

LOCAL GOVERNMENT COMMITTEE

Tuesday 10 September 2002
(*Afternoon*)

Session 1

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LOCAL GOVERNMENT COMMITTEE

21st Meeting 2002, Session 1

CONVENER

*Trish Godman (West Renfrewshire) (Lab)

DEPUTY CONVENER

Dr Sylvia Jackson (Stirling) (Lab)

COMMITTEE MEMBERS

Mr Duncan Hamilton (Highlands and Islands) (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

Sandy Brady (Highlands and Islands Enterprise)

Rona Fitzgerald (Equal Opportunities Commission)

Peter Peacock (Deputy Minister for Finance and Public Services)

CLERK TO THE COMMITTEE

Eugene Windsor

SENIOR ASSISTANT CLERK

Ruth Cooper

ASSISTANT CLERK

Neil Stewart

LOCATION

Committee Room 3

Scottish Parliament

Local Government Committee

Tuesday 10 September 2002

(Afternoon)

[THE CONVENER *opened the meeting at 14:03*]

Item in Private

The Convener (Trish Godman): Okay comrades, let us start. To begin today's meeting of the Local Government Committee, I welcome John Young, who is substituting for Keith Harding. It is always a pleasure to have you here, John.

John Young (West of Scotland) (Con): I hope that you will still be saying that at the end of the meeting.

The Convener: It will be rather a long meeting. I ask the committee to agree to deal with item 3 in private, as we will be considering a draft report. Are members agreed?

Members *indicated agreement.*

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

The Convener: We move to stage 1 consideration of the Public Appointments and Public Bodies etc (Scotland) Bill, for which the Local Government Committee is the designated lead committee. I am pleased to welcome Sandy Brady, who is Highlands and Islands Enterprise's director of strategy. You may speak to us for a few minutes, after which we will ask questions.

Sandy Brady (Highlands and Islands Enterprise): I hope to keep my opening remarks brief. On behalf of Highlands and Islands Enterprise, I welcome the opportunity to give evidence on the Public Appointments and Public Bodies etc (Scotland) Bill. Parliamentary and public interest in non-departmental public bodies is intense in Scotland, not least in the Highlands and Islands, where communities are small and the visibility of those who serve on public bodies is correspondingly greater.

We support the thrust of the bill—the move towards diversification of membership, which is a particular challenge in an area such as the Highlands and Islands, where travel and logistics can sometimes get in the way of the easy operation of public agencies. It is important that, where possible, public bodies throughout Scotland should reflect the geographical diversity of some of the more rural parts of the country. Participating in the central belt is hard work if one's residence is in one of the island communities. Such people are part and parcel of modern Scotland and they are keen to participate in public bodies.

Our experience relates to the Highlands and Islands Enterprise board, which looks after the strategic guidance of our organisation. We also have experience of local enterprise companies, 10 of which report to us on an annual contracting basis. In achieving a diverse membership for those local enterprise companies, we face the same challenge in microcosm as the Scottish Executive faces in finding a good range of board members.

In the 1990s, we introduced a policy of appointability through openness, to open the process up and to make it better understood and more transparent in local communities. Broadly, the policy has been successful and we are gratified that, to a large extent, the principles that lie behind it are those that are in the bill.

The Convener: In the third paragraph of your submission, you say that you were not convinced initially that the creation of a separate Scottish

commissioner for public appointments would be beneficial, because of, for example, the cost implications. Please outline exactly what those concerns were. Although you now accept the need for a separate commissioner, do you still have concerns in that area? What has happened to change HIE's position?

Sandy Brady: We have no residual concerns in that area. We strongly support the principle of a Scottish commissioner for public appointments. We believe that that is the right way forward. The only change has been the passage of time. It is almost two and a half years since we expressed our reservations. At that time, we were concerned about the fact that an existing UK mechanism was working reasonably well. The way in which the public sector and governance in Scotland has developed in that time suggests that things are different now. The role of the Parliament has developed. We welcome the proposal for a Scottish commissioner.

Ms Sandra White (Glasgow) (SNP): You mentioned the geographical spread of the Highlands and Islands. Bearing that in mind, do you believe that the consultation process in the Highlands and Islands has been adequate?

Sandy Brady: It has been adequate. Those who have had the desire to participate have certainly done so. Our organisation has a geographically diverse membership. Our board members felt that the issue was of interest in all the communities of the Highlands and Islands, from island communities in places such as Shetland and Orkney to communities down in Argyll. The operations of a range of public bodies affect daily life in the area. People are interested not only in geographical bodies, such as HIE, but in bodies that have a remit for all Scotland and that affect the way in which life goes on in the Highlands.

Ms White: Will the creation of the SCPA improve confidence in the ministerial appointment process? You welcome the creation of the SCPA, but will it create better relations and make people in the Highlands and Islands more confident in ministerial appointments and appointments to public bodies?

Sandy Brady: Yes. I believe that the creation of the SCPA will progress matters considerably. It will make the process more transparent. The bill has a number of facets that will ensure that, even where there are concerns about appointments that have been made, the commissioner will have a role in examining those concerns. The SCPA will make things better. Much of the issue is to do with perception. It is about creating a view in the public's mind that the processes are fair and open and that a genuine attempt is being made to recruit people from all walks of life.

Ms White: Will you provide examples of any dealings that HIE has had with the UK commissioner for public appointments?

Sandy Brady: We have seldom dealt directly with the UK commissioner. Our main involvement has been in the recruitment process for members of the HIE board, in which we have worked closely with the Scottish Executive. The processes have changed during the past five to seven years. They now start with an advertising process, which is the first step along the road to attracting a much wider field of potential applicants. Further development in that direction might be necessary.

Iain Smith (North-East Fife) (LD): I have a number of questions about the role for the Parliament that the bill envisages. In your written evidence, you refer to the fact that many of the bill's practical implications relate to the code of conduct. Should the bill's requirements to consult on the code be widened so that other bodies are included, as well as ministers and the Parliament?

Sandy Brady: The first code of conduct that the commissioner draws up will be important in setting the baseline for the way in which the process will operate in its first few years. It is important that draft guidelines are prepared and are widely consulted on. The body of knowledge that we have from the working of the UK commissioner could form the basis of those guidelines, but the guidelines must also reflect the kind of agencies that are listed in schedule 2 to the bill. The guidelines must also reflect Scotland's particular circumstances, not least of which is the role of the Parliament. The basis for the guidelines exists, but a wide consultation process would be helpful.

Iain Smith: Once the consultation is complete, should the code be subject to the approval of ministers or Parliament, or would that interfere with the independence of the commissioner?

Sandy Brady: The commissioner will need to have an on-going discussion with the Parliament, but I am not sure whether that should focus specifically on the code of conduct. It may not be possible to get the code of conduct perfectly right the first time round, as the code will need to evolve and changes will need to be made. Clearly, Parliament needs to play a part in that process. It is important that the commissioner and the Parliament have a working relationship, in which it is recognised that we can learn from the practice of the first few years to develop the code further.

Iain Smith: Your written evidence expresses concern about the bill's provision to allow the commissioner to report to Parliament a particular appointment as a breach of the code. The concern is about the effect that that would have on time scales. Is it appropriate that, where there has been a breach of the code, there should be an opportunity for Parliament to become involved?

Sandy Brady: A key tenet of the bill is that the Parliament would have such an opportunity, but we hope that that would be the exception rather than the rule. The issue comes back to public satisfaction with the process. The bill provides a safeguard for instances in which the commissioner feels that he or she needs to take some kind of action. Such a safeguard is important and is welcome, but I hope that it will be rarely used in practice.

Iain Smith: As do we all.

The policy memorandum indicates that the detailed procedures, such as those for the appointment of the commissioner and for the reporting arrangements to Parliament, will be matters for Parliament to decide in standing orders. Have you any views on that? Should the Parliament perhaps set up a separate public appointments committee?

Sandy Brady: The bill's proposal that Parliament should fulfil that role represents the correct way forward. That is a key role for Parliament and it will enhance the critical relationship between the Parliament and the commissioner.

Iain Smith: One big difference between the proposed commissioner for public appointments in Scotland and the current UK commissioner is that, on a majority of two thirds, the Parliament will be able to recommend to the Queen that the Scottish commissioner should be dismissed. Should that provision be there? If so, should the dismissal be on the basis of a specified majority, such as two thirds?

Sandy Brady: The provision is probably necessary as the backstop for an extreme eventuality that we hope would never come to pass. Therefore, it is an important provision. However, to dismiss the commissioner would be an exceedingly serious step to take, so a majority as high as two thirds is probably reasonable in the circumstances.

14:15

The Convener: In your written submission, you rightly highlight the potential for public confusion in having a standards commissioner, a public appointments commissioner and the newly established public services ombudsman, a matter with which the Local Government Committee dealt. You highlight the need for those roles to be clarified and publicised properly. Can you suggest a mechanism for doing that? Would it be easier to merge the roles into a one-stop shop?

Sandy Brady: A one-stop shop is not an immediate option. Those mechanisms must be given time to work in practice. Probably the best

publicity that the commissioner will get is if there is an early, high-profile case in which he or she takes some form of action. However, none of us would want to see that. Efforts must be made, not just at the outset but as the various provisions are implemented, to ensure that the roles are reasonably well publicised. They are not the kind of thing that will sell newspapers or fill column inches, but they are an important part of the checks and balances in Scottish public life.

Over time, the role of the commissioners in reporting to Parliament and giving examples of the matters with which they have been involved and the issues with which they have dealt will be one means of getting across to the wider Scottish public that the commissioners are playing an important role, even though that role might be unseen for much of the year.

John Young: I am a substitute on the committee and have just seen the committee papers in the past few minutes, so I am obviously at a bit of a disadvantage. However, it is probably appropriate that I should ask the next question, as I shall explain in a moment.

The bill makes great play of diversity and setting equal opportunities targets. The committee has apparently received evidence on the restriction that the bill sets on the commissioner's length of tenure—there is an age restriction that means that he or she must retire at 65.

As the father of the Parliament—I hasten to add that the mother of the Parliament, Dr Winnie Ewing, is 16 months older than I am—I would like to know your view of the enforced retirement age of 65 for the commissioner. We live in an age when people tend to live much longer. There are consultants in American professions, for example, who are over 65. Should the bill specify a retirement age for the commissioner?

Sandy Brady: In modern governance, if someone is competent to do a job and can fulfil it to the best of their ability, their age should not be a factor. Were you to ask your question in five to 10 years' time, we would probably regard it as a given that an enforced retirement age would not exist.

John Young: I asked the question because there have been numerous examples in recent years that would have been unheard of 20 years ago. One example is John Glenn, the former astronaut and United States senator who, after he retired, made a trip into space at the age of 77. Therefore, I wonder whether we should have an age embargo in the bill. Perhaps there is a pension reason for that. For example, would the commissioner—he or she—get a pension, or would that involve some kind of dealings? I do not know because I have only just become slightly acquainted with the committee paperwork.

Sandra White referred to the tremendous geographic spread of the area that you cover. That is something with which local councillors in such areas, unlike councillors in places such as Glasgow and Edinburgh, are conversant. With regard to equal opportunities, I have always felt that whoever has the ability to do a job should get it, irrespective of their sex. If we are asked to encourage equal opportunity, will there be a problem with having more male than female appointees, or is there likely to be a gender balance? I think that both sexes are essential in this context.

Sandy Brady: By and large, the membership of public bodies should reflect the gender balance in the population as a whole. We are not in that position currently, but we are moving towards it and have been doing so over the past five or 10 years, although progress has not been made as quickly as we would like. Part of the role of the commissioner, the code of practice and the guidance must be to see that steps are taken to achieve a gender balance and to ensure that minorities are represented. When an organisation is defined geographically, the geographical spread of the membership must also be considered. It is difficult to achieve all those things at the same time in a single organisation, but that should not stand in the way of our trying to achieve them.

John Young: Thank you. I have a final question on the same subject. We have spoken about age—away at the other end of the scale—and equality of the sexes. Are there any opportunities for a young person in their 20s to join a body?

Sandy Brady: Over the past few years, we in the Highlands and Islands have been conscious of that possibility. We have encouraged our local enterprise companies to see what they can do in that regard. Across our network of 10 LECs, three or four LEC board members are in their 20s. They are active young businesspeople. We did not have any people of that age on the boards before. They are all making a contribution to the discussion of the local economic strategy and that is to be welcomed. I hope that, in a few years' time, the representation of younger people will have increased. It cannot be achieved artificially, however; those people have been selected on merit.

Ms White: My question follows on from John Young's question about equal opportunities and diversity. Your submission says:

"where public bodies have a geographical remit they must reflect the customer base in their local communities and must not be designed artificially to suit a national model."

Do you think that there will be problems in implementing equal opportunities in the Highlands and Islands?

Sandy Brady: I do not think so for an organisation such as Highlands and Islands Enterprise, which represents part of the country, or for an agency such as the Crofters Commission or the Deer Commission for Scotland. Those organisations will normally draw their membership from the parts of Scotland concerned.

However, the question that you raise may be an issue for the agencies that look after the whole of Scotland. I am not advocating a geographical quota system, but it would be good for areas such as the Highlands and Islands, as well as for other rural parts of Scotland, to have a greater representation sprinkled across the membership of the bodies that are listed in schedule 2 to the bill. There are some good examples at the moment, but there is always scope for improvement. We should not go as far as setting geographical quotas, however.

Ms White: Are the provisions that refer to the promotion of diversity explicit and wide enough?

Sandy Brady: They could be a bit more explicit about the geographical factor, but they are sufficiently explicit about gender balance and minority representation. I hope that the code of practice will not only reflect those aims, but give some strong pointers as to how they might be achieved in practice.

Ms White: There are other issues about persons who are on public bodies being paid or unpaid and the distinction between the two. You stress that people make significant sacrifices to go along to meetings of those bodies, in terms of time as well as money. Having unpaid appointees risks putting people off volunteering, because of the time that is needed and the lack of money. Is the bill so complex and bureaucratic that it will put people off coming along as either paid or unpaid members of bodies?

Sandy Brady: No, I think not. The bill's great merit is the fact that it is short and succinct in setting out the broad framework within which the commissioner would operate. Some of the detail that will follow in the code of practice and the guidance will need to be examined carefully, but nothing in the bill stands in the way of people putting themselves forward. To broaden and deepen the membership of public agencies, we must attract a wider range of applicants in the first place. We must consider much more modern ways of advertising the agencies and persuading people that joining them is worth while. If we get a broad range of applicants, the choice of appointments will become a lot easier.

Ms White: Thank you for your clear answer. In your written evidence, you express the hope that the bill will not slow up the appointments procedure. We have considered volunteers and

the time that the appointments procedure takes. What other concerns do you have about the appointments procedure? Are you concerned that it is overly bureaucratic or that the time lapse is too long?

Sandy Brady: There is always a danger that, where we need fairness and transparency, we have to put in place some form of paperwork to ensure that the procedure is seen to be fair. We will always need to strike a balance on that. Appointments to public bodies cannot be made by electronic methods in the space of 48 hours. They require effort on the part of the applicants and those who sift through the applications and make the appointments.

Part of the trick is to make the prospect of serving on a public body that little bit more attractive at the outset. The information about what the job entails must be broader than it is—we will need more than a traditional newspaper advert. The process must involve potential applicants visiting public agencies throughout Scotland to find out more about what the job entails and what it is about. They may or may not then choose to put themselves forward, but that would encourage a wider set of applications.

Ms White: Are you saying that, even before the bill is enacted, advertising should be wider and people should be made more aware of the fact that the bill is coming on stream so that they are ready for it? Would that make implementing the bill a much quicker process?

Sandy Brady: Absolutely. The kind of thing that I have in mind is for existing members of a public body to give to those who may be interested in joining that body a couple of pages explaining what they do and outlining the challenges, frustrations and excitements of the job. A wide range of people would be able to read that and find out whether the job looked like something in which they were interested or whether it was different from what they thought it would be. It is relatively straightforward to do that and to enthuse a wider group of applicants.

The Convener: On diversity, the committee is keen to ensure that, by the time the bill is enacted, the issue will have been clarified and as many people as possible feel confident that they can apply for jobs in Scottish public bodies. Section 2(10) establishes that the commissioner will

“prepare and publish a strategy for ensuring that appointments to the specified authorities are made in a manner which encourages equal opportunities”.

As I said, the committee would be very supportive of that. The strategy should also set targets on equal opportunities.

However, other evidence that we have received suggests that it would be more appropriate for the

Scottish Executive to set the strategy and targets and implement the policy. The commissioner's role would be to ensure that the principles of equal opportunities and diversity are inherent in the public appointment process and that the Executive implements the policy in line with that strategy. What are your views on that?

Sandy Brady: I read with some interest the evidence that was given to you last week on that point. As the bill is drafted, the commissioner would have to consult ministers and Parliament on that matter. That is the nub of the issue. The strategy and targets are important and they need to be drawn up jointly by the commissioner and Parliament. Whether the commissioner would draft the strategy and consult the Parliament or whether the process would be the other way round is a moot point. I do not have a strong view either way. The key is that they both have ownership of the strategy.

The Convener: Thank you for your evidence. Your written submission started off saying that you were a bit doubtful and ended up saying:

“The ability of the Commissioner to investigate complaints arising from any appointment to a specified authority should further increase ... public confidence.”

That is what we are after in the bill. Thank you for coming along. If we need to contact you again, we will. It has been a pleasure to hear from you.

Sandy Brady: Thank you very much, convener.

The Convener: We welcome Rona Fitzgerald, who is the director of policy and parliamentary affairs at the Equal Opportunities Commission. Rona would like to say a few words, after which I will open the meeting to questions.

14:30

Rona Fitzgerald (Equal Opportunities Commission): I thank the committee for giving me the opportunity to come along today. I am relatively new to the Equal Opportunities Commission as some of you might know, but I have been doing a lot of work on mainstreaming gender equality in the European Union, the United Kingdom and the Republic of Ireland. Ireland has been considering equal opportunities carefully, as has the European Union. The priority of the Equal Opportunities Commission is to see as many women as possible playing a role in public life at every level. Public appointments are an important part of that.

We are heartened by what has been happening in Scotland, of which the Equal Opportunities Commission in the UK has taken note. In evidence to the Westminster Parliament, the EOC has commended the fact that the issues have been considered carefully in Scotland and Wales.

The committee is going through a process of examining the bill and trying to achieve balanced representation. It should be made clear what powers the commissioner will have and how the public appointments scheme will operate—in other words, how it will more broadly take into account equality, and from our point of view, gender equality. It should also be made clear how the bill will mainstream such issues in that work. It is important that all the links that must be made are clear from the outset in order to ensure that changes will happen.

Although there is a commitment to equality, what that means in relation to the workings of the commission must be spelled out. A proactive strategy—an important part of mainstreaming—will take on the issues to make sure that there is a greater representation on public bodies.

The Convener: Thank you. Do you think there is potential for confusion among the public about the respective roles? We have a standards commissioner, a public appointments commissioner and now we have a newly established public services ombudsman, or perhaps that should be ombudswoman.

Rona Fitzgerald: Ombudsperson.

The Convener: Anyway, do you think that that will be confusing for the public and that it would be better if the roles were all together in a one-stop shop?

Rona Fitzgerald: That is a fair question. Perhaps the public will eventually perceive that there are many people doing seemingly similar jobs, although they might deal with slightly different things.

There are merits in a one-stop shop where people can see where accountability and transparency start and in having one role that regulates a number of matters in public life. It remains for people to make the case for how a one-stop shop might work. What will be necessary to achieve it? How does one harmonise a number of functions and ensure that they are clear, which would be very important, if that route was to be followed?

The Convener: Do you think that the creation of the SCPA will improve public confidence in the public appointments process, particularly among those who apply for public office? Do you think that it will increase confidence among women or people from diverse backgrounds who apply that the appointment will be scrutinised and that the process will be clear and transparent? Will that encourage people to come forward?

Rona Fitzgerald: Yes, I think so. Similar moves have been made in other countries, such as Australia, New Zealand and Sweden—where there

is an ombudsman and a number of different mechanisms—and the Republic of Ireland, where public appointments have been opened up to a wider range of people through various mechanisms. The evidence is that such moves have instilled greater confidence and increased participation.

A number of other things are important in ensuring that more people come forward. I said that there must be a proactive strategy. I was involved with the monitoring committees for structural funds. The European Commission said that there should be balanced representation on those committees because they are the ultimate decision-making bodies. In many cases, women were asked to work on those committees, but because they were not given adequate training and did not have experience of making decisions about relatively large economic development projects, they felt somewhat intimidated.

It is crucial that training or capacity building is not just for new members of public bodies, whether they are women from black or ethnic minority communities or men from other groups. The training has to be targeted at all those who work in public bodies, including the commissioner. That is important, because mainstreaming is underpinned by the notion that we should get rid of the idea that women, people from ethnic minorities or people who have disabilities are the problem. We must move towards the idea that the way in which we have constructed public bodies or institutions has made them exclusive and that that militates against broader participation.

There has to be a lot of practical thinking about what broader participation means. I was involved in a project in Germany in which people had not thought about matters such as ensuring that affordable local transport was available so that people could get to meetings. There was a small fee for participation on boards, but it did not always cover the costs that people had to meet for child care or transport. There are always issues around the timing of meetings. Practical considerations of what I have called social infrastructure are crucial in ensuring wider representation and participation.

Iain Smith: The bill enshrines the broad remit of the Scottish commissioner for public appointments to promote diversity. In your written evidence you state that you would like to see a number of sections in the bill strengthened in order to ensure fully that equal opportunities are integral to the policies and actions of the SCPA. Those include a need for the bill to state explicitly how gender equality and equality in general will be built into the work of the commissioner, and a need for mainstreaming equality to be mentioned explicitly in the bill. Will you expand on what you want to be

incorporated in the bill and in the work of the commissioner in order to achieve that? Do you feel that without such changes being made, the bill will fail to deliver its aims on diversity?

Rona Fitzgerald: My area of expertise is mainstreaming, but diversity means something different to people. I know that it relates generally to the greater involvement of black and ethnic minority people. However, generally, the EOC talks about gender equality.

If we are to mainstream equality, it is important that that commitment is stated explicitly. It is therefore important not only to state that the commissioner will pursue a strategy of mainstreaming equality or diversity, but to spell out what that might mean. That would ensure that mainstreaming equality was a key objective in all the functions that the commissioner undertook.

Among the lessons that have been learned from people who have tried to mainstream equality are that the requirement to do so must be stated explicitly. People need a point of reference to return to; they need to be told that equality will be placed at the forefront of all of the commissioner's functions, which can be done by ensuring that the criteria for appointment take account of mainstreaming equality. A number of practical functions—such as trying to attract a wider range of people by publicising the recruitment process more widely—will need to be considered. It should also be recognised that anyone who takes part in public service should be rewarded, especially groups that are less well-off financially who might need support and help. Training must be provided for the commissioner and for all those who are involved in public bodies. Mainstreaming is something that people should be conscious of in conducting their business.

Iain Smith: Would it be sufficient for the code of practice to cover that or should it be included in the provisions of the bill?

Rona Fitzgerald: The primary legislation needs to include something in that respect. The code of practice is useful; it can explain more fully the intentions behind the legislation, but a clear statement should be contained in the legislation to the effect that the function of the commissioner is underpinned by a commitment to mainstreaming equality. The best reference point would be to say that one of the commissioner's objectives will be to pursue diversity—that would make it clear. It would ensure that whatever translates into the code of practice is as strong as it can be.

Iain Smith: I return to a question that the convener asked a previous witness about section 2(10), which establishes that the commissioner—rather than the Scottish Executive or the Parliament—will prepare and publish a strategy for ensuring that appointments to public bodies are

made in a manner that encourages equality of opportunity. As the convener said, we have heard evidence that that is the wrong way round. It was suggested that ministers should set the strategy and that the commissioner should monitor its implementation. Should ministers or the commissioner develop the strategy?

Rona Fitzgerald: My feeling is that preparation of the strategy should be with ministers. One of the other crucial points about taking a mainstreaming approach is political ownership. Some of the lack of clarity about mainstreaming equality relates to the fact that there is not always a sense that mainstreaming equality underpins everything that we do in policy and appointment processes. To raise awareness of that, and for reasons of political ownership, it is important that the preparation of the strategy rests at Executive level.

I can understand why the Executive might say that the person who is going to operationalise or implement the strategy should evolve the strategy in consultation with the Executive. However, it would be better if the strategy came from ministers, because that would give it the political clout that it needs.

14:45

Iain Smith: Finally, if the commissioner is left to develop the equality strategy, the bill suggests that he or she should consult Scottish ministers. Should the statutory requirement to consult on the strategy be widened to include other organisations or bodies?

Rona Fitzgerald: It would be good to have as broad a consultation as possible. It is valuable to hear different views, because people have expertise and might make very practical and useful points.

Ms White: From your submission, it appears that you support the creation of a separate Scottish commissioner. However, a few organisations have expressed concerns that that might lead to a fragmented approach to public appointments throughout the UK. Do you think that such a step will lead to fragmentation and confusion and, if so, how can that situation best be overcome?

Rona Fitzgerald: The creation of a separate Scottish commissioner makes more immediate sense because there is now a distinct Scottish polity and political frame of reference. Although it might appear that a UK-wide body was operating in the bigger picture and having the same effect throughout the country, there is a compelling case for having a Scottish commissioner, because context matters a lot as far as public appointments are concerned. We should also remember that the Scottish Executive has committed itself to

mainstreaming equality through its equality strategy. That is not a policy of the UK Government, which still operates the same positive action legislation under which the Equal Opportunities Commission was founded. Because the concept of mainstreaming represents quite a shift in the way that issues are dealt with, it makes more sense to have a Scottish commissioner.

Ultimately, if proper procedures are introduced the approach should not fragment. The thrust of the Local Government Committee is to ensure that people have confidence in the process and that the process itself is transparent. Once people see that there are clear criteria for how others are elected to or are selected for public bodies, and that a transparent system exists to allow for a wide variety of people to be represented on those bodies and for their activities to be scrutinised, the process should work effectively in a Scottish context.

The Convener: Your written submission outlines the need to attract a wider range of people to public appointments, to make the system more transparent and to review the criteria for appointments to all public bodies. Will the SCPA play a role in achieving those aims? If so, will the bill as drafted provide the SCPA with sufficient powers to do so, or will further legislation be required to achieve the aims that are set out in your submission?

Rona Fitzgerald: The bill as drafted should help to diversify the membership of public bodies and to attract as wide a range of people as possible. The code of practice will be very important in that respect. The commissioner's strategy must also make the process explicit, and there must be a clear outline of the systematic intervention that will be needed to ensure that a broader range of people is represented. One of the crucial aspects of representation on and participation in public bodies will be a proper monitoring process. Moreover, a proactive strategy and codes of practice could deal with people who feel that they are not coming through a weighed method of questioning and are wondering about the barriers to representation by a broader strand of Scottish society. Although I think that the bill has the capacity to do all that, it will also be important to review legislation to ensure that it meets the needs that it was introduced to address.

If we want a broader strand of Scottish society to be represented, but people are not coming through, we must have a means of asking why that is happening and of identifying the barriers to participation. The issue can be dealt with in the strategy and in codes of practice. The bill also has the capacity to do that, but it is important that legislation should be reviewed to ensure that it meets the needs that it set out to meet.

The Convener: You say in your written evidence that training in equal opportunities is important. Do you see a role for the SCPA and the Equal Opportunities Commission in providing that?

Rona Fitzgerald: Yes. It is important to enshrine training in equal opportunities as a basis for public appointments. Ireland has undertaken to mainstream gender equality. As part of the Irish national development plan, training has been introduced for public servants and policy makers in the administration of all Government departments and agencies. Although such training is voluntary at the moment, people are under considerable pressure to take part in it. Equal opportunities training has become a useful way of helping policy makers to understand how those who are responsible for implementation are trying to deal with issues. It has also become an important way of enabling women's groups and other representative organisations to get to know policy makers and the system.

It is important that training in equal opportunities is seen as a fundamental part of the commissioner's work. Sweden is committed to mainstreaming equality—gender equality in particular. Annual training for public servants and policy makers is built in. That training is progressive—it is reviewed and modified as different issues arise. Equal opportunities training has become the norm in Sweden. An important aspect of mainstreaming is that equality issues should become a regular part of our considerations. Such issues should not be an add-on; they should be fundamental.

Canada also provides equal opportunities training. Such training has led to increased awareness of what it takes to get people from diverse backgrounds involved in public bodies. It has also led to a much more effective intervention strategy, because people can see what the real issues are.

Ms White: I would like to ask a few questions about the role of Parliament. Do you agree that the appointment of the SCPA should be made by Her Majesty the Queen on the recommendation of this Parliament? Do you agree with the provision in the bill that gives Her Majesty the Queen power to dismiss the commissioner following a resolution of the Parliament? Do you think that it is necessary to specify that, if a resolution is passed by the Scottish Parliament on division, it must have the support of at least two thirds of members?

Rona Fitzgerald: Those are very tricky questions. I do not think that the Equal Opportunities Commission would take a view on Her Majesty's role in the process. Some of the provisions are given, and it would be very brave of us to tread in those waters.

The Convener: You could get your head chopped off.

Ms White: Treason.

Rona Fitzgerald: The EOC also faces a dilemma, because equal opportunities is a reserved matter. We operate as a GB organisation, although we are aware that Scotland is a different environment and we fight our corner within the organisation to establish that. I made the point that context is crucial. However, I will pass Ms White's question on.

Ms White: I asked that question in the light of the fact that you represent the Equal Opportunities Commission and of my view that Scotland should have the same equal opportunities as the British Parliament. On a more serious note, and turning to the role of the Parliament, I note that, under section 2, the commissioner

"must consult the Parliament and the Scottish Ministers ... In preparing the code of practice".

Given that much of the practical detail concerning the role of the commissioner will be contained in that code, should the code be strengthened so that the approval of ministers and the Parliament is required before the code is adopted, in order that any practical implications may be fully considered?

Rona Fitzgerald: I am sorry—could you repeat the penultimate part of your question?

Ms White: Do you consider that the code of practice needs to be strengthened?

Rona Fitzgerald: On that question, and in relation to the point about wider consultation with parties other than the ministers and the Parliament, I reiterate that we welcomed the Executive's consultation process. It has tried to consult widely. In this instance, it would be of benefit to obtain the views of a broader group of people, not just the Parliament and the Executive, but perhaps some of the bodies that are concerned by the bill. That would allow some of the practical issues that I mentioned to come through. The code of practice could be strengthened to specify wider consultation with specified organisations, which would ensure that feedback and input were as wide as possible. That would help us pick up on the range of issues that might arise.

Ms White: I asked representatives of other bodies about that, and they said much the same thing.

I want to ask you about your views on whether there should be a public appointments committee. The policy memorandum makes it clear that the detailed procedures relating to the appointment of the commissioner and the reporting arrangements

with the Parliament will be matters for the Parliament and will be set out in standing orders. Is there a need for a separate public appointments committee, or should such matters simply be for the Parliament?

Rona Fitzgerald: That is another tricky question, which I might want to think about. Where public appointments committees with a specified role have been introduced as part of the structure, it has worked well. The link with the Parliament, the democratically elected body, is an important one—people feel that it is a good place for accountability and legitimacy. I have a mixed view on the matter. In a sense, creating another committee would in itself create a dynamic. It would have to be ensured that such a committee could operate effectively and link closely with the Parliament. If a separate public appointments committee is not convened, we might lose out in some respects, including monitoring, having a proactive strategy and ensuring sufficient time for matters to be considered. I will think about the question further and come back to members on it.

Ms White: Thank you. That would be helpful.

John Young: You and I were Glasgow city councillors in a previous political life, convener.

The Convener: We were.

John Young: I mention that for a reason. Rona Fitzgerald mentioned her involvement with gender equalities in Europe and in Ireland. About 11 or 12 years ago, I was on a City of Glasgow District Council delegation to our twin city, Nuremberg. There might have been a need for you there, Rona. We found that the MEP, the equivalent of the MP, the mayor and the deputy mayor were all women. Some of the male councillors in Nuremberg told us that they really needed to secure some equality, but were not getting anywhere. I say that just in passing.

My question is in some ways along similar lines to my question to Mr Brady. You mentioned gender equality; I would like instead to address ageism. It is suggested in the bill that the commissioner retire at 65. People are living longer and living more active lives. A number of MSPs are over 65—I am one. In fact, I am over 70, and Winnie Ewing is older than that.

Has any thought been given to enabling some of the more elderly members of the community to become members of bodies such as the one that we are discussing? At the other end of the scale, is there a possibility that people who are in their 20s or early 30s could become members? I appreciate the fact that there can be problems with job commitments and expense. I agree with what you said about gender equality, but I wonder whether you have thought more about age equality. Is there any provision for getting younger people, perhaps under 30, involved?

15:00

Rona Fitzgerald: Your more light-hearted point about the under-representation of men is worth thinking about. When we talk about mainstreaming gender, we are referring to men and women. In work that I have done, in particular on how agricultural and rural development issues affect the genders, we have considered both men and women. The balance of our work has been in areas in which sex discrimination mainly affects women. In public appointments, we have been considering the under-representation of women in general. I do not think that either gender should dominate any sector, but that is a complex aim for us to achieve in the longer term.

We are not unconscious of the need to ensure the inclusion of people from as wide a variety of backgrounds as possible, which would include people from different age groups. I was at a meeting this morning with the Disability Rights Commission about new legislation and the strategy around greater access. Children and young people are not being consulted at the moment, although they are the objects of the strategy and are often the ones with the disabilities. Market research is crucial to understanding the needs of various groups.

Mainstreaming strategies have to promote the inclusion of as wide a range of people as possible, including older people who have years of experience and lots to offer and younger people who have the tensions and energy that we need to promote change. Getting a better balance will be very important. A mainstreaming strategy should be able to accommodate older people.

Having people retire at 65 is a civil service regulation, but there is no reason why we cannot say that we do not think that that is necessarily a good thing. People are living longer. I read something in the newspaper about someone who was in their 90s and still doing something that was important creatively. If people have the capacity to participate we should try to gain from their experience rather than exclude them.

John Young: Living in the Highlands and Islands, which involves travelling tremendous distances, is quite different from living in a compact geographical area. Do difficulties arise from that in getting people to serve?

Rona Fitzgerald: Yes, and we must always be aware of that. I have worked in the islands and have been to various places in Scotland. The geography and its effect on travel add a lot of difficulties for participation. If it takes four hours to travel to a meeting, that exacerbates difficulties, particularly for women, who are often the primary carers and are nearly always rushing home to get the tea. That is challenging. Travelling is an added

burden for people who do not have a lot of money. When I travel for my job, it is amazing how much I fritter away on things during the day, not only on travel expenses. It is important to recognise that as a reason for payment in public service.

The geographic issue is important and should be taken into account. Perhaps the commissioner will be able to encourage broader representation and ensure that the public bodies meet outside the central belt, even just once a year, to make sure that broader participation can take place.

John Young: Could we learn anything from Ireland? There are similarities with the geographical area that we are discussing.

Rona Fitzgerald: Participation in public appointments by a wider range of people remains geographically centralised. There are still people in the west of Ireland who must go to Dublin for meetings. When I worked with the Department of Justice, Equality and Law Reform, some of the events were held outside Dublin, which was successful, but it is not always possible to do that. In that sense there is not a lot to learn about geography and transport.

It is positive that a broader range of groups is represented and has been actively encouraged to participate and that money has been provided for women's groups to train people who want to be more involved in public appointments. However, the problem of geography is difficult to overcome without taking a meeting to another area. That must be a consideration.

The Convener: Thank you. There are no more questions.

You began by saying that you thought the Scottish Parliament was doing well in terms of women's representation and I support that. I remember the first time the committee considered the budget, a group from Engender examined the impact of the budget on women and it has continued to do that. Wherever possible, the committee raises the position of women and others to find out how we can support them better and get them involved not only in public appointments, but in other parts of public life.

It is interesting that John Young talked about ageism. I understand that the UK Government is seriously considering increasing the retirement age to 70. That might cover some of the issues.

Thank you for coming. If we need to get in touch with you again, we will do so.

Rona Fitzgerald: I will come back to you about Sandra White's question and try to clarify it.

The Convener: Okay, comrades. We welcome again Peter Peacock, the Deputy Minister for Finance and Public Services. Given that he is here

today and will be here every week for the next while, we should give him a season ticket. I welcome also David Spence from the public bodies and executive agencies team and Fiona Robertson, head of the public body and executive agency policy unit.

The minister has appeared before the committee before and knows the drill. After he has made some introductory remarks, I will open the floor to questions from members.

The Deputy Minister for Finance and Public Services (Peter Peacock): I have a fair amount of ground to cover in my opening statement. After I have spoken, my two associates and I will attempt to answer members' questions.

As the committee is aware, the Public Bodies and Public Appointments etc (Scotland) Bill implements the recommendations of two fundamental reviews of public appointments and public bodies in Scotland that have been undertaken since the advent of devolution: the February 2000 consultation on modernising the public appointments system, and last year's public bodies review, which I am sure all members recall.

The bill has two principal purposes. The first is to establish a separate independent commissioner for public appointments in Scotland. The second is to abolish six public bodies that are no longer required. Those bodies are listed in the bill.

The bill covers two other substantive matters. First, it will grant notarial powers to conveyancing and executry practitioners. Secondly, it will create a new public body, the national survey of archaeology and buildings of Scotland.

The creation of a Scottish commissioner is central to the Executive's plans to provide Scotland with a public appointments system that is independent, accountable and much more open than the one that has existed in the past. The system must be based on merit, so that the public can have increasing confidence in it. The bill contains a significant set of new proposals that will allow the Scottish commissioner to play a more dynamic role than do counterparts in other parts of the United Kingdom.

The first key function of the Scottish commissioner will be to regulate the appointments process by prescribing and publishing a code of practice for public appointments. We want the commissioner to consult Scottish ministers and the Parliament when drawing up the code. Secondly, the commissioner will oversee compliance with the code by ministers. They will have the power to inform Parliament if the code is breached—before appointments are confirmed. That is the commissioner's whistleblower role. Thirdly, the commissioner will appoint and train the independent assessors who will scrutinise the

process of appointments. Finally, they will report annually to Parliament.

The commissioner will have the power to examine the methods and practices that ministers adopt during an appointment exercise. If the code is not being observed properly, they may step in before the appointment is made.

The commissioner will be able to take action when they think that the code is unlikely to be complied with. If they are sufficiently concerned, they may direct ministers not to make an appointment.

The new commissioner will have an important additional power that the current commissioner does not have. Through the independent assessors whom the commissioner will appoint, the commissioner will be involved in each appointment. We believe that the work of the commissioner, together with the increased powers of parliamentary scrutiny, will help to increase public confidence in the system of public appointments.

The commissioner will have a formal role in and responsibility for the promotion of diversity in public appointments. That role will underline the Executive's commitment to ensuring that a wider cross-section of people comes forward to serve on boards and public bodies. The boards of our public bodies should reflect in full the richness and diversity of Scottish society. We want more women, more people from minority ethnic backgrounds, more disabled people and people from all socioeconomic backgrounds to participate and to be considered for appointments. Those people's voice and contribution are needed in all the work of our public bodies.

The bill also extends the role of the Parliament. Parliament will have a role in the appointment of the Scottish commissioner. It will have a much more serious role in the appointments process than it has had previously and will have increased powers of scrutiny throughout the process. It will, of course, be for Parliament to decide how it manages its new role. I have suggested that it consider establishing a dedicated public appointments committee, but that is a matter for the Parliament to consider.

The review of public bodies in Scotland identified the six public bodies that are cited in the bill for abolition. The abolition of those bodies cannot be effected without primary legislation. That is the reason for their inclusion in the bill.

The proposed notarial powers will ensure a level playing field for solicitors and independent conveyancing practitioners following the abolition of the Scottish Conveyancing and Executry Services Board.

The new national survey of archaeology and buildings of Scotland will take over the functions of the Royal Commission on the Ancient and Historical Monuments of Scotland. The new body will be classified as an executive NDPB with its duties and activities set down in statute rather than under royal warrant, as is the case at present.

The bill will implement changes that will modernise and improve the system of appointing people to the boards of our public bodies. We believe that it will have a positive impact on equal opportunities because the new commissioner will be given a specific responsibility to promote diversity to ensure that a wider cross-section of the Scottish people comes forward and is appointed to public bodies. The new roles for the commissioner and the Parliament will lead to greater public confidence in our public bodies and our public appointments system.

I am happy to answer questions from the committee.

15:15

The Convener: Thank you. I will kick off. Under section 3, Scottish ministers may, by order, in relation to appointments to the specified authorities, confer additional functions or remove functions that they consider appropriate. In particular, section 3 enables ministers to remove existing offices or bodies from schedule 2 by negative resolution. Should not such amendments be made by the affirmative resolution procedure?

Peter Peacock: The original thinking was to ensure that ministers did not have free rein to remove organisations from schedule 2 by their own hand. In order to facilitate the role of the Parliament and to allow it to express a view, it was considered that the appropriate procedure for doing that would be by negative resolution.

Frankly, I am not sure whether there is a deep, technical reason why that cannot be done by affirmative resolution. My colleagues may be able to say whether there is any particular logic behind the decision. If the committee has concerns and raises them in its report, I will happily consider the balance.

The Convener: Will the bill result in the public appointments process becoming overly complex and bureaucratic, in particular through the extension of the time frame for appointments, which might put off individuals from applying for posts? If that were to be the case, might not it undermine one of the good aspects of the bill, which is diversity? How does the minister expect the SCPA or the Executive to ensure that such effects are minimised?

Peter Peacock: The effectiveness of the appointments system and the need to ensure that

people are not discouraged from applying have to be balanced with the public interest that is shown—and which has been shown over many years—in the way in which public appointments are made. The convener will be aware that the Executive is accused—I think unjustifiably—of all sorts of political shenanigans in relation to public appointments. There is no evidence of that. The system is open and fair. We are putting in place a system that appears to be open, fair and transparent; one in which ministers are subject to close scrutiny by Parliament and independent assessors through the office of the commissioner. That will ensure that everything is above board and is seen to be above board.

We have tried to find the correct balance. Some people may think that the system is too bureaucratic, but the price of it not being that way is that we would continue to receive criticism—however justified or unjustified that may be—that could bring the public appointments system into disrepute. At the foundation of what we are trying to do lies the need to ensure that the system is of good repute—that is what we are trying to guarantee in the process.

Ms White: A number of bodies that gave evidence to the committee expressed concern about the commissioner's ability to react proactively to breaches of the code of practice. I want to allay those fears. You mentioned in your opening remarks that the commissioner has the ability to inform the Parliament before appointments are made and to examine applicants before appointments are made. You also mentioned that the commissioner could direct ministers not to make an appointment. Am I correct in thinking that ministers cannot overrule what the commissioner says? In instances in which the commissioner has expressed concerns about an appointment, where does the power lie?

Peter Peacock: I will try to talk the committee through the process. Where a post is to be filled, a job description will be drawn up and adverts will be placed to attract people. A shortlist will then be drawn up, interviews and post-interview discussions will take place and ministers will make the appointment. It would be normal for the assessors, who are independent of ministers and whom the commissioner will appoint, to be involved in the process from when the shortlist is drawn up right through to when ministers make the appointment. It will be possible for the independent assessor to be engaged in drawing up the job descriptions and placing the adverts, for example to consider the diversity requirements that we want to place on the commissioner and the appointments process. The independent assessors will be able to be involved from the outset.

If, during the process, the independent assessors felt for any reason that the code was not being followed properly, they could and would report that to the commissioner who, in turn, would seek to resolve the matter with ministers. I hope that the vast majority of matters would be resolved informally and that concerns would be referred to ministers to resolve informally. However, if concerns are not resolved to the satisfaction of the commissioner, they have the power, at any point in the process before an appointment is made, to blow the whistle on the minister and tell Parliament that they do not feel that the minister is acting according to the code. It would then be for Parliament to consider what to do. If the commissioner felt that the minister was about to break the code or had broken the code, they could instruct the minister not to proceed with the appointment until such time as Parliament had considered the matter.

We are giving the commissioner pretty extensive powers to regulate the procedure. In the final analysis, how the minister behaved thereafter would depend on what Parliament said.

As I have said before, if a minister ignored the dialogue that was going on with the independent commissioner and put themselves in a position in which Parliament was scrutinising their activities in the way that I have just described and sought to tell them to behave in a particular way, they would be out on a limb. I hope that we never get to such a position, because we have built in checks and balances to ensure that people know that they can be scrutinised if that is necessary.

Ms White: Most people who have given evidence have supported our having a separate Scottish commissioner. However, some organisations have expressed concerns that it might lead to a fragmented approach to appointments throughout the UK. Do you think that the bill will address adequately the Scottish problem and that it will not lead to a fragmented approach?

Peter Peacock: I am encouraged that SNP members' approach is now not to seek to fragment the UK. I hope to see that continue in many other policies over time.

Ms White: I did not say that. I am asking a question.

Peter Peacock: I take the point that people have made. There would be concern if we suddenly had widely diverging approaches throughout the UK to what are similar kinds of activities. Devolution, by its very nature, allows and encourages differences in approach in different parts of the UK, so we would expect differences to emerge, which is what is happening here.

In many respects, a more dynamic system is emerging in Scotland, because of the debate that there has been here about how to handle these matters. That said, we expect there to be close co-operation among the different commissioners, not just for its own sake, but to exchange information on good practice and what has not worked so well, to learn from that and to adapt each code of practice in the light of experience.

I understand that when Dame Rennie Fritchie gave evidence last week she suggested the possibility of a concordat among the different commissioners. That is a matter for them, but that might allow us to find the means to allay people's fears in that territory.

A lot of what we are considering today has its origin in the Nolan, Neill and Wicks committees—I hope that I have named those in the right order. If the Wicks committee were to make a set of recommendations that had implications throughout the UK, we would expect the Scottish commissioner to at least have regard to those and consider the implications for Scotland, although they would be free to decide their own policy.

With those safeguards in place, the dangers that people are concerned about need not be realised.

Ms White: I was about to mention Dame Rennie Fritchie's evidence. When I asked her that question, she mentioned that there might be a concordat.

Should a statutory duty be placed on the Scottish commissioner to liaise with the UK commissioner if anything untoward happens or if they do not agree?

Peter Peacock: I am quite happy to consider such a proposal. However, I hope that that would not be necessary. Common sense should dictate that, for all the reasons that I have outlined, people would want to liaise and keep in reasonably close contact with each other.

Moreover, it would be technically complex to impose such a statutory duty on the Scottish commissioner, because a similar duty would have to be placed on each of the other UK commissioners. After all, it takes two to tango. My instinct is to leave it to the good sense of a very senior appointment in Scotland to behave in such a fashion. That said, I am happy to reflect on the point before we come to the next stages of the bill.

Ms White: The Equal Opportunities Commission raised the point that the Scottish Parliament was much quicker than the Westminster Parliament to incorporate equality into a lot of its legislation. That is where the fragmentation occurs. I would not like to think that Scotland could come up with really good ideas to push forward equality issues but would be stopped because of legislation down

south. That is why I wondered whether a statutory duty should be placed on commissioners.

Peter Peacock: I take your point. However, I am pretty clear that placing a statutory duty on the Scottish commissioner to liaise would not require the change in legislation south of the border that we might want and that you seek. That would have to happen through other political processes.

Ms White: I was thinking that we could have a Sewel motion in reverse.

Peter Peacock: Are you suggesting a reverse takeover? It is an interesting thought.

Iain Smith: The Equal Opportunities Commission has suggested that, although the bill enshrines the commissioner's broad remit to promote diversity, it could be strengthened in that respect to ensure that equal opportunities are integral to the commissioner's policies and actions. Such steps would include the bill stating explicitly how gender equality and equality in general will be built into the commissioner's work and the fact that equality will be mainstreamed. Are you willing to consider including such proposals in amendments at stage 2?

Peter Peacock: I will consider the evidence carefully, although I appreciate that you have summarised the point. From giving evidence on other bills with which the committee and I are dealing—for example, the Local Government in Scotland Bill and the question of best value—I realise that the Equal Opportunities Committee and other committees have to advance any equal opportunities questions that are raised by legislation that passes through Parliament. We have given a memorandum of evidence to the Equal Opportunities Committee that tries to address the concerns and questions that it has raised with us on the matter.

As for the question whether, in promoting diversity, we should place a specific statutory requirement on the commissioner to promote particular aspects of the equal opportunities requirements, I should point out that the Executive's legislative programme includes a fairly consistent set of measures to incorporate equal opportunities. I am more than happy to review what we have done to find out whether we have taken account of those measures. However, I need to examine much more closely the question whether placing a statutory duty on the commissioner would have the desired impact. As I said, I am happy to review both the evidence to the committee and practices elsewhere to find out whether there is anything that we can reasonably carry out that would strengthen our approach.

Iain Smith: Section 2(10) places a duty on the commissioner

"to prepare and publish a strategy for ensuring that appointments to the specified authorities are made in a manner which encourages equal opportunities"

and to "set targets". We have heard evidence from Dame Rennie Fritchie and others to suggest that that duty should lie with ministers, with the commissioner's role being to ensure that ministers are implementing the strategy. Why have you chosen to place that duty on the commissioner? Do you have any thoughts on whether that duty could revert to ministers?

15:30

Peter Peacock: First, we thought it important for the commissioner to have a formal, statutory role to promote diversity. We can return later to the question whether that is adequately enough expressed in the bill.

Secondly, we were clear that it was not right for ministers to set their own targets on diversity. We thought that it would be more helpful for the commissioner to establish, independently of ministers, what ought to be happening in relation to diversity and to monitor ministers' compliance.

That is why we think that we have struck the right balance—I stress that it is a matter of balance and judgment. In relation to diversity, we think that it is preferable to place a statutory duty on the commissioner, that ministers should not be setting their own targets and that we should have some independent, external pressure on us to conform with what are regarded to be the right things to do.

Iain Smith: The commissioner has a duty to consult both the Parliament and Scottish ministers on the code of practice. In relation to the equal opportunities strategy, however, the commissioner has a duty to consult ministers only. Is there any reason why the Parliament and others are not being consulted on the equal opportunities strategy?

Peter Peacock: I am not entirely sure, now that you ask the question. We think that the Parliament has a legitimate interest in the drawing up of the code of practice and ought to be consulted. From the point of view of how the code would work in practice—in relation to procedures and administration—we think that ministers have a legitimate interest too. There is no requirement on the part of the commissioner to agree with what ministers say, or with what the Parliament says; the commissioner, while consulting other parties, retains his or her independence.

I will be happy to investigate whether there is an inconsistency in our approach to diversity in the bill. I imagine, as is the case with the present commissioner and the present code of practice, that the new commissioner would consult

informally and that there would be a lot of consultation with equalities interests on the diversity strategy. There would not seem to be anything wrong with consultation being held with the Parliament for diversities too; there may indeed be some merit in that. I will consider that matter and try to ensure that it is consistent with other measures.

Iain Smith: I take it from what you have just said that you do not feel that the duty to consult ministers on the code of practice need be strengthened by the addition of a requirement for ministerial or parliamentary approval of the code.

Peter Peacock: No. It is important that the commissioner is independent, and is seen to be independent, of both the Parliament and ministers. We can best guard the commissioner's independence by not requiring the Parliament or ministers to approve the code. We think it important for the commissioner to consult and to get a practical insight about proposals from a ministerial point of view; the Parliament also has a legitimate interest. Given the extent of public debate about public appointments in Scotland, it seems right that the Parliament be consulted too but, in the final analysis, it is only right that the commissioner—given the independence of their position—signs off the code.

John Young: When a commissioner demits office, he or she is restricted from taking up another position in a public body for at least three years. However, if you demitted office, you could take up a position in a public body within three months. What is the rationale behind that distinction?

Peter Peacock: It is explained by the relationship that the commissioner will have with individual public bodies, which may be quite intense. For example, it will affect how the chairs of public bodies are appointed. The commissioner will be involved more closely in the detailed work of public bodies than other officials are.

However, we recognise that the existence of this blanket provision constitutes a potential anomaly. For that reason, we have made it possible for the Parliament to waive the provision, if there has been no controversy or difficulty involving the commissioner and a particular public body. The Parliament may say that it is entirely reasonable for a retiring commissioner to take up a position in another public body within three months or some other period. The bill contains a general provision, but if the Parliament believes that the commissioner is acting reasonably it may lift the three-year restriction.

John Young: Surely ministers have tremendous knowledge of public bodies. Might they not have even more knowledge than commissioners have?

Why are ministers restricted from taking up positions in public bodies for only three months after leaving office, whereas commissioners must wait three years? That seems to be an anomaly.

Peter Peacock: John Young may be right. I would need to identify the source of the rules relating to the employment of ministers after they have left office. We may need to consider that issue at some stage. However, I am not sure that the member's point changes my position. We are trying to make a general provision, but to allow the Parliament flexibility in cases where it is reasonable to waive the rules. I am sure that in such circumstances the Parliament would act reasonably.

John Young: This afternoon we have discussed equal opportunities at great length. What about ageism? It is stipulated that the commissioner must retire at 65. You will agree that people are living longer. A number of members of the Scottish Parliament are more than 65 years old.

Peter Peacock: They are very sprightly.

John Young: Some of them are and some of them are not. What is the rationale for setting a retirement age of 65? Earlier I said that it is necessary to have a balance. I agree that there should be a gender balance and an ethnic balance. The minister mentioned that it was important for people with disabilities to be represented. I agree. However, there should also be an age balance. There should be opportunities for people over 65. At the other end of the scale, we should encourage people in their 20s to come forward for appointments, if that is at all possible. What is your reaction to that suggestion?

Peter Peacock: I take the point that the member makes. The Parliament contains many good examples of people beyond the age of 65 who have extremely alert minds and are capable of asking very difficult questions.

John Young: People such as yourself.

Peter Peacock: I have not quite reached that point. However, the post of commissioner is a pensionable job. We have set for it the same retirement age that is set for civil servants and across the board. The provision has been made in that spirit. No prejudice is intended. We are simply picking up on established practice. I am not sure why the rules that apply to the post of commissioner should be different from the rules that apply to many other jobs in the public sector.

I want to return to Mr Young's previous question. I understand that the three-year rule also applies in other pieces of statute that the Parliament has recently approved—for example, those relating to the public sector ombudsman. The provision

reflects legislation that the Parliament has approved in relation to similar appointments.

John Young: What about ministers, who are restricted from taking up positions in public bodies for only three months? You will agree that ministers—not just First Ministers and Deputy First Ministers, but ministers at all levels—acquire tremendous knowledge of public bodies, particularly within a Cabinet context. I am not suggesting that they should be restricted from taking up positions in such bodies for three years, but perhaps the qualifying period should be 15 or 18 months.

Peter Peacock: I think that my earlier point still stands: if there is good reason for the Parliament to waive the rule that prevents commissioners from taking up positions in public bodies within three years of demitting office, it has the provision to waive it. Whether the time is set at 15 months, 18 months or three years, the Parliament has the discretion to waive it if necessary or appropriate. That conforms to other areas of parliamentary legislation.

John Young: Are you, as ministers, bound by the Official Secrets Act 1989?

Peter Peacock: I have always operated on that basis—I assume that we are. Seriously—yes, we are indeed.

The Convener: The committee has received evidence calling for greater training in equal opportunities for those who are involved in the public appointments system. What strategies does the Scottish Executive have to achieve that?

Peter Peacock: A range of things is happening on equal opportunities throughout the Executive. Much more effort, of which training is a large element, is being made to mainstream equal opportunities into all our policies and work. As I understand it, the commissioner would promote diversity training for the staff involved in the appointments process.

We in the Executive already do a lot of equalities work, be it for individual staff members or groups of people. Good practice would determine that we instil that at all levels of process and all levels of thinking. I know from having appeared before the Equal Opportunities Committee that it has a strong role in reminding ministers of the continual need to do that and the need to mainstream policy. I do not think that the committee should be concerned about that; we want it dealt with properly.

The Convener: I do not think that we have any further questions. I can understand the minister's anxiety over Sandra White's wanting to have a reverse Sewel motion, which would be interesting.

It struck me that the title of the bill has

“Scotland” in brackets. I wondered why that was the case, and whether that was necessary. I guess that Scottish bills had “Scotland” in brackets before because they were United Kingdom bills that applied to Scotland, but bills of the Scottish Parliament are not. Could that point be considered?

Peter Peacock: The bill consists of two major parts, on public appointments and public bodies. I think that our original working title was “Scottish Public Appointments and Public Bodies Bill”. The feeling was that the construction of that title did not make it clear that both parts—public appointments and public bodies—applied to Scotland. It was felt that that could be achieved by putting “(Scotland)” at the end of the title, which makes it clear that both areas of the bill apply to Scotland. Some of the public bodies that operate in Scotland are not subject to Scottish statute.

I am sure that there has been, and will be, much debate about the question whether “(Scotland)” is the only way to designate what I have described. As the convener pointed out, rightly, it is a convention that follows Westminster practice. The convention was used for all Scottish Westminster bills to denote the fact that the bill would become Scottish legislation, albeit within the framework of the UK Parliament. I am not a lawyer and cannot tell you offhand whether there is any other way to give the same legal effect. I am more than happy to consider the matter further, however.

The Convener: I would be interested to see whether you can come up with a title without the brackets.

Iain Smith: The eventual act of the Scottish Parliament could apply only in relation to things over which we have devolved authority. That is also an issue.

Peter Peacock: That is, of course, the case. There are several levels to this. There is the short title of the bill, which is there simply because the bill needs a short title; equally, it determines the scope of the bill's provisions to some extent. It has been the convention in the past to use “(Scotland)”. The first line of the long title of all Scottish bills typically begins:

“An Act of the Scottish Parliament to make provision about”.

That in itself answers the question of extent. I will inquire of the lawyers whether there is any other way to achieve clarity in the short title covering the two limbs of the bill.

The Convener: I suspect that clarification about the two limbs of the bill could be considered by lawyers. Anyway, if the minister could take those points away and consider them, that would be helpful.

I thank the minister very much for coming along and answering our questions. We will see him again in a couple of weeks' time. I now close the public part of the meeting.

15:45

Meeting continued in private until 16:16.

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