

# The current arrangements for the appointment of the membership of Scottish local council education committees offend basic equal opportunity principles

By Democratic Audit

*The Education Committees of Scottish Local Authorities are currently obliged to reserve three 'external' positions for religious organisations. A recent petition from the Edinburgh Secular Society has sought to reform these arrangements, which date back to legislation from the 1970's and have, **Norman Bonney** argues, worrying legal and equalities implications.*

*St Giles' Crown, Edinburgh (Credit: Fr Lew, OP, CC BY ND NC 2.0)*

Local authority education committees in Scotland have, by laws inherited by the Scottish Parliament from the UK Parliament with devolution in 1999, three members with voting powers that are nominated by religious organisations. The Church of Scotland can nominate one member on all 32 committees; the Roman Catholic Church in Scotland can nominate one member on the 29 mainland committees; a third religious nominee emerges from public advertisement –but he or she may be the only nominee forthcoming. Research by the Edinburgh Secular Society has established that these third nominees are overwhelmingly Christian. A Church of Scotland paper at its 2013 annual Assembly stated that 'church representatives hold the balance of power in 19 of Scotland's 32 local authority education committees'.

In January 2014 the Scottish Parliament Public Petitions Committee heard a petition submitted by Edinburgh Secular Society and signed by over 1700 persons which suggested that the Scottish Parliament should urge the Scottish Government to bring forward proposals to amend 1974 local government legislation, itself amended in 1994, to remove the legal obligation on local authorities to accept the nominations of these religious representatives on their education committees. Other legislation would still allow individual local authorities, if they wished, to appoint religious nominees among the fifty per cent of the education committees' membership that may be appointed from external interests. As things stand at the moment they have to accept church or faith nominees selected by the process described.

Evidence which came before the Public Petitions Committee on 18 March, when it considered the petition, indicated that the Scottish Government did not plan to make any changes to the relevant laws. The two churches also indicated that they did not favour giving up their automatic seats on education committees. However a letter from the Scottish office of the Equality and Human Rights Commission stated that;

Section 149 of the Equality Act requires public authorities in Scotland to give due regard to the need to;

- eliminate unlawful discrimination, harassment and victimisation
- Advance equality of opportunity between different groups
- Foster good relations between different groups

The 1973 Act (as amended by the 1994 Act) of course predates the public sector equality duties; however, the Commission believes that, as concerns have now been raised, an appropriate course of action for Scottish Ministers may be to assess whether these provisions and the policies and practices which flow from them meet the requirement to give due regard to the three elements of the Equality Duty listed above'.

Without debating the issues, and perhaps keen to get a tricky issue off its agenda, the Petitions Committee referred the matter to the Education and Culture Committee for consideration and on Tuesday 6 May 2014 the latter Committee decided, without opposition and after a brief discussion, to close consideration of the petition and move to other business. In the course of the brief discussion the convenor, SNP MSP Stewart Maxwell, stated that

since the Scottish Government had determined its position on the matter there was no point in discussing it further. No reference was made to the letter from the Equality and Human Rights Commission.

## **Worrying issues**

Several aspects of this case study are a cause for concern. Firstly, there was no substantive discussion in the Education and Culture Committee of the issues raised by the petition and of the contributions that had been offered in evidence by several interests. Such meek acceptance of the line of the Scottish Government by representatives of the SNP majority and the Labour, Liberal Democrat and Conservative parties, without even debating the merits of the evidence does not suggest that the Committee was effectively undertaking its duty to hold the executive to account and be considerate of the representations made by numerous citizens and their organisations. What happened was far from the great ambitions for participatory democracy espoused in the early days of the current Scottish Parliament. In its Code of Conduct for MSPs the Scottish Parliament states;

‘2.2 The Scottish Parliament commits itself to being an open, accessible participative Parliament in which the public and other organisations in civil society are partners’

This principle seems not to have been followed in this case.

Also significant was the lack of any evidence from the Convention of Scottish Local Authorities which is currently experiencing considerable turmoil because of party political differences and the current referendum on independence. Surely such a body should have a view on possible changes in legislation affecting local authorities.

The current arrangements for the appointment of religious nominees to Scottish local council education committees offend many equal opportunity principles and the Equality and Human Rights Commission rightly raised the need for reconsideration of them. How can the Scottish Government and the Scottish Parliament be promoting equal opportunities when seats are reserved exclusively for nonelected religious nominees on committees and when there are specific reservations in two of the three places for nominees of two specific churches? How can refusing to consider in a meaningful way variation of these arrangements meet the obligations on the Scottish Government and the Scottish Parliament to advance equality of opportunity between different groups, particularly between the religious and the non-religious and even among different religious denominations? Will not a failure even to consider substantively the case of the petitioners promote good relations between groups, as the Scottish Parliament and the Scottish Government are obliged to by the 2010 Equality Act? Is not there a need for an independent legal view as to whether the current arrangements are discriminatory and in breach of the Act to be considered by these two public bodies? And can the current system of religious appointees, which generates 95 per cent of the appointees as Christians, be justified when the Scottish Parliament in its weekly Time for Reflection attempts to be much more religiously diverse, giving 18 per cent of the time to non-Christian denominations?

This case study questions whether petitions to the Scottish Parliament do get full and proper consideration, especially when they are passed from the Petitions committee to another one which for reasons of political convenience prefers not to engage with the substantive matters raised by the petitioners and the Equality and Human Rights Commission.

It should also be noted that one of the members of the Committee declares affiliation to the Church of Scotland on the Parliament’s website. Another member, who declares as Christian, initiated the move in the Committee to dispose of the petition without further action. No mention was made of these interests in the discussion. The Code of Conduct only regulates financial interests. Perhaps, too, that may need reconsideration.

Committee members also stated that they felt that the substance of the petition could be better dealt with in connection with a forthcoming private members’ bill by John Finnie MSP, the *Local Government Transparency and Accountability (Scotland) Bill*, which would, among other things achieve the same effect. They admitted, however, that it may not proceed if it does not get sufficient support. To go ahead it will require the support of 18 MSPs from three political party groups and a statement from the Scottish Government that it does not intend to legislate on the matter.

The Scottish Parliament now confronts major tests of its commitment to equal opportunities and whether it is prepared to assert itself independently of the Scottish Government.

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*Note: this post represents the views of the author and not those of Democratic Audit or the LSE. Please read our [comments policy](#) before posting. The shortened URL for this post is: <http://buff.ly/1nvnhVH>*

*The petition can be viewed [here](#). The letter from the Equality and Human Rights Commission can be viewed [here](#). For those who wish to follow these issues further there are complete visual and documentary recordings of the committee meetings at [the Scottish Parliament website](#)*

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