



The Scottish Parliament
Pàrlamaid na h-Alba

LOCAL GOVERNMENT AND COMMUNITIES COMMITTEE

AGENDA

5th Meeting, 2011 (Session 3)

Wednesday 9 February 2011

The Committee will meet at 9.45 am in Committee Room 4.

1. **Subordinate legislation:** The Committee will take evidence on the draft Public Appointments and Public Bodies etc. (Scotland) Act 2003 (Amendment of Specified Authorities) (No. 2) Order 2011 and the draft Scottish Public Services Ombudsman Act 2002 Amendment Order 2011 from—

Fiona Hyslop MSP, Minister for Culture and External Affairs, Sandy Robinson, Principal Architect, Jim Mitchell, Senior Architect, and Emma Thomson, Principal Legal Officer, Scottish Government.

2. **Subordinate legislation:** Fiona Hyslop MSP (Minister for Culture and External Affairs) to move S3M-7865—

That the Local Government and Communities Committee recommends that the Public Appointments and Public Bodies etc. (Scotland) Act 2003 (Amendment of Specified Authorities) (No.2) Order 2011 be approved.

3. **Subordinate legislation:** Fiona Hyslop MSP (Minister for Culture and External Affairs) to move S3M-7866—

That the Local Government and Communities Committee recommends that the Scottish Public Services Ombudsman Act 2002 Amendment Order 2011 be approved.

4. **Commission on the Future Delivery of Public Services:** The Committee will take evidence from—

Dr Campbell Christie, Chair, Alex Linkston CBE, Member, Kaliani Lyle, Member, Eddie Reilly, Member, Councillor Pat Watters CBE, Member, and Dr Ruth Wishart, Member, Commission on the Future Delivery of Public Services.

5. **Petitions:** The Committee will consider the following petitions calling on the Scottish Parliament to urge the Scottish Government to commission an independent review of the Scottish Public Services Ombudsman to make it more accountable for its performance, including the extent to which its investigations are fair and robust, and to widen its remit so that it can enforce recommendations it makes following investigations into the actions of public bodies—

[PE1342](#) Petition by Phyllis and Robert French

[PE1343](#) Petition by Sandra Smith

[PE1344](#) Petition by Philip Hawthorne

[PE1345](#) Petition by James Smith

[PE1346](#) Petition by William Whiteside

[PE1347](#) Petition by Christina Cumming

[PE1348](#) Petition by Mr and Mrs Corbett

[PE1349](#) Petition by Iris Innes

Susan Duffy
Clerk to the Local Government and Communities Committee
Room T3.60
The Scottish Parliament
Edinburgh
Tel: 0131 348 5217
Email: susan.duffy@scottish.parliament.uk

The papers for this meeting are as follows—

Agenda item 1

Cover Note for Draft Instrument

LGC/S3/11/5/1

[The Public Appointments and Public Bodies etc. \(Scotland\) Act 2003 \(Amendment of Specified Authorities\) \(No. 2\) Order 2011](#)

Cover Note for Draft Instrument

LGC/S3/11/5/2

[The Scottish Public Services Ombudsman Act 2002 Amendment Order 2011](#)

Agenda item 4

PRIVATE PAPER

LGC/S3/11/5/3 (P)

Agenda item 5

Note from the Clerk

LGC/S3/11/5/4

Local Government and Communities Committee

5th Meeting, 2011 (Session 3), Wednesday, 9 February 2011

Subordinate Legislation

SSI title and number: The Public Appointments and Public Bodies etc. (Scotland) Act 2003 (Amendment of Specified Authorities) (No. 2) Order 2011
(SSI 2011/draft)

Type of Instrument: Affirmative

Meeting: 9 February 2011

Date circulated to members: 20 Jan 2011

SSI drawn to Parliament's attention by Sub Leg Committee: No

Purpose: This Order amends schedule 2 to the Public Appointments and Public Bodies etc. (Scotland) Act 2003 to the effect that "Architecture and Design Scotland" is listed under the heading of Executive bodies rather than Advisory bodies.

Local Government and Communities Committee

5th Meeting, 2011 (Session 3), Wednesday, 9 February 2011

Subordinate Legislation

SSI title and number: The Scottish Public Services Ombudsman Act 2002 Order 2011 (SSI 2011/draft)

Type of Instrument: Affirmative

Meeting: 9 February 2011

Date circulated to members: 20 Jan 2011

SSI drawn to Parliament's attention by Sub Leg Committee: No

Purpose:

This Order amends Part 2 of the schedule to the Scottish Public Services Ombudsman Act 2002. Schedule 2 to that Act specifies persons liable to investigation by the Scottish Public Services Ombudsman. The Order adds Architecture and Design Scotland to that list.

Local Government and Communities Committee

5th Meeting, 2011 (Session 3), Wednesday, 9 February 2010

Petitions PE1342, PE1343, PE1344, PE1345, PE1346, PE1347, PE1348, PE1349.

Introduction

1. At its meeting on 23 November 2010, the Public Petitions Committee considered eight petitions calling for an independent review of the Scottish Public Services Ombudsman (SPSO). The petitions and the petitioners are—

[PE1342](#) Petition by Phyllis and Robert French

[PE1343](#) Petition by Sandra Smith

[PE1344](#) Petition by Philip Hawthorne

[PE1345](#) Petition by James Smith

[PE1346](#) Petition by William Whiteside

[PE1347](#) Petition by Christina Cumming

[PE1348](#) Petition by Mr and Mrs Corbett

[PE1349](#) Petition by Iris Innes

2. These petitions are identical in that they are all:

“Calling on the Scottish Parliament to urge the Scottish Government to commission an independent review of the Scottish Public Services Ombudsman to make it more accountable for its performance, including the extent to which its investigations are fair and robust, and to widen its remit so that it can enforce recommendations its makes following investigations into the actions of public bodies.”

3. At the meeting on 23 November 2010, the Public Petitions Committee agreed to refer the petitions to the Local Government and Communities Committee, and to write to the Scottish Parliamentary Corporate Body (SPCB). The Clerk to the Public Petitions Committee wrote to the Chief Executive seeking the SPCB’s view on a review of the performance of the SPSO and a possible extension to its remit.

4. A response from the Clerk/Chief Executive, agreed by the SPCB and setting out its position on the possibility of a review and extension to the remit, was sent to the Clerk of the Local Government and Communities Committee on 10 December 2010 (Annexe A). The letter from the Clerk/Chief Executive included a copy of his earlier letter to the Clerk of the Public Petitions Committee on these petitions.

Background

5. The Office of the SPSO was established in 2002 by the Scottish Public Services Ombudsman Act 2002. The Ombudsman is appointed by Her Majesty on the nomination of the Scottish Parliament. The SPSO handles complaints about public services in Scotland, including councils, the National Health Service,

housing associations, the Scottish Government and its agencies and departments, universities and colleges and most Scottish public authorities.

6. The SPSO is directly accountable to Parliament through the laying of annual and other reports, but is independent of the Scottish Government, members of the Scottish Parliament and the SPCB in the exercise of its functions. It has been the practice of the Local Government and Communities Committee to take evidence from the SPSO each year on its Annual Report. The Ombudsman last gave evidence to the Local Government and Communities Committee on his annual report on 10 November 2011. The Standards Procedures and Public Appointments Committee has recently published a report in which it recommends that the annual reports of all parliamentary commissioners and ombudsman be formally referred to a lead committee for consideration.

7. The Ombudsman, Jim Martin, was appointed in May 2009. Shortly after his appointment, he commissioned an independent review by the Local Government Ombudsman in England on the handling of a long-standing complaint. The report was laid before Parliament on 2 October 2009. Although this report concentrated on one particular case, it highlighted weakness in processes and procedures that could have had systemic implications. Mr Martin apologised unreservedly for the way in which the case had been handled.

8. In response to the findings of the independent review, the SPSO has undertaken an internal review of its complaints handling policies, guidance procedures and practices. In evidence to the Committee, the Ombudsman has recognised that certain levels of performance were unacceptable and indicated that he has taken steps to address these issues. These steps included a reorganisation of the way that the SPSO's office handles cases and has resulted in a shortening of the time taken to handle complaints.

9. Further work on standardising the complaints procedure has been undertaken by the SPSO as required under section 16A of the Scottish Public Services Ombudsman Act 2002 (inserted by the Public Service Reform (Scotland) Act 2010). The SPSO draft Statement of Complaints Handling Principles was laid before Parliament on 5 November 2010 and was referred to the Local Government and Communities Committee for consideration. The Committee recommended that the draft Statement of Principles be agreed to.

SPCB comments

10. In his letter to the Committee, on behalf of the SPCB, the Clerk/Chief Executive acknowledges the work being done to improve the SPSO's performance. He states that there are no plans at this point in time to undertake a further review of the performance and actions of the Ombudsman, particularly as it is clear that the Ombudsman recognised that some of the procedures and processes were deficient, and has taken suitable measures to address them.

11. The SPCB has not taken a position on the extension of the Ombudsman's remit to enable him to enforce any recommendations it makes following investigations. In evidence to the Committee on 10 November 2010, the Ombudsman indicated that if he were to find that his recommendations were

constantly being challenged (which they currently are not), he might come to Parliament at some future date to argue that something be done to strengthen the power. He suggested that this could be changing the SPSO's power from one of making recommendations to one of giving directions, although he counselled caution in considering how this could be done¹. He also stated that the SPSO might need the support of Parliament from time to time to ensure that recommendations are carried out.

Decision

12. The Committee is invited to agree what action it wishes to take in relation to these petitions. Three potential options are suggested below and the Committee is invited to indicate which option it prefers—

13. **Option 1 – The Committee could decide to close the petitions under rule 15.7 of Standing Orders.** If the Committee considers that the action taken by the SPSO to review and improve its performance, accountability and its investigations is sufficient to satisfy and allay any need for an independent review of the SPSO, and that there is no need to widen the SPSO's remit so that it can enforce its recommendations, the Committee can decide to close these petitions under rule 15.7 of Standing Orders. The Committee must notify the petitioner that the petition is closed and provide the reasons for closing it.

14. **Option 2 – The Committee could consider any further action it would like to take on these petitions before dissolution.** The Committee could consider whether it wishes to take any further action in relation to these petitions before dissolution, taking into account the committee's current work programme and limited number of committee meetings remaining before dissolution.

15. **Option 3 – The Committee could include a recommendation in its legacy paper to its successor Committee to reconsider these petitions in the next session.** The Committee may wish to recommend that these petitions are considered by its successor. Given it is likely Standing Orders will be changed so that the SPSO's annual report will automatically be referred to a lead committee to consider, this would provide an opportunity for a successor committee to assess how effective the changes implemented by the SPSO have been. The successor Committee could also consider whether there is a need to widen the SPSO's remit so that it can enforce recommendations that it makes following investigations.

Susan Duffy
Clerk to the Committee

¹ Local Government and Communities Committee. Official Report, 10 November 2010, col 3677.

Susan Duffy
Committee Clerk
Local Government and
Communities Committee
The Scottish Parliament
Edinburgh
EH99 1SP

Clerk/Chief Executive
Edinburgh
EH99 1SP

Tel: 0131-348-5255
Fax: 0131-348-5259
Paul.grice@scottish.parliament.uk
Typetalk: 18001 0131 348 5255
(for Scottish parliament information use the
Textphone No: 0845 270 0152)

December 2010

Dear Susan,

PETITIONS PE1342, 1343, 1344, 1345, 1346, 1347, 1348, 1349

As you know I have received a letter dated 24 November 2010 from Fergus Cochrane, Clerk to the Public Petitions Committee relating to the above petitions which I understand have now been referred to the Local Government and Communities Committee. We have followed with interest the progress of these petitions and noted the deliberations that have taken place in the Public Petitions Committee.

In his letter, Fergus Cochrane has asked the SPCB for further information about reviewing the performance and actions of the Scottish Public Services Ombudsman. My response has been agreed with the SPCB.

You may already have seen the SPCB's earlier letter of 8 October to the Public Petitions Committee on the above petitions (copy attached, for ease of reference), but it may be helpful to provide some additional background and to put this matter in context.

Mr Martin was appointed on 1 May 2009 and quickly identified that there were issues around the way some cases had been handled by the office. In August 2009, Mr Martin commissioned the Local Government Ombudsman in England to undertake an independent review of the way in which a complaint, received in 2005, had been handled.

While the review concentrated on one particular case, the findings of the review pointed to weaknesses in the processes and procedures of the office that could have systematic implications. I enclose a copy of the report for the Committee's

information which Mr Martin laid before Parliament on 2 October 2009 together with an unreserved apology for the way in which the case had been handled.

On the basis of the independent review findings, Mr Martin undertook his own internal review of all aspects of the complaints handling policies, guidance, procedures and practices. This resulted in a widespread reorganisation of the way the Ombudsman's office now deals with cases with greater focus in particular on shortening the time taken to deal with complaints.

Given the external review was completed just over a year ago, the SPCB has no plans at this point in time to undertake a further review of the performance and actions of the Ombudsman, particularly as it is clear that the Ombudsman recognised that some of the procedures and processes were deficient, and has taken suitable measures to address them

The petitioners have also sought the Ombudsman's remit to be widened so that it can enforce recommendations it makes following investigations into the actions of public bodies. I also see from the Official Report of the Committee's meeting of 10 November 2010 that this was an issue the Committee discussed with Mr Martin. However, the SPCB has not taken a position on this matter.

I hope this information is of assistance to the Committee in its deliberations on the petitions.

A copy of this letter has also been sent to the Clerk to the Public Petitions Committee.

Yours sincerely

P E GRICE
Clerk/Chief Executive



The Scottish Parliament
Pàrlamaid na h-Alba

Fergus Cochrane
Clerk to the Public Petitions
Committee
The Scottish Parliament
Edinburgh
EH99 1SP

Clerk/Chief Executive
Edinburgh
EH99 1SP

Tel: 0131-348-5255
Fax: 0131-348-5259
paul.grice@scottish.parliament.uk
Typetalk: 18001 0131 348 5255
(for Scottish parliament information use the
Textphone No: 0845 270 0152)

8 October 2010

Dear Fergus,

Petitions PE1341 and PE1342 - 1349

Thank you for inviting comments from the Scottish Parliamentary Corporate Body (SPCB) in relation to the above mentioned petitions which are currently being considered by the Public Petitions Committee. The SPCB has asked me to reply.

It is perhaps worth noting that the role of the Scottish Public Services Ombudsman (SPSO) is not to act as an advocate for complainants nor as a defender of the bodies within his jurisdiction but as an independent and impartial arbiter for members of the public who claim to have suffered injustice or hardship as a result of maladministration or service failure. With this in mind we would comment as follows on each of the petitions.

PE1341 calls on the Scottish Parliament to conduct an annual audit of the public expenditure on the SPSO and establish public complaints channels to examine the public dissatisfaction at the SPSO in managing complaints raised by members of the public.

Under the Scottish Public Services Ombudsman Act 2002, the SPSO must prepare annual accounts in respect of each financial year and send a copy of the annual accounts to the Auditor General for Scotland for auditing. Given a statutory provision already exists for the expenditure of the SPSO to be audited, we can see no benefit in the Scottish Parliament undertaking a similar exercise.

As the Committee may be aware, the SPSO, in the exercise of his functions is not subject to the direction or control of any member of the Parliament, any member of the Scottish Executive or the Scottish Parliamentary Corporate Body. The SPSO provides members of the public who are dissatisfied with the decision reached, an opportunity to have the decision reviewed if certain facts contained in the report are not accurate and evidence is readily available to demonstrate that, or the complainant has new and relevant information which was not previously available

which affects the decision reached. The SPSO publishes Casework Challenge Decisions letters on a quarterly basis.

In addition, the SPSO has a 3 stage complaints process for dealing with service delivery complaints cumulating with the complaint being sent to an Independent Service Delivery Reviewer. The SPSO publishes complaints statistics including the outcome of each service delivery complaint on a quarterly basis.

As the SPSO has procedures in place for dealing with complaints from members of the public who are dissatisfied, including publishing statistics on the number of complaints received and the outcome, we can see no reason to establish public complaints channels. In addition, given the SPSO's independence, it would not be appropriate for the Parliament to have a role in the SPSO's complaints processes.

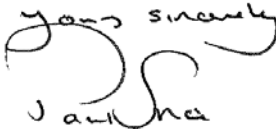
Petitions PE1342-1349 call on the Scottish Parliament to urge the Scottish Government to commission an independent review of the SPSO to make it more accountable for its performance, including the extent to which its investigations are fair and robust, and to widen its remit so that it can enforce recommendations it makes following investigations into the actions of public bodies.

As mentioned above, the SPSO in the exercise of his functions is not subject to the direction or control of any member of the Parliament, any member of the Scottish Executive or the Scottish Parliamentary Corporate Body. This is to safeguard the SPSO's independence.

The SPSO is accountable to the Parliament through the laying of reports. The Review of SPCB Supported Bodies Committee endorsed the SPCB's suggestion that officeholders should be subject to committee scrutiny and monitoring on the exercise of their functions on at least an annual basis and also recommended that the SPSO should be considered more frequently by Committees of the Parliament given that one of the SPSO's roles is to let Parliament know how well public services are working.

On the SPSO's performance, the SPCB has noted that since the SPSO introduced new internal practices and procedures, the number of outstanding complaints has fallen significantly and that the average turnaround time for determining complaints has also dropped substantially.

Any change to the remit of the SPSO including widening its remit so that it could enforce its recommendations would be for the Scottish Government to propose through the legislative process and the Scottish Parliament to approve or otherwise.

Yours sincerely

J a n e t a

P E GRICE
Clerk/Chief Executive