of practice, as well as naming those organisations in which best practice took place. I did that not because of any increase in the number of organisations not following my rules but in the interests of openness and transparency.

The commissioner's role is to see the overall picture, to evaluate how the system is working through an audit inspection and to report on that. Having a comprehensive knowledge of the system makes the office of the commissioner credible and enables it to add value.

Much of my work in the past financial year has been on streamlining the regulatory framework that guides the Scottish Executive, the National Assembly for Wales and Government departments. That work resulted in my issuing a new code of practice. Regulatory work is at the heart of the commissioner's role. That work engenders trust because it is not captured or influenced by special-interest groups. The independence of the commissioner's role is crucial. I believe that, ultimately, a new commissioner for public appointments should decide what needs to be in the code of practice, although they might wish to consult widely on that.

I hope that a new commissioner for public appointments for Scotland will draw on the experience and wisdom that has been built up in our office since 1995. That is why, at the end of this month, I will set up a separate office in Scotland to provide a fully operational base and to allow a seamless transfer of responsibility to a new separate commissioner for Scotland. The new office is being set up with the consent of the Scottish Parliamentary Corporate Body and with the assistance of the Scottish Executive and the chief executive of the Scottish Parliament. That preparatory work will in no way be binding on a new commissioner, who will, no doubt, want to put their own stamp on the office.

I am delighted that the bill will give the new commissioner a formal role in promoting diversity. It is important to continue to drive progress on diversity, while preserving the overriding principle of appointment on merit. If we achieve diversity—by bringing on board more women, young people, people from minority ethnic groups, disabled people and people from a wider regional base—that will not only reflect the community that those people serve but enrich the character and work of public bodies. More diversity will also help to create a civic society in which all kinds of people participate in decision making.

As part of my work on diversity, I have encouraged the Scottish Executive to conduct a mapping exercise that is aimed at providing a clearer understanding of the state of public appointments in Scotland and of how those appointments break down in terms of gender,

ethnicity, disability, geographical spread, age and remuneration—what we need to know in order to decide what we need to do. The mapping exercise, which is under way, should provide the basis on which detailed work can take place in compiling a diversity strategy.

If the bill is successful and a new, separate public appointments commissioner for Scotland is appointed, I will look forward to working closely with them. We could achieve a formal link, probably by means of concordats, and support that with a number of informal meetings.

I am happy to answer any questions that the committee might have on the views I have presented or on my written evidence.

**The Convener:** I will start the ball rolling by asking about your comments on diversity. Your submission states that you have spoken at a number of engagements that were targeted at attracting more women and more people from ethnic minorities to apply for public appointments. How much interest has been shown at those meetings?

**Dame Rennie Fritchie:** A tremendous amount of interest has been shown. For example, I spoke at a meeting of the women at work project in Inverness, which was organised by the Workers Educational Association and involved women from the Highlands and Islands. I would have to look at the figures, but I think that 60 or 70 women—a large number—came from throughout the region to say that they were doing all sorts of things in their local community. Many of them had realised for the first time that certain appointments were open to them. They wanted to know more about public appointments and how to apply for them. There has been a lot of interest from a wide range of people.

**The Convener:** That is interesting.

**Mr Keith Harding (Mid Scotland and Fife) (Con):** Will the creation of a Scottish commissioner for public appointments improve confidence in the ministerial appointment process among the Scottish public and, particularly, among potential applicants for public appointments?

**Dame Rennie Fritchie:** That is a difficult question. People will gain confidence from knowing that there is a commissioner for public appointments and a proper, regulated process. Many people do not appreciate that there already is a commissioner. When the original consultation document on the commissioner for Scotland was published, a number of people telephoned me to say, "I thought you already did this, but the document reads as though there isn't a commissioner and we are about to get one for the first time." The fact that a commissioner and an independent regulatory body exist already gives people confidence.

This morning, I said to a colleague that I understand that people may have more confidence in someone who lives in Scotland and who is able to demonstrate Scottishness. I told my colleague that I grew up in Fife, across the Firth of Forth, and that the first thing that my grandmother, who raised budgerigars, taught her birds to say was "Home rule for bonnie Scotland"—indeed, that is all that they could say. I understand that appointing someone who lives in Scotland and who is known here may give people confidence, although people have had no difficulty with the system that I regulate—they have not suggested that that system is anything other than properly run.

**Mr Harding:** Will the powers granted by the bill to the Scottish commissioner for public appointments be sufficient to achieve the bill's policy objectives?

**Dame Rennie Fritchie:** Yes, I believe so. I raised a number of points that I believed needed to be examined but, broadly speaking, I think the commissioner will have all the powers that they require to do a good job and to demonstrate that they are doing a good job.

**Mr Harding:** In your written submission and in your opening remarks, you said that, by next month, you are to establish an office of the commissioner for public appointments in Scotland, in order to

"enable the Scottish Parliament to take over a going concern if the new Commissioner is established."

Is there a danger that that may lead to the perception that the post of the commissioner is being established not by taking into account the Scottish policy dimension but in line with current UK practices?

**Dame Rennie Fritchie:** I hope not. In my discussions with the chief executive of the Scottish Parliament, we were at pains to consider what would add value to the process and what would help someone to hit the deck running, without having to start by finding out the key things or how to set up the office. By establishing the office, we will have a member of staff who is trained in understanding how the audit processes are managed, who has gone through the annual cycle and can determine the right time to do certain things, and who has begun to get to know some of the key groups and constituents. We want to set up a framework for managing the administration of the process, rather than to impose a system that does not already exist in Scotland, although the rules that are in place will apply until the Scottish commissioner is appointed. I understand from the Scottish Parliament's chief executive that the aim, which I share, is to help someone to become effective speedily, so that they do not have to

spend a year trying to find a place from where to recruit staff and figuring out what they should be doing.

**Iain Smith (North-East Fife) (LD):** I will ask about the role of the proposed Scottish commissioner and their links with the Parliament and ministers.

You indicate in your written submission that you are concerned about the duty that is to be placed on the Scottish commissioner to consult Parliament and ministers on the code. Could you elaborate on your concerns?

**Dame Rennie Fritchie:** I am concerned about that proposal because, at present, I am not required to consult Parliament, although I consult the Scottish Executive, the National Assembly for Wales and Government departments because they manage the process that I regulate. If I am to make changes to that process, I am interested in how those changes will impact on those offices.

In the public perception of the system, there is a concern about the independence of the commissioner. The commissioner will exist to regulate the process in relation to ministers and Government departments, but if one has a duty to consult the very people whom one is to regulate, the public perception of independence may be put at risk.

**Iain Smith:** You do not regulate the Parliament or parliamentarians—you regulate the bodies that ministers appoint. In a sense, therefore, you regulate the ministers, whom you consult, but you do not regulate the Parliament, which you do not consult. I am slightly confused about your logic.

14:15

**Dame Rennie Fritchie:** I guard my independence from the political process fairly jealously. Of course I meet and appear before committees in all four countries, and I listen carefully to what people have to say, but the fact that I am not required to consult gives me independence from the political process.

**Iain Smith:** But the requirement would be only to consult; it would not be to do what they say.

**Dame Rennie Fritchie:** I understand that, but the whole point of consulting is to listen to what people have to say and to take it into account, and that adds time and administration. If I am bringing out a code of practice, consulting the number of people whom I regularly consult in any case takes a certain amount of time. That adds to the bureaucratic process, but that was not my reason for saying that independence is in jeopardy.

**Iain Smith:** Given that that is your stance—the logic of which I am not sure that I follow—how do you feel about the fact that the commissioner will

be appointed on the recommendation of the Parliament, rather than on the recommendation of the First Minister?

**Dame Rennie Fritchie:** Currently, the commissioner is not recommended by any politician, be they a minister or a First Minister. My appointment, and that of previous commissioners, was separate from the political process. I was appointed by the Queen and Privy Council. I met no politician during the process of my application, nor did a minister have to recommend me. The proposed mechanism adds something new; it adds the political process to the appointment of the commissioner.

**Ms Sandra White (Glasgow) (SNP):** I wish to follow up on one of the topics that Iain Smith touched on. I think it was in July—although it may have been before then—that you said that the Executive failed to follow the code of practice in several key respects. We are talking about the fact that you are able only to consult. Would it be better if, when you said that the Executive did not follow the code in key respects, the Executive had to follow the code and follow your advice, rather than that you could just consult the Executive?

**Dame Rennie Fritchie:** There are two points. First, when I bring out something new, I consult, because I want to hear how it will impact on the various executive bodies and Government departments. Secondly, on my code of practice and my requirements, I do more than consult when I audit. I say, "This is what you should have done, by my rules, and you broke them; therefore you didn't do it." I do not just consult bodies in relation to audits; I make it known that they have breached the code of practice or have put at risk some of the principles. I am not consulting them when I inform them that they have broken the rules.

**Ms White:** Thank you; I just wanted clarification on that point.

I will follow up on what Keith Harding said regarding the establishment of a separate Scottish commissioner. I know that you welcome that, but would that lead to a fragmented approach to dealing with public appointments across the UK as a whole, bearing in mind the fact that appointments are made to 65 cross-border public bodies?

**Dame Rennie Fritchie:** It will not necessarily lead to fragmentation, if there is good will, and if concordats and proper processes are in place to ensure that where we want to do—and should do—things in a similar fashion we can do so. Different ways of doing things should be able to flourish. I would play my part to support keeping a common view, while having a different way of interpreting the principles, and perhaps even a different emphasis.

**Ms White:** I know that some of the practices of the Scottish commissioner will be different from those of the UK commissioner, so are you saying that if cross-border problems arise, you will consult on them?

**Dame Rennie Fritchie:** We may have two simultaneous processes—one for cross-border appointments and England and Wales, and one for Scotland—but my understanding is that cross-border appointments will follow the UK-wide processes.

**Ms White:** Do you foresee any problems with that situation? The code of practice in Scotland could turn out to be better than the UK-wide code of practice.

**Dame Rennie Fritchie:** There are always problems. I could look at the situation and identify all the problems that might arise. We must all think about what difficulties might arise and about how we might best discuss, understand and agree on a proper way of combating them. If we foresaw only problems, we would never make changes. Although there are problems and issues that would need to be examined, I am not concerned that they are so great that the task would be impossible.

**Ms White:** If an appointee were unhappy, either with the proposed Scottish legislation or with the UK-wide legislation, would they be free to write to you with suggestions for changes that you could adopt?

**Dame Rennie Fritchie:** An appointee to a cross-border body could write to me, but an appointee to a body that falls within the remit of the Scottish commissioner would have to write to the separate Scottish commissioner with any such complaints. It might be possible for the commissioners to have a range of concordats or agreements.

I am commissioner for public appointments for Northern Ireland under a separate order in council. A similar process was undertaken in Northern Ireland and a separate commissioner was established. I was asked to take on that role while a range of issues were considered. In time, there will be several commissioners. We might well hold a series of case-study meetings to discuss common problems and complaints, to consider how we could tackle some of the problems and to agree on solutions and a way forward.

When the relevant body falls within the remit of the Scottish commissioner, a complainant should go to the Scottish commissioner and the process should end there. However, that would not prevent the Scottish commissioner from discussing different kinds of complaints with the other commissioners, identifying common themes and attempting to find a common way of dealing with them.



**Elaine Thomson (Aberdeen North) (Lab):** I want to ask about the terms and conditions of appointment. Schedule 1 sets a range of terms and conditions and proposes that Her Majesty the Queen should have the power to dismiss the commissioner

“in pursuance of a resolution of the Parliament which, if passed on a division, must be voted for by the number of members equivalent to not less than two thirds of the total number of seats for members”.

The need for support by a two-thirds majority has been questioned and the barring of ministers from the vote has been raised.

**Dame Rennie Fritchie:** I cannot comment on that. The decision to include those proposals in the bill has been taken. There is no such arrangement anywhere else. That situation does not apply at the moment, so I cannot comment on whether it is a good idea.

**Elaine Thomson:** It is a case of wait and see.

To what extent will the proposal for the commissioner to appoint assessors ensure independence from ministers?

**Dame Rennie Fritchie:** The appointment and overseeing of independent assessors is a crucial role. It represents an advantage and a great step forward, which I support whole-heartedly. The recruitment, selection, appointment and training of the assessors should come under the remit of the commissioner. In that way, independence would be preserved and would be seen to be preserved, which harks back to Mr Smith's question. By taking that aspect out of the political domain, there would be no risk to the public perception, which would be a good thing.

**Tricia Marwick (Mid Scotland and Fife) (SNP):** I think that I would have liked your granny a lot, not only because she was a Fifer, but because of what she taught her budgies.

**The Convener:** That is a surprise.

**Tricia Marwick:** What is the basic difference between your role as commissioner for public appointments for the UK and the role that the Scottish commissioner will have? Does the bill set out differences in the role and the function of the commissioner in Scotland?

**Dame Rennie Fritchie:** There are several differences. One difference is that in preparing the code of practice, the Scottish commissioner will have to consult ministers. Another is that a commissioner could be voted out of office by the Parliament, which Elaine Thomson has just mentioned.

Another difference is that although I have a duty to be involved in and to promote diversity, I do not set targets. It seems to me that it is for the

Government to set policy and for the Scottish Executive to implement that policy and meet targets. It is for the commissioner to scrutinise the targets, comment on them and work with the Scottish Executive and others to promote diversity. It is difficult for the commissioner to set separate targets if the commissioner has no lever to pull that has anything at the end of it in relation to departments or for the commissioner to insist that departments do things if the commissioner cannot make them do those things.

Another difference is that the person who holds the commissioner's office will be disqualified from holding substantive public roles in public bodies for three years. There is currently no such rule anywhere else. I know that the business appointments advisory group, which covers Scotland as well as Wales and England, has a three-month embargo on ministers and permanent secretaries. The introduction of a period of three years seems to be an unusual step. I do not know what the thinking is on that.

Another difference is that the Scottish commissioner must leave at age 65. That is different from my post. It seems somewhat at odds with openness, transparency and diversity that, although there is no age bar for public appointments, there is an age for the person who regulates those appointments.

The final difference is the rule that the person would serve no more than three terms of office, each of five years. That would mean that they could be in place for 15 years, although the current rules state that the cut-off point is when someone has spent 10 years in a public appointment. The current rules may well be changed, but this is almost pre-empting a change before a commissioner comes in to make up the rules. At present, unless there are extenuating circumstances—perhaps a merger or a major change going through that would require an extension—someone in a public appointment should leave after 10 years. The bill would give the commissioner 15 years, which is five years beyond the period allowed in the current role.

**Tricia Marwick:** When you came to give evidence to the committee when we were considering Alex Neil's bill—the Public Appointments (Parliamentary Approval) (Scotland) Bill—you were unhappy about the suggestion in that bill that there should be a pre-appointment process that involved the Parliament. The Public Appointments and Public Bodies etc (Scotland) Bill suggests that the Scottish commissioner for public appointments can report to the Parliament if there are any breaches. Is not that a bit like closing the stable door after the horse has bolted? How do you envisage that the newly appointed commissioner will be able to oversee compliance

with the code of practice by the Scottish ministers? How will he or she be able to investigate any complaints that arise?

**Dame Rennie Fritchie:** On the first question, what is currently written into the bill is a way of endeavouring to give a new commissioner a power that does not currently exist for me. If I am not happy with things, I go to the Executive and if I am not content with what is happening there, I go to the minister. That is the end of the internal action. I can, of course, thereafter make public my concerns. There is in the bill a separate intention that someone who is unhappy with the minister could come to the Parliament to say that. My understanding is that the intention is to give a further power to the commissioner. I do not currently have such a power, so it is difficult to judge how it would work. I think that such a power would be rarely used; but the fact that it existed would be a deterrent to any Executive or minister who might wish to ignore or flout the code of practice.

On how the commissioner will investigate complaints and so on, I do not see the commissioner's powers as being any different from the rights and responsibilities that I have now. I can currently investigate complaints when they are made directly to me or, if I have a concern—perhaps I have read things in the press or have begun to hear murmurings—I can call for the papers, send in the auditors and people from my office and examine the case without waiting for someone to make a formal complaint to me. I can then make public what I find. I can do that already and I do not see that it would be prevented by the bill.

14:30

**Tricia Marwick:** We spoke about the power that a commissioner will have to report a case to the Parliament. You envisage that that power will be used very rarely because of its deterrent effect. Is there a difference between a power to report to Parliament and an obligation on the commissioner to report to Parliament? If there is no obligation it will be entirely in the commissioner's hands whether he or she comes to the Parliament in the first place.

**Dame Rennie Fritchie:** I agree. There is a very big difference between a right and a requirement: a right to do something gives one power to exercise that right should certain circumstances occur, but a requirement to appear before Parliament is not the same.

I am invited to—and always appear before—committees in all the countries of the UK. I have a responsibility to come before and be answerable to the Parliament and to the public for the actions

that I take. At the moment, as I understand it, that is a right and it is not for me to suggest that it should be a requirement. That is not out of any lack of respect for the democratic process; rather, it relates to public perception. The more independence the commissioner has and the more that they can be seen to demonstrate integrity, the better for all parties. As soon as there is a suggestion that one group or another might have influence on someone, the public begin to get very edgy—as do I.

**The Convener:** I asked you earlier about diversity. Are the provisions in the bill that relate to the role of the SCPA in promoting diversity adequate, or should they be stronger?

**Dame Rennie Fritchie:** It did not strike me that there was anything missing. The concern is always to strike the balance between ensuring that there is diversity in the rich pool of candidates that will come forward and maintaining the principle of appointment on merit. People must be fit to do the job that they are appointed to carry out. We must continue to make greater, more creative and cost-effective efforts to encourage more people to come forward to be considered. We also need to think broadly about what is required of those who are appointed. However, once the line has been set, people must be appointed on merit. There is sometimes a danger that people might want to promote one aspect over another. Maintaining the balance is essential, for the good of such bodies—having people who are fit for purpose making non-executive decisions—and of the public, who will then have confidence in them. It is important for the people who are appointed to know that they have been appointed on merit and that they are seen to have the capacity to do the role.

I have a concern—I am considering how to capture information on it—about people leaving appointments early, on which I have only anecdotal evidence. There has been a suggestion from some groups, particularly different ethnic groups, that they get people appointed, but that those people then leave within a year or two because they are not allowed to take part in the whole thing—they are expected to stick to diversity—or they did not appreciate that the post would take such a large amount of time. I am considering what is the evidence beneath the anecdote and what we should take account of when we encourage people to come forward. We must also consider what training and support should be in place to enable people to carry out the role.

**The Convener:** Is it appropriate that the rules that will govern the appointment and the working of the SCPA should be laid out in the standing orders of the Parliament?

**Dame Rennie Fritchie:** I cannot give a considered view because I do not understand what options there might be that might give a different outcome. My understanding is that people have decided that the approach that is being taken is the best one that has been found so far. It seems to be an appropriate way forward, but that is the most that I can say because I do not know what else was considered.

**The Convener:** Neither do we.

One of the most significant things that you said was in response to Iain Smith's question. You said that you guarded your independence jealously—you are right to do so. I am not sure that I agree totally with all that you said in your answer—I do not think that Iain Smith does, either—but it is my understanding that the bill would try to ensure that the commissioner was as independent as possible. I see that as the way forward in relation to the appointment of the commissioner and, although we might not agree with you 100 per cent, I am sure that we will not lose that aspect.

I thank Dame Rennie Fritchie for coming along.

I welcome Roger McClure, who is the chief executive of the Scottish Funding Councils for Further and Higher Education.

I ask you to speak to your paper for a couple of minutes before I open up the discussion.

**Roger McClure (Scottish Funding Councils for Further and Higher Education):** I am pleased to be able to respond to the committee's request to give evidence. We have made a brief submission, which members have before them. I do not want to go through it in detail, but I would like to make a couple of points.

I am the chief executive of two councils, the Scottish Further Education Funding Council and the Scottish Higher Education Funding Council, each of which has up to 15 members who are appointed by the First Minister. I am appointed by both councils with the approval of the First Minister. I would like to add that, as I took up my post only on 1 March this year, I am a relative newcomer to public life in Scotland.

I want to stress the importance of the bodies that we call executive non-departmental public bodies. It is well known that such bodies are uniquely British institutions. They play a vital management role between the political process—including the civil service and the policy-making level—and the detailed operations on the ground. In order for that role to be discharged well, two things are crucial: the people who are selected to be responsible must be the best people that can be secured; and, because of the large amount of public funds that are involved, the public must have confidence that the people who have been selected are the best

people and have been appointed appropriately. For those two things to happen, there needs to be an open and transparent procedure that ensures, however it is managed, that a minister who approves an appointment can demonstrate that the process was open to anyone who was qualified, that the process was fair and that the appointment was decided on merit and the ability to do a good job, but on nothing else.

However, it is obvious that in such a process one has to strike a balance between rigour—which would allow maximum confidence, but would imply fairly detailed scrutiny and a lengthy and complex process—and deterrence. A complex and daunting process would put off many people who might wish to be involved in public life and who would be perfectly able to play an appropriate role.

We welcome much of what is in the bill. However, until we see the new commissioner's code of practice, it will be hard to judge the processes and how they will work. We expressed in our submission the same concern that Tricia Marwick expressed about whether there was a risk that the stable door would be locked after the horse had bolted. In Dame Rennie Fritchie's case, the process is safeguarded in the code of practice by the appointment of independent assessors whose job it is to ensure that the process for any appointment adheres strictly to the code. There is constant monitoring of the process as it is gone through. Until there is more flesh on the bones it will be difficult to be sure how successful the process will be.

**The Convener:** Given the comments that you have just made, do you think that the creation of the SCPA will improve confidence in the ministerial appointment process among the public and those who might apply for public positions?

**Roger McClure:** Yes, I think that it will. As Dame Rennie Fritchie pointed out, a public appointments commissioner exists for the UK. It seems to me, as a newcomer, that the focus for accountability within Scotland is—post-devolution—much more on the Parliament. That focus is appropriate if we are to get the public confidence that we seek.

**The Convener:** Have your organisations had dealings with the Office of the Commissioner for Public Appointments or independent assessors working with it? Would such dealings have been different had the SCPA been in place at the time?

**Roger McClure:** I must rely on the advice that I have been given. My understanding is that we have not had direct involvement with Dame Rennie Fritchie's office. In the case of recent appointments to the funding councils, such as my appointment, the procedures that were used were those of the Scottish Executive, which required the

involvement of the public appointments unit and independent assessors.

**Iain Smith:** Will you expand on the role that you think the Parliament will have in the appointments process, given the proposals in the bill? You raised concerns about sections 2(7) and 2(8) in relation to the commissioner's reporting to the Parliament a breach of the code, which might be made before or after an appointment has been made and, I understand, might also suspend an appointment. Is it appropriate that a breach of the code that the commissioner deems to be sufficiently serious should go before the Parliament and that the Parliament should have the power to suspend an appointment until it has had the chance to consider the matter?

**Roger McClure:** The point that we raised was not so much about whether Parliament should have a role. It was more a question about the timing and practicality of aspects of the bill. Taking the bill at face value, without the code of practice to hand to know how such a situation would be mediated, it appears that appointments that did not comply with the code of practice could be made and the Parliament and the commissioner would know about them only afterwards. That would depend entirely on whether a commissioner in Scotland used the same kind of process of independent assessors as is used in the UK. If that were the case, there would be less concern.

14:45

If the process were halted in midstream, so to speak, that could create difficulties for the body that was waiting for an appointment to be made. In some cases, that is a significant matter, because the body might need to have an appointment in place in order to carry on its business. It is also the case that a protracted delay, caused by discussion and debate about a particular individual, could result in difficulties for the individual concerned.

It seems that, either through the involvement of independent assessors or by some other route, advantage could be gained from a process that demonstrates that the code of practice embodies the principles of fairness and openness up to the point at which the minister approves the appointment. I do not have a clear view of how many appointments are to be made each year in Scotland, but if the process was thought to be too onerous, it might be possible to identify a particular set of posts—possibly those in which large sums of public funds are involved—for which that kind of assurance would be particularly important. Those posts could be focused on, rather than the process being applied in the case of all appointments.

It would be advantageous for a minister to be

able to say, at the point of making an appointment, "I know that this candidate has been through a process that has met the requirements of the code of practice." To do so puts everybody on a firmer footing and avoids subsequent embarrassment.

**Iain Smith:** I accept that point, but a problem remains about the lack of detail in the bill. That said, I understand that the intention is for the commissioner to appoint independent assessors and for the code of practice to be examined throughout the process. Given those circumstances, is it a reasonable backstop for the commissioner to report to the Parliament?

**Roger McClure:** I agree that, if the commissioner identifies non-compliance, some convincing or credible power must exist that will allow that non-compliance to be brought to attention in order for the minister to take note of it. It appears that the bill provides for that eventuality.

**Iain Smith:** Is it appropriate for the Parliament to be involved in the commissioner's appointment process, as has been suggested? Should the rules for that process and the arrangements for the operation and reporting of the commissioner to the Parliament be laid out in the Parliament's standing orders?

**Roger McClure:** I am not sure whether I am in the best position to answer that question. As I set out in my opening statement, the funding councils felt that it was important for the public to see the commissioner as an independent person who is able to reach his or her independent judgments. The test of that is whether the proposed method of appointment gives the commissioner sufficient independence. In other words, is it likely that the process will convince the public of that? The answer to that question is a matter of judgment, but our feeling was that the process would be a satisfactory way of doing that.

**Iain Smith:** I have one final question. In respect of the independence of the commissioner, are you concerned about the proposal in the bill that the Parliament be able to dismiss the commissioner on a two-thirds majority?

**Roger McClure:** I do not think so. If I remember rightly, the same rules will apply to the commissioner that apply to the Comptroller and Auditor General and the Auditor General for Scotland, who are independent officers of the Parliament. The commissioner for public appointments will also be an officer of the Parliament, because their conditions of appointment will be approved by the parliamentary corporation. In the case of a person's being dismissed, it has always been a convention that a two-thirds majority of Parliament has to be mustered. That satisfactory control has stood the test of time. Such a majority is pretty difficult to

achieve and it is a clear indicator that a case has to be answered.

**Mr Harding:** In the funding councils' submission, you suggest that the five-year term of office for the commissioner is too long. Can you outline what experiences have led the funding councils to that conclusion?

**Roger McClure:** Our terms of office are generally three or four years. That is based on our experience that some people whom we would have liked to approach to be members of the councils have been concerned and would not want to sign up for a longer period. We welcome the fact that the bill mentions a period "not exceeding five years". The implication is that a lesser term could be negotiated with the Scottish Parliamentary Corporate Body. That seems to introduce a sufficient element of flexibility and it should not deter anyone who does not want to do a five-year term because of their personal circumstances, but could do a shorter term.

**Mr Harding:** So you do not see it as a deterrent or think that someone might not think it would be worth applying if the term was only five years?

**Roger McClure:** I am sorry but I did not get the point of the question.

**Mr Harding:** Do you not think that it would be a deterrent for those people who might consider that a five-year appointment is not worth applying for?

**Roger McClure:** Do you mean because the term is too short?

**Mr Harding:** Yes.

**Roger McClure:** The bill makes provision for the appointment to be renewed.

**Mr Harding:** But your suggestion is that the term should be reduced. At present, the term is five years, with a possible further five years; I understand that it could go to 15 years. You are talking about the possibility of three terms of three years.

**Roger McClure:** Yes.

**Mr Harding:** Would the appointment be a good career move for someone if they knew that they could be out within three years?

**Roger McClure:** The bill leaves it open and I have no difficulty with that. It seems sensible for someone to have a five-year term that can be renewed. On the other hand, some people might prefer not to commit themselves for five years but could commit themselves for three or four years. If their circumstances changed, that term could be renewed. My suggestion introduces an element of flexibility, which is a good thing.

**Elaine Thomson:** Some organisations have expressed concern that the creation of a separate

Scottish commissioner could lead to a fragmented approach to public appointments across the UK. Do you think that the creation of the SCPA could cause confusion amongst potential applicants? If so, is there any way that that could be overcome?

**Roger McClure:** I would not have thought that that should be a major concern. As I said in my answer to one of the first questions, now that Scotland has its own Parliament it is important that the focus should be on Scotland. I do not see why people should be confused about that. If they are confused, the problem will become less as devolution develops.

When you talk about fragmentation, I suppose that you are asking whether the situation will lead to unacceptable disparities in practice. There is a risk of that, but it is fairly unlikely. People who work in similar activities talk to one another. There will be consultation, and the various commissioners will be aware of one another's codes of practice. There will be extensive consultation on the codes of practice and, if they were diverging in ways that could not be justified, we would expect that to be examined thoroughly. The risk is pretty small.

**Elaine Thomson:** Are the powers that are granted to the SCPA by the bill sufficient for the commissioner to perform their duties? Are any additional powers required?

**Roger McClure:** I listened to Dame Rennie's answer to that question and I am not sure that I can add to it. The bill grants the commissioner considerable independence, which is the first important thing. It gives the commissioner the ability to come to the Parliament, as I talked about in my answer to Mr Smith's question. Those are the real foundations on which the office will rest. In terms of appointing staff, the commissioner will have the ability to appoint independent assessors. All such things are written into the bill.

It is difficult to judge whether a better result would be obtained by trying to get all the answers into the legislation—which can often lead to difficulties—or by using the legislation to establish someone of the right calibre with the right level of independence and then relying on the code of practice approach. I favour the latter.

**Ms White:** The SCPA will have to consult the Parliament and the Scottish ministers on two areas in the bill. One of those areas concerns revising the code of practice; the other is about ensuring equal opportunities. Do you think that the statutory requirement should require the Parliament and the ministers to extend the consultation? If so, which organisations should be consulted, or do you think that we should not have to consult further on those issues?

**Roger McClure:** Again, it is a fine judgment between appointing an independent commissioner to carry out a job, trusting them to do it well, making their independence a cornerstone of the function that they are carrying out and then losing faith and starting to impose all sorts of constraints or rules on how they should do their job. It is a difficult question to answer, as I do not have direct experience of performing the role. I do not speak with the same experience as Dame Rennie.

Would it make matters any better if the bill stated that the commissioner should consult all appropriate bodies? That stipulation is so vague that it does not get us further forward. I cannot imagine any person being put into that situation and not feeling that a proper way to conduct themselves would be to consult appropriately on the code of practice.

**Ms White:** Should the commissioner consult only the Scottish ministers on the observance of the equal opportunities requirements, or should that be widened out too?

**Roger McClure:** I agree with Dame Rennie's point that the bill has not got that quite right. The commissioner's job is to scrutinise appointments and to report on that to the Parliament. It is not the commissioner's job to set policy on equal opportunities or to set targets for anything else. It is the job of the Administration to determine such matters and the job of the commissioner to vet whether that strategy is being implemented, but not to set the strategy. That is out of key.

**The Convener:** You say in your submission:

"It will be important for the Commissioner to ensure that the procedures for appointment and the scrutiny process do not themselves discourage particular groups from seeking to participate in public life."

Are you suggesting that the framework that is outlined in the bill is too rigid and might result in individuals being discouraged from applying for posts in public life because of the scrutiny that their appointment would come under?

**Roger McClure:** The procedures in the bill are not the problem, because the bill is mainly concerned with powers that are given to the commissioner. The problem will be with the code of practice and what is expected of bodies that are seeking to make appointments. There is no easy answer to the question. Rigour is important, but it is likely to discourage people who, for one reason or another, have not participated in public life and who lack confidence in coming forward. Some initiatives have been taken, such as the work shadowing initiative in which my councils have taken part. Individuals have been invited to shadow chairs of some of our committees to find out what is involved and to get an impression of the kind of work they do. It will take a long time to

build up greater interest and confidence in taking part in such activities.

I agree with what Dame Rennie said about merit and competence being important. Important bodies are involved, some of which discharge large amounts of public funding. Merit and ability to do the right job must be at the top of the list and we must seek other ways of engaging people who are not participating.

**Tricia Marwick:** In your submission, you refer to sections 2(7) and 2(8) of the bill. You express concern that it would be possible for an appointment to be made that was in breach of the code and that that might be identified only after the event. I am not convinced that the bill as written provides the comfort that Iain Smith seems to suggest that it does. Would your concerns be met if the new commissioner signed off every appointment—or, indeed, every significant appointment—to the effect that the appointment process complied with the code of practice before it was sent to the Parliament for approval?

15:00

**Roger McClure:** That was the sort of thing that we had in mind. The question now is how far the involvement of an independent assessor, who would represent the commissioner throughout the appointments process, would deliver that. If, before the process was completed, an assessor could alert the commissioner to the fact that, despite their best efforts, the process was not following the code of practice, the commissioner would have the opportunity to intervene before the appointment was approved. If the code of practice that is introduced is essentially identical to the existing UK code, such a situation might well be taken care of. That said, we cannot be sure about that until we see the code of practice, although I would be quite surprised if it were very different from the practice that has already been built up.

**Tricia Marwick:** More important, such a signing-off process would alert the Parliament, before it gave its approval, to whether an appointment had complied with the code.

**Roger McClure:** It would provide that assurance.

**Tricia Marwick:** Jack McConnell, as the then Minister for Finance, said in the chamber in March 2000:

"During the 1980s and 1990s, quangos and those who served on them lost public confidence. We want to change that, to transform the system, to put the past behind us and to look to the future positively to rebuild confidence. Devolution creates the opportunity to modernise our public appointments system."—[*Official Report*, 30 March 2000; Vol 5, c 1240.]

Since devolution, has there been renewed

confidence in our public appointments system? Will the bill achieve such an aim?

**Roger McClure:** I have a better chance of answering the second part of your question than the first, because I have not been here long enough to make such a judgment. The bill is going in the right direction. Appointing a commissioner in Scotland, making that person as independent as possible and trying to build the kind of assurance that gives the public confidence must be the right way to go.

**The Convener:** I have two questions on the diversity of applicants. Are the bill's provisions relating to the promotion of diversity explicit and wide-ranging enough to fulfil policy intentions? Secondly, might any other non-legislative measures be required to ensure the promotion of such diversity in public appointments?

**Roger McClure:** As you know, I am not a parliamentary draftsman. However, I suspect that the less that is said in the bill, the better, as long as it is categorical. I will need to check back, but I think that the bill as drafted requires that there should be equal opportunities, or words to that effect. I think that that covers it. As I indicated earlier, it is for the Administration to decide on its strategy to encourage bodies to meet that requirement and, if necessary, to set targets and so on; it is for the commissioner to monitor the process.

As for what those strategies might be, I have referred to work shadowing, which is quite a good example. Fear of the unknown often stops people doing something, and giving them the opportunity to experience a situation at first hand has proved to be a successful approach. However, if merit is the absolute test, that is a difficult issue and it will take a long time to build up a cadre of people who feel that they have the experience to enable them to meet such tests. We must be patient and work away as best we can at initiatives of the sort to which I have referred. We must continually encourage people.

**The Convener:** We have exhausted our questions. Thank you for your attendance. You are right to say that this is the beginning of consideration of the bill. We are heading in the right direction. There will be hiccups—there always are—but I hope that we will sort those out before the bill becomes an act.

We now move into private session. I ask the public, the official reporters and others to leave.

15:05

*Meeting continued in private until 16:08.*





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