



OFFICIAL REPORT
AITHISG OIFIGEIL

DRAFT

Standards, Procedures and Public Appointments Committee

Thursday 21 March 2024

Session 6



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STANDARDS, PROCEDURES AND PUBLIC APPOINTMENTS COMMITTEE
7th Meeting 2024, Session 6

CONVENER

*Martin Whitfield (South Scotland) (Lab)

DEPUTY CONVENER

*Ivan McKee (Glasgow Provan) (SNP)

COMMITTEE MEMBERS

*Jackie Dunbar (Aberdeen Donside) (SNP)

*Stephen Kerr (Central Scotland) (Con)

*Annie Wells (Glasgow) (Con)

*attended

THE FOLLOWING ALSO PARTICIPATED:

Malcolm Burr (Electoral Management Board for Scotland)

Andy Hunter (Association of Electoral Administrators)

Robert Nicol (Scottish Assessors Association)

CLERK TO THE COMMITTEE

Catherine Fergusson

LOCATION

The David Livingstone Room (CR6)

Scottish Parliament
Standards, Procedures and
Public Appointments Committee

Thursday 21 March 2024

[The Convener opened the meeting at 09:30]

Decision on Taking Business in
Private

The Convener (Martin Whitfield): Good morning. Welcome to the seventh meeting in 2024 of the Standards, Procedures and Public Appointments Committee. We have received no apologies this morning.

Our first agenda item is a decision on whether to take items 3 and 4 in private. Item 3 is consideration of the evidence that we are about to hear in public session and item 4 is consideration of our approach to a report from the Scottish Parliamentary Corporate Body. Are members happy to take those items in private?

Members *indicated agreement.*

Scottish Elections
(Representation and Reform) Bill:
Stage 1

The Convener: Our second agenda item is evidence on the Scottish Elections (Representation and Reform) Bill. We are joined by Malcolm Burr, convener of the Electoral Management Board for Scotland; Andy Hunter, chair of the Scotland and Northern Ireland branch of the Association of Electoral Administrators; and Robert Nicol, vice-chair of the Scottish Assessors Association's electoral registration committee and electoral registration officer for East Renfrewshire, Inverclyde and Renfrewshire.

Those are very long titles, but you are all very welcome at committee to give your contributions on the bill. If you are content, I will push off with questions, with the usual convener's proviso that not everybody has to answer all the questions, but you should feel free to do so if you want to contribute something.

I kick off with the proposal in the bill to extend candidacy rights, particularly to those with limited leave to remain. I ask Malcolm Burr to answer first. What are your thoughts on the advantages and disadvantages of that proposal, and do you have any concerns about it?

Malcolm Burr (Electoral Management Board for Scotland): Thank you for the opportunity to give evidence today, convener.

The extension of candidacy rights is, of course, a policy matter, but there are a number of practical issues. The main one is that, if candidates are allowed to stand for election who may not have the right to remain for the full term of office, there is the potential for by-elections that are arguably unnecessary and certainly costly. It may be that the bill could be amended to restrict candidacies to those who have leave to remain for the full term of office. One could argue that it is a legitimate expectation of the electorate that, except in exceptional circumstances, candidates will be able to serve the full term of office.

Those are the only observations that we would make on that point. I am straying into the policy remit, I admit, but there are practical consequences of that extension; otherwise, it is a policy matter.

The Convener: Thank you. I absolutely respect that there is a policy element in contrast to the implementation aspect.

You said that one possible amendment would involve individuals having limited leave to remain for the full period of the proposed office. Are you able to comment on whether that is a practical

solution, given that those who are granted limited leave to remain are given varied periods of time and that there is certainly no consideration of electoral office cycles in that discussion.

Malcolm Burr: No—there is no practical solution to that, really, unless the extension is for the full term of office. The candidate could be asked to declare whether they are qualified or not qualified to stand for election.

The Convener: Robert Nicol and Andy Hunter, do you want to add anything on that just now?

Robert Nicol (Scottish Assessors Association): It is not really a matter for the ERO.

The Convener: No, I appreciate that.

Andy Hunter (Association of Electoral Administrators): I have nothing to add to Malcolm Burr's comments.

The Convener: I have no problem with that.

The proposal received significant support in the committee's consultation on the bill and, prior to that, in the Government's consultation on electoral reform. Malcolm Burr, leaving aside any problem with the policy decision, you see there being two practical problems with the proposal. Probably the most concerning would be a rise in the number of by-elections, which cost money and are problematic within the structure. The other problem relates to being able to identify, at the time of an election, whether there is likely to be a problem coming down the line with limited leave either expiring or being rescinded. Your comments are very helpful.

I will now hand you over—throw you on the mercy of—the committee. I go to Stephen Kerr first, and then to Ivan McKee, who will carry on with the next block of questions.

Stephen Kerr (Central Scotland) (Con): Seventy-seven per cent of all respondents to the Government's consultation disagreed with the proposal to extend candidacy rights. Malcolm, in your experience, are there any other jurisdictions where that type of extension of candidacy rights exists? If so, what has been their experience?

Malcolm Burr: I have not looked into the matter, I regret to say. It is a policy matter and therefore it is not, strictly speaking, within the EMB's remit. I am not aware of other jurisdictions with such an extensive potential candidacy.

Stephen Kerr: On the issue of the declaration that a candidate makes on presenting themselves as such, they would not currently have to say—this would not be part of the test, as it were—that they were qualified. It would be a matter of their self-identifying as someone who was in the United Kingdom on limited leave to remain—is that correct?

Malcolm Burr: Yes, that is correct. Of course, it is not for the returning officer to investigate the claims that are made on a nomination form. If a claim is competent at face value, we accept it.

Stephen Kerr: So, it is possible that someone could present themselves as a candidate and not identify themselves as someone who was in the United Kingdom on limited leave to remain, and then, during the term of office, they could effectively be asked to leave the country.

Malcolm Burr: Yes, that is possible.

Ivan McKee (Glasgow Provan) (SNP): It is clear that there are many situations in which someone could be elected to serve a term of office and then not complete that term, and that some of those situations might be known to the person at the start of the term and others might not be known to them until later, during the term itself.

You mentioned that the public might expect to have the right, if they elect someone, to expect that person, at least at the outset, to intend to serve the full term. Is there, or could there be, provision under the proposals for such candidates to make their situation known in the public domain, so that the public would vote in the full knowledge that there is the potential risk that the person may not be able to serve the full term?

Malcolm Burr: Yes, I think that that would be possible through the nomination process. There could be a question asked, such as, "Do you have leave to remain for the entire term? If not, state for how long." That would be possible.

Ivan McKee: And that would be in the public domain.

Malcolm Burr: Yes.

Ivan McKee: Moving on to other subjects, there is provision in the proposed bill for a new Scottish disqualification order. Perhaps I could start by getting your perspective on whether intimidation or abuse of electoral workers in Scotland is, of itself, a problem that needs to be addressed.

Malcolm Burr: To cover the administrative point first, that would have to be another line in the nomination process in that the candidate would have to state that they were not disqualified and did not have a relevant conviction. It is a perfectly competent qualification.

We would say that the nature of intimidatory or abusive behaviour would need to be carefully defined in order to avoid any unintended impacts on freedom of political speech in particular. There is a distinction to be drawn—I am veering into my legal territory here—between intimidatory behaviour, which is more objectively assessed, and abusive behaviour, which has a tendency to be subjectively assessed.

Those would be my only comments on the matter. In terms of process, it would be easy enough to manage through the nomination process.

Ivan McKee: Do you have any perspective on whether a disqualification order would be likely to act as a deterrent to unacceptable behaviour?

Malcolm Burr: I am honestly not sure. A lot of abusive comments are made off the cuff or are of the moment and probably would not be caught. One would hope that the possibility of a disqualification order would deter anyone with political ambitions who was minded to participate in a campaign of intimidation or a premeditated act of intimidation. Again, I am drawing the distinction between intimidatory behaviour and what can be classed as abuse.

Ivan McKee: Are there any practical considerations? You have already mentioned that disqualification needs to be declared up front. Other members of the panel should feel free to comment, if they have any perspective on that.

Malcolm Burr: No. From a returning officer's perspective, the candidate simply has to state that they are able to stand. We always take that at face value—we do not investigate the veracity of those claims.

The Convener: The disqualification order would be on the public record. In an election, would it be a challenge if there was more onus on the people who check the details to ensure that the voluntary information is correct? It is slightly different from some of the other matters that are, rightly, taken at face value. A disqualification order would be in effect within the public realm, so would it be unreasonable to expect something further than just the candidate having the obligation to declare it?

Malcolm Burr: I have to defend the principle that returning officers do not investigate. We do not have that resource and we do not seek that power. Of course, we use our common sense, so, if matters are known to us, we raise them with the candidate.

The Convener: Is there a resource implication, or is it a principle that returning officers should accept what is presented to them by an individual or the supporting team around them?

Malcolm Burr: It is a long-established principle of our electoral practice. Whether that needs to change in future years is another question, but it is not something that we have ever done or really needed to do.

Ivan McKee: I have a final question. Again, I do not expect you to take a policy position on this, but are there any practical considerations around disqualification of candidates for MSP or councillor

roles who appear on the sex offenders register? Would you like to make any comments on that issue?

Malcolm Burr: The electoral community and the consultation generally were very much in favour of that disqualification.

Ivan McKee: Would Andy Hunter or Robert Nicol like to comment on any of those issues?

Robert Nicol: Electoral registration staff are in contact with all sorts of members of society throughout the year and, thankfully, abuse of our staff is relatively rare, but we welcome the inclusion of ERO staff in the definition in the bill, because it recognises their status when they are undertaking their work.

The Convener: That is an important element, irrespective of the numbers that we are talking about. There should be a recognition of the increased importance of respect, particularly towards the individuals who help to roll out the vehicle of democracy. Excellent. That is helpful.

Stephen Kerr will ask about various changes.

Stephen Kerr: Everything seems to be heading to you, Malcolm—I feel as though there should be a big spotlight shining down on you.

Why is it important that the EMB's legal status changes as is outlined in the bill? What is the reason for that? From your perspective, what are the advantages of that?

09:45

Malcolm Burr: There is, I suppose, quite a long story in that regard, since the EMB's formation as a statutory committee in 2011. Since then, our role has increased and the desire for us to offer support and to provide help has increased substantially.

There are two immediate practical reasons for the change. The first is that, if we are to perform the role that will now be expected of us—for example, in leading the e-counting contractual process—we will need some form of legal status to enable us to enter into contracts, which we cannot do at the moment because we are not a legal entity—

Stephen Kerr: How is that done at present?

Malcolm Burr: It is done through a quite convoluted but workable process in which the 32 returning officers give agency to the Scottish Government to procure the counting contract, which is managed through a project board in which the EMB plays a key role.

Stephen Kerr: Does that work?

Malcolm Burr: The process worked very well last time, but it would be much easier if the EMB, on behalf of returning officers, could run the process directly.

The bill proposes increases in the responsibilities of the convener, but there is a very practical reason for the change. As an institution, the Electoral Management Board is quite fragile because being on it is an entirely voluntary activity. I do not intend that that should change significantly. I am a serving returning officer and chief executive of a council, and the secretary, Chris Highcock, is deputy returning officer for the City of Edinburgh Council and has duties to that council. We are hosted and supported by the City of Edinburgh Council, with Scottish Government funding support, which I want to acknowledge. When we have asked for things, funding has been made available to us. However, there is fragility in the structure; it all flows from members' roles as returning officers or deputy returning officers, which are linked to our other jobs.

The workload has increased, particularly over the Covid period with work on the Scottish General Election (Coronavirus) Bill, as it was at the time. Let us just say that the pressures were becoming quite intense. We have tried to mitigate pressures through the appointment of a deputy convener: you will see my comments on that later. I would like there to be two deputy conveners: one on the returning officer side and one on the electoral registration officer side. Therefore, there is a practical point to be addressed about the capacity to contract, and there is a very practical point to be addressed about the fragility of the current arrangements.

Stephen Kerr: Talk to us about how the role has expanded since the EMB was founded, in 2011. In what ways has it expanded and what additional pressures has that created?

Malcolm Burr: As the board has become established, it has developed a representational role on behalf of the electoral community—including invitations such as the one to this meeting, for example. You are not speaking to board members as returning officers from a big council or a small council; you are, for example, speaking to me as convener of the board. Therefore, there is a representational role and, significantly, the expectations of support from the electoral community have increased, partly because of capacity issues.

Councils' corporate services and law and administration departments are not what they were. There are not the same in-house experience or numbers as there were in the past, so we have a much greater consultative and support role, particularly at the time of elections. The directions that we give on Scottish Parliament and local

government elections are necessary. I think that they are appreciated, and they are negotiated with the electoral community. We do not have anything to do with UK elections, of course, but we issue recommendations for Scottish Parliament elections that look very like such directions would look.

Stephen Kerr: The number of elections and electoral events has also created tension; they included UK general elections and, for example, the EU membership referendum. Does that make the past 13 years different from the average period of work for the board?

Malcolm Burr: The period has been exceptionally busy—there is no question about that. We had two UK elections in a short period and we have had referenda. We now do not have European elections to deal with.

The work is about not just elections but accessibility and the focus on the voter. The strapline that we use is:

“to deliver a result that will be trusted as accurate”.

I would probably now say “be trusted by all reasonable people as accurate” and focus on the voter. That came out of the Gould report back in 2007, in which it was felt that voters' interests had not been properly recognised.

The policy interest in elections has grown, too. One thinks of electronic counting. Some countries have electronic voting. There are also issues about registration. There is a lot more policy interest in election matters from both Parliaments.

Stephen Kerr: I have been involved in one or two elections—I declare an interest—and have only ever seen our elections being conducted professionally and efficiently. Speaking as a candidate, the work on and the quality of the electoral experience have been first class.

Malcolm Burr: I am pleased to hear that.

Stephen Kerr: I have to be clear. I have to declare an interest about such things.

I am also interested in what you said about the voluntary nature of the board and fragility. For clarity, for those who are watching proceedings and so that it is in the *Official Report*, I ask you to confirm whether everybody who is connected to the EMB works in a voluntary capacity and there are no paid positions.

Malcolm Burr: We receive a grant from the Scottish Government, which pays for a certain amount of the time of the secretary, Mr Highcock, who works on behalf of the board four days a week on secondment from the City of Edinburgh Council. That is the only paid position.

Stephen Kerr: You have described the relationship with the City of Edinburgh Council a little bit more fully. The secretariat sits within the council's head count and four fifths of the cost is paid by the Scottish Government—is that correct?

Malcolm Burr: Yes, that is correct. If, for example, we needed communications assistance, specialist information technology assistance or anything of that kind, our first port of call would be the City of Edinburgh Council, because it hosts us in its offices.

Stephen Kerr: By and large, has that worked well up until now?

Malcolm Burr: It works well even now. It is simply that it is a fragile structure because it is heavily dependent on the good will of that council. For all I know, the City of Edinburgh Council might—

Stephen Kerr: Kick you out.

Malcolm Burr: It might require the services of its own employees in different ways. My council is very tolerant about the time that I spend on electoral matters, but another council could take a different view. The situation is simply a little too fragile.

I do not see the new arrangements that we seek as being unduly expensive or demanding on the public purse. We are very conscious of that.

Stephen Kerr: The roles of the convener and deputy convener would continue to be voluntary. The bill provides for one deputy convener, but you have asked for two. Perhaps you can explain why you feel that a deputy convener is needed, and then why there is a need for two. Those roles would continue to be voluntary, within those individuals' other jobs and employment.

Malcolm Burr: That will depend on the detail of the constitution of the EMB, which needs to be addressed before the bill advances much further. It is important that the members of the EMB and the electoral community are aware—in fact, that everyone is aware—of what an EMB that has a legal personality would look like.

Stephen Kerr: In that case, are my questions somewhat unresolved, in the context of the bill, because the bill does not describe what you have just said?

Malcolm Burr: No. The bill says simply that there will be “a body corporate”. That requires further work. I had a meeting with Scottish Government colleagues yesterday about how we will take that forward, because it is, in my opinion, extremely important that that is clear and known before the bill becomes law.

Stephen Kerr: What was agreed yesterday?

Malcolm Burr: We will look very clearly at the legal options, because “body corporate” is a generic term that could include anything from a company to a partnership—obviously, those would be inappropriate—but we need to consider whether it should be a public body or an enhanced statutory committee, for example. None of those would be detrimental to the purpose, nor would they need to be particularly expensive, but legal status requires a constitution, and it is important that that is clear.

Critical to that is the independence of the board: that is fundamental. We are all dependent on someone for funding, and the relationship with Scottish Government colleagues has been very good—they have been very supportive of the EMB—but anybody who advises on, supports and delivers elections must have as much independence as possible from the political process. Therefore, that is another reason why it is important that the constitution be agreed at the earliest possible stage.

Stephen Kerr: In that case, what is going to happen? What you have said this morning is very important: before the bill can properly proceed through the legislative process, we should have a clear understanding of that. Therefore, what specific actions will flow from what you discussed yesterday with Scottish Government colleagues?

Malcolm Burr: The EMB will work very closely with the Scottish Government to draft a potential schedule to the bill, which will set out in clear terms how the EMB will be constituted, how it will go about its work, what its line of accountability will be and from where its funding support is to come.

Stephen Kerr: What is the timetable for production of that schedule?

Malcolm Burr: That will be a priority over the next three months.

Stephen Kerr: Where does the balance of the work lie—with the EMB or with the Scottish Government?

Malcolm Burr: It is the Scottish Government's bill, and the parliamentary draftsmen will take the work forward, but we will play an active part in the process.

Stephen Kerr: I am mindful of the time.

Malcolm Burr: I apologise for the length of my answers.

Stephen Kerr: No—we have invited you precisely in order to give this level of detail and evidence, which is very good.

My final question—I am reassuring the convener—is about why we need a deputy convener and why you feel that we need two deputy conveners.

Malcolm Burr: Any organisation with any kind of statutory power should have a depute. Things happen. The power to give directions is personal to the convener; directions are not given by the board but by the convener of the board. So, for reasons of efficiency, there should always be a depute who is able to exercise the full powers of the convener in the event of their incapacity, or worse.

Scotland has a fairly unique system of returning officers and electoral registration officers, and the board brings those two professions together. I think that that recognises, rightly with regard to the current establishment, that the convener must be a returning officer. However, it is right that there is a statutory position that recognises the electoral registration officer part of the electoral process as well as the returning officer side—hence the recommendation. If that is not agreed, there should be at least one depute who can act for the convener in the event of incapacity—

Stephen Kerr: From whichever function.

Malcolm Burr: Yes.

10:00

Stephen Kerr: I might have perjured myself, because I think that I continue the questions now, do I not?

The Convener: No. [*Laughter.*]

Stephen Kerr: I do not continue.

The Convener: No—not unless you have anything that follows from that answer.

Stephen Kerr: No. I have no more on that section.

The Convener: Do other members have questions on that?

Jackie Dunbar (Aberdeen Donside) (SNP): I would like some clarification with regard to the electoral registration officers. Are you suggesting that the deputies should be one of each—a registration officer and a returning officer—to ensure that all bases are covered, so to speak? I am sorry if I misheard.

Malcolm Burr: Yes, I am suggesting that, because that reflects the informal arrangements that we have in place. At present, I have a depute convener—with a small d and a small c, I suppose—who is a returning officer and a depute convener who is an electoral registration officer, but that is under the current, informal structure. If we are constituting the board, I would like that to be continued. Only one of those deputies would have full powers, and that would be the returning officer depute.

The Convener: I want to move on to another provision that the bill proposes, which is in relation to the postponement of elections. All three organisations that are represented today have made submissions on that. Andy Hunter, I will come to you first, because I was interested in the point in your submission that, in essence, elections could be postponed by up to 16 weeks. I do not expect you to comment on the policy decision in that regard but, with regard to the practicalities of a single or double suspension, what is the effect at the chalkface, to use an old teaching phrase, when the phone rings and you are told that an election has been postponed?

Andy Hunter: Ultimately, it depends on the timing of the postponement. If it comes really early and you are not far down the road with the project, for want of a better word, it is much easier to make changes. If you have already started to engage with your printer and you have things printed with dates and so on, all of that goes to waste. The same applies to booking premises and staff to work during the election. All of that is bad enough if the date changes once, but, if you extend it again, you double that difficulty. The UK Parliament elections are an example of exactly that. They are extremely difficult to organise and plan for, because the dates are not fixed and they could come at any time.

In the case of a postponement, which ultimately needs to happen—obviously, the circumstances require that—we just look to make the transition to deal with it as smooth as possible. A double step makes that more difficult.

The Convener: If we put aside the cause of the postponement, would a fixed, albeit longer, period rather than two shorter periods be helpful? Would it be helpful to know even before a postponement happens that it would be for a set period? Would that make the administration easier?

Andy Hunter: I suppose that that would make it easier, because there would be absolute clarity about the length of the postponement, but I can see why you might want some flexibility for the particular circumstances. Different reasons for postponement might create reasons for different periods of extension. The issue is more about changing to one date and then changing again. The issue is the need to properly reflect on the cause of the postponement and make a judgment to ensure that the extension is long enough that the period will not need to be extended again.

The Convener: Would it be helpful or otherwise if postponement, rather than just being a pause for a period, reset the clock? Let us say we were four weeks into what is colloquially called the short campaign and there was a postponement for a period. When the clock restarted, would it make any difference from a practical point of view if you

had to deliver within the remaining two weeks or restart the full six-week short campaign?

Andy Hunter: I do not think that it would make any difference from a practical point of view, because all the parameters would reset anyway.

The Convener: Things would reset anyway.

Before I open up the topic to other witnesses, I want to ask about the recruitment of staff, which you highlighted as being one of the challenges. Do you want to explain why that is a challenge, given that there is not a significant number of people who only ever do election work and sit around in their holiday homes for the bits in between?

Andy Hunter: I think that most people who are employed are polling—*[Interruption.]* Sorry?

Jackie Dunbar: I just said that the convener was brave to say that.

Andy Hunter: Employing polling staff is a significant job, obviously. Most people do that on one day, but they do many other things on many other days. Therefore, it would not be as easy as just asking them to come back in two or three weeks' time, as they might have already planned holidays, for example. Others might have work commitments, meaning that they would no longer be able to do the polling. People will keep the polling date free, but they will have made arrangements for other days, so a change would have an impact. Getting sufficient staff is more difficult than it has ever been, so any change to the election date would make things difficult.

The Convener: Robert Nicol, do you have any concerns about postponements?

Robert Nicol: Registration is a year-round activity, but, when we know that an electoral event is happening, it takes a number of months to plan for that in conjunction with returning officers. We know that there will be an electoral event in the next 10 months, but we do not know exactly when, which makes planning complicated. We have experienced that situation previously, so it is not something that we are incapable of doing.

In relation to postponement, we need to look at how that would interact with the timetable for registration and suchlike. Let me pick some random dates. Let us say that an election for 1 May was postponed until 1 June. During that period, there would be churn in the electoral register, with people becoming eligible to vote because of their age, for example. We need to see how such aspects would interact with the timetable to ensure that whatever we put into place is in line with the law. It is not uncomplicated, but, equally, it is doable.

The Convener: I will explore that a little bit. If you are not in a position to advise at the moment, I

am more than happy for you to come back to us in writing. Do you think that time should, in essence, freeze during a postponement, with no additional people being allowed to come on to the register, or would it be better to accept that the passage of time during a postponement means that people are entitled to come on to and, indeed, come off the register? From an administrative, non-policy position, which would be the best approach?

Robert Nicol: That would be a policy decision, which would be dependent on the precise regulations. Either approach would be possible, but it would depend very much on the point in the timetable at which postponement happened.

The Convener: Let us say that we entered a 16-week period of suspension quite close to the election day. That would have an impact on postal votes and on registration, so there could be—to use your description—churn. I agree that postponement—and related decisions—is a policy decision but, from an administrative point of view, what are the challenges were the register to reopen during that period, with more people becoming eligible to vote, and what are the challenges were it to remain closed, with the electorate being fixed in line with the original timetable?

Robert Nicol: One of the problems with electoral law is that it is very complex, as it involves a number of different regulations and acts, so I would not want to give you a precise answer at this point in time. I suspect that the answer is that it would depend on at what point in the timetable there was to be a postponement. However, I would prefer to come back to the committee on that, if you would allow me to do so.

The Convener: Please do. That is a genuine offer, because although, on the face of it, that would appear to be a useful provision to have, the unknown unknowns become very important here. You are right to say that, whichever way the decision went, it would be workable, but I think that there should be an input on the practicalities, depending on when the decision is made. That is very helpful.

I want to push on the cost element of a postponement, from the point of view not just of registration but of implementation. How big an effect will a postponement have on cost for those who administer the process?

Andy Hunter: As I said, a variety of costs could come into that. Premises have to be booked and, because some premises are private, there will be a fee, regardless of whether the booking is cancelled. A fresh booking will have to be made, so polling places might have to be paid for twice. It might be necessary to pay for a more expensive

polling place, if it is not possible to get the one that would normally be used.

There will also be staffing costs. Staff will have been through training, but there might be a need for follow-up training, and there will be printing costs, because poll cards will probably have to be redone. Depending on what stage of the process you are at, postal packs might have to be redone. The paperwork that goes to the polling station might need to be redone, depending on the timing. Those are all expenses that would be incurred. I am trying to think whether there are any more.

The Convener: There is always another one. Thank you for that.

Jackie Dunbar: I want to follow up on the issue of premises. I am aware that a lot of schools are used. That might give rise to another issue, because some schools close. How much notice would you need to give the education authority? Do you have the ability to say, “No, sorry—you have to close,” or is it down to the willingness of the education authority to do so?

Andy Hunter: The returning officer can use the premises that are owned by the local authority, so the returning officer would have the ability to close a school again. In most cases, returning officers work very closely with the education authorities to minimise disruption, for obvious reasons.

Jackie Dunbar: If what I have read is correct, local government elections could be postponed for two weeks. That will have a huge impact if the postal votes have already gone out. Do you envisage that the postal votes that had been sent out would all be null and void and that new postal votes would have to be issued, or would the ones that had come back simply be used for the postponed election two weeks later? Either way, I think that there would be problems.

Andy Hunter: Yes. I think that it was the EMB that made the comment that two weeks was probably too short a period for local government elections to be postponed by, for reasons such as those that you have mentioned.

We then come to the detail of what a postponement actually means. Earlier, we talked about the registration side. Are we talking about postponing or freezing an election, or cancelling it and redoing it from scratch, in which case all the postal packs would have to be scrapped? You are right to say that such a short period of postponement would make that process very difficult, because some people could hold on to their postal votes, while other people might not have been issued with them. That could give rise to all sorts of integrity questions.

Malcolm Burr: On the point about the two weeks, the committee will have noted that the

submission from the EMB was strongly in favour of setting a maximum period of four weeks. Although it is recognised that elections should be postponed for only a minimum period, there are practical issues, particularly with an electronic count, which requires a certain type of venue—often, such a venue will be a sports centre rather than a school, and there might be other bookings. I think that two weeks is simply too short a period, frankly, to make all those complex arrangements with contractors. Electronic counting is our contract, but it is delivered by other people. Two weeks is simply not practicable.

10:15

The Convener: Do you have a short question, Stephen, or has it been answered?

Stephen Kerr: I have a question about e-counting. Malcolm Burr’s submission says that six weeks is too short a period to reset the e-count—is that right?

Malcolm Burr: No. In our submission, we say that

“two weeks may well be insufficient”.

Those are diplomatic words. I would say that two weeks would be insufficient, and we say that the maximum period should be four weeks. A maximum of six weeks would be very helpful, indeed, but I was working on the basis that elections should be postponed for the minimum period possible. I think that four weeks is the minimum period possible, but six weeks would, of course, allow us a little leeway.

Stephen Kerr: What are the practical reasons for that from your perspective, or is it simply a matter of cost? For example, we would not be able to have a by-election in the Scottish Parliament six months before a general election.

Malcolm Burr: Yes. As a policy decision, it is simply a matter of the cost relative to the benefit, given that there would be a fixed-term election in a fairly short period.

The Convener: My last question relates to the postponement of elections. I know that a lot derives from policy, but your input would be helpful. If a postponement is being considered, there should be consultation. Are there any organisations that you would like to see on that consultation list before the decision is made?

Malcolm Burr: I declare my interest, convener, obviously. That is right. For Scottish parliamentary elections, the Presiding Officer, under the bill, will consult the commission, the returning officer and me as appropriate. For local government elections, I would consult the commission and Scottish ministers. One can always extend

consultation, but given that we are talking about, I hope, very short periods of postponement, that is sufficient under a statutory framework.

The Convener: Would it help if there was an explanation of the sort of grounds that would lead to a postponement? Would it be helpful from your point of view if there was a clarification of the test that the Presiding Officer had to apply?

Malcolm Burr: That would be reasonable for all parties concerned. It is a basic principle of law that, if you are exercising a power and taking a decision, you should give reasons for that decision. It is perfectly reasonable to request that those reasons be given and recorded.

The Convener: That is helpful.

Annie Wells (Glasgow) (Con): Good morning. I would like to talk about the election pilots aspect of the bill. In your submissions, you all seem fairly supportive of that. Are any areas already under discussion for future pilots, or is that aspect simply an enabling function for future pilots?

Malcolm Burr: It is a little of both. We all recognise that the practical delivery of elections changes over time. Electronic counting was the big one for local government. That reflects positive changes, including the capacity of technology to assist. In time, there may be negative changes relating to things such as supply, or factors such as security to take into account. It is always good to try things out. It is a very valuable thing to do when what we are doing is explained fully in advance.

There is a practical point about increased accessibility. We are always trying to increase the accessibility of the whole electoral process. We would like to try different means of making the ballot paper available—for example, someone could phone a number and have their ballot read out to them. I think that that is very good idea, and it was recently trialled in the north of Ireland. However, you need the ability to suspend elements of the rules that relate to that, and that is what the provision seeks to do.

The board has asked for itself to be added to the list of those who are able to initiate pilots. We are keen to do that practically and in principle.

Annie Wells: Do you think that the consultation and reporting requirements on the election pilots are satisfactory?

Malcolm Burr: Yes, I do.

Annie Wells: That was an easy answer.

Malcolm Burr: It was.

Annie Wells: I will take up no more of your time, gentlemen. Thank you.

The Convener: I will pose a problem with the pilots. If the board is added as an initiator, it might be challenging for regions to say no to the board.

Malcolm Burr: I would hope not, convener. The electoral community is a close and supportive one, and we have great respect for one another's views and the views of those we serve. I would not anticipate any undue deference to the board in that regard. If there was a robust argument to be made, I think that it would be made and listened to.

The Convener: That is very helpful.

Jackie Dunbar: I would like to ask about section 29 of the bill, which is about democratic engagement funding. The engagement funding will be enabling, but the bill does not actually commit funds at this time. I am keen to hear your views on that. Andy Hunter is catching my eye, so I will go to him first.

Andy Hunter: We are all keen to see what we can do to increase people's engagement in terms of getting registered and turning out. That is, of course, people's free choice. However, such engagement is extremely difficult to judge and improve, because a huge number of factors affect why people do not register. Those factors range from their simply not being interested in registering to accessibility issues or a lack of awareness.

We have moved to an event-driven style in the modern world whereby people will leave it to the last minute. I may be speaking out of turn, but I think that people tend to leave things to the last gasp. If we can get people to engage earlier, that will make the whole business much easier and prevent any issues from arising.

On the fact that there are no funds, there needs to be something. The bill also needs to be very clear and purposeful about what is being done with funds. As with pilots, we want the funds to have a clear objective and not to confuse the matter even more, and any funds that would be available should certainly be used in the most efficient way.

Malcolm Burr: I think that a democratic engagement power is a good power. We all try to do our best with all areas of society, including the hard-to-reach groups, to encourage participation. We publicise what we do and how to vote. That is, of course, helped by the Electoral Commission's work. However, there might be hard-to-reach groups that we are not aware of or that have needs that we are not meeting. If such groups can be identified, that is a useful power.

Of course, there has to be a right to withdraw from the political process in our culture. The independence referendum always reminds us that turnout can be very high when people are

energised to vote and participate. I have a lot of experience of a local government election in the Western Isles in which the turnout was 89 per cent, because there were particular issues and particularly strong candidates in it. We cannot forget that, too. However, having that potential financial assistance for specific hard-to-reach groups, some of which we may be unaware of, is helpful.

Jackie Dunbar: As a former councillor, I know that, when Aberdeen City Council housing officers deal with new tenancy agreements, one part of the pack encourages people to sign up to vote. That involves joint work by the Grampian valuation joint board and the ERO.

Robert Nicol, what are your views on that? Is there anything else that could increase voter registration? How would it be best to take that forward?

Robert Nicol: That is a big question. I will first address the point about engagement strategies and so on. In the consultation, the Electoral Commission summed it up pretty well by saying that such strategies are “highly dependent” on work with “partner organisations”. With the best will in the world, a member of my team or someone like me going out to talk to those groups to try to get them to engage is not always the most productive approach. Sometimes, we need to use cheerleaders in the communities that are harder to reach. Many civil society organisations experience funding issues, so it would certainly be positive if they could access some direct funding, although we would need to know in advance what success would look like, so that we could measure what we were getting from taxpayers’ money. I would welcome that approach.

The solution to voter underregistration—if that is not too much of a pejorative term to use—lies with the community as much as it lies with officials and other stakeholders. As Malcolm Burr said, it is obvious to those in the electoral community who survived the referendum that, although that was a difficult time, it was also empowering. It was good to see that what we were doing was valued and that the wider population was engaged. No matter how we, as administrators, felt about the outcome of the referendum, we thought that, by the end of it, although it had been a horrendously difficult time, we had taken part in something that was worth while. That is what we want from all electoral events. We want communities to value what we are doing and to use what we put in place for them.

I would absolutely welcome a potential fund. The ERO community does a lot of partnership work with the Electoral Commission, our local councils and local groups in each of our areas. That is one of the strengths of having local

electoral registration officers. However, we need to face the fact that, although electoral registration is important to a lot of community groups, those groups help people with other aspects of their lives. Funding would certainly help to raise the profile of electoral registration.

Jackie Dunbar: Do schools have a part to play in encouraging our younger generation to have their say and get their names on the electoral roll?

Robert Nicol: Absolutely. In conjunction with the Electoral Commission, we are involved in things such as the welcome to your vote week, which runs annually. If we get registration at the forefront of young people’s minds, that will set them up for life. We want to normalise being registered in communities and to make it part of everyday life, so that people know that they are registered and that that is important to them. By doing that work at an early stage, we hope that we will grab those people and hold them for the remainder of their lives as they move through different stages. Schools and young people’s organisations are vital in that regard, and the welcome to your vote week is good.

However, it is sometimes difficult to resource all the demands at various times, so we probably need to improve how we train the trainers, because we should not necessarily be the people who go out and do those things.

10:30

The Convener: I understand that there is a policy dimension to this question, but I want to talk about the practicalities. Would automatic voter registration cause you any administration problems? I know that it would be a different landscape. Quite apart from that the policy decision about whether there should or should not be automatic voter registration, does anything about it concern you?

Robert Nicol: From an electoral registration perspective, at this point in time I have two paymasters. The powers on registration are partly devolved and partly reserved. Each Parliament—or each Government, depending on your point of view—is absolutely entitled to make the decisions that it thinks are right for it in each of those spheres, and I would not want to interfere in that in any way. However, my teams and I are the people who interact with the electors. If there were to be divergence on that matter, it could have impacts on both registers.

The Representation of the People Act 1983 says that I must maintain two different registers—one for UK Parliament elections and another for Scottish elections—and that, where possible, they should be combined. Divergence in the method or the criteria that are required for someone to be on

either register, or both, would make their administration harder. It would also make it harder for electors to understand the process. The commonality between the two registers is certainly in excess of 90 per cent—it is about 95 or 96 per cent. We need to be careful with any changes that we make, whether they be via pilots or substantive changes. We need to ensure that we do not harm the vast majority of electors who are already registered and playing their part in society.

I certainly would not rule out automatic voter registration, but I think that there would be real difficulties with it. I can say a wee bit more about that if you like.

The Convener: That is fine. I am interested in it from the administrative point of view, so that we could have that on the record.

My other question is on an aspect that seems to be omitted from the bill, which is the emergency proxy vote, particularly for carers. I will come to you first, Andy Hunter, on the practical matters, and then to you, Malcolm Burr. What are your views on that situation? From my experience of running around on election day, that is the one question that keeps coming up, but no one seems to know the answer to it.

Andy Hunter: On the practical aspect of processing the forms, it would not matter. Again, policy would determine who would be entitled to such a vote and who would not.

The Convener: From an administrative point of view, is the existing system fine? Could it take other applicants' names being added to it without too much challenge?

Andy Hunter: That was the bit that I was hoping to get to. Being able to take huge volumes of information would have an impact on the system. It is quite a resource-intensive exercise, in particular on polling day, because we have to get the information across to the returning officer and so on. There is a volume element to that, but I appreciate that it would be a matter of policy, then we would need to deal with how we resourced it.

The Convener: It is always on election day that it happens.

Andy Hunter: We get one or two names before that, but not many.

The Convener: Malcolm, do you want to add anything?

Malcolm Burr: I have very little to add to that, other than to note that there has to be a cut-off point during the day, otherwise the system is impossible to administer.

The Convener: That is very helpful.

It seems that the committee has finished its questioning. I remind our witnesses that, once they have had an opportunity to consider their evidence, the offer is there if they would like to write to us, particularly on the one matter that we have raised, in which case we look forward to receiving that further information.

I thank our witnesses for their attendance and their contributions, both beforehand, in the call for evidence, and during this meeting.

10:34

Meeting continued in private until 11:04.

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