OFFICIAL REPORT
AITHISG OIFIGEIL

Standards, Procedures and Public Appointments Committee

Thursday 21 November 2019

Session 5

The Scottish Parliament
Pàrlamaid na h-Alba

Thursday 21 November 2019

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STANDARDS, PROCEDURES AND PUBLIC APPOINTMENTS COMMITTEE
21st Meeting 2019, Session 5

CONVENER

*Bill Kidd (Glasgow Anniesland) (SNP)

DEPUTY CONVENER

*Mark Ruskell (Mid Scotland and Fife) (Green)

COMMITTEE MEMBERS

*Neil Findlay (Lothian) (Lab)
*Jamie Halcro Johnston (Highlands and Islands) (Con)
*Tom Mason (North East Scotland) (Con)
*Gil Paterson (Clydebank and Milngavie) (SNP)
*Maureen Watt (Aberdeen South and North Kincardine) (SNP)

*attended

THE FOLLOWING ALSO PARTICIPATED:

Dame Sue Bruce (Electoral Commission)
Isabel Drummond-Murray (Local Government Boundary Commission for Scotland)
Ailsa Henderson (Local Government Boundary Commission for Scotland)
Ronnie Hinds (Local Government Boundary Commission for Scotland)
Andy O'Neill (Electoral Commission)
Bob Posner (Electoral Commission)

CLERK TO THE COMMITTEE

Katy Orr

LOCATION

The James Clerk Maxwell Room (CR4)

Scottish Parliament

Standards, Procedures and Public Appointments Committee

Thursday 21 November 2019

[The Convener opened the meeting at 09:30]

Scottish Elections (Reform) Bill: Stage 1

The Convener (Bill Kidd): I welcome members to the 21st meeting in 2019 of the Standards, Procedures and Public Appointments Committee. Agenda item 1 is the Scottish Elections (Reform) Bill. Joining us today are Dame Sue Bruce, Andy O'Neill and Bob Posner from the Electoral Commission. We are limited for time today because we have two panels, so we will not take opening statements. I will ask you a couple of joined questions and you could just lead into it from there.

The bill proposes changing the lines of responsibility for the Electoral Commission so that it is accountable to the Scottish Parliamentary Corporate Body for Scottish elections. Could you explain the impact of the proposed changes to the accountability of the Electoral Commission and who it reports to? Do you have any concerns about the proposed changes to accountability and the new reporting arrangements?

Dame Sue Bruce (Electoral Commission): Thank you for the opportunity to give evidence. We very much welcome the bill and the establishment of formal mechanisms for the Electoral Commission to be directly accountable to the Scottish Parliament. We think that it is important that the Electoral Commission has a direct formal link to Parliament for accountability for its interactions in any of the Scottish elections. Discussions are on-going, which Bob Posner can talk about.

Bob Posner (Electoral Commission): Since the Electoral Commission was formed in 2000, we have striven to be accountable to Parliament—appearing before committees on policy issues and so forth—but this is a big change because it is about the financial flow of money connected with Scottish elections. As Sue Bruce has said, we very much welcome the change. We have been working hard with parliamentary and Government officials to make it work and work well. The discussions about how to get the formula and the approach right are advanced.

As a body, we will be diligent in making sure that, in the work that we do in Scotland on Scottish elections, we are directly accountable, the money is transparent, we are properly audited, and there is proper scrutiny and oversight. That will be our approach. The board of the commission and I, as the accounting officer, are clear that that is how we will proceed.

The Convener: Do you have any concerns at all about moving to the new system? Should the move be smooth?

Bob Posner: Yes, I think that it will be. You will be aware that we are also moving to direct accountability to the Welsh Assembly for financial matters, so, in effect, we will be facing three Parliaments. Like all public bodies, we will have an annual business plan and a five-year rolling corporate plan. We will need to ensure that our plans reflect the needs and priorities of the three legislatures. If I have a concern—it is positive rather than negative—it is that it will be for us to be alert to the requirement for officials and procedures in all three Parliaments to interact well and efficiently.

Andy O'Neill (Electoral Commission): Obviously, there are complications in dealing with three legislatures, but we have been working with Scottish Parliament and Scottish Government officials for a number of years to work out how it will work when the legislation commences. I am aware that the corporate bodies have some comments about auditing and finance formulae and such and we are working with others to sort those things out. It is for the Scottish Parliament, the Senedd of the Welsh Assembly and the Speaker's Committee of the House of Commons to agree the funding formula.

The Electoral Commission is acting as the expert adviser because we know what we do. We are getting to that point. We are very keen to ensure that the provisions in the bill are commenced as soon as possible after the parliamentary process takes place. The Scottish Parliamentary Corporate Body will want our estimates submission to be with it around September next year for the following financial year. That is a quite important year for you, because it is a year in which the Scottish Parliament election takes place and we do a lot of things around the Scottish Parliament. It would really help us if we could get commencement quite early.

The Convener: That seems to make a lot of sense. If no one else wants to come in at this point, we have a couple of questions from Mark Ruskell.

Mark Ruskell (Mid Scotland and Fife) (Green): Good morning, everybody. In your written evidence you say:

> "This Bill includes some elements that will improve the reporting of spending at local council elections. We understand that the Scottish Minister will make other changes using his powers under secondary legislation. The Bill does not present a full picture of these changes."

Are you saying that it is unclear where the balance of primary and secondary legislation will be? Are you clear about what the changes will be, or do you think there needs to be greater clarity at this point?

Bob Posner: To take a specific point, the bill introduces donation controls in the regime for Scottish local elections, and that is a good thing. It modernises those elections and brings them in line with other elections in the United Kingdom. The bill is moving towards doing the same thing on spending controls for candidates, but we are saying there is more to be done there. There are choices about whether it would require primary legislation or whether it is done subsequently through secondary legislation. Quite a lot can be done through secondary legislation, but we are saying that there is more to be done in the bill. As Parliament, presumably you will look at that.

Mark Ruskell: Would it make sense to put it into primary legislation?

Andy O'Neill: We see regulation—particularly of the council elections—as a package, but some of it is in this bill, some of it is in the Scottish Elections (Franchise and Representation) Bill, which you are also looking at, and some of it will be in secondary legislation. Some of that secondary legislation will come in what we call the local government elections order, which will likely come in 2021 for the 2022 elections.

We have been making recommendations on some things since the 2012 local government elections. This bill creates donation controls for council elections. Currently, a candidate has to say what money has been spent on but does not have to say where the money came from. That is deficient compared with what happens in elections in England, Wales and Northern Ireland. The bill will bring Scotland up to that standard.

The statement of expenses form is in this bill, but there are other things that will need to change. As you know, we provide candidate and party guidance for elections. The candidate guidance for council elections does not have the same status as the guidance in other elections. If you follow our guidance in the Scottish Parliament elections but you do something wrong, it is a defence to say that you followed our guidance. That is not the same for council elections because, although we have produced guidance for those since 2003, we have not done so on a statutory basis; we have done so as an agent through an agreement with the Scottish Executive. That will change via secondary legislation. We understand from the Scottish Government that those things will be in place for the 2022 elections—some things now and some things later. The Scottish Government is committed to doing that, and we hope that it does.

Mark Ruskell: You have described the full picture. Are you content with it?

Andy O'Neill: Yes.

Dame Sue Bruce: Yes.

Bob Posner: Yes, but, as the chief executive of the Electoral Commission, I would say that. As Sue Bruce said, we welcome the bill because it is going in the right direction and it is modernising and reforming. However, if you step back and look at the wider picture of electoral law, you will see a broad consensus that it needs modernising and consolidating. There is a lot to be done. The Scottish Law Commission worked on it with the other law commissions in the UK a few years ago and published an excellent blueprint report. It is quite a long document about how electoral law across the UK could be modernised. We recommend that the Scottish Government keeps that blueprint in mind. One must not think that this is the end of the journey, and I am sure that you do not. There is a lot more to be done to electoral law.

An example of where there is more to be done is spending and donation controls, which are really about transparency for voters and confidence in the legitimacy of the system. There are inconsistencies. The rules require us to publish weekly pre-poll reports on donations. That is happening now in the lead-up to the general election. You might consider that that is a good thing and want to introduce it for the Scottish parliamentary elections. There is a considerable period after elections before the public sees from the parties' campaigners' spending returns what was spent. Those periods could be shortened, which would be in everybody's interests. Plenty can be done. Those are some examples.

The Convener: Thank you. Those replies were helpful.

Jamie Halcro Johnston (Highlands and Islands) (Con): In your written evidence, you suggest that the current code of conduct for observers at local government elections should also be used for Scottish Parliament elections. Does the bill not allow for that?

Andy O'Neill: The bill creates a code of conduct for observers at Scottish Parliament elections. We currently have a code for observers for all elections across the UK, apart from Scottish council elections. The code for Scottish council elections was created in the Local Electoral Administration (Scotland) Act 2011, but the codes are exactly the same. This bill and the

Referendums (Scotland) Bill, which another committee is looking at, currently have provisions requiring us to produce another code of conduct. We would have to consult on it, give it to ministers and have it laid in Parliament. It is likely to be exactly the same as the council elections code, so we have suggested that the Finance and Constitution Committee should use the council elections code, suitably amended or expanded if necessary.

We say that there should be the same code for Scottish Parliament elections, so there would be one code for Scottish electoral events and we would have the other code for everywhere else in the UK. Otherwise, things could be quite confusing for observers, who are appointed for three years. A technical point is that we would have to give them two different badges and they would have to remember which badge they had to wear at which event, which seems an unnecessary duplication.

Jamie Halcro Johnston: You feel that consistency would be an advantage?

Andy O'Neill: Yes, it is about consistency. An amendment to that effect to the Referendums (Scotland) Bill has just come out.

Jamie Halcro Johnston: Under the bill, would it be the same—

Andy O'Neill: It would be same code for council elections and referendums. We would presumably change its name to the Scottish electoral events code.

Jamie Halcro Johnston: I will not get you to comment on the Referendums (Scotland) Bill, but if you had been looking to create a new code and had had to go through a consultation period, how long would it have taken?

Andy O'Neill: From memory of when we brought the code in, about nine months.

Jamie Halcro Johnston: Do you have any concerns around the timescale for preparing codes of conduct for Scottish Parliament candidates?

Andy O'Neill: Do you mean a code on spending? Our concern is about being able to deliver it in time for it to be in place well before the Scottish Parliament elections on 6 May 2021. We talk about a six-month rule—the Gould principle. People might think that that means six months before the electoral event, but a candidate or a party needs to know well before that because they have to plan. In this instance, it would be six months before the beginning of the regulated period, which is the first week of January before the May 2021 electoral event. There are two aspects to the timing. We can currently produce a party code. We do not have the ability to produce a candidate code, which this bill would give us. There is no point in doing one without the other. We need the provisions to be commenced as soon as possible so that we can create the code, but the code is also dependent on what is known as the Scottish Parliament elections order, because the code will reference the order. The order is planned to be revised before the 2021 election. It needs to be laid pretty soon, so that we can get the right references into the spending code and give that to ministers to put into Parliament.

09:45

Jamie Halcro Johnston: What kind of support and advice do you envisage having to give to those who are covered by the code once it is in place?

Andy O'Neill: We try to achieve compliance through guidance. We do so not just by producing tomes of guidance, which you can all see on our website anyway. We offer an advice service, we go to party events, we do drop-in sessions and we have to do it well ahead. That is the key.

Jamie Halcro Johnston: Do people engage well?

Andy O'Neill: Yes. Some parties have skilled trainers and do it themselves using our material. Other parties rely on us to do it for them. A lot of candidates who stand as independents come pretty fresh to this, particularly for council elections, which are at the entry level of formal democracy, and they probably need support. The smaller parties probably need more support than the major parties, which have professional staff to advise them.

Neil Findlay (Lothian) (Lab): We have been discussing the list order effect. Could you talk us through the key findings of the commission's recent research on ballot paper ordering at local government elections?

Andy O'Neill: The idea of a list order effect has been floating around for a number of years. For instance, in the 2017 local government elections, 81 per cent of the multimember wards—284 wards—had more than one candidate from the same party standing. We looked at the statistics and found that, in 73 per cent of those instances, the candidate for that party whose name was higher up the alphabet received the first preference. If Sue Bruce and I were standing for whatever party, I would get the second preference, even though I might be the better candidate, because she is "Bruce" and I am "O'Neill".

That is the perception. Actually, we still do not know whether that is true—it is almost impossible to prove—but if you look at the preferential orders, which you can do because they are electronically counted, you can see that, in 82 per cent of

Labour votes, 78 per cent of Scottish National Party votes, 68 per cent of Conservative votes and 64 per cent of Liberal Democrat votes, the candidate whose name was higher up the alphabet received the first preference.

You cannot say for certain that the reason why people would vote for Sue Bruce first and me second is that her name is higher up the alphabet than mine—there are millions of other reasons why people vote for particular people—but there is certainly a perception that the view that that is the reason probably has some validity. People worry about it and have thought about alternatives to alphabetic discrimination, as it is sometimes called.

The Scottish Government has indicated that it wants a review. In our report on the 2017 council elections, we said, "Whatever you do, you should test it to ensure that there are no unintended consequences," and we volunteered to do the testing. In April this year, the Scottish Government asked us to assess the impact of alphabetic listing on voters, to look at the status quo, to consider the issue of drawing the order by lot—that is, using balls or whatever to order the list, which might result in a list that is all over the place—and the issue of adopting an alternating A to Z and Z to A ballot, where the order would be alphabetic on one paper and the reverse of that on another.

We employed Ipsos Mori to do some research with the public across Scotland to ensure that we got the views of voters. We talked with returning officers and deputy returning officers about the administrative impact of the proposals. We asked the political parties whether there was anything to do with campaigning that we needed to be aware of. We also talked to groups representing people with disabilities. In September this year, we published a report, which is in the Scottish Parliament information centre—no doubt many of you will have read it. What we found from the research—which was qualitative not quantitative—was that the ordering of candidates did not have an impact on the voters' ability to vote for their preferred candidate.

One of the interesting things that we found from in-depth interviews was that many of the interviewees were not aware that the ballot paper was alphabetically ordered before we told them that it was. We talked to representatives of disability organisations, who were concerned that the changes might mean that disabled people would not be able to familiarise themselves with the ballot paper before they came to the polling station. We were told that disabled people quite often learn the order so they know how they are going to vote before they turn up, so adopting an alternating A to Z and Z to A ballot would mean that they would not know which list they would be facing and would have to learn both.

Administrators were confident that they could administer the process, but they wanted prescribed rules, because there are issues of transparency, particularly if we went down the road of using lots. That would probably mean that you would have to extend the election timetable. We got down to the level of thinking about how long it would take to do the pulling of lots and administrators thought that if you had, say, 20 wards with 15 lots per ward, it would take a long time—do the maths.

There was no consensus across the parties. SNP party officials were very keen on the A to Z, Z to A approach, and Liberal Democrats also supported that to a degree. The Conservative Party was for the status quo. The Labour Party and Scottish Greens did not have a view—to be fair, list order does not really have an impact on the Scottish Greens, because they tend not to stand more than one candidate in most places.

Mark Ruskell: Not yet.

Andy O'Neill: We gave the report to the Scottish Government. It is down to the Scottish Government to propose something, which we would expect because the ballot paper is a form attached to the elections order, and that would come sometime in 2021, before the 2022 local government elections.

I am happy to try to answer any questions or write to you on the subject afterwards.

Neil Findlay: Did you say that it was Ipsos Mori that did the research?

Andy O'Neill: Yes.

Neil Findlay: How many people were surveyed?

Andy O'Neill: It was qualitative research. About 112 in-depth interviews took place, all over Scotland. Interviewers met disability groups, people with learning disabilities and suchlike.

Neil Findlay: If people did not know that the ballot paper was alphabetically ordered, but the results showed that, in 70 per cent of those instances—was that the number you said?

Andy O'Neill: It was 73 per cent.

Neil Findlay: So, in 73 per cent of those instances, even if people did not know that the ballot paper was alphabetically ordered, the candidate for a party whose name was higher up the alphabet received the first preferences. That reinforces the list order effect for me. If people are unaware that the order is alphabetical, what they are doing is voting for the first person they see.

Andy O'Neill: Some interviews were conducted using glasses that, essentially, record people's eye movements. We produced research on that, too, which you can find on our website. What we found was that the majority of voters tend to start at the top of the list and go down until they find the party emblem, then they will look at the party name and then look for the candidate.

Of course, what we are talking about happens only in council elections. In a sense, the solution is to become well known and popular, because people also look at the candidates' names. There is an issue about the fact that candidates in council elections might be less well-known than parliamentary candidates.

Neil Findlay: Full randomisation would be my solution in order to combat the effect that you have verified. If you are a popular, well-known person, the voter will find you anyway.

Andy O'Neill: We were not asked to look at full randomisation. The Scottish Government asked us to look at two options: order-by-lot and A to Z, Z to A. Although randomisation is not a showstopper, administrators would find it more challenging to administer. Sue Bruce would have to administer it, so she might want to comment at this point.

Neil Findlay: There would be more administration for the people doing the counting.

Andy O'Neill: Yes.

Neil Findlay: I think that that would be the issue.

Andy O'Neill: There would be issues with counting but also with printing, checking and correspondence—all the bureaucracy around an election which, fortunately for them, most people do not know about.

The Convener: Gil Paterson has a follow-up question.

Gil Paterson (Clydebank and Milngavie) (SNP): Was any evidence taken about the worth of a candidate? That is, was any account taken of the issue of the extent to which people give their votes to the party and the extent to which an individual attracts votes?

Andy O'Neill: Not in this bit of research, no. It will come down to how popular the candidates are. For instance, the SNP stood two councillors twice in two of the multimember wards in the Western Isles and, on those two occasions, the SNP candidate lower down the ballot paper was elected massively and the other one was not. That will come down to that person being known but, in that case, you are talking about a certain type of community. Of course, it also happens in what you would describe as the central belt. The situation varies around the country. However, it is correct to say that, if you are well kent, the voter will find you.

Gil Paterson: Yes, but if the notion is that there is no effect, you would need to know how many people vote for the party. Randomisation might be confusing, but I wonder if you agree that—

Andy O'Neill: The research looked at how people voted, not at motivation. We did not look at why they voted. Some people were asked to find a specific candidate and we timed their response. The reason why we cannot say that alphabetic discrimination exists as a phenomenon is that we do not know about voters' motivations when they are voting in the polling booth, because there are many possible motivations.

Gil Paterson: But, to come to a conclusion, that is exactly what we need to know. There is a general opinion in politics that some people give weight to some candidates, no matter how popular they are, and that that is a relatively small figure compared with the number of people who vote for a party. Do you agree that people vote for parties now and not for individuals, so that is where the issue of alphabetical order is relevant? For those people, the first part of the exercise would be finding the party on the ballot paper and, when they find that, they have won the board game.

Andy O'Neill: Yes, in a sense. We hear anecdotally about people choosing candidates because they are higher up the ballot paper. However, if you accept that, on average, where two candidates are standing, 73 per cent of the voters vote for Bruce first rather than O'Neill, and that they arrive at those names by starting at the top and going down the list of parties to find the logo of the party that they want to vote for, and then moving in to allocate their first preference to the party representative who is higher up the ballot paper, that means that 73 per cent are accepting the party ticket and not choosing between the two human beings.

Gil Paterson: Do you agree that the evidence that you presented at the start proves that point? You did not present any evidence that reversed the impression that, in every case, when it came to alphabetical order, the situation is exactly as you have described.

10:00

Andy O'Neill: I accept that there is likely to be alphabetic discrimination in the process, but you cannot say that for certain because you do not know all the other motivations of the voter. Voters might well be voting for Bruce rather than O'Neill because they know Sue Bruce and think that she is a far better candidate than I am. Various solutions might lessen the effect, but we do not know that either. For instance, if you chose the A

to Z, Z to A approach and someone came in and voted alpha-beta for a particular party, you would have to ensure that the next person who wanted to vote for that party would get a different ballot paper, and you do not know that they would, because papers would likely be A to Z or Z to A on the same ballot paper pad. It is a random solution. It probably would not ensure that, if you had two candidates, 50 per cent of votes would go to the first candidate and 50 per cent would go to the other candidate. You would also have the problem that, if you were standing three candidates, one of them would always be in the middle.

Dame Sue Bruce: There is a bit of supposition here. Although statistics suggest that the alphabet rules over the outcome, the findings of the Ipsos Mori research did not back that suggestion up. The findings from the sample who were tested showed that the order did not make any difference, that people did not take longer to find their candidate and that they did not find it more difficult.

There was one area of concern. Groups representing people with disabilities thought that switching names around on the ballot paper might make it more difficult for some people to find what they wanted.

Gil Paterson: I can understand how that could come about, but I think that what is missing here is an understanding of what people do nowadays. There was a time when the name of the candidate would be chalked in big huge signs on the ground because it was against the law to print the party name. Now we print the party name, and I believe that people now go and look for the party, so it would seem sensible to me if the party names were in alphabetical order. This is about fairness and we should be fair to everyone, not just to the public but to the people who stand.

Do you agree that there should be some form of fairness in the system? Democracy should always be fair. You have presented evidence that tells us that, statistically, alphabetical ordering is unfair on some individuals. I already thought that, so I might just be reinforcing my opinion.

Bob Posner: I do not agree that we are drawing that conclusion. Andy O'Neill said that it is a complex equation. A fair summary of our position, as he said at the beginning, is that we should not rush at this, because there is potential for unintended consequences. You talk about unfairness and having a level playing field. If one is going to change a system, one has to think carefully about it. If research tells us one thing, it is that having party names and, now, logos and emblems on ballot papers carries great weight with voters, because that is where peoples' eyes go first, and other factors—perhaps the name of one particularly well-known candidate—may come into play afterwards. It is a complex equation, and we are saying that, if there is to be change, further research, pilots and thought are needed.

Andy O'Neill: One thing that the research found is that, when we asked voters to find candidates on the ballot paper, they could find them on the status quo paper, the A to Z, Z to A paper and the paper that was ordered by lot. People can find names if they are looking for them. Our primary concern was to ensure that none of the options that we were asked to test confused the electorate.

The Convener: I invite two very short questions from Mark Ruskell and Neil Findlay.

Mark Ruskell: Is the list order factor stronger when two candidates from the same party are close to one another on the ballot paper? I know of one council election in which there were two SNP candidates whose name began with H. Someone who was looking for the SNP probably voted for candidate 1 and then candidate 2, which potentially disadvantaged one of the candidates. I do not know whether you have looked at that sort of thing—people looking for a party and finding two candidates in that party's slot. Surely, that would have a more pronounced list effect. I do not know whether there is any evidence of that.

Andy O'Neill: There is evidence in the sense that we did a trial with glasses that allow researchers to see where people's eyes are going. Most people start at the top of the ballot paper, go down the list of parties, find the party logo and find the name. They tend to vote preference 1 for the first name in the party's list.

Mark Ruskell: First they find the logo, then they start going down the numbers.

Andy O'Neill: We do not know whether there were other motivations—whether they thought H-name 1 was better than H-name 2. We just do not know.

Mark Ruskell: It could have been that.

Neil Findlay: Whether the list runs from A to Z or from Z to A does not have any impact, because the name in the middle stays in the same place no matter what, does it not?

Andy O'Neill: If there are three names.

Neil Findlay: So, we can rule that option out. It does not make any sense. The qualitative research was inconclusive, but the quantitative research evidence—of nearly 75 per cent of the voters—seems pretty conclusive. If any of you were standing for election, would you prefer your name to be Aardvark or Zebedee?

Andy O'Neill: It would depend on whether there were other Zebedees after me.

Neil Findlay: Exactly.

Andy O'Neill: The key takeaway from the research is that in both of the options that we were asked to look at—listing from A to Z and listing from Z to A—voters could find the candidate on the ballot paper.

Neil Findlay: Of course they could find the candidate.

Andy O'Neill: Our primary motivation was to ensure that the system did not disadvantage voters. If they wanted to find a candidate, they could find that candidate.

Neil Findlay: I do not think anybody would dispute the fact that they could find the candidate; what we have to look at is the impact of the list order effect. I think that we need to look further into that.

The Convener: It is a complex matter, and it was useful to hear your views on it.

We now move to electronic voting.

Tom Mason (North East Scotland) (Con): In recent years, you have been evaluating electronic voting. What has been the outcome?

Bob Posner: Electronic voting is very attractive at one level as we move into a digital age. Electronic voting is recognised as a means of voting that will continue to emerge; however, as an organisation, we are still speaking words of caution about it. Examples from comparable democracies around the world suggest that it is probably right to be cautious.

The great disadvantage of electronic voting in comparison with our current system is that it is not transparent. Our current system is great: you can see the votes and what is happening. By definition, electronic voting means that the vote goes into a box somewhere, results come out at the other end and there are issues of confidence and legitimacy—about whether the systems are safe and give the right results—which is a big disadvantage compared with the paper system. Having said that, electronic voting is an accessible means of voting.

We looked at other countries that are experimenting with electronic voting. Australia is an interesting example, as is Estonia. Estonia is a small country where everybody has an identity card and all the people are digitally linked. Electronic voting was introduced with the expectation that people would choose it. However, experience has shown that, at subsequent elections, more and more voters have gone back to the traditional mode. That indicates that, when they have choices, people's confidence in electronic voting is not that high.

We are speaking words of caution about electronic voting, but we are also saying that it has potential advantages and that it will come in time. We did some pilots a number of years ago. Andy O'Neill may want to comment on those.

Andy O'Neill: There were a number of pilots in England in the early noughties up to 2007, and we carried out independent evaluations. The bill does not ask us to independently evaluate any trials that might be undertaken, but we would like to do that, given that we are the independent Electoral Commission and can offer expertise in the area. We have done it before.

We undertook some evaluation of postal vote pilot testing for the Scottish Government from about 2003 to 2005, but we did not exist in a legal sense in council elections in Scotland until 2011, and we wonder whether that is why there is no provision for us to evaluate electronic voting trials when and if they come.

Tom Mason: Your evidence talks about trying to improve accessibility to electoral events and voter turnout. What do you consider to be the best way to balance the competing demands for increased accessibility and the different methods of voting?

Bob Posner: There is accessibility in the sense of giving the voters different ways to vote.

Tom Mason: Yes.

Bob Posner: Stepping back, there are different systems in comparable democracies. In the UK, we place great weight on postal voting as an alternative as of right, which has advantages and disadvantages. In other democracies, there are different forms of advance voting. Polling stations open in advance of the traditional polling day. In a number of democracies, overseas voters are allowed to vote in local consulates or embassies. We do not offer that option to overseas voters; we rely on postal voting.

People talk about having online voting over the internet or electronic voting machines in polling stations, which is more about having a different means of casting a vote than about creating greater accessibility. I do not think you will find anywhere in the world where there is complete confidence in online voting, but we are beginning to see examples of its being explored, which is probably the right thing to do, albeit with great caution.

It is more interesting to think about whether it would be possible to enable people in the UK to vote more easily. We have 381 separate electoral registers across the whole of the UK, and there is a separate electoral register in Scotland. Wales is proposing to join up those registers and to look at automated registration. If you could join up the

electoral registers across the nations of the UK, you would open up all sorts of possibilities.

Would it not be good if I was at one end of the country, not near my home on polling day, but I could go into any polling station and vote? There are some examples of that possibility. Would it not be good if we had joined-up registers and I could register on polling day itself? Canada is a good example of that, because it has joined-up registers.

One of the keys to accessibility is modernising and joining up the UK's electoral registers. Achieving that would open up options for accessibility.

Dame Sue Bruce: Young people have grown up with digitisation being a common thing and it is attractive to them as we try to encourage them to register, participate and engage with democracy. It also offers an alternative to people who cannot reach polling places. At this stage in the 21st century, it is something that probably should be considered as an option for the longer term, but, as Bob Posner said, the key test is whether people have faith that the system is secure and trustworthy and has integrity. I believe that that would be the main concern of most people.

Gil Paterson: The maximum fine that the Electoral Commission can impose for a breach of the election spending rules currently is £20,000. Last week, we heard from academic experts who agree with the commission that the maximum fine should be raised to £500,000. What impact might that have on people underdeclaring?

10:15

Bob Posner: There is a range of criminal offences covering aspects of electoral law. If offences are serious enough, they should be looked at in the criminal courts. There is also a civil fines regime covering some less serious offences. We can issue fines up to the current maximum of £20,000 for party and campaign offences. That system has been in place since 2010.

The way that the system has worked in practice is that, quite rightly, most of our fines have been at the lower end of the scale. I think they will always be at the lower end—for example, when, during a campaign, a party gets something slightly wrong and that needs to be pointed out. Many times, we do not fine at all but just point out the breach. Sometimes we apply a low fine of a few hundred pounds or a few thousand pounds. I do not think that that will ever change. That is right, because we do not want to discourage campaigning and participation, and the breach is often not deliberate—the person just does not have the rules right, and they should have the rules right.

At the other end of the scale, there is a lot of money—many millions of pounds—in politics and campaigning. It must be recognised that the prize of elections—winning and being elected—can be tempting, and a lot of organisations are involved now. I am not talking about the main parties, which have a great culture of compliance with the rules in the UK; I am talking about other campaigners who come to an election and other organisations that want to influence how people vote.

There is a lot of money involved in campaigning, and we have seen instances of the rules having been broken. The question for you, as parliamentarians, is whether a fine of £20,000 is sufficient in that context. As the regulator, we do not think it is. There needs to be a higher-level fine—you could pitch it at £500,000 or at whatever amount you think is appropriate—that sits there as a deterrent so that people are less tempted to break the rules or so that, if they do break the rules, the sanction means something. That is the context for our view.

Do you want to add anything to that, Sue?

Dame Sue Bruce: The key point is that it has to be a major deterrent to people breaking the rules in a major way. As Bob Posner says, most of the fines are currently at the lower end. The deterrent would hopefully help people to learn the rules and stick within them. We think that the current maximum fine is at risk of being seen as the cost of doing business for big organisations that can afford to pay it and that, therefore, it is not a deterrent, whereas a larger maximum fine would be. Were that to be made the case under the bill, Scotland would be leading the UK in setting the bar, and that might not be unhelpful.

Tom Mason: I have a quick question. Can parties insure against being fined?

Bob Posner: I do not think so, but I do not know that for sure.

Tom Mason: Would it, in fact, be legal?

Bob Posner: A person can insure against legal costs and so forth, but I do not think they can insure against a fine in any walk of life. I think that I am right in saying that.

It is interesting to take the matter out of politics and regulation of the political rules and to think about regulation in other fields. In the UK, over the past 10 to 20 years, we have seen a trend of enabling regulators to set a level of fine that matters. The top one that we are all aware of is the fine for sharing our personal data, is it not? However, it is interesting to see that, although the Scottish Information Commissioner and the UK Information Commissioner's Office have been given the power to set fines that mean something,

most fines are still at the lower end, where it matters.

In essence, it is about promoting confidence in elections. Imposing a low fine on politicians does seem to beg a question, but we do not want to discourage campaigning.

Gil Paterson: Would you be aiming that fine at election agents or at parties?

Dame Sue Bruce: It would really be aimed at anybody who broke the law, whoever they were.

Bob Posner: Yes. Our absolute priority as a regulator is to get compliance, which is why I alluded to that being one of the good things about UK politics. I know that we have issues, but we do have a culture of compliance with the rules. Compared to some other countries in the world, we have very robust, good elections. The political finance rules are broadly complied with and the political parties work hard at that.

We work hard with all campaigners to help them to comply with the rules, and that includes agents. Agents are a very interesting example in that they are caught in the middle between the local candidate rules and the headquarters and national campaigning rules. I have quite a lot of empathy with agents. If there is one thing that we could all work at, it is helping agents to do their job better and to be more empowered in the system, so that they can control things in their local areas and their work means something. That area could be strengthened.

Gil Paterson: That leads to my next question. At present, there is a financial loss, and I think we can all agree that some of the fines that have been offered up for some heavy spending are like chip money—it is like buying a bag of chips in comparison. A fine of £500,000 would be meaningful, but I wonder whether you have thought about, or had any evidence of, whether the game would change if criminal action were to be taken in respect of declarations that sought to deceive. We are all human—we make mistakes and can spot them—but when parties or individuals set out to deceive, should the matter go to a different area of law?

Bob Posner: There are criminal offences in addition to fines, but the problem with our criminal electoral offences in the UK is that most of them were written 100 years ago. When we talk to prosecuting bodies, the police, the judges and the courts here in Scotland and in the rest of the country, there is a real difficulty because electoral offences are written in rather old language and need to be modernised. In their report, the UK law commissions picked up on the need to take all the electoral law offences and put them in modern criminal law language, so that people can be more readily prosecuted when they breach the law.

However high we set the civil fine, there is currently a gap. If something is serious enough, it should be dealt with in the criminal courts—that sanction should sit there in addition. We do have electoral law regarding data, but it is sometimes quite difficult for prosecutors and police to bring about prosecutions because that law does not quite work in the modern language—the courts struggle with it. There is, therefore, a real need to modernise our criminal law. I commend the pack that was written by the UK law commissions, which has the support of leading criminal lawyers and judges across the country. The law could very easily be modernised, but that would need the time and the will of Parliament. The next phase may be to look at that for your Scottish elections.

Gil Paterson: I take it that, given the recommendations that you are making, you see that as a problem currently.

Bob Posner: Yes, I do.

Maureen Watt (Aberdeen South and North Kincardine) (SNP): In order to impose a fine of whatever size, you have to prove that there has been non-compliance. Do you have sufficient power to gather information if you suspect that there is an issue with compliance? If not, what is the impact of that? If a political party suspects that another party is overspending—perhaps because it has produced five different leaflets in a council election—can you start an investigation in real time or do complainants have to wait until after the election? Do you need to be able to start investigations in real time before leaflets are shredded or whatever?

Bob Posner: As you would expect, we work hard in real time during and in the lead-up to elections to respond where there are concerns and complaints and to avoid the law being broken or, if it is broken, to bring the person back into regulatory line. However, we hit two problems with that. We are not complaining because we are given a good toolbox of investigatory powers but, in practice, over the past 10 years or so, two problems have emerged in how we can regulate and on which other regulators are better placed than we are.

One issue is with our ability to get information quickly in real time, as you alluded to, particularly from other organisations that are involved in the process, such as social media companies or suppliers and providers rather than the organisations or individuals doing the campaigning. For example, at a very low level, we might not have the power to obtain information from a newspaper about who placed an advert without an imprint in it. We have a problem getting hold of information from others quickly and in real time. That is why we have recommended that the bill should expand the power for us to get

information from third parties quickly. That would enable us to respond more quickly and investigate. There is a gap there.

The other gap, which I alluded to earlier, relates to financial spend information. Traditionally in the UK, that does not have to be reported to us until well after the electoral event—for the big spend, it is many months after—and that means that a period is built in, with investigations often being opened nine or 12 months after the event has taken place. That does not help confidence in the system. We understand why that was the situation traditionally and that made perfect sense, but we live in a digital age now and certainly the main campaigners—maybe not so much the smaller ones—are doing everything on computer systems. The information is there and it should be possible for it to be available to the public to provide transparency much more quickly, although there is a choice to be made about how much to shorten the periods by and whether to have reporting during an election. That would give the public confidence and would give us the ability to act more swiftly.

Maureen Watt: Will you explain for the benefit of the *Official Report* which other regulators you share information with and whether there is a problem with sharing that information? How can we speed up the process for you to get the information that you need where there has been a suspected breach of the rules?

Bob Posner: A good example is the use of personal data, which is a direct and topical issue in politics and campaigning. In that example, there is another regulator across the UK, the Information Commissioner's Office, and currently we do not have the power to share data in that context. That is slightly odd. We are gathering information and the Information Commissioner is gathering information, but the Information Commissioner has the power to share data when we do not, which is strange. That presents a slight barrier when we are sharing information.

We work with law enforcement agencies and police authorities across the UK and in Scotland. They often want information from us quickly, and we have to go through a process. We make it work, but there are data protection rules to follow before we can provide information. That is clumsy. An information-sharing power is standard in legislation these days, and a number of regulators in different fields have that. If it occurs to a regulator that it would be useful for another regulator to have data that it has gathered and it makes sense to do so, it is very easy to share that data. Such a power would make the system more efficient.

There are two points about getting information more quickly. We need extra power to require information from others in real time. There also needs to be a sufficient deterrent so that people cannot just say, "No, I won't." We need to be able to require the information and get it or to go to court immediately to require it.

There is then the wider issue that I alluded to about how quickly to make transparent the data that major campaigners and major political parties have on not just the money that they are spending but the nature of the spending. That data exists—the campaigners have it and know that they are doing it. Equally, one does not want to cut across the nuances of a particular campaign and how they are campaigning but, rather than transparency later, the core data could be made available virtually immediately to the regulator if the regulator needs it, or it could just be made available to all citizens and the public immediately. One can have a much more transparent system if one wants to. The more transparent one makes it more quickly, the more confident we would all be that our politics is clean and good. Often, we hear about things and there is suspicion but there is nothing to it—in fact, the campaign is not breaking the law but, because nothing is transparent, that cannot be demonstrated. There are benefits in giving confidence.

Maureen Watt: You make a good point at the end there. I would not say that there is an awful lot of confidence in the Electoral Commission when you report what you think is clearly a breach. If the Electoral Commission could have two or three powers that you do not have now to increase confidence in the system, what would they be and are they covered in the bill?

Bob Posner: We have spoken about fines. That is a deterrent and we have the ability to take action, however one pitches that. We have spoken about strengthening our ability to obtain and share information.

We have not focused on digital campaigning. However, we should do so, because so much of the campaigning is now done online and digitally, and increasingly so, and we have no proper rules directed to that nature of campaigning. It seems absurd that, as you know, if you put a leaflet through a door or put something in a newspaper, you have to say who it is from and who is campaigning, so that the voter knows who is trying to influence them, yet online we do not have the equivalent rules.

10:30

In the Referendums (Scotland) Bill, you have just introduced online controls, and you had such controls for the 2014 referendum. I suggest that you would want that for all Scottish elections. At

the very least, you would want transparency on the sources of campaigning online.

Online campaigning needs regulation on top of that. We need powers to regulate online campaigning because otherwise different platforms will do things differently. One platform might ban any political campaigning, which might be a good or a bad thing. Another platform might allow campaigning in a certain way. We will get different approaches from the online platforms, which are run by private companies with different motivations. You probably want some regulatory rules on top of that. Those are our core asks.

Dame Sue Bruce: I support the law commissions' recommendations that we see what consolidation can be made of Scottish electoral law to strengthen the position here. Obviously, the timetabling of the changes should allow them to come in as effectively and swiftly as possible.

Neil Findlay: Let us take an extreme mythical example of a party pretending that its social media press account was, let us say, a fact-checking organisation. I know that that would never happen in elections in this country, but would you see your organisation potentially having a role in that, given that it was online?

Bob Posner: We are a financial regulator—we regulate the money in politics—and we have always said that we would not want to be a truth commission. It would not be a good idea for anyone to be a truth commission in the UK. Political parties will say what they say and they will campaign to voters. It is about voters understanding who is campaigning towards them, which goes to transparency, and being able to make up their minds about that. We issued a statement yesterday on the issue that Neil Findlay is talking about. We were critical and said that all campaigners must campaign with integrity and transparency.

Neil Findlay: You said that you should have powers for online enforcement, such as fines or whatever. Is that an example of an area where you want enhanced powers?

Bob Posner: The first and most important thing is that voters should know who is campaigning at them. Then there is a question about whether something that is misleading should remain online. You then get into wider areas of online harm. I would not just focus that on politics. There is a much wider regulatory debate about the issue of online harm and the use of online platforms. It does not apply only to us as an organisation. The UK Government and Governments in a number of other democracies, including, I am sure, the Scottish Government, are thinking about the wider issues of online harm in other areas. There is a regulatory position to emerge—I am sure that it will emerge for Scotland and for the UK as a whole—about all online harm, and part of that is what to do about the political aspect.

Neil Findlay: I am sorry to press you on this, but it is important. I understand exactly what you are saying, but I am asking whether you foresee your organisation playing that role in future.

Bob Posner: It is not immediately obvious that we would do that. It would be quite a change from how we stand at the moment. We are a financial regulator. Ultimately, it is a matter for Parliament to decide what it does with its Electoral Commission, but it would be a change.

Neil Findlay: Who would play that role? Would it be Ofcom?

Bob Posner: There are choices about how one approaches that in the UK.

The Convener: You might not want to be the truth commission, but you would not want to be the conciliation commission either, just to mix a couple of words in.

I thank our witnesses for that extremely helpful evidence. If you want to send us any points on issues such as digital imprints, which we have not really covered, we would be grateful for that. I thank Dame Sue Bruce, Bob Posner and Andy O'Neill for their attendance.

I suspend the meeting for a short period, until we get the next panel established.

10:34

Meeting suspended.

10:36

On resuming—

The Convener: We are quite tight on time today, unfortunately. If my colleagues have a question, try to get it in and I hope that we will run fine.

This is the second panel under item 1 on the Scottish Electoral (Reforms) Bill. Joining us are Isabel Drummond-Murray, Ailsa Henderson and Ronnie Hinds, all from the Local Government Boundary Commission for Scotland. I welcome you all. As we are a wee bit tight for time, rather than taking an introductory statement, we will move to questions and you can expand on those as we go, if that is okay.

Neil Findlay: My understanding is that there is a proposal to change the name of the organisation. Who does what? Are we creating a new, separate organisation? Will there be two organisations? What is the lie of the land?

Ronnie Hinds (Local Government Boundary Commission for Scotland): We have recently acquired responsibility for doing boundary reviews for the Scottish Parliament as well as local government. Local government has been the focus of our work since the organisation was founded. We recently acquired responsibility for the Scottish Parliament from the national body that previously did that along with the boundaries for Westminster elections.

We are set up to be an independent commission. Ailsa Henderson and I are both members of the commission. We are supported by a secretariat led by Isabel Drummond-Murray. That secretariat supports the Scottish commission and the UK Boundary Commission, which is responsible for the reviews of the UK parliamentary constituencies. The commission shares a secretariat with another commission.

Neil Findlay: I was concerned about duplication and why we would need two organisations. In effect, there is one organisation but two different sets of headed paper. Is that administratively how it works?

Isabel Drummond-Murray (Local Government Boundary Commission for Scotland): There are two separate commissions but one team of civil servants supporting both commissions.

Neil Findlay: We see name changes to organisations in the headlines occasionally because they have to change this, that and the next thing. Will it be a minor issue for you, or is a big administrative change required?

Ronnie Hinds: We do not see it as a major issue. Our submission says that we are open to suggestions for an alternative—suggestions on a postcard, I suppose—but “Boundaries Scotland” is a more succinct summary of what we do.

The name has to change because we are no longer responsible only for local government so our current title cannot be sustained. Something other than “Boundaries Scotland” that captures what we do would be no difficulty to us.

Neil Findlay: You are quite happy with that being the name of the new organisation.

Ronnie Hinds: Yes.

Maureen Watt: I have a supplementary question, convener. You said that the commission now has control of Scottish Government elections, which have been devolved to you from the UK Electoral Commission. How much scope does that give you to change things, or are you still bound by the same rules as the UK commission? For example, could you alter the size of constituencies to take in geographical considerations, island considerations and things like that?

Isabel Drummond-Murray: The legislation governing the reviews has not changed at all; it is just that responsibility has passed to the local government commission to take on what was previously done by the reserved commission.

Maureen Watt: I want to focus on the length of terms. There is a proposal in the bill to move to fixed five-year terms. Will that have an impact on your review schedule? If the term was to remain unaltered at four years, will that also have an effect? What effect will the boundary term have on your work?

Ronnie Hinds: There are two parts to that question. I will try to answer the first part and ask Isabel Drummond-Murray to answer the second. The first part is the question of whether the commission has a view on four-year and five-year terms. Strictly speaking, we are neutral. We will work to whatever terms are determined by the Parliament.

The one qualification that I would add to that is that you will see from our submission that the nature of our work means that it takes quite a period of time to do it properly. Our last set of reviews took just under three years to go through the process from start to finish and produce a report with recommendations and proposals for revised boundaries. Given that, you would expect that five years would give us a bit more headroom for that work. In administrative terms, five-year terms might make our work a little easier but we are not saying that it is a paramount consideration. We could work on either and we have done in the past.

The second part of your question refers to the practicalities of what the bill proposes in relation to how we might move towards, say, a five-year term. Isabel Drummond-Murray can talk about how that would affect the way that we would like to be able to do our work.

Isabel Drummond-Murray: Yes. The bill proposes a 2028 deadline, which is 12 years after we submitted the fifth review in 2016, but whether we move to a five-year term or stay at four years, the 2028 deadline does not fit with maintaining the idea that our proposals can be in place for up to three elections. If we move to five-year terms, we would look to a 15-year deadline. It would not be a target, it would be a deadline. We could review earlier. If we retain four-year terms, we could move to a 12-year deadline, but the current five-year term is slightly out of sync, and so it would need a minor adjustment from the 2028 date that is proposed in the bill.

Tom Mason: I would like to focus on the number of councillors in multimember wards. Do you need the increased flexibility to increase those numbers up to five and possibly down to two?

I notice that the survey shows that you have fairly good consent as to whether that is a good idea, although the survey seemed to be quite small; if I remember rightly, the sample size was approximately 118 people. There is also the impact of changing the number of people in a ward to the proportionality that takes place. May I have your comments on that?

Ronnie Hinds: We welcome the additional flexibility. It makes the key part of our work, which is designing wards that are fit for purpose under the legislation that we work to, a little easier. We could point to examples from the last set of reviews that we did for councils where, if we had had the power, we might have suggested a five-member ward in an area or two. Likewise, we might have come up with a two-member ward.

You have to remember that that is in the context of operating under legislation that simply gave us three and four-member wards, so we were not looking to have five-member wards or two-member wards. Notwithstanding that, we could see occasions when it might have been a good thing to do. Given that under the terms of this legislation we would have a choice between two, three, four and five-member wards, it is conceivable that we might find more instances where five or two members would work.

We welcome the additional flexibility. To answer the specifics of the question, I could not say that we need it because the legislation as it stands has been perfectly satisfactory for the work that we have done, but it would improve our ability to design wards that local people recognised and wanted to be part of if we had other options.

10:45

Ailsa Henderson (Local Government Boundary Commission for Scotland): There were concerns about community ties being broken last time around, and we know that communities in Scotland come in different shapes and sizes, so the extra flexibility of two-member wards and five-member wards would allow us to capture wards that better capture entire communities within them. At the moment, it is sometimes difficult to use the three-member and four-member wards to do that.

When the minister did not accept some of our recommendations, the point that was made was about the ability of the wards to reflect community ties and boundaries. That extra flexibility would be helpful to us.

It would also recognise that communities are different shapes and sizes and that there are considerable variations in how rural or urban those wards are. Having a variation that runs from two-member to five-member wards also allows us to better tailor those wards. If you are stuck with larger ward sizes and you have very low population density, such as in rural and remote communities or island communities, it is hard to identify wards of a manageable size.

We are working within the definition of effective and convenient local government, which is not defined much more than that, but we are thinking in terms of how voters access their councillors and how councillors undertake their work. Identifying large wards makes that more problematic.

Tom Mason: That leads to my next worry: the operation of multimember wards. As wards get bigger, and there are greater numbers of councillors, who is responsible for what becomes less well defined. Are any surveys being done on the acceptance of multimember wards and the way they work? Your focus is on the boundaries fixing the communities, and not really on taking into account whether people like the idea. Alternative voting systems could be put in place. I am not advocating first past the post necessarily but I admit that, as a city councillor, I know that the operation of multimember wards is problematic in a number of ways.

Ailsa Henderson: We take absolutely no view on the electoral system. We very much work within the rules that we are given. If the electoral system is single transferable vote, we design the wards as best we can for single transferable vote.

On your point about whether there is useful research on the ground, there is not. We have discussed previously how beneficial a body of work would be that looked at how voters interact with the electoral system and interact with their councillors, and how councillor workload is affected by things like district size. To date, there has not been a great wealth of academic research commissioned from practitioners on this.

Ronnie Hinds: The question is well posed. From our point of view, although we welcome the additional flexibility as I said previously, we must recognise that it is a significant step to move from a multimember ward system that offers only the choice of three or four-member wards to one that basically doubles that and says that a ward could have two, three, four or five members.

It is also worth bearing in mind the fact that, under the Islands (Scotland) Act 2018, we can have single-member wards in six of the councils. We are currently working with those six councils on that basis. We could therefore quickly reach a situation where we have significantly expanded what we mean by the multimember ward system. What I take to be the point of the question is that that is being done without the benefit of any strong data or research that tells us how the current system has operated since it was implemented.

I am not saying that that is a reason to be fearful of the provisions in the bill, but it is an occasion to ask how much we should know about how multimember wards work in practice. The commission thinks it would be no bad thing for some such research to be carried out.

Tom Mason: Thank you.

The Convener: Jamie Halcro Johnston has a wee back-up question on that point.

Jamie Halcro Johnston: We have talked about community. I am from Orkney, which is covered by the Islands (Scotland) Act 2018 with regard to multimember and single-member wards. Communities can sometimes be split up in terms of their representation. The community can stay the same but be lumped in with other areas and, therefore, if there is a boundary change and the group that they are lumped in with changes, the individual councillors might change at every election. How do you balance that? Voters like to know who their local councillor is. They might want to stay part of a group that has a familiar group of councillors. How do you balance that?

Ronnie Hinds: Yes. Others will also contribute but my short answer is that we would do it with some difficulty. That is one of the reasons why we welcome the additional flexibility proposed in the bill.

Essentially, in those terms, we need to seek some appropriate balance. On the one hand, the paramount consideration in the founding legislation is parity, which means that more or less, within a given council area, each elector's vote counts for the same as every other elector's vote so that there is no massive disparity within a council area in the ratio between those who are represented and those who are elected to represent them. However, on the other hand, we also have to recognise the importance of local ties, as the legislation puts it, and community more widely, as Jamie Halcro Johnston's question put it, and we seek to do that. The additional flexibility helps but it does not change the fundamental proposition that we have to manage to do that.

The other helpful thing inherent in the bill is that, subject to one or two amendments that we would like to see, it gives us the opportunity to engage more fully with the local council and the communities that make up the council area so that we get more time for dialogue with people about what it means to be a member of a community; that is in the eye of the beholder. We can try to understand what people feel strongly about and how we can best take account of that when we are trying to design ward boundaries around the legislative framework. The idea of having rolling reviews and time to be doing a smaller number of councils than all 32 local authorities in Scotland at once is an important component of the legislation. That would also help us to strike an appropriate balance between parity on the one hand and community identity on the other. Others might want to come in on that.

Jamie Halcro Johnston: Might that be to do with engaging with community councils in particular?

Ronnie Hinds: We are seeking to do that with the six councils that are covered by the Islands (Scotland) Act 2018. Recently, on Shetland, we met most of the chairs of the community councils to hear first hand what community means to them.

Ailsa Henderson: In keeping with the spirit of an absence of disruption, that was the initial principle behind having a 12-year upper limit for the reviews, so that if there is a four-year electoral term, the boundaries would be in place for three electoral terms. That would be another argument for moving from 12 to 15 years if a five-year electoral term is used, because it means you are not changing boundaries after every single election. That would mean stability in the ward boundaries, but not necessarily stability in the elected councillors, because of course they could change at any election even if the ward boundaries are the same.

Jamie Halcro Johnston: I guess it was just that I have known councillors. My father was a councillor when there were only single-member wards, and he was moved constantly because the boundary effectively changed. He almost moved across seats so that he could stay within our community. It was just that aspect that was of interest. Thank you.

The Convener: Thank you, Jamie. You have covered the issue of rolling reviews, which I was going to ask about.

Gil Paterson will ask the next question.

Gil Paterson: Do you have any concerns about the proposal to subject certain Local Government Boundary Commission changes to enhanced parliamentary scrutiny through orders that would be subject to the affirmative procedure?

Ronnie Hinds: No, we do not have concerns about that. Ailsa Henderson has already alluded to the process that governed the proposals that emerged from the most recent set of reviews, which is subject to ministerial decision. We think that it is appropriate that Parliament should have that role, and we welcome the scrutiny that Parliament would bring to bear on our work. However, as the committee will know from our submission, we are at pains to stress the independence of the work that we do and the fundamental importance of that for the democratic system within which we work.

We would welcome scrutiny by parliamentarians that added value to the work that we seek to do. Who knows how that will work out in practice? It is not for the commission to suggest to the Parliament how to exercise its scrutiny. We would not do that, but we would expect that, if the Parliament were to take an interest in the proposals that we had made for a particular council area, that might happen partly because that council or the communities in that area had a view on the matter, and I think that that would be fair grist to the mill.

I anticipate that you would come back to us on specific elements of our proposals, because that would be constructive and helpful to us in following the process that is set out in the bill to engage in some further reflection and to carry out a further review against that. We would be looking for quite specific feedback on an area such as—to pick one at random—the Borders, along the lines, "In this part of the Borders, we think that that might not be the best possible fit for community interests." We could take that away and work with it. We would hope to get out of that process something that helped us to move our work on.

In overall terms, to answer your question, we have absolutely no problem with parliamentary scrutiny. I think that it is capable of adding value to our work.

Gil Paterson: Good. Thank you for that.

The Convener: That was very helpful. You have given answers to questions without them being asked. [*Laughter*.] Seriously, that was really useful.

Maureen Watt: I have a question about the advertising of proposals for Scottish Parliament boundary changes. Would removing the requirement to publish such proposals in local newspapers have advantages? Is that just yesterday's form of communication?

Isabel Drummond-Murray: I think that the problem with the Scottish Parliament legislation is that it is inflexible, whereas in local government we advertise as we see fit. For Scottish Parliament boundary changes, the legislation requires not only that we publish notices in at least one newspaper that circulates in each constituency, but that that notice should describe the effect of the change. It is not even enough to have a notice that says, "Go and look at the website." That means that the process is very expensive. In the first review, my predecessors went down the route of putting in maps, and I think that it cost more than £500,000 in total.

We think that more flexibility would mean that we could choose to do that if we thought that it would be helpful in a particular area but, equally, if we thought that using social media or putting the money into other sorts of advertising would be more worth while, we would be able to do that. It is not necessarily a question of saving money; it is about our having the flexibility to use money that we have in the publicity budget in the best way possible. There is some evidence that local newspaper circulation is down on where it would have been at the time that the legislation was introduced. I do not know that I can definitely say that people do not look at public notices in the press—I am sure that some people do—but I think that we could use a wider range of publicity measures, which might include public notices in papers.

Maureen Watt: Have you set out a plan for the sort of communication strategy that you would want?

Isabel Drummond-Murray: We have not quite done that yet. We are trying different things with the islands reviews. Ronnie Hinds mentioned the benefit of being able to review a small number of councils at one time, which is that we can try things out. We are using social media, which, for us, is breaking new ground, but it is early days. By the time we come to the next Scottish Parliament review, we would expect to have come up with a plan for how best to communicate, but we are not quite at that point yet.

Ailsa Henderson: We have used a range of different methods in the council areas that we are looking at now. That will allow us to figure out which ones are most effective from the point of view of the responses that we get in. We are at a very early stage but, so far, the new methods have resulted in a doubling of submissions, so we think that we are on to something.

Maureen Watt: That is good.

The Convener: Is there anything that is not in the bill that you think is a matter of importance for electoral reform or administration in Scotland? Is there anything that you think needs to be pressed that is not already being proposed?

Ronnie Hinds: While my colleagues reflect on that, this is not something that is not in the bill, but I reiterate the point that was made earlier about the practicalities of achieving the policy intention of the bill as expressed in the policy memorandum; the expression "rolling reviews" is the one that comes to mind.

We would like the opportunity to follow the same kind of more engaged process that we can follow at the moment with the six island councils to be expanded to the whole of Scotland. As matters stand, if we move to five-year terms and do not change the provisions in the bill for having an upper ceiling of 12 years between reviews, it will not achieve in practice what I think the bill is trying to achieve in theory. That is quite an important

issue for us. That is not something that is missing from the bill, but it is not stated in a way that we think would achieve the objective.

Now that I have filibustered a wee bit, maybe my colleagues—

11:00

Ailsa Henderson: I would agree with that. An adjustment to 15 years for reviews, if five-year electoral terms are used, would be helpful. That would mean that the boundaries were designed for three electoral terms, which would be useful, because it would minimise disruption. It would also give us the opportunity to look at a certain number of councils at a time rather than all 32 at the same time. That would mean that there would be more capacity for consultation, more engagement with community councils, different city strategies and so on. It would allow us to tailor things and to get it right.

The Convener: So you are saying that the issue is one of practicalities. If five-year terms are adopted, for it to work, the rolling programme would have to go up to 15 years, would it not?

Ailsa Henderson: Yes. We are talking about multiples of electoral terms—that is to say, three electoral terms. If it is a four-year term, it should be a 12-year period. If it is a five-year term, it should be a 15-year period.

The Convener: Thank you very much. The depth of your replies has been extremely encouraging but, as I said to the first panel, if anything at all comes to mind that you think that we have not covered today, we would be very pleased to hear from you. Your evidence has been extremely helpful.

I thank Ronnie Hinds, Isabel Drummond-Murray and Ailsa Henderson very much for their attendance.

11:01

Meeting continued in private until 11:27.

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