Local Government Committee
2nd Meeting, 2002 (Session 1)
Tuesday 15 January 2002

The Committee will meet at 2.00 pm in Committee Room 2

1. **Items in private:** The Committee will consider whether to take items 4, 5, 6 and 7 in private.

2. **Public Appointments (Parliamentary Approval) (Scotland) Bill:** The Committee will take evidence on the general principles of the Bill at Stage 1 from—

   Alex Neil, MSP
   David Cullum, Non-Executive Bills Unit, Scottish Parliament
   Alison Coull, Non Executive Bills Unit, Scottish Parliament

   Office of the Commissioner for Public Appointments:
   Dame Rennie Fritchie DBE, Commissioner for Public Appointments
   Alistair Howie, Policy Adviser to Commissioner for Public Appointments

   Scottish Executive:
   Peter Peacock, MSP, Deputy Minister for Finance and Public Services
   Fiona Robertson, Head of Public Bodies Review, Corporate Services Department
   Donnie Jack, Head of Public Appointments, Corporate Services Department

3. **Budget Process 2003/04:** The Committee will consider terms of reference for the appointment of an adviser.

4. **Scottish Public Sector Ombudsman Bill:** The Committee will consider a draft Stage 1 report.

5. **Education (Disability Strategies and Pupils’ Records) (Scotland) Bill:** The Committee will consider its approach to the Bill at Stage 1.

6. **Travel Expenses:** The Committee will consider a claim for witness travel expenses.

7. **Committee away day:** The Committee will consider proposals for an away day.

Eugene Windsor
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The following papers are attached for this meeting:

**Agenda item 2**

Submission from Alex Neil, MSP  
LG/02/2/1

Submission from Dame Rennie Fritchie  
LG/02/2/2

Memorandum from the Scottish Executive  
LG/02/2/3

**Agenda item 3**

Budget Process 2003/04: Terms of Reference for an adviser  
LG/02/2/4

**Agenda item 4**

Scottish Public Sector Ombudsman Bill – Summary of Evidence  
[PRIVATE]  
LG/02/2/5

**Agenda item 5**

Education (Disability Strategies and Pupils’ Records) (Scotland) Bill – proposals for consideration at Stage 1  
[PRIVATE]  
LG/02/2/6

**Agenda item 6**

Local Government Finance Inquiry – witness expenses paper  
[PRIVATE]  
LG/02/2/7

**Agenda item 7**

Paper outlining details for a Committee away day  
[PRIVATE]  
LG/02/2/8

The following papers are attached for information:

Minutes of the 1st Meeting 2001  
LG/02/1/M
The Public Appointments (Parliamentary Approval) (Scotland) Bill and The Role of the Commissioner for Public Appointments

Introduction
The purpose of this paper is to explain the role of the Office of the Commissioner for Public Appointments (OCPA) and how it relates to the proposed Public Appointments (Parliamentary Approval) (Scotland) Bill. The paper considers both the current involvement of the OCPA in the process of appointments to public bodies and the provisions of the proposed Bill and explains where the provisions of the Bill overlap or are in addition to the current role undertaken by the OCPA.

The Role of the Commissioner for Public Appointments
The Public Appointments Order in Council 23 November 1995 provided for the specific functions of the Commissioner and these are detailed at Annexe A. The OCPA was established in 1996. The role of the Commissioner can be summed up in one statement to monitor the application of the Code of Practice (see below) to ensure appointments are made on the basis of merit, are fair and are from open competition.

Code of Practice
The OCPA published its Code of Practice in 1996 and an updated version of the Code was issued in July 2001. A summary of the processes provided for in the Code can be found at Annexe B. The Code sets out the process to be followed when preparing for and selecting people to take up public appointments. It also details how the Commissioner handles complaints and audits appointing bodies. The Code sets out seven principles that must underpin all appointments.

The seven principles are as follows:
- Ministerial responsibility
- Merit
- Equal opportunity
- Independent scrutiny
- Proximity
- Openness and Transparency
- Proportionality

These principles are the foundations of the OCPA involvement. The OCPA itself has no direct involvement in any appointment, their monitoring is entirely retrospective on a selective audit basis or in cases where a complaint is made.

The Bill enhances the seven principles, in particular through the additional consideration given to the nominees’ suitability, experience and quality with the aim of ensuring that the appointment is on merit alone.

The extra scrutiny that the Parliament will give under the Bill will reinforce the principles, the Parliament has the power to call before it nominees, Ministers and Executive Officials to give evidence prior to an appointment being made. In practice this may turn out only to be undertaken for higher profile appointments. Although every appointment can be considered by the Parliament and could be examined further if the need arose. Allowing nominees and Ministers to speak about applications in public session should ensure that any perception of deals being made behind closed doors is removed.
**Appointment process**

The appointment process has three stages. The involvement of the OCPA is restricted to requiring the appointment of independent assessors. Independent assessors are appointed by the Scottish Executive and sit on panels on an ad hoc basis, it is for the Executive department concerned to decide when an assessor will be involved in an appointment. Their role is to take part in the selection for certain candidates and for others to monitor the process, their specific functions are set out in Annexe B. The departments concerned select the assessors.

At the planning stage the Code requires specification for the post and thus the criteria for appointment to be set. This is required as the Code recognises that the criteria for appointment, even to the same post, may have changed. Under section 2(c) of the Bill the person’s suitability for the post is examined and the Executive are required to prepare a statement setting out the nominee's suitability. This allows Parliament to compare the initial specification with the statement.

Under the Code it is possible to re-appoint prior to the expiry of a term of office. The Code provides procedures and criteria for re-appointments, and for those appointments to be audited, however advertisement and the appointment of an independent assessor are not required. Re-appointments are included in the Bill and given the same scrutiny as new appointments. The Bill provides that additional safeguard allowing a judgement to be made in relation to the current criteria for the post and whether the postholder remains suitable. As highlighted above the criteria for the appointment may have changed in the period of the appointment.

The second stage of the process is preparation and the Bill will allow the Parliament to check that this stage has been carried out in accordance with the process set down at the planning stage. There is some overlap here but again the Commissioner is concentrating more on ensuring the process is properly undertaken. The Parliament will be concentrating on ensuring that the process attracts appropriately qualified applicants.

The Parliament will also consider the third stage, selection. The Code prescribes the procedures and the likely involvement of independent assessors and/or advisory panels. The Parliament as well as considering the procedure used will go further and assess the abilities and qualities of the applicant when rated against the specification. Under the Code an interview is held for every upper tier appointment whereas for lower tier appointments it is at the discretion of the department concerned whether a formal interview takes place. OCPA guidance requires that no nomination is to be made on the basis of written evidence only and as a minimum an informal chat with an Executive Official is necessary. The Parliament will scrutinise lower tier appointments to ensure that the Minister has carried out the procedure correctly as well as considering the abilities, experience and qualities of nominees to undertake the task.

**Complaints**

The Commissioner can only investigate complaints on a retrospective basis. The Bill allows Parliament to highlight potential difficulties prior to the appointment being made, it is anticipated that the Bill will pre-empt some of the complaints made to OCPA as a result of Parliament having considered the appointment process. If it appears to the Parliament that the process has not been followed correctly section 8(2) allows the Parliament to reject the nomination. In the case where a procedural
error has been made the nominee, with the express permission of the Parliament, may be re-nominated.

Thus the Parliament's scrutiny will lessen the prospect of complaint to the Commissioner. This in itself should give people participating in the appointment process greater assurance that the process of appointment is on merit and is open and accountable.

The Public Appointments (Parliamentary Approval) (Scotland) Bill
The Bill's aim is to increase the accountability of public bodies in Scotland through Parliament approving nominations to those bodies. The Commissioner's role is more about ensuring compliance with the Code of Practice than achieving the best candidate for the post. The Bill allows Parliament to consider the nomination based on four criteria:
(a) the procedure followed by the Minister;
(b) the fulfilment of statutory obligations;
(c) the suitability of the nominee for the post; and
(d) the adherence to the OCPA Code of Practice.

The Bill is intended to complement the work of the Commissioner. The focus of Parliament's scrutiny differs from that looked at by the Commissioner.

The only areas of overlap that exist between the work of the Commissioner, the independent assessors and the Bill relate to matters of procedural scrutiny. The majority of the Bill is unique and separate from the remit of the Commissioner. The Bill is very specific in addressing the principle issue of ensuring that nominees are suitable; the Commissioner makes sure that the process was carried out according to the Code of Practice.

Conclusion
The role of the Commissioner for Public Appointments is to monitor the application of the Code of Practice to ensure appointments are made on the basis of merit, are fair and are from open competition. The objective of the Bill is to increase the accountability of certain public bodies by requiring appointments made to those bodies to be subject to the scrutiny and confirmation of the Parliament.

The Bill enhances the seven principles underpinning the OCPA Code by providing for greater independent scrutiny, ensuring openness and transparency and that appointments are made on the basis of merit. The Bill may ultimately reduce the number of complaints made to the Commissioner as process problems are likely to be identified prior to appointment.

The appointment process will be strengthened by the Bill. It adds a unique independence and scrutiny that did not exist before without placing much of an additional burden on departments. It does this by utilising information already gathered in the process. The Commissioner's role is to regulate, monitor and report on Ministerial appointments in relation to ensuring that they follow a fair, open and transparent process. The Bill by concentrating on the abilities, qualities and experience required for the job, and matching them with those of the nominee enhances the process of appointing persons to public bodies in Scotland. It also assists in ensuring that the appointment process is seen to be open, accessible and free from political bias. The Bill will compliment the work already carried out by the
Commissioner and the independent assessors. There is very little overlap between the Bill and the work of the Commissioner.

Alex Neil MSP
Annexe A

Public Appointments Order in Council 1995

(a) to exercise functions with the principle of selection being on merit;
(b) to prescribe and publish a Code of Practice and any additional guidance as necessary;
(c) to audit appointment policies and practices to ensure that the Code is being adhered to;
(d) to require in certain circumstances appointing authorities to publish summary information in relation to selection for appointment;
(e) to conduct inquires into policies and practices followed by appointing authorities;
(f) to publish an annual report; and
(g) appoint other officers to carry out the functions of the Commissioner.
Annexe B

The Code of Practice and the Appointments Process

The Appointment Process
The appointment process divides bodies into two categories. The first is the upper tier which contains bodies whose members receive £5,000 or more in fees or bodies who receive £10 million or more of government funding. The second tier is the lower tier which are bodies whose members receive less than £5,000 in fees and who receive less than £10 million in government funding.

The appointment process is split into three stages, the planning stage, preparation stage and the selection stage.

The Planning Stage
The planning stage is the very first step of the process and this is when the selection criteria are chosen, decisions are made as to how and when the independent assessor will be used and timescales are set. The Minister is consulted at this early stage as they have to agree the above. Comments are also sought from the public body concerned on the criteria proposed who are also invited to highlight any other issues relevant to the appointment. Each time a vacancy arises a new job and person specification must be drawn up as the post may have changed since it was filled last. In selecting the criteria to be used the Executive department must have regard to the seven principles. The assessor has no input or role in relation to this step of the process.

The Preparation Stage
The second stage is the preparation stage which involves publicising appointments and sourcing potential candidates. At all times this requires to be done in adherence to the seven principles. All advertisement for posts must be conducted in a way that is proportionate to the level of the vacancy, for example the vacancy of Chair to a high profile body could expect to be advertised more widely than a vacancy for a non-paid member of a low-profile body. All vacancies which fall under the remit of the Commissioner must have the ‘OCPA Regulated’ mark on the advert to let applicants know that the appointment process is being monitored by the Commissioner.

Advertising is not the only way that people can learn about vacancies. Government departments can also seek candidates through other sources, namely:
- The Public Appointments Unit
- Department Lists
- Targeting of Individuals
- Nominating Bodies
- External Consultants

Regardless of how an applicant is sourced they must go through the same process as all the other applicants, including the completion of an application form. Application packs containing application forms must be sent out to all applicants and the Code of Practice details the minimum amount of information that the pack must contain and the formats that it is to be available in. Closing dates should be put on all applications and once specified it must not be changed without notification to all affected people.
The Selection Stage
The third and final stage of the process is the selection stage which covers the short listing and selection of appointees. Selection is achieved by measures which differ depending on the tier that the body belongs to and involves Independent Assessors and Advisory and/or scrutiny panels.

Independent assessors are people appointed by the Scottish Executive to oversee the appointments process, they receive training from the OCPA and are in place to ensure that the second principle of independent scrutiny is adhered to.

For appointments to upper tier bodies the assessors are likely to be used at the early stages and be a member of the advisory panel therefore they are fully involved in the selection procedure. For lower tier bodies the Commissioner recommends that the assessors have full involvement however there is no requirement for the assessor to assist other than reviewing the process not the decision making up to the point of short listing applicants prior to final selection.

An advisory or scrutiny panel is utilised to varying degrees according to the tier of the body. The panel consists of an official from the department, a representative from the public body and at least one independent assessor. For an upper tier appointment the key stages of the appointment process must be carried out by the panel. Panels can be established by the department to consider any and all appointments or they can be established on a one-off basis. The independent assessor is expected to take an active role in the panel. When an assessor is present all criteria must be agreed with the assessor as well as the process being followed. The assessor should also receive a copy of the panel's collective decision which must include who is being recommended to the minister and whether each candidate met the criteria for the appointment. No appointment can be made unless the candidate has been scrutinised by the panel.

For lower tier bodies there is no prescriptive way the appointment need be scrutinised apart from the proviso that no one individual will oversee the entire process. Independent assessors can be used, however if they are not involved they are at least required to review the process prior to the final decision to ensure that it has been carried out in accordance with the seven principles.

A shortlist of candidates is drawn up, each of whom will have been assessed against the criteria set down in the advert. All decisions made by the panel or the department must be documented, even those relating to rejected candidates.

During the selection process candidates require to be made aware of the standards a person is required to fulfil in order to serve on a public appointment and this includes political activity. All candidates are required to complete a question on political activity. (Annexe B of the Code of Practice)

It is for the Minister to decide who is ultimately appointed from those recommended to him.

Audit
The Code of Practice provides for an audit procedure of appointments made to ensure that those appointments comply with the Code of Practice. This is one of the functions of the Commissioner set down in the 1995 Order in Council. All
appointments to upper tier bodies will be audited by independent auditors and a selection of lower tier bodies will be audited annually.

Complaints
The Commissioner will not investigate any complaints about appointments which are more than one year old. The Commissioner will handle complaints regarding the appointments process, the individual's experience as an applicant and appointments where it appears the process has been breached. Complaints will initially be dealt with by the department concerned. The department has to report to the Commissioner on the number of complaints that it has received.

As well as the department involved being able to investigate the complaints the Commissioner can investigate or ask an independent auditor to do so. The Code prescribes the procedure for handling a complaint in any of these circumstances.
PUBLIC APPOINTMENTS (PARLIAMENTARY APPROVAL) (SCOTLAND) BILL

Memorandum by Dame Rennie Fritchie, Commissioner for Public Appointments

1. I am grateful to the Local Government Committee for inviting me to present written evidence in respect of the Public Appointments (Parliamentary Approval) (Scotland) Bill.

2. I should like to begin by recognising formally the importance of the Scottish Parliament in playing a proper part in the public appointments process. It may be helpful if I first set out my role as Commissioner for Public Appointments and then outline my strong reservations about the Bill.

3. I have been Commissioner for Public Appointments for Scotland, as well as for England and Wales, since March 1999. Under a separate Order in Council, I am also Commissioner for Northern Ireland. My role is to regulate and monitor Ministerial appointments to the public bodies within my remit. Scotland is due to establish its own separate Commissioner on 1 April 2003, subject to legislation being passed, at which time, I would relinquish my responsibility for Scottish appointments. A similar arrangement to establish a separate Commissioner for Wales is also being considered.

4. I have been working very closely with the Scottish Executive and the National Assembly for Wales. There is broad agreement that the Scottish Executive and the Welsh Assembly should adopt the established public appointments principles while they continue to adapt the appointments process and give it a national identity. I am keen to ensure that the valuable experience and wisdom built up in the Office of the Commissioner for Public Appointments since it was set up in 1995 is shared with the offices of the new Commissioners.
5. Since becoming Commissioner, I have been committed to opening up public appointments to a wider group of people, and have made a concerted effort to build relationships with different sectors and organisations, including women’s groups, ethnic minority organisations and community leaders. I have additionally endeavoured to address the perception that public appointments were subject to regional and demographic bias, and to reassure the public that the process is a regulated one.

6. I issued a new Code of Practice in July 2001 which aimed to simplify the previous Guidance issued by my office. The Code encourages all Government Departments to be as flexible and pragmatic as possible within the principles set down. The Code includes the principle of proportionality, which means that appointments procedures should be appropriate to the nature of the post and the size and weight of its responsibilities. It has taken some time for Departments to apply the principle of proportionality, as they were somewhat cautious about using it. I therefore intend to invite our auditors to report on Departments’ use of this principle in their forthcoming round of departmental audits. I also see it as very important that the process for each appointment is carefully timetabled and kept as simple and as short as possible.

7. In my view, the confirmatory hearings proposed in the Public Appointments (Parliamentary Approval) (Scotland) Bill would have an effect upon the public appointments process in Scotland, particularly in respect of new appointments to NDPBs.

8. As Commissioner, I have done much work to promote diversity in public appointments, which means trying to encourage different kinds of people, with different ways of doing things, to apply for these appointments. This includes more women, more from the ethnic minorities, more disabled people, more young people and more from the wider geographic regions. I have examined the perceived tension between appointment on merit and the need to achieve a greater diversity on boards. As a result, I have adopted a much broader definition of the term “merit” in line with the Nolan Committee’s original recommendations that criteria for selection should
9. In my outreach work, where I have been targeting women’s groups and various ethnic minority groups, I constantly hear that any additional processes are viewed as a real deterrent. I therefore feel that the Bill’s proposal for confirmatory hearings may have the effect of discouraging many people from a diverse background from applying for public appointments, therefore restricting the field of candidates. The proposal is especially likely to act as a deterrent to those who may not even be used to an interview situation, let alone appearing in public before a Parliamentary Select Committee. The result of this might be that the good progress made in Scotland to get people with more diverse backgrounds on to boards is severely affected.

10. The Bill will also extend the time taken to complete the public appointments process by building in an additional step. The practical difficulty of finding time for the Parliamentary Committees to hold confirmatory hearings, as well as the added difficulties of appointments having to be held up during Parliamentary recess, will inevitably lead to delays in the appointments procedures.

11. Another difficulty with such hearings might be that Committees could divide along party lines. This could then be perceived as politicising public appointments and would impede the principle of appointment on merit, which we have striven so hard to achieve over the last few years. This could have an effect on the confidence of the public about the way in which public appointments are made at a time when we are making progress in getting over the message that a fair, open and regulated process exists.

12. Confirmatory hearings might also compromise Ministerial accountability and the principle of choice. Parliament holds Ministers to account for their stewardship and may need to challenge or criticise the leadership and management of public bodies. This independence might be at risk if Parliament played a part in the appointments process.
13. Having said that, I can appreciate that the Scottish Parliament will wish to ensure that new appointees to high level posts, such as Chairs of Scottish NDPBs, are upholding standards of public service. I would therefore suggest that the Parliamentary Committee might invite new Chairs to appear before them after, for example, three months of being appointed to the post, and then perhaps again a year after that. The Committee could then satisfy itself that the public appointments process was delivering the right person for the task. Similarly, in relation to both extensions of appointment and re-appointments, which the Bill also covers, the Committee might wish to invite Chairs to appear before them at least six months before the appointment is due to expire in order to assess the Chairs continuing suitability for the post.

Dame Rennie Fritchie DBE
Commissioner for Public Appointments
35 Great Smith Street
LONDON SW1P 3BQ

17 December 2001
PUBLIC APPOINTMENTS (PARLIAMENTARY APPROVAL)  
(SCOTLAND) BILL 2001

MEMORANDUM
by the Scottish Executive

to the
LOCAL GOVERNMENT COMMITTEE
of the
SCOTTISH PARLIAMENT

September 2001
INTRODUCTION

1. This Memorandum has been prepared by the Scottish Executive to assist consideration by the Local Government Committee (as lead committee) of the Public Appointments (Parliamentary Approval) (Scotland) Bill 2001 (referred to throughout as “the Bill”) which was introduced by Alex Neil on 4 September 2001.

2. This Memorandum provides some background and sets out the Executive’s view on public appointments, the main theme of the Bill. It confirms the Executive’s resistance to the Bill.

Scottish Executive
September 2001
APPOINTMENTS TO PUBLIC BODIES

Background

3. In 1995 the Committee on Standards in Public Life (then known as the Nolan Committee), made a series of recommendations intended to increase public confidence in the way in which appointments to public bodies across Government were made. The principal recommendation was that an independent Commissioner for Public Appointments should be appointed. This Commissioner’s role would be to establish a Code of Practice for Ministerial appointments to public bodies, and to monitor the process to ensure that appointments are made on merit after fair and open competition.

4. The first Commissioner for Public Appointments was appointed in December 1995 and the first Code of Practice was issued in July 1996. In November 1988 the remit of the Commissioner was extended to cover appointments to advisory NDPBs, nationalised industries, public corporations and the utility regulators. Because of the nature of the work undertaken by Tribunals – bodies with jurisdiction in a specialised field of law – appointments to them do not come within the remit of the Commissioner.

The Commissioner’s Code of Practice

5. The Code of Practice sets out the regulatory framework for the public appointments process and is based upon seven principles as recommended by the Committee on Standards in Public Life. It aims to provide departments with a clear and concise guide to the steps they must follow in order to ensure a fair, open and transparent appointments process that produces a quality outcome and which can command public confidence. The seven principles as set out in the Code, are attached in the Annex to this Memorandum.

6. Independent scrutiny is a mandatory element of every appointments competition. No appointment may be made unless an independent assessor has been involved in the process. When making its recommendation on the principle of independent scrutiny, the Nolan Committee said “Independence cannot be precisely defined but should normally mean that such a person has no operational role within the bodies or the government departments concerned.”

7. The Executive currently has 15 Independent Assessors who act as the ‘guardians’ of the Commissioner’s Code. Although appointed by Ministers, they are not answerable to them and can raise any concerns over a specific appointments round directly with the Commissioner. As explained in Public Bodies: Proposals for Change, Ministers have agreed that in future responsibility for the appointment and training of Independent Assessors will transfer to the Scottish Commissioner for Public Appointments once that office is established.

Ministerial Appointments in Scotland

8. The Scottish Ministers are responsible for almost 3,500 appointments, 2,000 of which are to Children’s Panels. The actual number of vacancies can vary from year to year; this is because appointments are usually for a period of 3 or 4 years and members of bodies are generally eligible for re-appointment (subject to the conditions of the Commissioner’s Code). For the year ending 31 March 2000, 133 appointments and 115 re-appointments were made.
9. All appointments to Executive and Advisory NDPBs, Public Corporations, Nationalised Industries and Health Bodies are made in compliance with the conditions set out in the Commissioner for Public Appointments’ Code. For appointments to Tribunals, Ministers have agreed that the ‘spirit’ of the Code will be applied. In practical terms this means that steps are taken to ensure that these appointments are made on merit after a fair, open and transparent process.

10. All appointments made by the Scottish Ministers coming under the remit of the Commissioner for Public Appointments are subject to audit. Under the terms of the Commissioner’s Code, all departments are audited over a three-year cycle. The Executive’s appointments processes will be audited during 2001-02.
GENERAL IMPLICATIONS OF THE BILL

What the Bill Proposes

11. The purpose of the Bill is to increase accountability of Public Bodies to the Parliament. It provides that nominations for appointments to specified Public Bodies that are made by the Scottish Ministers, should be subject to the approval of Parliament. The definition of ‘appointments’ includes re-appointments and extensions to existing appointments. The proposal is for an ‘enabling’ Bill which will allow for detailed procedures for Parliamentary scrutiny to be laid down in Standing Orders.

The Executive’s Views

12. The Executive believes that there are a number of specific reasons why the proposals outlined in this Bill would have a serious negative impact on the appointments system.

13. The Executive believes that responsibility for making appointments to public bodies who are accountable to them must rest with Ministers who are in turn accountable to Parliament for their actions. The Bill threatens to muddy this clear and clearly understood line of accountability.

14. The Executive believes that there are already sufficient powers in place for the Parliament to scrutinise the work of public bodies which are not always used to their full extent. For example, under Section 23 of the Scotland Act, the Parliament can call on any person to appear before it to give evidence or to produce documents concerning any subject for which a member of the Executive has responsibility. The same powers could be used to hold Ministers to account for their appointments to public bodies and general policy towards each body.

15. As part of its on-going work relating to the review of Public Bodies, the Executive is committed to developing robust mechanisms for enhancing accountability and corporate governance.

16. The current appointments system has built-in mechanisms for ensuring that it is fair, open, transparent and delivers a quality outcome, which is subject to independent scrutiny. The Bill’s proposals would place the appointments system firmly in the party political arena and would undermine much of what has been achieved since the introduction of the Nolan rules. As made clear in Public Bodies: Proposals for Change, Ministers have agreed to proceed with the setting up of a Scottish Commissioner for Public Appointments. Part of the role envisaged for the Scottish Commissioner will be to report directly to the Parliament on the Executive’s performance in administering the Nolan process. The introduction of a Parliamentary layer of scrutiny as proposed in this Bill, would undermine the role and responsibilities of the new Commissioner.

17. The Bill’s proposals would have a serious negative impact on the Executive’s attempts to attract a more diverse range of candidates to public appointments. Ministers are committed to broadening the range of candidates being considered for a public appointment. In particular they are keen to see more women, more people from ethnic minority backgrounds, disabled people and people from different socio-economic groups coming forward for consideration. Faced with the possibility of being called to appear before a
Parliamentary Committee would only act a deterrent in attracting these and other candidates. All applications for public appointments are confidential and dealt with on a confidential basis. Many candidates would not wish knowledge of their candidature nor their personal applications forms to enter the public arena.

18. By necessity, the current system is already lengthy to ensure that every appointment is made on merit after a fair, open and transparent process. Despite this, every effort is being made to streamline the process. On average it can take between 4-6 months to complete an appointments round. The introduction of an additional stage in the process, as envisaged in the Bill with the possibility that it could last up to 56 days, would add considerably to the time taken to fill posts. Rejection of a nominee by the Parliament could have serious repercussions for the effective management of the public body in question in that a key post could be vacant for a considerable period of time. The Bill offers no practical solution to the problem of how a vacancy is to be filled if Parliament chooses to reject a candidate.

19. The costs of the proposals in terms of staff time being diverted from other tasks would be very significant. In the Executive’s view this opportunity cost would far outweigh any conceivable benefit.

20. For these reasons the Executive will not be supporting the Bill.
FINANCIAL IMPLICATIONS

21. The Financial Memorandum suggests that the main costs arising from the provisions of the Bill will relate to the number of cases where actual hearings take place and the number of cases where the recommended appointee is rejected and a fresh appointments round is ordered.

22. The Executive believes that the projected level of caseload as set out in the Financial Memorandum is extremely conservative and higher numbers of hearings are likely to be held by the Parliament. This will have a knock-on effect on overall costs. We believe that the minimum additional costs are likely to be in the region of £150,000.
INTERESTED PARTIES

23. The Bill seeks to introduce a level of Parliamentary scrutiny into the public appointments process. As the regulator of the public appointments system, Dame Rennie Fritchie DBE, Commissioner for Public Appointments should be consulted.
THE SEVEN PRINCIPLES

Ministerial Responsibility

The ultimate responsibility for appointments is with Ministers.

Merit

All public appointments should be governed by the overriding principles of selection based on merit, by the well-informed choice of individuals who through their abilities, experience and qualities match the need of the public body in question.

Independent Scrutiny

No appointments will take place without first being scrutinised by an independent panel or by a group including membership independent of the department filling the post.

Equal Opportunities

Departments should sustain programmes to deliver equal opportunities principles.

Probity

Board members of public bodies must be committed to the principles and values of public service and perform their duties with integrity.

Openness and Transparency

The principles of open government must be applied to the appointments process, its working must be transparent and information provided about the appointments made.

Proportionality

The appointments procedures need to be subject to the principles of proportionality, that is, they should be appropriate for the nature of the post and the size and weight of its responsibilities.
LOCAL GOVERNMENT COMMITTEE

BRIEFING PAPER

The Budget Process 2003/04
Appointment of Adviser to the Local Government Committee

1. Purpose of Report

The purpose of this report is to provide the Committee with an opportunity to consider and agree terms of reference and person specification in relation to the appointment of an adviser for the Budget Process 2003/04.

2. Background

At the meeting on 8 January 2002 the Local Government Committee agreed to appoint an adviser to assist its consideration of the Budget Process 2003/04. The Committee will be asked to consider Stage 1 of the Executive’s proposed budget 2003/04 by May 2002.

It is proposed that the adviser be appointed using the fast-track procedure. Under this procedure an adviser is appointed at a standard day rate not exceeding 15 days in total.

3. Finance Committee Adviser

The Finance Committee has a central co-ordinating role in relation to the scrutiny of the budget. To assist in this process the Finance Committee has agreed to appoint a standing adviser whose role will be to assist it in scrutinising the Executive’s spending proposals and to provide assistance to the Parliament’s subject committees in their scrutiny of Departmental budgets. The Adviser appointed to assist the Local Government Committee will liaise with the standing adviser as necessary throughout the process.

4. Proposed terms of reference

The Committee is invited to consider the following draft terms of reference for the appointment of an adviser.
Adviser Duties

The Adviser will:

- Set out a framework for gathering evidence
- Assist in the identification of relevant witnesses
- Prepare lines of questioning for witnesses
- If necessary, brief the Committee on particular aspects of the local government budget
- Sift the evidence gathered
- Analyse the findings
- Draft the Committee’s response to the Finance Committee by the end of May
- Provision of specialist expertise to clarify any ad hoc enquiries from the Convener and other Committee members during the course of the enquiry
- Meet with Clerking and Research Services staff, in Edinburgh, to discuss progress.
- Liaise with the standing adviser to the Finance Committee as appropriate.

Person Specification

The Adviser must:

- have extensive experience in local government finance in Scotland and have knowledge and understanding of the relevant policy issues. He or she should understand the construction of the local government budget within the Scottish Executive.

- be able to demonstrate credibility in the subject area. It is preferable that, if an academic, he or she should be recently published in the field.

- have proven analytical and interpretative skills and the ability to deal with evidence from a wide range of sources.

- have good communication skills and the ability to present and disseminate data in an accessible style. An ability to deal accurately with follow-up queries and offer clarification and explanation is essential

- be able to demonstrate that he or she has the time to undertake the work

- be able to maintain absolute confidentiality about the matters under consideration or which come before them.

As an expert in the field, he or she may have had an involvement with the main agencies involved in providing services. However, the adviser should not currently be wholly involved with the Scottish Executive or be set to gain from reallocation or increase in local government funding in any particular area. The successful candidate will be required to declare interests, pecuniary or otherwise, in advance of commencing employment.
Workplan

It is estimated that the role and workload of the adviser should be completed within 10-12 days. It can therefore be encompassed adequately within the 15 days allowed for within the fast-track procedure.

5. Recommendation

The Committee is asked to consider the content of this report, and approve the terms of reference for the adviser.

Eugene Windsor
Clerk to the Committee