Local Government Committee

21st Meeting, 2002

Tuesday 10 September 2002

The Committee will meet at 2.00 pm in Committee Room 3

1. **Item in Private:** The Committee will consider whether to take item 3 in private.

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

   Highlands and Islands Enterprise:
   Sandy Brady, Director of Strategy

   Equal Opportunities Commission:
   Ms Rona Fitzgerald, Director of Policy and Parliamentary Affairs

   Scottish Executive:
   Peter Peacock, MSP, Deputy Minister for Finance and Public Services
   David Spence, Public Bodies and Executive Agencies Unit
   Fiona Robertson, Head of Public Body and Executive Agency Policy Unit.

3. **Local Government In Scotland Bill:** The Committee will consider a draft Stage 1 report.

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The following papers are attached for this meeting:

**Agenda item 2**

Submission from Highlands and Islands Enterprise

Submission from the Equal Opportunities Commission

**Agenda item 3**

Local Government in Scotland Bill: Draft Stage 1 Report

[PRIVATE] TO FOLLOW
HIGHLANDS AND ISLANDS ENTERPRISE NETWORK
WRITTEN EVIDENCE ON THE PUBLIC APPOINTMENTS AND PUBLIC BODIES ETC. (SCOTLAND) BILL

Highlands and Islands Enterprise, as one of the bodies specified in Schedule 2 of the Bill, will limit its evidence to the provisions of Part 1 of the Bill and the relevant schedules in relation to the establishment of a Commissioner for Public Appointments for Scotland. Evidence is not being submitted on Part 2 of the Bill in relation to the abolition of a number of public bodies, etc.

1. Reasoning behind the Bill

Public bodies such as HIE play an important role in the governance of Scotland. HIE has welcomed the improvements in openness and accountability in the appointments procedures and processes that have come about since the Nolan Committee in 1995. Since devolution the availability to Scottish Ministers of guidance from the UK Commissioner for Public Appointments has further assisted these improvements.

In its written submission to the Scottish Executive’s consultation on Modernising the Public Appointments System in Scotland in March 2000, HIE did not advocate the establishment of another separate mechanism to deal with public appointments in Scotland given the cost implications and the danger of an inconsistent approach being taken to public bodies across the United Kingdom. HIE suggested that, if it was not feasible for the UK Commissioner to take on the role in the longer term, there may be merit in the responsibilities being built into the remit of the Standards Commission for Scotland as contained in the Ethical Standards in Public Life Bill.

More than a further two years post-devolution and with most appointments to public bodies in Scotland the responsibility of the Scottish Ministers, HIE recognises that it is now desirable to have a separate basis for Scotland and, given that the office of Standards Commissioner has now been established and the Ethical Standards in Public Life Bill enacted, it is probably no longer feasible to combine these two roles. However, there is clearly potential for significant confusion amongst the general public about the respective roles of the Standards Commissioner, the Public Appointments Commissioner and, indeed, the newly established Scottish Public Services Ombudsman and it will be vital that these roles are clearly defined and regularly publicised throughout Scotland.

2. Key issues raised by the Bill

Section 2 of the Bill states that the Commissioner is to prepare a code of practice which will regulate the process for making appointments by Scottish Ministers to the specified authorities. Potentially it will be the content of that code of practice which will give rise
to any practical implications for bodies such as HIE but, in general terms, HIE welcomes the establishment of such a code.

HIE welcomes the provisions of section 2(10) of the Bill which states that the Commissioner is to exercise the Commissioner’s functions with a view to ensuring that appointments to the specified authorities are made fairly and openly and, as far as reasonably practicable, all categories of person are afforded an opportunity to be considered for appointment. Any moves to further diversify membership of public bodies are to be welcomed. We would, however, stress that 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.

Within the HIE Network, we have not only the main HIE Board but a range of local boards – both Local Enterprise Company Boards (LECs) and Local Careers Scotland Advisory Boards (LABs). While we recognise the need for openness and fairness in all appointments procedures, there is a clear distinction between the paid appointments to the HIE Board and the unpaid service on local boards. In many cases, members of LECs and LABs give up huge amounts of personal time with no payment – as well as time needed for meetings, board members often have to spend inordinate amounts of time travelling to and from remote locations across the Highlands & Islands, often necessitating overnight stays away from home. A major concern for the HIE Network would be the risk of putting people off volunteering for service on local boards on account of any procedures that are overly complex or bureaucratic.

3. Consequences of the Bill’s enactment

HIE would hope that the main consequence of the Bill’s enactment would be a greater reflection of the diversity of Scottish life in our public appointments system and increased public confidence in the fairness and openness of the procedures and processes. The ability of the Commissioner to investigate complaints arising from any appointment to a specified authority should further increase that public confidence.

HIE would, however, hope that the enactment of the Bill, will not slow up the appointments procedures. In particular it may be appropriate to insert some timescales into Section 2(8) of the Bill in relation to the reporting of a case to Parliament.

4. Consultative process

HIE welcomed the opportunity to comment fully on the Scottish Executive’s consultation paper issued in February 2000 on Modernising the Public Appointments System in Scotland.

Sandy Cumming
Chief Executive
Highlands and Islands Enterprise
23 August 2002
INTRODUCTION

The Equal Opportunities Commission (EOC) was set up by the Sex Discrimination Act 1975 (the SDA). Its duties are to work towards the elimination of discrimination between women and men, to promote equality of opportunity between women and men generally, and to keep under review the workings of the Sex Discrimination and Equal Pay Acts. The Equal Opportunities Commission (EOC) is a non-departmental public body, funded through grant-in-aid. Our sponsor department is the Women and Equality Unit at the Department for Trade and Industry. The Equal Opportunities Commission is the leading agency working to eliminate sex discrimination in 21st Century Britain.

The EOC’s statutory responsibility relates specifically to gender equality, and that is where the Commission’s main expertise is. However, issues of gender equality are integral to all other equality groups, including those areas regulated by statute and those identified in Schedule 5 of The Scotland Act. The Commission also recognises the reality of multiple discrimination, where black women and women with disabilities suffer greater discrimination than black men or men with disabilities, and certainly than able-bodied white men. It is against this background that the EOC approaches this consultation.

Public Appointments and Public Bodies (Scotland) Bill

The following is a summary of points that will be part the EOC presentation to the Local Government Committee on 10 September

- EOC welcomes the appointment of Commissioner for Public Appointments with a clear task to publish code of practice. We also welcome developments in Scotland in respect of the objective to appoint more women to public bodies and the commitment to mainstream equality in the work of the Scottish Executive.

- The Bill as published is the result of considerable deliberation and consultation and we commend the Executive for that. However, we would have liked to see the Bill state explicitly how gender equality/equality will be built in the work of the Commissioner for Public Appointments and the bodies that fall within the scope of Bill, considering the range of public bodies and the relationship they have with the public, delivery of services and policies implementation.
In order to mainstream gender equality/equality in legislation we would suggest that the Executive:

- explicitly incorporates an equality perspective in the legislation and related documents
- demonstrate that both the process and the purpose of the legislation will adopt a mainstreaming approach.

**Mainstreaming**

Mainstreaming is a strategy that aims to make equality considerations, a regular part of the mainstream policy process. Underlying the concept of mainstreaming is a recognition that women and men do not have the same situations, needs and resources and that these differences can affect the way in which women and men can access everything from the labour market participation to public services. A number of tools underpin a mainstreaming strategy. These include:

- explicitly incorporating a gender perspective into policy development;
- sound baseline data about the relative position of women and men across a range of areas;
- clear target setting and indicators;
- a comprehensive, responsive and clearly communicated monitoring system and a robust system of evaluation.
- Provision for training and capacity building activities for all those involved in developing and implementing policy and practice.

In response to the Executive consultation papers the EOC made a number of points that the Committee might find useful:

**Key Objectives of the Public Appointments System**

The Scottish Executive, in modernising its appointments procedures should be and indeed, has demonstrated that it is prepared to question whether individual public bodies need to exist. Critical questions of this nature may suggest other ways of making decisions or delivering services that may be more effective and efficient. Where the continued need for the public body is agreed, further questions should be asked about how the body can achieve its objectives most efficiently and effectively. It is essential that appointments are made on merit, but in determining merit the criteria are crucial. The EOC strongly recommends that the criteria for appointment to all public bodies are reviewed.

**Transparency**

The Scottish Executive could do more to ensure that its procedures for making public appointments are more accessible and informative. In particular, the level of information and detail available from some Departments varies significantly from that available from other Departments. Consistent information in plain English that sets out what the posts require it would, in addition, be helpful if potted biographies of current postholders could be made available so that prospective applicants could see what background current postholders come from and also identify gaps in experience where they could make a contribution.
Attracting a Wider Range of People to Public Appointments

The Executive’s proposals for attracting a wider range of people to public appointments are very positive, and should begin to bring about change in the composition of some public bodies. The EOC would, however, in addition recommend action research to assist in identifying a wider range of people for public appointments.

Training

Training in equal opportunities for all officials and others who participate in the public appointments system should be essential. The Equal Opportunities Commission is very well aware that the majority of those who are involved in the selection and appointment process have not had adequate equal opportunities training. Lack of equal opportunities training can result in discrimination particularly in setting criteria. If the principles of equal opportunities are adhered, a wider range of people would be attracted. Criteria and advertising should take account of the fact that individuals with non-traditional backgrounds and experience could make a very positive contribution to the work of certain public bodies. For example, for some public bodies posters in doctors’ surgeries, libraries and shopping precincts plus local radio advertising could help to reach out to a still wider range of under-represented groups.

Targets for Diversifying Membership of Public Bodies

The targets set out in the consultation paper are appropriate. However, they will be achieved only by positive action, including positively encouraging under-represented groups to apply; offering support, encouragement and mentoring to under-represented groups; providing training in equal opportunities for all those involved in the selection and appointment process; and reviewing and revising all post criteria to eradicate discrimination.

Payment For Public Service

Scotland’s public bodies need high quality appointments to ensure that their deliberations and their services are top quality. Payment should therefore be sufficient to fund competence and, where necessary, expertise and to attract those with the skills the particular body requires. In addition, from time to time it is important to review the type and level of payment. Childcare and transport costs and the costs of caring for disabled or elderly dependents should clearly be met by public bodies if the Scottish Executive wishes to broaden representation.

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1 The National Economic and Social Forum in Ireland has in the last few years brought together into decision-making a wide range of formerly excluded groups, including travelling people, women’s group and people with disabilities. It provides useful example of how this can be achieved.
Improving the Appointments Process and Strengthening the Independent Element

The role of independent assessors is vital in demonstrating the independence of the appointments system. Appointment of assessors by the Commissioner would strengthen the perception of independence. Independent assessors should have good judgement and independence of mind and should be drawn from a wider range of people. If the proportion of independent assessors on appointment panels were to be increased, that would need to be increased by ensuring that specialist knowledge of the public body itself is well represented.

05/09/02
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