Standards, Procedures and Public Appointments Committee

Thursday 5 December 2019

The Scottish Parliament
Pàrlamaid na h-Alba

Thursday 5 December 2019

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STANDARDS, PROCEDURES AND PUBLIC APPOINTMENTS COMMITTEE
23rd 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:

Graeme Dey (Minister for Parliamentary Business and Veterans)
Dr James Gilmour
Iain Hockenhull (Scottish Government)
Maria McCann (Scottish Government)

CLERK TO THE COMMITTEE

Katy Orr

LOCATION

The James Clerk Maxwell Room (CR4)

Scottish Parliament

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[The Convener opened the meeting at 09:30]

Decision on Taking Business in Private

The Convener (Bill Kidd): I welcome everyone to the 23rd meeting in 2019 of the Standards, Procedures and Public Appointments Committee.

Agenda item 1 is a decision on whether to take item 3, which is discussion of some correspondence received by the committee, in private. Are we agreed?

Members *indicated agreement.*

Neil Findlay (Lothian) (Lab): I prefer such things to be discussed in public as a default position. I do not think that there is anything that we should not discuss in public and I would prefer that.

The Convener: We will discuss that later and come back to you at the next meeting if that is okay.

Neil Findlay: Yes.

The Convener: Thanks for that. That is perfectly reasonable.

Scottish Elections (Reform) Bill: Stage 1

09:31

The Convener: Under item 2, the committee will take evidence on the Scottish Elections (Reform) Bill. Joining us today in the first panel is Dr James Gilmour, who has kindly provided us with a submission on his ideas. I welcome Dr Gilmour and move straight to questions from the members.

Maureen Watt (Aberdeen South and North Kincardine) (SNP): Good morning, Dr Gilmour. For the record, will you briefly talk us through your research and key conclusions on the list-order effect?

Dr James Gilmour: How long have you got? We could have a whole day's seminar taking the five research papers apart, but we will not do that.

Maureen Watt: I did say "briefly".

Dr Gilmour: Thank you for the opportunity to answer the committee's questions in person. The list-order effect is very real. There is no question but that, when a party nominates two candidates, the upper candidate on the list receives a greater proportion of that party's first-preference votes and has greater electoral success. Similarly, when a party nominates three candidates, a greater proportion of the party's first-preference votes goes to the highest candidate, a lower proportion goes to the middle candidate and a smaller proportion again goes to the bottom candidate on the list, so the effects are real.

There are a number of complicating factors. Incumbency plays a part when we disentangle what is going on, but the sex of the pairs of candidates has no effect. Whether the pairs are male and male, male and female, female and male or female and female, sex has no effect. There is, of course, severe underrepresentation of women, but that is a completely separate issue.

As far as incumbency is concerned, we did a very interesting exercise in response to a targeted consultation from the Scottish Government, in which the candidates' names were ordered alphabetically from A to Z and they were separated into incumbents and non-incumbents. For the incumbent candidates, alphabetical position had no effect. We grouped those candidates into 10 alphabetical groups. In the first group in the alphabet, 85 per cent were elected, while in the last group 86 per cent were elected; there was no effect whatever.

However, there were effects among non-incumbents. Surprisingly, the second alphabetical

group—not the first—was overrepresented, and the last alphabetical group was significantly underrepresented. There might have been complicating factors there. A party that was particularly popular in that election might have had a disproportionate number of its candidates in the second alphabetical group. Conversely, a party that was not particularly popular might have had a disproportionate number of candidates in the last alphabetical group.

Therefore, among incumbents there were no effects, but among non-incumbents there were effects of alphabetical position. The biggest effects of all, though, relate to party pairs and party threes.

Neil Findlay: The Electoral Commission's submission said that there was no list-order effect. Do you disagree with that view 100 per cent?

Dr Gilmour: No. The work that the Scottish Government asked the Electoral Commission to do had an extremely narrow remit: to consider two designs for ballot papers and to look specifically for a particular candidate who stood alone for their party.

I have read the Electoral Commission's report, and also the Ipsos MORI research report on which it was based. You are quite right that, overall, the ordering of the candidates had very little effect. The most surprising finding of all that work was how few of the test voters recognised that the ballot paper ordering was alphabetical, which seems amazing.

Neil Findlay: Have you seen good practice in other countries and jurisdictions that might address the issue and so level the playing field?

Dr Gilmour: I am not aware of any other legislature that uses the single transferable vote system having taken positive steps to address the issue. However, one of the research papers that I have referenced contains detailed information on that. It does not form part of my submission, but if the committee wished to see it, I would willingly make a copy of it available. It shows that there is very little evidence of alphabetical advantage in the Republic of Ireland, and that in Malta, where STV is used for both Parliament and local council elections, it has negligible effect. Malta's Parliament has five-member constituencies. Each party nominates up to 21 candidates for each such constituency, even though the maximum number of seats that it could possibly win is five. Malta's political culture is totally different from ours but, given the larger numbers of candidates and the greater choice that voters have, the alphabetical effects that we see in Scotland seem to disappear there.

Neil Findlay: Finally, if you had the freedom to design the system, what would you do to try to level the playing field?

Dr Gilmour: In one of my submissions I have made suggestions about increasing ward sizes and stopping the use of by-elections to fill casual vacancies.

Neil Findlay: So you would not do anything about list order, other than increasing the number of candidates?

Dr Gilmour: No—because of the downsides. As I have said in one of my submissions, complete randomisation would be a very simple solution. It would also be the only totally effective one, in that, as far as list order is concerned, there are major problems with all the other potential solutions. The problem with approaches such as randomisation or going from A to Z and Z to A, as has been suggested, lies in voter confusion and disability-related problems. This has not been probed but, in some cases, if a group of voters with a specific disability is sufficiently disadvantaged by not having the appropriate access to accessible information as defined under the Equality Act 2010, that might amount to legally recognised discrimination. That would have serious consequences for the whole legislative programme.

Maureen Watt: We tend to discuss this subject in terms of electoral process. Has anyone done any research into how the parties manage it? For instance, do parties target a particular part of the ward with one candidate's name and use another candidate's name in another area? Has anybody considered how the parties organise themselves in that regard?

Dr Gilmour: There are leaflets from the 2007 elections in which a party nominated three candidates and suggested a different order of voting—1, 2, 3; 3, 2, 1; and 2, 1, 3—in different parts of the ward. The party named the communities in the different parts of the ward where it suggested doing that. Parties are not so successful in dragooning or persuading their potential supporters to do what they like. Of those voters who give a first preference to one of a party's two candidates, only 80 per cent give a second preference to the other candidate of the same party. Parties that try to maximise their support to get people to vote 1, 2 or 2, 1 still have quite a big gap, with a 20 per cent loss.

Similarly, where there are three candidates, of those voters who give a first preference to any one of the three, only 80 per cent give a second preference to one of the remainders, and only 70 per cent mark all three—so there is a 20 per cent loss between the first and second preference and a further 10 per cent loss between the second and

third preference. When it comes to maximising their support, parties have quite a lot to learn.

I have made the parties aware of those results and have sent them copies of various papers, with an offer to follow up, although none of them has ever done so.

Tom Mason (North East Scotland) (Con): I get the impression that we are worrying a bit too much about the order effect—aside from the question of disenfranchising disabled or disadvantaged people. Am I to understand that, in order to get a grip of this subject totally, we need far more research, rather than jumping too quickly to any conclusion at this stage?

Dr Gilmour: I do not know that we need more research. Your first remark might be right—that we are worrying about order far too much. As somebody said in one of your previous evidence sessions, it is not an issue for the voter, but it is an issue for some of the parties—and obviously for some candidates, depending on whether their name starts with an A or a Z.

We must not get the thing out of proportion, although the effect is very real. Part of my solution would be to consider what happens in the Republic of Ireland and in Malta. If we increased the number of candidates that parties were standing, the alphabetical effect would probably diminish. I would recommend that we increase the number of candidates who are likely to stand by increasing ward sizes significantly beyond the proposal under the bill, and that we abolish by-elections, so that parties are encouraged to nominate more candidates at the ordinary election and to have some spares, if I can call them that, to fill the casual vacancies when they come along. The evidence is clear from Malta and the Republic of Ireland that, where there are significantly larger numbers of candidates, the effect disappears.

09:45

From the analysis of the Scottish results, there is also a small amount of evidence that the proportion of votes going to the uppermost candidate was high in three-member wards where there were only four candidates. The split was something like 70:30. However, where there were five candidates in a three-member ward, the split fell to 60:40, and, as the number of candidates went up, it continued like that, right the way down. Just the number of candidates of any party has a beneficial effect on reducing the alphabetical bias in allocation of first preference votes between party pairs.

Tom Mason: Working on the principle that any formula simplifies and exaggerates, are you saying that the bigger the number of candidates, the fewer problems we have with almost everything? The extreme of that is to ask why we should have any wards at all. Why not have just one city-wide election?

Dr Gilmour: That is possible. It would not be practical to have an election for 63 councillors—or 58 or 59, whatever the number is today—for the City of Edinburgh Council. From the voter's point of view, there are two factors that we must take into account. One is a city-wide issue about proportional representation; the more members we elect together, the greater the representation we will obtain, because, if we have 59 councillors, 59 groups could each win one seat and be represented. In the present partisan nature of our politics, that is unlikely to happen, but it is possible. If we elected them all together, the proportionality across whatever groups are represented would be greatly increased. However, the other aspect is a requirement for local representation. It is inappropriate that I, who live in the south side, should be represented by somebody who lives in Leith or in the north-west of the city. It is not a conflict; it is a balance between local and city-wide representation. We must balance the two factors.

In my submissions, I have made the point that, in the four main cities and in densely populated urban areas, the present threes and fours are ridiculous. Even the Government's proposed limit of five members is far fewer than it could be. It is seven in Northern Ireland. In a city such as Edinburgh or Glasgow, it could be eight or nine.

Tom Mason: Is the conflict that the single transferable vote is not the right system for local government and that we should look for some other form of voting system?

Dr Gilmour: No, not at all. One of the joys of the single transferable vote is that it is so flexible. If we wanted to elect all 59 councillors in one election, STV is perfectly capable of doing that.

I supervised an election in Iceland in which there were 550 candidates for 25 places on a national council, and the entire island was the electorate. STV is an extremely flexible system. On the other hand, if, for good practical reasons—for example, on some islands—the sensible size of the ward is only two members, STV proportional representation works well there as well. It is one of the most flexible voting systems. It has flexible implementation.

One of my concerns is that, since STV was introduced for local government elections in Scotland, we have taken a very constricted or restricted view of what size wards can be. In my submission, I drew attention to the education authorities of the 1920s, for which a much more open and voter-centred view was taken of what

made a reasonable size for a ward or electoral district.

Tom Mason: If we have large numbers, do we not lose the connection between the constituent and the councillor, because they are representing so many people?

Dr Gilmour: No, I do not think so, although it depends to some extent on how the councillors get on and whether they will work together. I live in a four-member ward in which four different parties are represented. That has been so at every STV election, although it has not always been the same four parties. The councillors in my ward work as a team. One of them picks up issues for a particular alphabetical group of electors and deals with them, provided that they are non-partisan matters. For partisan matters, I know which of my four ward councillors to go to. Some of those four councillors are in the administration and some of them are in the opposition and provide scrutiny, so there are advantages in that as well. People can relate to individual councillors or to a team of councillors; there are effective means to do that. However, if people—the councillors who are elected—do not want to make the system work, they will stop it from working, which is not what the voters are looking for.

Gil Paterson (Clydebank and Milngavie) (SNP): I have a couple of questions. Did you say that you were researching the list-order effect on behalf of the Scottish Government, or did I pick that up wrongly?

Dr Gilmour: I do not quite understand the question.

Gil Paterson: Did you say in your introductory remarks that some of your research was carried out for the Scottish Government?

Dr Gilmour: Nothing that I have done has been for the Scottish Government, but I have used my research in making responses to a variety of Scottish Government consultations on the issues.

Gil Paterson: Okay. A proposal has been put to us for people who might have difficulty if the list was not alphabetical, but your evidence suggests that nobody applies the alphabetical system when voting, because they go to the first person listed for a party on the ballot paper.

Dr Gilmour: I have no specific evidence on that, but the conclusion from looking at the data as a whole is that the majority of voters vote by party. Therefore, they probably look for the party emblem and most of them read the ballot paper from the top down. They look down the list until they see their chosen party's emblem and put "1" there and then look for the other candidate and put "2" there.

Gil Paterson: You are very perceptive; my next question was going to be about that aspect. I

might come back to it. The data suggest that alphabetical order does not come into the equation at all. It seems to be the case—this is what is suggested by the numbers that you have mentioned and those that we have already heard—that people give their first choice on the ballot paper to the candidate for their party nearest the top of the list, no matter what the name is.

Dr Gilmour: There are interesting results from situations in which there are party threes—that is, where parties have three candidates. If the first preference is for the highest candidate of the three on the ballot paper, the majority of the second preferences go to the middle candidate, not the bottom one. If the first preference is for the bottom candidate on the paper, the majority of the second preferences go to the middle candidate, with a smaller number going to the top candidate. If the first preference is for the middle candidate of the three, those voters split evenly—for their second preference, half of them go up the ballot paper and half of them go down it. It depends on whether voters choose to read the ballot paper from the top to the bottom or from the middle.

Gil Paterson: I have a follow-up question—I think that you have already answered it, but I want it to be clear for the record. Did you carry out any research on how people vote? Do they go to the party first and then pick from the party list?

Dr Gilmour: I have done no research on that whatsoever. My research is based on the published electoral results and the repository of ballot data that we have in Scotland, which is a unique resource. I analyse what voters did, but I do not know how they did it or why.

Ipsos MORI's work for the Electoral Commission, which was commissioned by the Scottish Government, gives an idea of how some voters looked at the ballot paper. The eye-tracking work showed what voters looked at first and last on the ballot paper, but it does not tell us anything about why they did what they did. That would require research in behavioural psychology, which is quite difficult and very expensive, especially if it is quantitative, which it would have to be in order to get behind what is in the figures.

On the other hand, although some parties are very agitated about alphabetical effects and the fact that, occasionally, out of their pairs of candidates, more of those who are placed higher on the list get elected than those who are placed lower, as far as voters are concerned, that is not an issue and we are agitating about it too much.

You have to consider all the downsides of making any change. You have to remember a very important point about A to Z and Z to A lists. If I were a candidate for a party that nominated three candidates for my ward, one of whose name

began with A, the other began with Z and my name begins, as it does, with G, and the Government was determined to use A to Z and Z to A ballot papers, I think that I would have had a strong case for judicial review. Although the Government would be deliberately manipulating the paper to remove a bias between A and Z, the effect of that would be to permanently disadvantage me, because my name falls in the middle. I think that that would be discrimination, and I could call for judicial review—I would certainly want to ask if I could.

The Convener: Thank you. That introduces another interesting angle for which we unfortunately do not have time to explore. Mark Ruskell has the final question.

Mark Ruskell (Mid Scotland and Fife) (Green): I was struck by your comments about multimember wards and the potential to have administration and opposition councillors in the same ward. Having been a councillor in a similar situation, I know that there is a constructive tension in that.

To wrap up the session, will you reflect on your proposal to scrap by-elections for local government and say more about your thoughts on recounting the original votes? I can see there being a few issues in terms of the length of time between the original vote and the by-election and the impact on parties that might put forward only one candidate in the original election and would perhaps be removed from any subsequent reallocation.

Dr Gilmour: I will pick up that last comment first. That is the whole point. In an ordinary election, if a party thinks that it will win only one seat, it plays safe and nominates only one candidate, who will have to be a man or a woman, so there is no diversity of representation at all.

If we increase the ward sizes so that the party might win two seats, it would have to nominate a team of two. Those parties that nominate men only would stand out like sore thumbs and would be dealt with through social and political campaigning.

10:00

The point about not holding a by-election to fill a casual vacancy and instead going back and recounting the original ballot papers is that, to take advantage of the situation, parties must have a spare candidate—that is, at least one more than they expect to win seats at the original election— so that if such a vacancy arises and the ballot papers are recounted, they have a candidate who was not previously elected available to take it. That has been standard practice in Tasmania for decades; it is also standard practice in Malta.

Malta not only fills ordinary casual vacancies by that means; it has a provision whereby—I certainly do not look favourably on this—candidates are allowed to stand in several constituencies, which significant numbers of them do. They can be a member of Parliament for only one constituency, so if they are successfully elected in several constituencies, as some of them are at each election, they have to decide which constituency they will represent and they stand down in the others. There are then immediate casual vacancies in the other constituencies and immediate by-elections, which are conducted by counting the ballot papers again. That applies equally if the casual vacancy arises halfway through the life of the Parliament—they go back to the ballot papers.

Mark Ruskell: Are you saying that that works best where there are much larger multimember wards, because it incentivises parties to put forward multiple candidates and they can rely on their back-up candidates to come in?

Dr Gilmour: There are two interacting factors. If you have larger wards, where such wards are practicable, and instruct the Local Government Boundary Commission for Scotland to maximise the size of wards—there should be parity—that would increase the size of the teams. The team size could be increased even more by doing away with by-elections for casual vacancies and getting parties to nominate a bigger team that includes a spare or two in case a by-election arises.

That approach would remove two of the current structural barriers to diversity. When parties nominate small teams or, in many cases, only one candidate, there is no opportunity for diversity. The biggest lack of diversity at the moment is with men and women. Women are 52 per cent of the electorate, but at one local government election only 23 per cent of the candidates were women and 24 per cent of the elected councillors were women. There is a long way to go if this Parliament is serious about properly representing in local government the diversity of the electorate. However, addressing the issue of representation in the Scottish Parliament is a job for another day.

The Convener: There are other questions, but we have two panels today and I am sorry to say that we have no more time. Dr Gilmour, that was extremely interesting and worth while.

Dr Gilmour: If the committee has other questions, please do not hesitate to ask the clerks to send them to me. I can provide answers to them, and it will be for you to decide whether they are made part of a public or private submission.

The Convener: That is kind of you. Thank you very much for all your time.

We will have a wee changeover of witnesses.

On our second panel today, we have Graeme Dey, the Minister for Parliamentary Business and Veterans, and Alison Fraser, Iain Hockenhull and Maria McCann from the Scottish Government. I welcome you all.

We will move straight on to questions, to make sure that we get through as many as possible.

Maureen Watt: The policy memorandum notes that the proposal to change terms to five years is not the "settled preference" of the Scottish ministers. Do you support a change to five-year terms? What are the advantages and disadvantages of increasing term lengths from four to five years?

The Minister for Parliamentary Business and Veterans (Graeme Dey): The more I reflect on that, the more I come to the view that five-year terms ought to be the direction of travel. There are a number of reasons for that, which I will provide in no particular order.

Five-year terms have become the norm in the Scottish Parliament over the past two parliamentary sessions. If we project forward for the next 15 years or so, four-year terms would result in two potential clashes and, as members know, clashes are neither desirable nor without challenges in having to legislate to try to avoid them.

Five-year terms are a tidier approach. If there is a clash, there are two different electoral systems at play and, in 2007, we saw the difficulties that arose from that, including spoiled ballot papers. We do not want council elections to be overshadowed by national elections, because they are important in their own right.

Wales and Northern Ireland have moved to five-year terms, as have other countries including France and the Republic of Ireland. There are cost-saving implications with five-year terms. We estimate that, for both sets of elections, that would save about £37 million over the next 20 years.

A number of reasons brought us to the view that five years would probably be preferable, but I recognise that there is a range of views.

Maureen Watt: If the provisions in the bill were agreed to, would they take effect in time for the next scheduled Scottish Parliament elections in 2021? Would that give sufficient time for the implementation of changes in electoral registration and administration?

Graeme Dey: All those factors have been the subject of intense discussion with the relevant stakeholders. We would follow the Gould principle, which is the six-month rule. Off the top of my head, the likelihood is that we would lay any relevant commencement materials in September 2020 under the affirmative procedure, with a view to them being agreed to by November 2020, which would give stakeholders the period of time that they are looking for.

Gil Paterson: The bill will prohibit an individual from voting more than once in local authority elections that are held on the same day. However, it will not prevent someone from appearing on more than one electoral register. Is the prohibition enforceable, given that dual registration is allowed? How could voting more than once be detected?

Graeme Dey: There is a lot in those questions. First, I ask Iain Hockenhull to give the committee some background.

Iain Hockenhull (Scottish Government): It is a feature of our system that we do not have one single register. As a consequence, students are typically registered either at home or at their university address, or they are on both registers. It is very difficult to police or establish whether all students should be voting in their university constituency or at home. We do not have that level of prescription in our system; we allow people to choose. As a result, the system operates in that way.

Underlying the system is always the criminal law, which will penalise anyone who tries to exploit the system by illegally voting twice. We do not have any evidence of malpractice, or evidence to suggest that the law is being flouted in that way. If we were aware that there was a problem, we could look at the issues and tackle them.

Graeme Dey: The bottom line is that we have no evidence to suggest that there is a significant problem in that regard. In addition, we have to be careful in our approach to ensure that we do not create a disparity between United Kingdom elections and Scottish elections.

Gil Paterson: I can understand that. I cannot remember whether there has been any inquiry, or any research, into people voting twice. Do we know whether people are breaking the law in that way? Have we checked?

Iain Hockenhull: By including the provision in the bill, we are not accusing anyone of having broken the law in that way. It simply addresses an issue that we included in our consultation in 2017-18, in which we asked if people thought that the current situation should continue. There is currently a bit of an anomaly in comparison with the position for other elections. At national level, someone does not get two votes, whereas in a local government election, someone who splits their residence between two locations is able to vote in both areas provided that they are in different council areas, although they cannot vote twice if those places of residence are in the same council area.

In the consultation, we essentially asked whether that practice should continue. We were not saying that it was wrong, but we were offering the option to say whether or not it should continue. More than 80 per cent of the respondents to the consultation said that we should stop it. The consultation analysis was strongly of the view—or rather, the flavour of the analysis suggested—that the one-person-one-vote principle should be the reason for putting a stop to the practice.

Gil Paterson: But the Government has resisted making that change in the bill, because we want to stay the same as the rest of the UK.

Iain Hockenhull: The bill is making a change by removing the ability for someone to vote in two locations.

I will separate out the issues. If the bill passes, it will become illegal to vote twice in two different areas in one local government election, just as it is in Scottish Parliament elections. It is still possible for someone to be on two different registers, but they have to choose which location to vote in. If they voted in both locations, they would be committing a criminal offence, with a maximum penalty of up to £5,000.

Gil Paterson: Would it not be easier, in the spirit of the one-person-one-vote principle, to enable people to be on only one register—end of story? Would that be a solution to all this? In effect, it would meet the demands of 80 per cent of respondents to the consultation, as you mentioned, because that is what they are telling us.

Iain Hockenhull: It is partly a question of resource. We could establish a single national register and make people choose. For example, a student at the University of Aberdeen who lives in Dumfries would have to choose whether to be on the Dumfries register or the Aberdeen register. However, they might subsequently choose to change their mind, and we might have to think about imposing a limit, so that people cannot change their mind more than twice a year, or something like that. There are options, but it is a question of whether we want to put resource into pursuing that aspect.

Graeme Dey: Of course, resource would be required to do that. In addition, it would potentially—I stress the word "potentially"—put students off voting if they were confined to voting only at home, for example. There is a range of issues, and we are taking a proportionate approach.

10:15

Gil Paterson: The proposals would mean that someone could still vote in one area at a scheduled election and then in another area at a by-election. Perhaps you can clarify something. Given that two separate elections are quite common when it comes to local government elections—in almost every election that I can remember, a by-election has also taken place somewhere at the same time—would it be possible for someone who is registered in two areas to vote on the same day in a national election for local government and in a by-election in a different area? Would that still be allowed?

Iain Hockenhull: That is an established feature at all levels of the UK electoral system. Historically, it has not been considered to be enough of a problem to be pursued. It is a feature of the system.

Gil Paterson: So that would be allowed under the current system.

Iain Hockenhull: Yes.

Gil Paterson: Thank you for that.

The proposal to allow attainers to register from the age of 14 has been welcomed. We have heard a lot about how important it is to educate young people on the electoral system. If registration from the age of 14 is going to happen—the committee has received overwhelming evidence to suggest that people think that it is a good idea—what will the Government do to utilise that new episode in people's lives? How will we achieve what we have set out to do?

Graeme Dey: You are right to make the point that the proposal has been widely welcomed, and I think that it will make things a lot simpler. Just last week, I sense-tested it with a group of young people from my constituency and got a very positive response.

With regard to how we raise awareness of the change and the whole journey around political awareness, there is currently a political literacy strand to education. There will also be a lot of publicity to come, involving the likes of YoungScot and the Scottish Youth Parliament, to raise awareness. I could provide a much more detailed answer, but in essence that is where we are. Some follow-up work will be done to support the change.

I do not know about committee members, but I get the sense that young people are now very much alive to politics in a way that perhaps they were not 20 years ago. They are very switched on. As I said, when I sense-tested the proposal last week with 30 youngsters from my constituency, they were very much up for it and very much on the ball when it came to the political process.

Gil Paterson: I appreciate that point, and I agree with you—since the 2014 referendum, political awareness among our young people has

been immense across the board. They are very much engaged, whether they are in favour of independence or against it; that is not the question.

Will the Government put in some resources to help the education authorities to educate young people on the process itself? To people who vote all the time, the process must seem fairly easy, but I come across many people who worry about presenting and voting, as simple as that may be.

Graeme Dey: The answer is that that is up to local authorities, as they control the education system locally, and they can tweak what they currently deliver to explain to people the changes in the system. I do not think that it is a massive deal. Curriculum for excellence is a vehicle for providing education on that point, and I am pretty confident that huge resources will not be required to raise awareness of the change.

As I said earlier, information will not only come through local and national Government; YoungScot and the Scottish Youth Parliament will also do work in that regard. My view is that we are covered.

Gil Paterson: I have a further question on the availability of resources. We have heard that it is quite an onerous task to keep the electoral register up to date. Has the Government considered what assistance it might provide to ensure that the register is resourced and kept up to date as well as it can be?

Graeme Dey: In terms of resources?

Gil Paterson: Yes.

Iain Hockenhull: We are in dialogue with the electoral professionals—the Electoral Commission and electoral registration officers—regarding what is needed. The bill makes provision for the Electoral Management Board for Scotland to get involved in Scottish Parliament elections, and the policy memorandum describes some additional funding that has been given to the management board for its co-ordination role, to help it with its new powers for Scottish Parliament elections.

Maria McCann (Scottish Government): When it comes to improving registration, we have been working jointly with the Westminster Government and the Welsh Government to bring forward a programme of canvass reform in order to target resources to those who are underrepresented and to make it easier to channel resources appropriately. We have been doing a lot of detailed work on that. As Mr Paterson suggested, there is a real need to improve the register and to get the underrepresented groups on it. We will bring forward a Scottish statutory instrument on that shortly. A joint policy approach is being taken.

Mark Ruskell: Do you think that the education of young people would be enhanced if they could stand for election themselves?

Graeme Dey: Are you seeking a personal view?

Mark Ruskell: An official view from Government would be fine, but a personal view will suffice.

Graeme Dey: That is covered in the Scottish Elections (Franchise and Representation) Bill, is it not? It is an area that you have teased out before.

Mark Ruskell: It is not covered in the franchise bill, but it could be. I guess it is a live discussion, so I am interested in your view on it, personal or otherwise.

Graeme Dey: The position that we are taking at the moment is probably the right one, but I recognise the argument around 16 and 17-year-olds voting and the point at which they can stand. That is an on-going conversation. Right now, however, I think we are in the right space.

Neil Findlay: What is your view on electronic voting? What do you foresee as a system that we may consider?

Graeme Dey: It is important to define what we mean, at this stage, by "electronic voting". There is an immediate presumption that we are talking about online voting here and now. The work is at a very early stage, but what is envisaged in the first phase is to facilitate electronic voting in a central place, not least in order to accommodate people with learning disabilities and to make voting easier for them.

The option to move to some sort of electronic voting system is always there, but there are security and other concerns around that, and I think that such a system would be somewhere down the line. Essentially, in the immediate term, the proposal is to work with disability groups to address some of the concerns that they have.

Neil Findlay: So, a phase of that work is already on-going. Is that work—

Graeme Dey: Sorry—there are no firm plans right now for a pilot, but that is what we are moving to, and that is what we have in mind.

Neil Findlay: As regards what is actually being done at the moment, is that one hour a month of a civil servant's time, is there a team or is there a person working on it? How far has it gone?

Iain Hockenhull: A member of the elections team is considering possible pilots. The main focus at the moment is on accessibility. Rather than the transmission of a vote, the idea is more about securely and privately allowing someone with a visual impairment, for instance, to register their vote, bring it along to the polling station and have it uploaded in such a way that no one else

gets to see how they are voting, thus affording them privacy. There would be no electronic transmission in any of the pilot ideas that we are currently discussing or looking at.

Neil Findlay: So someone with a visual impairment, say, would complete their ballot paper elsewhere before coming along.

Iain Hockenhull: They would get some sort of package at home that would allow them to make their choice, and that could then be communicated in a different way, but not crossing the internet— so no one else would get to see what they had chosen.

Neil Findlay: I was listening to the radio the other day and heard people with a visual impairment making the point that, wherever they cast their vote at the moment, it is not private. Would what is proposed allow them to make a private decision?

Maria McCann: Yes. The proposal is for electronic delivery of the ballot paper. People would then use whatever reader they use at the moment. That is very important, because they use it for so many other aspects of life. They will be able to make the decision in private and no one else will know. We still have a long way to go: we are still working on the detail, but that was the most pressing thing.

Neil Findlay: To be absolutely clear, we are not talking about remote voting, electronically. We are at the initial stages of moving to a central location where you would cast your vote in some electronic format to be determined at a future date.

Maria McCann: We have not got down to the detail on that, but online voting—voting from your phone or something like that—is not being looked at at the moment.

Neil Findlay: What discussions have been had with other countries' electoral registration teams about their experience of electronic voting?

Maria McCann: Two members of the team visited Estonia recently during an election. They were able to see that whole process in action. The percentage of people voting online in Estonia has increased. It was quite low the first time, at about 20 per cent, and it has gone up. I think it is heading towards half, so it is growing in popularity, but obviously the full traditional system was also available.

Neil Findlay: Did electronic voting lead to increased participation?

Maria McCann: I do not know: I would have to go and see if there is any research into that.

Neil Findlay: I understand the point of moving towards electronic voting for people with a visual impairment or other disability, but presumably the point of electronic voting is to increase participation—that is how it has been presented historically. If there is no increase in participation, what is the point?

Maria McCann: We could write to you with the detail of the Estonian situation, if that would help.

Neil Findlay: Thanks. Finally, do you see a role for organisations such as the Electoral Commission in reviewing electronic voting?

Graeme Dey: That is our intention: it will require an amendment to section 5 of the Scottish Local Government (Elections) Act 2002.

The Convener: I have a couple of quick questions. The first is about the role of the Electoral Management Board for Scotland, which has asked the Scottish Government whether you are open to future funding requests. For example, if local government posts need to be backfilled because of additional workload on those who hold dual roles, will you be open to such a request, to facilitate better working of the system?

Graeme Dey: Indeed. The dialogue on that sort of thing will always be on-going. We have actually increased the funding, as the board requested. I will give you some numbers: the grant in 2018-19 was £78,700; in 2019-20, it was £100,600; and we have agreed on an estimated £115,600 for 2020-21. We remain open to any valid approaches from the board.

The Convener: Thank you. My second question concerns the Local Government Boundary Commission for Scotland. The intention of the legislation we have been presented with is to allow for rolling reviews of boundaries, but we have heard concerns that the bill as drafted would not allow for that if term lengths were changed to five years. Will you lodge amendments at stage 2 to address that?

10:30

Graeme Dey: Obviously, that would depend on the proposed move to term lengths of five years being accepted. The commission has indicated that, in those circumstances, it would want us to look at a review period of 15 years. I have reflected on the commission's views on that and am sympathetic to them. I will write to the committee about that in due course. The commission has made a reasonable case.

The Convener: Mark Ruskell has further questions on that issue.

Mark Ruskell: The commission welcomed the flexibility to propose two and five-member wards, but we noticed that the financial memorandum states:

"It is not envisaged that the total number of councillors for a local government area would change as a result of a Boundaries Scotland review."

For clarity, will the commission be able to recommend increasing or, indeed, decreasing the number of councillors in a council area as a result of a change in ward numbers?

Graeme Dey: I invite Maria McCann to give a detailed answer to that question.

Maria McCann: It would be able to do that. I think that, during the fifth round of reviews, it worked on the assumption that there would not be vast changes in the number of councillors. However, there were some proposed changes, and my recollection is that they were accepted. That is not to say that there would be an absolute ban imposed on changes. That would be allowable. They would be accepted as they were before.

Mark Ruskell: I am aware that there were some subtle changes as a result of the previous review. If the intention is that flexibility will remain, getting that on the record is welcome.

What consideration has been given to the proposed changes on proportionality, particularly in two-member wards?

Maria McCann: We have not looked at the proportionality issue. Obviously, it is relevant, but it was not part of the consultation and it has not been specifically looked at. We did not look at quite a lot of aspects of the boundary commission legislation. Topics were picked, and that was not one of them.

Mark Ruskell: Why was that issue not looked at?

Maria McCann: To be honest, I do not know the origins of that. However, the issue could be looked at.

Mark Ruskell: It is a proportional voting system, so the answer is on the tin, is it not? If you are going to look at changing the system, why would you not look at proportionality as part of that?

Graeme Dey: We will write back to you in detail on that.

Mark Ruskell: My final question follows on from that. How is the multimember proportional system working, and is there scope for reviewing it? You may have heard different views today and in previous evidence sessions on whether the system is great and whether it is working well and is optimised. Perhaps it would be of interest to open up those areas. I do not know whether the Government wishes to do that.

Graeme Dey: There is certainly no time in this parliamentary session to do that, but I am

sympathetic to Mr Ruskell's point. The system has been in place for some time, and there is a range of views on how effectively it works. I will not express a view either way. It is reasonable to ask whether a review of its effectiveness might be taken forward in the next parliamentary session. That would be appropriate.

The Convener: I want to raise an issue that is of concern mostly to candidates—it is a genuine concern for them. The requirement that the home addresses of parliamentary candidates be published has been removed, which is perfectly logical and sensible in the current climate— probably in any climate—but the home addresses of candidates in local government elections still appear on electoral notices and ballot papers. In my opinion, that jars. What do you think about that?

Graeme Dey: Indeed, convener. Through correspondence with Richard Lyle, the Scottish ministers have made a public commitment to amend the requirement to publish candidates' addresses on ballot papers for local government elections. To be clear, that would provide an option for candidates to have such publication continue if they so wished. Such a change would not need to be included in the bill; it could be addressed as part of the conduct order for the local government elections in 2022.

However, I entirely agree with you, convener. That is why, given the probability that council by-elections will come around soon, I undertake to consider whether, in the new year, we might introduce an affirmative SSI that would address the issue more quickly.

The Convener: Thank you very much for that. The issue will be important to many people.

Tom Mason: The issue of the list-order effect on ballot papers has been raised, but it is not dealt with in the bill. Does the Scottish Government have plans to consider it?

Graeme Dey: I thought that that issue might come up. Obviously, it provokes a great deal of discussion. I have certainly reflected at great length about the various options that exist.

We all recognise that the current system is not perfect. However, we should not change it simply for change's sake: any change should be made for good reason, such as to make the system more effective, fairer or less biased. If we were to go into that in detail, a lot of work would need to be done on the pros and cons of the various alternatives.

The committee will be aware that the Scottish Government has been considering two options. The first is drawing names by lot; the second is having two ballot papers, one of which would list

candidates from A to Z while the other would list them from Z to A. We asked the Electoral Commission to look at those options in detail, and we have not yet reached a decision on whether to adopt either of them—or, indeed, any other option. It is clear that any option would involve both pros and cons. There is an argument for testing some options in local government by-elections to see what actually works in practice in a Scottish context.

However, I agree with Bob Posner of the Electoral Commission that we should not rush into changing the system and thereby risk unintended consequences. I do not mean to sit on the fence by saying that. If we are to make changes, we need to get them right. As I said earlier, the fact that we believe that the present system is flawed does not mean that we should change it simply for the sake of doing so.

I know that others consider randomisation to be an option. By way of background, I add that the Scottish Government estimates that implementing such an approach would add £2 million to the cost of conducting an election—which is not to mention the administrative burden that it would create. I am also trying to work through in my head how such a system would not create another bias somewhere along the line, depending on factors such as whether we had 100 per cent uptake of ballot papers.

Other issues add to the confusion in that area. For example, to assist people with visual impairments, we are currently required to have large-print sample ballot papers at polling stations. We might ask how we could possibly have those samples if the ballot paper were to be randomised, as opposed to having one straightforward paper— or two papers if the A-to-Z and Z-to-A option were to be adopted. Further, some local authorities still want to count by-election ballot papers manually, and having multiple forms of ballot paper would create a great deal of difficulty for them.

In making those points, I am not suggesting that we should not change the system; I am simply laying out the pros and cons for the various options, which I am sure the committee will also have considered.

Tom Mason: As you mentioned in your previous answer, that really raises issues about the need to review the whole electoral system.

Graeme Dey: The question is one of whether to recognise the potential for bias in the current arrangement. We need not accept that possibility; it could be argued that people simply go to the ballot paper and look for their party of choice or for its emblem. We have had a substantial piece of work done on the time that people take, using various approaches, to arrive at the name of the

person they want to vote for. A fair bit of work has been done on that but, right now, none of it is absolutely conclusive in any direction.

Neil Findlay: You casually flung in a figure of £2 million there. Where did you get that figure from?

Maria McCann: We looked at the issue in 2015, when we were preparing the e-counting specification for local government elections. We asked suppliers what the additional costs of the e-counting process would be, and they provided us with an estimate—obviously, we would have to go out to tender to get the figure verified.

Neil Findlay: When I finish up in Parliament, I think that I will go into shuffling ballot papers for a living. It seems to be a profitable business.

Mark Ruskell: I would like to ask about the maximum fines that the Electoral Commission can impose. At the moment, the maximum is £20,000. The cabinet secretary gave a commitment to raise that to £500,000 in relation to referendums. Is there a commitment to match that? Name a figure.

Iain Hockenhull: We are in discussions with the Electoral Commission on that subject, and we are considering the options in the light of the progress of the referendums legislation. The Electoral Commission has mentioned a figure that is tied to the old powers of the UK Information Commissioner's Office, which could levy fines of up to £500,000 for data breaches. That is the figure that is proposed, but, as I said, we are in consultation on that.

Mark Ruskell: What discussions have you had with the Electoral Commission about extending its powers to include a power to require information and a power to share information?

Iain Hockenhull: We have considered those powers. There are some limitations on what we are able to do, given the existing structure of the devolution settlement, because the Electoral Commission is a UK-wide body that deals with all elections.

The Electoral Commission has existing powers to obtain information, but a number of issues have been raised in relation to which it might be possible for it to go further. However, as I said, they might be outwith the scope of this Parliament.

Mark Ruskell: Are you thinking about reviewing the payment regime for returning officers?

Graeme Dey: There are on-going discussions on that subject, which we hope will come to a satisfactory conclusion relatively soon.

Mark Ruskell: Will any changes be in place in time for the 2021 Holyrood elections?

Graeme Dey: That is the intention.

Mark Ruskell: Do you think that, if returning officers get it wrong, there should be some form of financial sanction? For example, in the local government elections in 2012, a ballot box in Glasgow simply was not counted but the result was declared. The entire ward had to be counted again, and the returning officer generously paid for that recount out of his bonus—I suppose that that was a form of performance-related pay.

Could any sanctions be brought in to deal with the situation in which a returning officer has clearly not met the standard that is required but will still get a substantial bonus for running the election?

Graeme Dey: There would have to be a determination between something being genuine human error and its being quite significant.

Mark Ruskell: It is about responsibility. Under the current structure of payments, taking on that responsibility is handsomely rewarded.

Maria McCann: As part of the review, we have been considering the areas of remuneration and responsibility in their entirety. The points that you make are under consideration.

Mark Ruskell: The instance that I talked about was an isolated example, thankfully, but it was a real one.

The Convener: That is interesting. It would be good to know where things stand on that issue at the moment and where things are going.

Graeme Dey: As with a couple of other issues that have been mentioned today, it is worth saying that this is a work in progress. We are happy to write to the committee and keep you updated as matters progress.

The Convener: Thank you. Maureen Watt has a question on the SPCB.

10:45

Maureen Watt: On 12 November, the committee received a letter from the SPCB. The letter set out its concerns about taking on the accountability and responsibility for the Electoral Commission, specifically with regard to the concerns related to budget, the potential for overspend and auditing arrangements. Has the Scottish Government reached agreement with the SPCB to resolve its outstanding concerns?

Graeme Dey: Funnily enough, that issue was one of the first things that I noticed when I first picked up the bill. I understand entirely the concerns that the SPCB has raised, and there are on-going discussions about those concerns. The situation has not been sorted yet, but I can say with confidence that it will be sorted to the satisfaction of the SPCB and anyone else with a relevant interest. As soon as we get to that point, I will advise the committee of that.

The Convener: For everyone's information, I say that the SPCB is the Scottish Parliamentary Corporate Body. I should have introduced it in that way—I apologise.

There is a recommendation that electoral law should be consolidated. For example, the committee heard from the Electoral Commission that the outdated language that is used to describe criminal electoral offences makes prosecution difficult. The committee is mindful of the work of the law commissions in the UK that recommended the consolidation of electoral law. Is the Scottish Government considering further work on modernising and consolidating electoral law?

Graeme Dey: You are correct to point to the cross-UK work that has been done on the issue. We expect further findings to be published next year.

We recognise the need for consolidation. In some respects, the work that is being done in this bill and in the Scottish Elections (Franchise and Representation) Bill is doing that, but it is clear that there is a case for further consolidation work to be done, particularly given the fact that the bill that we are discussing today is, in essence, a series of amendments to other pieces of legislation. We recognise that there is a need to consider, over the coming years, the consolidation of Scottish electoral law.

The Convener: Is the Scottish Government considering the impact on this bill of any changes made in the Referendums (Scotland) Bill?

Graeme Dey: Yes.

The Convener: Can you give us any idea of what impact there might be?

Graeme Dey: The Referendums (Scotland) Bill has not completed its passage yet. I do not mean that as a flippant remark, but it has yet to complete stage 3. We will consider the situation after that point. Again, I am happy to keep the committee updated on that.

The Convener: Yes, it would be wrong to pre-empt anything.

I think that we have reached the end of our questions. I thank the minister and his team for coming to the committee today.

10:48
Meeting continued in private until 11:20.

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