



OFFICIAL REPORT
AITHISG OIFIGEIL

DRAFT

Standards, Procedures and Public Appointments Committee

Thursday 5 September 2024

Session 6



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STANDARDS, PROCEDURES AND PUBLIC APPOINTMENTS COMMITTEE
20th Meeting 2024, Session 6

CONVENER

*Martin Whitfield (South Scotland) (Lab)

DEPUTY CONVENER

*Ruth Maguire (Cunninghame South) (SNP)

COMMITTEE MEMBERS

*Joe FitzPatrick (Dundee City West) (SNP)

*Oliver Mundell (Dumfriesshire) (Con)

*Annie Wells (Glasgow) (Con)

*attended

THE FOLLOWING ALSO PARTICIPATED:

Jamie Hepburn (Minister for Parliamentary Business)

Iain Hockenhull (Scottish Government)

CLERK TO THE COMMITTEE

Catherine Fergusson

LOCATION

The David Livingstone Room (CR6)

Scottish Parliament

Standards, Procedures and Public Appointments Committee

Thursday 5 September 2024

[The Convener opened the meeting at 09:30]

Decision on Taking Business in Private

The Convener (Martin Whitfield): Good morning, and welcome to the 20th meeting in 2024 of the Standards, Procedures and Public Appointments Committee. I have received no apologies.

The first agenda item is for the committee to decide on whether to take items 3 and 4 in private. Agenda item 3 is consideration of the evidence on the Scottish Elections (Representation and Reform) Bill. Agenda item 4 is consideration of correspondence from the Parliamentary Bureau on allocation of time for Opposition business. Do members agree to take those items in private?

Members indicated agreement.

Scottish Elections (Representation and Reform) Bill

09:30

The Convener: Agenda item 2 is the Scottish Elections (Representation and Reform) Bill. We are joined by Jamie Hepburn MSP, who is the Minister for Parliamentary Business, and by Scottish Government officials Iain Hockenhull, who is the elections bill team leader, Chris Nicholson, who is a solicitor and head of branch for constitutional reform and external affairs, and Lorraine Walkinshaw, who is a lawyer in the legal directorate. I welcome you all to the meeting and invite the minister to make some opening remarks.

The Minister for Parliamentary Business (Jamie Hepburn): I will be as brief as I can. I start by thanking the convener and committee colleagues for inviting me to give further evidence to the committee on the Scottish Elections (Representation and Reform) Bill. As this is my first appearance before the committee, convener, I take the opportunity to thank you for the work that was undertaken to scrutinise the bill at stage 1 and I look forward to working with the committee as we move into stage 2.

Over the summer, we have been working on a number of changes to the bill that are planned for stage 2, including my meeting a number of other members of the Parliament who have expressed an interest in lodging amendments. I hope that my letter to the committee last week on our considerations was helpful in that regard, although I am aware there was a slight typo. For absolute clarity, on the first page of the letter, the adjustment to the period of postponement for local government elections is for a maximum of four weeks and not a minimum of four weeks, as it said. I understand that my officials have been in touch with the committee clerks to clarify the matter.

As my letter explained, we have been preparing amendments in response to the points that have been raised in evidence and in the committee's stage 1 report. I repeat my thanks not just to the committee, but to all those who have provided evidence to the committee in its considerations.

The amendments that are being prepared include provisions on emergency rescheduling of elections. That requires decision makers to publish a statement of reasons when they take a decision on rescheduling. The provisions will also adjust the maximum postponement period for local government elections from two weeks to four weeks.

Amendments on electoral innovation pilots are also being prepared to add the Electoral Commission as a statutory consultee and to ensure that pilots can encompass electoral registration changes.

The annexes to the letter set out proposed changes to the constitution of the Electoral Management Board for Scotland and proposals to disqualify those who are subject to sex offender notification requirements from elected office. We are in continual discussions on its constitution with the Electoral Management Board and others and I am keen to ensure that there is as much consensus on that matter as possible. There is a question about the extent to which there should be formal provision for Scottish ministers and/or the Scottish Parliament to request, while respecting its operational independence, that the board undertake certain activities. It might be an option for the Scottish Parliament to set out its priorities for elections in a statement.

We continue to give active consideration to the subject of disqualification of elected members, including whether or not there should be any difference in approach between that for councillors and that for MSPs. Although it seems to be instinctive that we would apply the same rules across the board, which is the position that I lean toward, there are some important differences to consider. In particular, we do not have a process for councillors who have been accused of certain conduct to be suspended. We do not, as yet, have any recall mechanism for MSPs but, as a Parliament, we have by resolution agreed in principle that there should be one. We may well have the opportunity to consider that further if Graham Simpson takes forward his members' bill.

Although I have set out some of the Government's thinking on changes to be made to the bill, I still consider it to be very much Parliament's bill. As such, I am keen to continue to hear views from across the Scottish Parliament, including from the committee, as to how we might refine and improve the bill so that we can put in place the best possible legislation.

I look forward to discussing those matters with the committee. I and my officials—Iain Hockenhull, Chris Nicholson and Lorraine Walkinshaw—will be happy to answer any questions that the committee has for us.

The Convener: Thank you very much for that opening statement, minister.

I refer to the two letters that the committee has received from you, the more recent of which clarified—as you have confirmed today—that the postponement should be for a maximum of four weeks. Have you any concerns about using the words “minimum” or “maximum”, given the

challenge that was indicated in evidence that we heard, which said that at least four weeks would be needed to rejig the machinery of election if it were to take place safely and securely? What consideration have you given to the period being set at four weeks, or to using wording other than “minimum” and “maximum”, to meet the evidence that we heard, which was that it would be difficult in practice to organise an election in a period shorter than four weeks?

Jamie Hepburn: That is why we have changed the period from two weeks to four weeks.

I am not perturbed by use of the term “maximum” or, indeed, although we used it in error, “minimum”. What the defined period should be is a reasonable question.

For what I hope would be self-evident reasons, it would be sensible to prescribe a maximum period in legislation, because we do not want the process to be extended without limit. The reasonable question would be whether a period of four weeks is correct, or another prescribed period would be correct. In that regard, I am open minded. If it is felt that it should be slightly longer—I suggest that it should be only slightly longer—I am quite willing to hear that. We have heard quite clearly from those who have responsibility for organising elections that a period of two weeks would be too tight and that the process would probably require about four weeks. If that means that we should have a bit more leeway, I am quite open to considering the period again.

The Convener: Would it be fair to say that setting the period at four weeks, irrespective of the cause, might be too restrictive? We seem to have agreement that two weeks would allow insufficient time, so we are in an interesting bidding war between those who are in favour of two weeks and those who are in favour of four weeks. The question is whether that in itself would cause us problems.

Are you prepared to go away and discuss that with the people who gave evidence, to see whether there can be agreement, in principle, on whether four weeks is the right time, or on what the wording should be? I am concerned about use of the word “maximum”, because it means that there could be a one-day postponement, which would cause chaos. I am similarly concerned about use of the word “minimum”, because the period might need to be shorter than four weeks.

Jamie Hepburn: We will continue that discussion. That is why we responded to the committee to say that four weeks was the period that it was suggested to us would be sensible. If it were felt to be sensible to prescribe a period that is a little longer, I will be happy for us to consider

that. I suggest that it should be a significantly longer period of time.

Equally, if it were felt to be sensible to suggest that there should be a minimum period, I would be more than willing and open to hearing what that might be from those who organise elections—and, indeed, from the committee, if it has a perspective on the matter, too.

The Convener: Excellent. Thank you, minister. I will hand over to the more-than-capable hands of Oliver Mundell for the next section of questioning.

Oliver Mundell (Dumfriesshire) (Con): I want to ask about disqualification, particularly in the context of the sex offender notification requirements that you touched on in your opening statement. The committee has considered that area and, to me, there is clear reason to act in it. However, I want to understand how disqualification would work in practice and what the Government's thinking on it is.

It was previously indicated that disqualification was being proposed where an individual was subject to the sex offender notification requirements. The committee understands that to mean where an individual had been convicted of certain offences and was required to appear on the sex offenders register. Your recent letter to the committee mentions people being subject to the sex offender notification requirements where there is no conviction, but there is a relevant order. Can you explain the difference in those categories and say a bit more about your latest thinking on what would trigger disqualification?

Jamie Hepburn: That has come about as a consequence of clear concern. We have, of course, seen some folk being elected as councillors who have then committed an offence, but it has not been possible to disqualify them. That has been a cause for concern for the public, for me and, I am sure, for other members of the committee, as well as for those who have to work with those people as colleagues and for the people whom they represent. That has compelled us to consider the matter and to act. That is the rationale, and I think that it is broadly accepted that it is a sensible rationale. Clearly, we have to pick a threshold at which we can disqualify someone. In our view, it seems to be reasonable to say that those who are subject to sex offender notification requirements meet the threshold.

In relation to your question about the slight difference between those who are subject to such requirements who have been convicted and those who have not been convicted, I will pick up on that as best I can now, but I am happy to provide more evidence in writing, if that would be helpful.

Broadly speaking, most such people will have been convicted: they will have been through the

courts and been convicted, which is why they are subject to a sex offender notification requirement. There are some who will not have been convicted. Of course, it is part of our criminal justice system that, where it is found that a person cannot, by dint of their state of mental wellbeing, be held criminally culpable for having committed an offence, they can be held in our hospital estate rather than in the prison estate. However, they could still be subject to the requirement. We think that it is still sensible that they would be disqualified on that basis, because the same issues of public concern about wider public safety would remain.

There is also a slight difference in the Scottish jurisdiction when compared to the jurisdiction in England and Wales. In England and Wales, people can be subject to the sex offender notification requirement on point of caution rather than conviction. We propose that that would meet the threshold to be disqualified in Scotland, as well. That is a slight nuance or difference.

There are a few other points, but we will perhaps pick those up in writing, which might provide the committee with a bit more detail.

Oliver Mundell: That is helpful. One of my concerns is that returning officers in different authorities could have to interpret very complicated circumstances. It is imperative that the rules are clear.

I will move on. I am minded to agree with the position that you have set out, but are you confident that it will meet legal proportionality tests, particularly given that some individuals can be subject to such requirements indefinitely? Are you confident that, in setting that threshold, it is legally proportionate?

Jamie Hepburn: This is where it gets a little tricky because, as is prescribed through the Venice commission, and in relation to article 3 of the European convention on human rights, there is a difference laid out in respect of local government elections and parliamentary elections. There is a nuance in that regard. However, insofar as we have looked at the issue, we think that it is entirely proportionate to apply the approach in the case of councillors.

Candidly, as I said in my opening remarks, I lean towards a position in which we seek equivalence for councillors and MSPs. There are nuances that we need to look at, but we think that we can do what we propose in those circumstances, I think that that would be proportionate, as well. It is the case that the requirements under such orders can be indefinite, but there are, of course, review periods.

To cut a long answer short—that probably was a long answer that could have been short—yes, I think that the proposal is proportionate.

09:45

I want to return to something that you said, as it is important to get this point on the record—not least because returning officers will probably pick up on your remarks and get back to you. A feature of our system is that people can be disqualified from standing for elected office. It would be impossible for returning officers to police that at the point of nomination. For example, more than 2,500 candidates stood for elected office in the 2017 and 2022 local government elections. Although I understand the rationale for asking returning officers to police that, doing so would be very difficult indeed. It might be an issue that we want to explore a bit further, and it would be reasonable to do so, but it is necessary for me to make that point clear at this stage.

Oliver Mundell: I was going to come on to the point that, in our current system, the responsibility is placed on the candidate—

Jamie Hepburn: Correct.

Oliver Mundell: —to self-declare on a range of issues that might prevent them from putting themselves forward. My understanding is that, if a person goes into the process, their nomination is open to challenge. During the election window, people could bring to light information that would potentially disqualify a nominated candidate. Therefore, it is important to have clear rules on that. Have you considered that circumstance? Is it your view that such individuals should be blocked from candidacy, as well as being disqualified if elected?

Jamie Hepburn: Indeed, such people should not be eligible to stand in the first place. I suppose that that is the purpose of the notice of poll, in which we publish the names of candidates so that members of the public can see who has been nominated. If anyone spots a name that gives cause for concern, they can report that.

I think that we have also had evidence from returning officers stating that they exercise their judgment if they become aware of someone who gives cause for concern, and that they would take the appropriate action at that stage, too.

We are already adding a new category of disqualification through the bill—those who are disqualified from eligibility for office on the ground of intimidatory behaviour. In effect, new categories would be added to the process that we have in place now for people being nominated and standing for office, which I think has, by and large, served us well.

Oliver Mundell: On amendments, I think that you mentioned meeting MSPs from across the Parliament and that detailed work has been carried out on amendments. Given our interests in this section of the bill, are you in a position to share the proposed amendments with the committee at this stage, or will you be in such a position in short order, so that we can decide whether we need to take more evidence? There are detailed aspects to the issue, but it is not something on which we got a huge amount of detailed evidence during stage 1. We agree on the principle; this is about making sure that the proposals are workable—

Jamie Hepburn: That is a reasonable point. If the committee wants more information to enable it to take more evidence, I am absolutely happy to furnish it with that information. On whether that would necessarily be in the form of the written amendments, that would create a new process in our consideration of legislation. However, I would not definitively rule that out. I am keen to inform the committee about what the amendments might look like.

I am probably more inclined to provide as much information as possible about our intention. Far be it from me to comment if the committee wants to take more evidence. That is entirely up to the committee. If it does that and provides the outcome of its deliberations to us, we will reflect on that.

The Convener: With regard to disqualification, at the minute, when someone puts their name forward for election, they go through a short period of time when there can be notices saying that they cannot stand for election for reasons X, Y and Z. The difference in this case is that, even if that does not happen, the person could still never stand for election. The point is the stage at which that becomes apparent and what the challenges are. It is clear from your evidence this morning, for which I thank you, that there is real complexity in this matter, with the potential for an extension to, in effect, a non-criminal order. The challenge lies in the detail.

You mentioned the Venice commission. Is it the Scottish Government's view that elected individuals at local authority level and here in Parliament should be held to the same standards, rather than there being the nuance that you hinted at with regard to the Venice commission?

Jamie Hepburn: Broadly speaking, in as much as we are able to do that, yes. As I think that I have indicated, that sometimes comes up against other legal factors that we will have to consider. However, in broad terms, yes, there should be equivalence.

The Convener: That is very helpful. May I ask for clarification with regard to the relevant stakeholders that the Scottish Government has engaged with on the specific matter of the sex offenders notification requirements and disqualification? Who have you engaged with? I do not want to assume anything, but I imagine that Police Scotland has had an input, along with criminal justice social workers and even the human rights bodies. Who have you reached out to and who has fed back?

Jamie Hepburn: We have heard from returning officers about some of the complexity of administration. We have engaged with Police Scotland, as far as I am aware. Of course, there has also been an internal discussion within different parts of the Government. I will bring in Iain Hockenull to provide a slightly more comprehensive list, although we are happy to do that in writing.

Iain Hockenull (Scottish Government): We have highlighted the issue to the Convention of Scottish Local Authorities, particularly in relation to councillors. With regard to the justice scope, that is more dealt with by our colleagues in the justice directorate of the Scottish Government. We have had quite a lot of debate about the orders and equivalent measures. We have also discussed the matter with the Welsh Government, which has made provision along these lines for members of the Senedd and councillors, and with the UK Government, which has already made provision for councillors in England. Therefore, this approximate prohibition is already in place elsewhere in the UK, so we have had those discussions.

Welsh Government officials have confirmed that they have not really set out anything new for the police in Wales in this regard. It has not led to a direct change for police services. It is more a case of it being an additional disqualification factor, which is treated in much the same way as any other disqualification factor.

The Convener: Therefore, in relation to the human rights element and whether, in effect, a never-ending order would lead to a never-ending disqualification from standing for elected office, the Scottish Government's confidence to assert that the proposal is reasonable has been developed more through discussion among yourselves—I understand that the Welsh Government has tackled the same issues—rather than in discussion with people elsewhere.

Iain Hockenull: Yes.

Jamie Hepburn: Deliberations have not finished, so the discussion will continue. We are happy to provide you with some detail of our discussions thus far, and we will continue to

discuss it with those who we consider to have a relevant interest in the matter, which will inform our final position.

The Convener: That is helpful. To echo what the committee has already said, we are in agreement with the basic principle, but the second that we delve into it, we are confronted with more questions than answers. Given the importance of the matter for individual voters' trust in democracy, it is an important issue to consider.

As there are no further questions on that point, I will turn to the matter of the Electoral Management Board for Scotland. Thank you for your comprehensive coverage of that in your letters. I would like to pick up on a couple of areas in those letters, the first of which relates to the proposed constitution. You have set out the areas that the constitution would need to cover. Is there anything further that would assist the committee with regard to this matter?

Jamie Hepburn: No, there is not, at this stage. I am keen that we provide that to you as soon as possible. I thought that it would be helpful to give a sense of the broad areas that we are looking at, but I am happy to provide more information once we have it.

The Convener: That is helpful. I might have been slightly surprised had anything further been in existence because, at the moment, it is a living document, and I know that you need to reach out to various people on that.

There seems to be agreement that a corporate body is the right legal entity. When it comes to the finance for that corporate body, you point out that the intention would be to fund it in the same way as the Political Parties, Elections and Referendums Act 2000 sets out—namely, that it would be a reimbursement to the Electoral Management Board rather than, for the sake of clarity, something like the process that our commissioners have, whereby they present a budget for approval. Are you confident that that funding model will be satisfactory for the future?

Jamie Hepburn: I think that it will be, but that is subject to discussion. We have also suggested that it might be more appropriate for the body to be sponsored by the Scottish Parliament, rather than by the Scottish Government. That has taken us into dialogue with the Scottish Parliament. As you can imagine, the Presiding Officer and the chief executive of the Scottish Parliament have an interest in that, so they might have a different perspective. We want to land on a point of agreement with them on that.

The Convener: That leads me on to my next question. What discussions have you had with the Scottish Parliamentary Corporate Body, rather

than the Parliament itself, about that? Are you able to share its views on taking on another body?

Jamie Hepburn: I would be loth to share its views; I would rather let it do that. Far be it from me to speak for the SPCB. However, I have spoken briefly to the Presiding Officer about it, and I have spoken to the chief executive. Officials have also been in contact with Scottish Parliament officials. Although I do not want to speak in detail about it, I get the sense that there is a willingness on its part, but we need to finalise arrangements to get that over the line.

The Convener: That is helpful. I have no doubt that the committee will also inquire about that, because it is the funding question. Various committees of the Parliament have taken a great interest in the commissioners in Scotland and the cost of those and other entities because, at the end of the day, part of ensuring confidence in the system is knowing that there is adequate funding for something to happen. Discussions about the pilot schemes demonstrate that some of these things are not inexpensive. The financial memorandum rightly highlighted the unknown quantity with regard to the costs of the corporate body that is being proposed, so we might continue to press you for further details.

Jamie Hepburn: If I may pick up on that, although we are creating a corporate entity, the Electoral Management Board already exists, so we are not creating a new entity. We provide funding of around £200,000 per annum to the Electoral Management Board. Yes, there could be a question as to whether that will suffice as it moves to a new legal status, so we are looking at that just now. The commitment is that that requires a new financial memorandum. We will produce that and will provide it to this committee and to the Finance and Public Administration Committee, which, of course, is taking a great interest in financial memoranda.

The Convener: Those who currently host the voluntary EMB might look differently at a non-voluntary entity.

Jamie Hepburn: Indeed.

10:00

The Convener: The challenge of using priority statements has been spoken about, because the EMB must remain at arm's length from those whose election it is overseeing. I understand the mention of the Scottish Government's priority statement, but you have indicated that, potentially, the Scottish Parliament—I assume that you mean the Parliament itself rather than the SPCB—could make a priority statement. Will you explain that further?

Jamie Hepburn: There is a fine balance to be struck. From an operational perspective, we must let the Electoral Management Board get on with its work. Clearly, we would not want the Government or the Parliament to be seen to cut across its operation. However, we are also democratically elected representatives, and there is nothing wrong with our being able to identify issues and lay those out in a statement to the board as something for it to have regard to rather than as something that prescribes or directs it to do anything in particular. Rather, the intention is that it would be something that it should be aware of in the context of its work.

There is then a question as to where that responsibility should lie. Should it lie with Government or with Parliament? You raised the reasonable question about the corporate body. Yes, I would envisage that that responsibility would lie with Parliament as a whole, but could the corporate body also raise issues? Could it be a mixture of Government and Parliament? Those are issues that, frankly, I am keen to hear a perspective on from other members, because we have not reached a definitive position in that respect.

People are absolutely right to caution against anything that could be seen to compromise the independence of the Electoral Management Board. I observe that it is already the case that the Electoral Commission is responsible to the Scottish Parliament for its activities in Scotland. However, there is provision for the Scottish Government to fund certain activities for the Electoral Commission, with its agreement, and it is still able to operate entirely independently of Government, so such things are achievable.

The Convener: Absolutely—they are achievable. Again, the devil will always be in the detail. Predominantly, elections are handled very successfully here in Scotland and there is a great deal of confidence in them. One of the assurances that this committee is seeking is that, as the bill becomes a piece of legislation, that vehicle of trust and security can move forward, and it is one of our roles to ensure that.

Oliver Mundell: I want to go back to the point about priority statements. Are you not concerned that, whether it is the Scottish Parliament or the Scottish Government, if politicians are seen to be making statements, particularly with regard to some of the pilot areas and other bits and pieces, it would call into question the democratic legitimacy of the board or the things that it is planning? I worry about the stolen-election type of stuff. Colleagues have come to the committee and talked about randomised ballot papers and other quite novel electoral provisions. You could have candidates or, potentially, political parties saying

that they had been disadvantaged or cheated. Do you not think that we could get into that kind of space? Would it not be better to keep it completely separate from politicians?

Jamie Hepburn: A balance has to be struck. By and large, yes, of course, on an operational basis, the Electoral Management Board must be able to operate independently of political direction and interference. That is a given; we would all agree with that. I have made the point about the activity that the Electoral Commission might undertake, funded by the Scottish Government. We cannot compel the Electoral Commission to undertake work, so that would be done through a process of dialogue and agreement.

Of course, Parliament is a pluralistic entity, and if any individual member of the Scottish Parliament has concerns, they will raise them. In the same way, if organisations out there have concerns, I am sure that they will raise their voices, too. By and large, we have a transparent, open and democratic system that enables people to raise their concerns and allows us to deliberate on them.

Oliver Mundell: But you would recognise that there is a difference between concerns being raised in the way that you are describing and formal statements being made that either set out a definitive position or collate views in a definitive way. I think that that ups the question of how seriously an independent body would be expected to take those things into account.

Jamie Hepburn: This is where we have to be careful, and it is why I would suggest that the issue is something that organisations have to have regard to instead of there being specific actions that they must undertake.

Oliver Mundell: That is different from being consulted, is it not? I would expect politicians, the Government and elected representatives—a wide range of stakeholders—to be consulted on changes, plans and ideas, but when some stakeholders are given the chance to make formal statements that have to be given due regard, that feels a bit different to me.

Jamie Hepburn: It is different. We still need to reflect on the fact that Parliament has been democratically elected; the people have determined that we are the 129 individuals who should represent them, and we are accountable to them at the ballot box. I do not think that it is unreasonable to suggest that we might have a point of view that we might want to express and that that should be something that the board should have regard to. If that crossed the line into the board having to do certain things, I would start to get concerned.

You are right to raise those issues, Mr Mundell, because this is where we need to get the balance right. My perspective is that this is still a sensible move; I am open to whether it should be Government and/or Parliament that makes such a statement, but it should happen in a manner that is appropriate and proportionate and which does not compromise the board's independence. That is the bottom line.

Oliver Mundell: I will leave it there for now, convener.

The Convener: If no one else has any comments, I will pass over to Ruth Maguire.

Ruth Maguire (Cunninghame South) (SNP): Good morning, minister. I want to ask about secondary legislation, and then I have a question about electoral pilots.

What update can the Government provide to the committee on the further consultation that has taken place with key stakeholders on the new areas that are being considered for amendment?

Jamie Hepburn: Are you talking about the secondary legislation as proposed in the bill, or secondary legislation—

The Convener: It is the other changes that we are asking about. Clearly, there is primary legislation that has already created secondary legislation, and that will continue, but the bill hints at other secondary legislation and we just want to find out where the Government is on that matter. There seems to be a huge amount of secondary legislation; there were initial discussions when the bill was very broad, and now that things have been narrowed down, we want to establish where the Government is.

Jamie Hepburn: We continue to engage with those who have an interest in these areas. I think that I am right in saying that the Delegated Powers and Law Reform Committee has looked at whether the powers that we propose could be made through secondary legislation. Of course, it is not unusual for a bill to lay out that provisions can be made through secondary legislation, and I do not think that that committee has expressed any particular concerns about the provisions that we have set out in that respect. Of course, we will continue to engage in dialogue with those who have an interest in either the appropriateness of including secondary-regulation-making powers in the bill or, indeed, how we might utilise those powers.

Ruth Maguire: Can you say something about how the Scottish Government decides what to take forward through primary legislation and what to take forward through secondary legislation?

Jamie Hepburn: I can speak about that in general terms rather than just in relation to the bill.

By and large, the judgment is that, if we think that circumstances could change quite quickly and we need to make a fairly quick change, it is appropriate to put that sort of thing in secondary legislation. That is one element. If matters evolve and circumstances change, it might be more appropriate to make provisions via secondary legislation rather than in primary legislation, because—to state the obvious—it takes longer to do something by using primary legislation than it does by using secondary legislation. At the end of the day, all secondary legislation still has to be put before Parliament and agreed by Parliament, so there is still that process for deliberation and accountability.

Ruth Maguire: With that in mind, are there additional areas of electoral law that the Scottish Government will likely seek to change through secondary legislation prior to the next Scottish Parliament election?

Jamie Hepburn: Yes, there are. Some of those areas do not relate to the bill, because there are already powers to make secondary legislation. What we have laid out thus far are proposals on, for example, amendments to the dissolution period before Scottish Parliament elections and to the definition of notional expenditure for candidate spending. We have already talked about issues to do with intimidation. Associated with that, there are concerns about undue influence, so we want to look at the definition of that.

There is also an issue that I have reflected on before that I think is important, because it goes back to the convener's point about equivalence in the treatment of councillors and parliamentarians. As candidates for Parliament, we are able to put as our residence the constituency in which we reside. We think that it should be possible for those who stand for election as councillors to say which ward they reside in. We are looking to progress that and to give election agents the option of providing a correspondence address.

There will probably be a conversation about—I have already spoken to Jeremy Balfour about this—replacing the requirement for a tactile voting device with a wider responsibility for returning officers to provide appropriate support. I am happy to discuss that further.

We are also looking at allowing the Boundary Commission for Scotland to access limited electoral register attainer data when conducting reviews, so that it will be able to take account of people who will come on to the register when they come of age, as well as allowing emergency proxy votes for people who accompany others to medical appointments.

Those are things that we have said we will do. There are a range of other areas in which we are

considering what the position might be. Examples of those are candidate mailings and what information might be provided on polling cards—for example, could additional information be provided to help with accessibility? There are things that we have said we will do, and there are other areas that we are considering. Some of those things interlink with the bill but do not require it, because we are already able to do such things through secondary legislation.

Ruth Maguire: Thank you. That is helpful.

On potential electoral pilots, we should all be very concerned about participation and ensuring that as many people as possible take part in elections. Is there scope in the electoral pilots for automatic voter registration, for example? Does the Government have a position on that?

Jamie Hepburn: One of the things that we were asked to do, which we will be doing, is to bring forward an amendment to make it clear that pilots can focus on registration issues. I know that there is interest in that area. I have spoken to the Electoral Reform Society about that. It is keen on there being a pilot, although it would not necessarily have to be the Government that ran it. I am wide open to considering that. I do not know whether such evidence has been given directly to the committee, but some electoral registration officers have expressed concerns about the quality of the data, depending on the source that it is drawn down from, such as whether it is still current and up to date.

There are issues around registration that might lend themselves to being looked at in a pilot. As a Government, we have not said that there definitely should be a pilot on automatic registration, but we want to make it clear that that is something that could be piloted.

Ruth Maguire: Thank you.

10:15

The Convener: Are you talking about automatic or assisted registration, minister? After all, there is a very subtle difference between the two: with an automatic registration pilot, either you do it or you do not, but with assisted registration, a data challenge exists for various other reasons, such as the quality of data that is held and so on. Are you talking about automatic registration—that is, people being automatically registered when it becomes apparent that they should be on the register—or assisted registration, when there is some form of positive outreach and people are told, “You can now be registered, and this is all that you need to do”?

Jamie Hepburn: I was talking about automatic registration, but equally it has been suggested that

there could be pilots to assist the registration process through the utilisation of other data sources or other points at which people register their information. Could, for example, the national health service or other council services provide a means by which people could simultaneously register to vote? That sort of thing could be piloted, too. Of course, the purpose of having pilots is to learn from them, and if they work, we can consider making them a feature of our system. Wales is looking at the issue just now, so we will be able to look at the experience there.

The Convener: An issue that could arise with an automatic registration pilot is that—I say this ever so slightly flippantly—there might be a postcode lottery when it comes down to those who might be part of it. When you look at the figures for the number of people who are not on the electoral register, you can see that a pilot could make a very significant difference to the electoral pool in an area, be it for a council election or, indeed, a Scottish Parliament election. If we agree in principle that there should be automatic registration, it should happen universally to ensure that no individual voter is excluded. The flipside, then, is that it will ensure a playing field across the whole of Scotland.

Jamie Hepburn: That is a reasonable point. I suppose that there is a certain tension—or a balance to be struck—between saying, “Well, we want to see if this works, so we have to pilot it in a certain area” and the fact that we would be adding a feature or a facet to electoral registration in only one or more areas, not across the entire country. That would have to be considered as part of any pilot.

The Convener: That is excellent. Thank you.

I am sorry, Joe—do you want to come in?

Joe FitzPatrick (Dundee City West) (SNP): No, I am fine, convener.

The Convener: We have a couple of questions about other bits of secondary legislation, but if you do not mind, minister, it might be easier for the committee to write to you for an update on each of the areas that you have highlighted, plus others, particularly for the benefit of members who are not on this committee. For example, a number of members are rightly concerned about and seek reassurance on the issue of tactile devices.

Jamie Hepburn: I am happy to speak about that a little just now—

The Convener: I was just going to say that, if you want to say more about where the Government is with that, it might be beneficial.

Jamie Hepburn: I can understand that, on the face of it, it might seem to be concerning that we are no longer prescribing that the tactile device

that has been deployed should still be deployed. I am using those words because what has been prescribed is the utilisation of one type of device and, frankly, it has probably been overtaken by new developments that might be a little better. If one takes the issue at face value, one might well ask, “Why are you removing what has already been prescribed, given that it is there to assist people?”, but we want to ensure that there is a wide range of more appropriate support, and I am happy to talk through what is being done just now.

For example, the Electoral Management Board for Scotland’s accessibility sub-group, which includes representatives of councils, the Electoral Commission and the Scottish Government, is looking at a range of issues. One involves enhancing the existing polling place finder app, which is provided by a charity called Democracy Club. The app is available for anyone to use to find where their polling place is, but we think that it is particularly helpful for those with sight loss, and we are looking to see whether we can enhance the app, with trials of that expected to start shortly.

A tactile ballot paper overlay is also being developed—that is probably the most relevant development in relation to the existing tactile voting device. In a nutshell, the difference is that the overlay that is being designed works with specific ballot papers. It is designed around the size of the actual ballot papers that people will use, whereas the current tactile voting device is not quite the same. It has to be affixed by a person in the polling station and it does not necessarily match the exact size of each ballot paper. You can see why that change might lend itself to being an improvement.

Work is also being done to look at greater audio support through automated telephone lines. Those were piloted successfully during the Northern Ireland Assembly elections in 2022 and were rolled out for local elections in Northern Ireland last year. A voter can phone a helpline to get information on how to cast a vote and details on who is standing. Anecdotal evidence shows that that service was not taken up in huge numbers but that those who used it found it very helpful. That was not an expensive innovation—the cost of setting it up was about £10,000. The Electoral Management Board sub-group is in the process of setting up a similar trial in Scotland.

We are also looking at digital polling cards, which we think could be helpful and could benefit certain groups of people by enabling them to get their polling card in a digital format.

I hope that that gives reassurance that we are not seeking to reduce the quality of support that is available to people and that, actually, we are looking to enhance it.

Joe FitzPatrick: On that last point, we know that, in the Westminster election that we have just had, a number of people did not manage to cast their vote because they did not have proof of identification. Is there an opportunity to consider whether the UK Government might work with you on a digital polling card, which might help folk who do not have a passport or driving licence and who are too late to apply for something else? Might something come out of that?

Jamie Hepburn: We would be happy to do that. Earlier this week, I had a useful and fruitful conversation with my counterpart in the UK Government, Alex Norris. There is a lot that we agree on. I take this opportunity to make it clear that we still have no intention of creating a requirement for people to show ID to cast their vote, and I pressed that point with Mr Norris, as I do not think that that should be a requirement in UK elections, either. We do not have responsibility for legislating for that, but I made it clear that I see no necessity for that requirement. That is the Scottish Government's perspective, and I hope that the UK Government will act accordingly. However, when we can work together on these things, I am absolutely committed to doing so.

The Convener: Annie Wells, do you want to cover anything?

Annie Wells (Glasgow) (Con): No, I am fine, thank you.

The Convener: Are you sure?

Annie Wells: Yes.

The Convener: Right. Oliver Mundell has a question.

Oliver Mundell: It is on the current tactile voting device. Would it not offer reassurance to some people to say that those will continue to be available until the other options are developed? I do not understand why that is difficult. We all accept that better things are available, but people are legitimately concerned that something that they are used to using is to be taken away. Would that not be quite easy to do?

Jamie Hepburn: It could be, and I have not closed down that option. It may be that, for a transition period, we can make it clear that those devices will still be available. The change has been made south of the border, and concerns were raised at the time, but the practical experience has been such that the concerns no longer remain, because the other devices and approaches have been successful. However, I am open to considering that approach if it is felt to be some form of reassurance in the immediate period.

Oliver Mundell: The devices exist and electoral staff are used to using them. I just think that it

would not do any harm and it might give people confidence, which I have, in what you are saying—namely, that they will not be disenfranchised in the short term.

Jamie Hepburn: I am open to persuasion on that. Again, it is for the committee to consider from whom it wants to take evidence. It might be useful to hear the perspective of returning officers on the matter. As you have accepted, the bottom line, which we must press, is that there is no desire to reduce the quality of support that is available. On the contrary, we want to enhance it. However, if in the process of conversation with all stakeholders it is felt that that could offer a degree of reassurance, I am open to hearing that.

The Convener: Minister, if you are happy for us to do so, the committee will write to you with a couple of questions about the associated secondary legislation. In the meantime, what is the Government's position on anonymous voter registration and the extension to domestic abuse protection orders, given the proposed changes in other parts of the country that might affect people there? If someone moved to Scotland, would they be able to apply for anonymous registration because of the physical and/or psychological harm that they are at risk of? I understand that we still need to make changes.

Jamie Hepburn: I hope that most people would recognise that that is a sensible thing to do. We are still going through the process of looking at how we would put that into operation.

The Convener: Therefore, you do not have a timescale for that at the moment.

Jamie Hepburn: No, but I will be happy to write to the committee on that.

The Convener: As I said, we will probably encompass those questions in our correspondence.

My other question relates, ironically, to next-day counts. Should we continue to count overnight, or should we give the staff a break so that they come back the following morning slightly more refreshed? In correspondence, you talked about reaching out for the views of the Scottish Parliament. To go back to where we started today, is that the Scottish Parliament as a corporate body or the Parliament as made up by the members? Where are you with that consultation?

Jamie Hepburn: That is largely with the members—it starts with them. I am happy to hear what people think. I am torn between two options—actually, I am not torn because, instinctively, I quite like the overnight count. I do not know what others round the table think, but I am willing to bet that they also like the overnight count. However, we have heard that there might

be practical considerations in that regard, and we have to take those seriously and consider them. That also needs to be balanced against the practical experience that, as far as I can see, there have not been significant difficulties with overnight counts thus far. The perspective is being articulated that it might be more appropriate to do the rest of the count the next day, so we have to consider that, but I need to be persuaded of its merits. I am keen to hear what other members think.

The Convener: I have no intention of polling committee members now on their individual views. As a committee, we, too, would need to take evidence on that. However, in practical terms, how do you intend to take that evidence from members of the Scottish Parliament? I very much echo the attitude of the Scottish Government that this bill belongs, and election bills generally belong, in essence, to Parliament, to be facilitated by the Scottish Government. On such issues, it would be useful to know how you intend to conduct that consultation.

10:30

Jamie Hepburn: To be perfectly candid with you, convener, I am just operating on an open-door basis. Let me place on the record now that if any member of the Scottish Parliament wants to speak to me about any element of the bill, I am happy to speak with them. If it is felt that it might be useful to have some other form of consultation, I am happy to consider that, although it is not our usual approach. You rightly make the point—I share the perspective—that this is Parliament's bill.

The Convener: Yes, and I specifically chose the issue of overnight counts because, interestingly, that is the one area on which you pointed out in your correspondence an intention to consult the Scottish Parliament. There is a difference between your open-door policy, which I absolutely endorse and have used on occasions, and a consultation in which members and other consultees are actively approached in order to seek their views. There is a different emphasis there. If you draw a conclusion from that consultation, it is helpful to know how it happened.

Jamie Hepburn: I am being reminded with a discreet note from Iain Hockenhull—well, it is not that discreet, because I am about to say it—that the Scottish Parliament political parties panel has also been contacted, so that is another way that we have engaged in order to get views.

The Convener: As always, Iain Hockenhull anticipates my very final question. Do you have a meeting date for the panel to discuss the matter?

Jamie Hepburn: I await a reply.

The Convener: Excellent.

As members have no further comments, is there anything that you would like to add, minister?

Jamie Hepburn: At this stage, no, convener, but I am very grateful for the opportunity to speak with you about the matter. As much as I am giving my perspective, I am genuinely interested in other people's perspectives as well.

The Convener: Absolutely, and I welcome the comments in a number of formats about seeking the views of this committee. I find that both reassuring and helpful. Of course, the committee's views have to be based, in some way, on evidence that we hear, and that is an opportunity for people outside of the Parliament at various levels to participate.

Minister, I thank you and your officials for attending today—it is always illuminating—and we will be in touch with you through correspondence.

10:32

Meeting continued in private until 11:06.

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