



OFFICIAL REPORT
AITHISG OIFIGEIL

Standards, Procedures and Public Appointments Committee

Thursday 18 April 2024

Session 6



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Pàrlamaid na h-Alba

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STANDARDS, PROCEDURES AND PUBLIC APPOINTMENTS COMMITTEE
9th Meeting 2024, Session 6

CONVENER

*Martin Whitfield (South Scotland) (Lab)

DEPUTY CONVENER

*Ivan McKee (Glasgow Provan) (SNP)

COMMITTEE MEMBERS

*Jackie Dunbar (Aberdeen Donside) (SNP)

*Oliver Mundell (Dumfriesshire) (Con)

*Annie Wells (Glasgow) (Con)

*attended

THE FOLLOWING ALSO PARTICIPATED:

James Adams (RNIB Scotland)

Professor Alistair Clark (Newcastle University)

Ahlam Hamoud Al-Bashiri (Scottish Refugee Council)

Professor Toby James (University of East Anglia)

Alice Kinghorn-Gray (Electoral Reform Society)

Kay Sillars (Unison)

Hannah Stevens (Elect Her)

CLERK TO THE COMMITTEE

Catherine Fergusson

LOCATION

The David Livingstone Room (CR6)

Scottish Parliament
Standards, Procedures and
Public Appointments Committee

Thursday 18 April 2024

[The Convener opened the meeting at 09:00]

Decision on Taking Business in
Private

The Convener (Martin Whitfield): Good morning, and welcome to the ninth meeting in 2024 of the Standards, Procedures and Public Appointments Committee. We have received apologies from Oliver Mundell MSP; Edward Mountain joins us today as his substitute.

Our first agenda item is a decision on whether to take in private agenda item 3, which is consideration of the evidence heard on the Scottish Elections (Representation and Reform) Bill. Are members happy to consider that item in private?

Members *indicated agreement.*

Scottish Elections
(Representation and Reform) Bill:
Stage 1

09:00

The Convener: Our next agenda item is evidence on the Scottish Elections (Representation and Reform) Bill. We are joined in the room by Ahlam Hamoud Al-Bashiri, peer education co-ordinator for the Scottish Refugee Council; Alice Kinghorn-Gray, campaigns officer at the Electoral Reform Society Scotland; and James Adams, the Scotland director for the Royal National Institute of Blind People. We are joined online by Hannah Stevens, chief executive officer of Elect Her, and Kay Sillars, the regional manager of Unison. Welcome to you all.

If everyone is content, I will press on with questions, with the proviso that witnesses should not feel that they need to answer every question but should feel free to contribute when they would like to do so.

I turn, in the first instance, to Jackie Dunbar.

Jackie Dunbar (Aberdeen Donside) (SNP): Good morning, panel, and thank you for coming. I will begin by asking for your views on the proposed disqualification orders. I am interested in hearing any thoughts or insights that you have about the level of intimidation, harassment or abuse that folk have to endure during elections. I do not mean just candidates; I mean campaigners and the hard-working electoral staff, too.

I will start with Kay Sillars, who has probably had to deal with the staff side of that.

Kay Sillars (Unison): Thank you for inviting Unison to the meeting. That is a really important issue. One of the aims behind the bill is to increase participation in our democratic process. If that is an unpleasant thing to participate in—as a candidate, a member of staff or a member of the public who wants to ask serious questions—people will back out and will think that it is not for them or that they are not interested. We see across all sorts of surveys that people just do not want to participate in political debate in our country.

No one should experience violence at work—by which I mean violence in the widest sense of the word. You might not be physically injured by people screaming and shouting at you, but that still has an effect on day-to-day life, and anyone who has experienced that kind of intimidation knows that your heart rate goes up, you panic and it sits with you for the whole day. It is not just about the event itself, either—people go to work the next day thinking that it might happen again.

It is really important for local government staff, who tend to be our members, that serious action is taken to protect people at work, but that also applies to what happens to candidates and to people who participate in the process in general.

We would like elections to be something that we look forward to. I would like to see people thinking of themselves as empowered and willing to take part in the process. I am interested in hearing what Hannah Stevens has to say, because I think that women, in particular, are intimidated out of our political processes.

Jackie Dunbar: I should also have asked whether you think that people from minority backgrounds, disabled people or folk who identify as women are affected differently. Is the level of abuse higher for them or is it about the same? I realise how bad that question sounds, and I do not mean it in the way that it comes across.

Kay Sillars: Certainly, from our surveys of our members about their day-to-day working lives, we know that a lot of abuse is related to people's protected characteristics, for want of a better expression. We have never asked about that specifically around elections, but we have certainly asked about it around people's day-to-day working lives, and it shows in all that work.

Jackie Dunbar: Thank you. You explained it so much better than I did.

I ask Hannah Stevens to respond next.

Hannah Stevens (Elect Her): Thank you for the opportunity to join the committee today. At Elect Her, over the past few years, we have spoken to hundreds of women about their experiences of engaging in democracy at every stage, right from the beginning, where women are wondering what it is and how it relates to them, through to their getting involved—whether that is getting involved with a political party or choosing to follow an independent route—and to candidacy. More recently, we have been engaging with women once they are elected and in office. Across the board, we are hearing about what an enormous problem abuse is.

I am thrilled that the committee is taking the issue seriously and looking at ways that, through the bill, we can continue to engage on the matter. I truly believe that the issue is having a negative impact on our democracy. The clearer the understanding that we get of the problem, the more we can examine how we can work to fix it. Women categorically receive a greater amount of abuse, and women of colour receive an even greater amount. Amnesty International research has found that 20 minority ethnic MPs received almost half of all the abusive tweets towards female MPs. That is a social media challenge. We have to understand that people with additional

positionalities are receiving increased amounts of abuse.

I am excited that the committee is exploring the issue, but the bill looks only at preventing a person from standing as a candidate if they have committed an offence, and we feel that so much more can be done to tackle the matter. The Jo Cox Foundation has several recommendations that are relevant to this conversation. One is on having clear guidance for elected representatives on reporting abuse to the police. We have had lots of conversations with women who simply do not know what their rights are when it comes to reporting abuse or how best to engage on the issue.

The conversation has to be about women in elected office, but I am also pleased that you acknowledge those who are activists or campaigners, because lots of misogynistic abuse is happening as a result of the culture in political parties, which is where people might start to get involved in democracy.

Another of the Jo Cox Foundation's recommendations is on the provision of greater financial support for elected representatives to enable them to deal with the costs that are associated with personal safety and handling abuse. Our financial systems are not yet up to speed with those additional needs. If, for example, it is recommended that a member avoids using public transport for a period while they are in receipt of abuse, that comes with increased costs.

On the wider points in the bill about increasing public trust and engagement in democracy, which I imagine we will discuss later, we believe that having that wider conversation is really important. There is a deep lack of understanding of what our elected representatives are doing for us, and democratic education is a really important part that connects to this conversation.

Finally, the Jo Cox Foundation also recommends training for police and others involved in law enforcement about their responsibilities in dealing with threats against elected representatives. I know that Police Scotland has been doing good work with the Convention of Scottish Local Authorities to develop that, and I really encourage the growth and development of that work.

Jackie Dunbar: You have actually answered my second question as well. Thank you very much for that.

Would anyone like to add anything? My next question was going to be—

The Convener: Just before Jackie moves on to her next question, I want to ask Hannah what she would like to be in the bill. You referred to the Jo

Cox Foundation's recommendations, which the committee is aware of, and you highlighted the one on guidance, which could be progressed without the bill. Are you looking for anything specifically in the bill, or would you like—I will use a phrase that will come back to haunt me—a declaration in the bill of an intention to introduce other legislation, such as statutory instruments, to bring in the guidance? Would that go some way to reassuring you that the intention to have the environment that I think we all want can be achieved without specific calls for that in the primary legislation?

Hannah Stevens: I am afraid that I do not feel expert enough in the structure of bill development to determine which way that information should be best presented, but I would say that an acknowledgement of misogyny, including racist misogyny, within any relevant part of supporting literature around the bill is vital to truly articulate the reality of the situation, which is that women—more specifically, minoritised women—are receiving an increasingly larger amount of abuse than the men in this system.

The Convener: That is helpful. Thank you.

Jackie Dunbar: Are there any other provisions that the rest of the witnesses think could be considered for inclusion in the bill? Does anybody have anything to add?

The Convener: Do you mean specifically with regard to the intimidation and harassment side?

Jackie Dunbar: Yes.

The Convener: Ahlam Hamoud Al-Bashiri is probably the person to come to on that. Is there anything specific that you would like to see in the bill not just with regard to the proposed changes to those who can stand, but in relation to the experience that refugees and those who have the right to vote have in their interaction with the electoral process?

Ahlam Hamoud Al-Bashiri (Scottish Refugee Council): Thank you for giving us the opportunity to give evidence in your committee meeting today. I am happy to come back to you and answer that question in writing.

What I want to comment on—maybe you will ask me about this—is extending the right to stand for election to people with limited leave to remain. I am happy that that is included in the bill, because that is how it was before, in 2019.

I am here to speak not just on behalf of the Scottish Refugee Council but as a refugee from a refugee community in Scotland. I—

The Convener: I do not mean to cut across you, but we will come to that specific issue, because I know that you have valuable evidence

on that. We are trying to explore the bill in manageable chunks, so we are looking at disqualification at the moment, but we absolutely will come to the issue that you mentioned. I am more than happy for you to write to us afterwards on the point about intimidation.

Jackie Dunbar: The bill's policy memorandum refers to the disqualification of MSPs and local councillors who appear on the sex offenders register. That is not provided for in the bill, but the Scottish Government has said that it will consider that ahead of stage 2. I am interested in hearing people's views on whether someone who is on the sex offenders register should be able to stand for, or continue to hold, office—not just for the Scottish Parliament, but for local government.

The Convener: Kay, can I come to you first on that?

Kay Sillars: I am sorry—I was just going to come back in on the earlier point. We will not be able to administer our way out of the problem of violence. What we need is action around it. There are already plenty of rules to deal with violence and intimidation; we need people who are supposed to do something about it—whether that is managers or the police—actually doing something about it.

The Convener: That is helpful.

Kay Sillars: The issue about sex offenders is not widely debated in Unison. We have not had a lot of people saying, "Oh, my! How can we empower people on the sex offenders register to take part in our democracy?" I do not think that we would want to go down that road. Sex abuse is about violence and power.

Jackie Dunbar: What I meant was that, currently, if someone is put on the sex offenders register, they can remain as a local councillor and there is nothing that we can do to remove them from that office. Do you think that there should be a process in the bill to remove that person, or should the situation remain as it is? I do not know whether that clarifies things.

09:15

Kay Sillars: I should not be so sarcastic. It is important that we have powers to remove people who commit such offences. An elected person is in a position of power.

Jackie Dunbar: And of trust.

Kay Sillars: And of trust. We are talking about people who manage staff at a basic level, and they have access to the community and are in a position of respect in the community that could give them opportunities to commit further abuse. I apologise for my sarcasm.

Jackie Dunbar: Thank you very much. As no other witness has anything to add on that, I am happy to hand back to you, convener.

The Convener: I will bring in Ivan McKee.

Ivan McKee (Glasgow Provan) (SNP): Good morning. Ahlam Hamoud Al-Bashiri briefly touched on the issue of extending the rights of candidacy to foreign nationals with limited leave to remain. If you want to give us your perspective on that, that would be very helpful. I will then open up the discussion to the other witnesses.

Ahlam Hamoud Al-Bashiri: I will repeat what I said earlier. I am here to speak not only on behalf of the Scottish Refugee Council but as a refugee from the refugee community in Scotland. In 2019, I came to the Parliament to speak about that when we were campaigning to give refugees and asylum seekers the right to vote in national and local elections and the right to stand in elections. I am so happy that, in 2020, the right to vote in Scotland was given to refugees and that I, as a refugee, can vote in national and local elections here. In 2021, when I went to cast my vote for the first time, it was one of the most beautiful moments of my life. I am so glad that I chose to make Scotland my country.

I am so happy that we have the opportunity to give the right to stand in elections to people with limited leave to remain, which includes refugees such as myself. That provision has been included in the bill, so we have an opportunity to extend that right to people with limited leave to remain in Scotland.

We, at the Scottish Refugee Council, welcome that but, at the same time, we are disappointed, because the bill does not include giving the right to vote to asylum seekers, which is something that we will continue to campaign for. We believe that giving that right is a significant step towards inclusivity and ensuring that everyone, regardless of their status, has a voice in shaping the future of this country. It does not matter where those people come from; what matters is that they choose to make Scotland their country and their home.

Guaranteeing the right to stand in elections for people with limited leave to remain is a matter of fairness, equality and democratic principle. It is a recognition of the contribution and the potential of individuals who have become part of society but who may still face barriers to full participation in the political process.

The Scottish Refugee Council understands how crucial that is. We totally failed when refugees did not have the right to vote in elections. One refugee who voted for the first time in the Scottish parliamentary election in 2021—the election in which you were elected—said:

“It is a beautiful moment to vote for the first time in my life.”

Just imagine that. Many people come from countries that are not democratic countries like Scotland, and we are very happy that we live in a democratic country where we can practise the right to vote to elect members of the Parliament.

We also want you to give us the right to stand in elections. If you walk down any street in Glasgow or Edinburgh today, you will see a lot of people who are not represented here in the Scottish Parliament. We are talking about people whose voices and issues are missing. It is important to consider that. It is essential to consider the voices and perspectives of all members of society. Empowering the voices that we know have previously been marginalised and underrepresented would strengthen our democracy and ensure that decisions are made with the full representation of our diverse population. Furthermore, it would be a step towards removing barriers to inclusion and would strengthen overall political participation, supporting social and political integration for non-citizens in Scotland.

We have a very important policy—the “New Scots Refugee Integration Strategy”—which states that asylum seekers should be integrated from the day of their arrival in Scotland, not from the day when they are guaranteed refugee status. I believe that we must treat people as human beings rather than on the basis of their immigration status. That is why we are calling for people who have limited leave to remain to have the right to stand in elections.

The Convener: Ivan—

Ahlam Hamoud Al-Bashiri: I am just finishing.

The Convener: Sorry.

Ahlam Hamoud Al-Bashiri: Allowing people who live in Scotland but who do not have British citizenship to stand for election would make the Scottish Parliament more diverse.

Applying for citizenship is very expensive, and some people in our country cannot afford the fee. The proposed bill would give people who have limited leave to remain the right to stand in Scottish elections regardless of their citizenship status and would provide them with the opportunity to contribute to and participate fully in Scottish society. We believe that this is about promoting democratic participation and empowering those who have chosen to make Scotland their home. It would also promote equality here.

Ivan McKee: That is very helpful and lays out clearly a very important perspective.

Do any other witnesses have perspectives that they would like to share? Does anyone want to come in online?

I also want to ask about the issue of dual mandates. MSPs can hold another office as a councillor or as an MP. I would like to hear the panel's views on how appropriate dual mandates are. Does Alice Kinghorn-Gray want to kick off on that?

Alice Kinghorn-Gray (Electoral Reform Society): I am happy to come in if that is okay with everyone.

I extend thanks on behalf of ERS Scotland to the convener and the committee for having us here.

On dual mandates, we would like to see legislation brought in that is in line with that in the Welsh Senedd. We do not see any real reason why MSPs should be double jobbing, which is another term for dual mandates. We do not see any real benefit of that for voters or our democratic institutions. The Welsh legislation sets out what is acceptable, and we agree with that.

In line with that, we think that a newly elected MSP who is a sitting MP should have eight days in which to resign their seat in the House of Commons and that, if they are a councillor, they should have 375 days to resign from the council, so there is a bit more leniency there. The Senedd has legislated for an newly elected member who is a sitting member of the House of Lords to take a leave of absence from the Lords, but we would like to see newly elected MSPs who have a seat in the Lords resign from it. To reiterate, we do not see any real benefit to an MSP having two jobs, as it were.

Ivan McKee: Does anyone else have a perspective on that issue?

Kay Sillars: I agree with the ERS in as much as I do not think that it is good or helpful for our democracy for people to have dual mandates. The issue is created by the fact that standing as a candidate is an incredibly high-risk thing for people to do. It involves a huge amount of hard work and sacrifice, and it is hard for parties to get people to do it. Some of the things that we are looking at in Scotland, such as getting more people to stand and making it easier to be a candidate, will contribute to getting rid of the need for parties to, for example, end up with their councillors standing as MSPs. We need to make more fundamental changes to make it easier to be a candidate, although, obviously, it is always going to be high risk, because it is a win-or-lose situation. I cannot see any harm to our democracy from changing rules in the way that the ERS proposes, but we have to understand why we have ended up here in the first place and deal with some of that as well.

The Convener: I have a question for Ahlam Hamoud Al-Bashiri. One of the things that has been raised with us is the fact that, when an MSP is elected, they have to take an oath of allegiance. Do you see any potential challenges from an individual's point of view in taking that oath of allegiance? Are there perhaps any unforeseen consequences that we have not considered yet about requiring that of a new MSP who has gone through the entire election process and succeeded, particularly if they have refugee status and so on?

Ahlam Hamoud Al-Bashiri: There might be concerns, depending on which perspective someone is coming from. As I said, everyone who chooses to make Scotland their home must be given the same rights. I accept that I am a refugee and that some of you may see me through that label, but I do not see myself as a refugee; I see myself as a human being, and I must be given the same rights as anyone who is living in this country. Why are we treating people on the basis of their immigration status? I think that, by allowing people who live in Scotland but do not have British citizenship to stand for election, we also challenge the status quo and start to build a country where everyone has the same rights. That might sound like an idle hope, but I strongly believe that Scotland can do that.

The Convener: That is lovely. Thank you very much.

Edward Mountain has a question on an earlier point.

Edward Mountain (Highlands and Islands) (Con): I have my own views on dual mandates and whether it is possible to do both jobs. I find doing the job that I am doing already to be quite intense, so I am not sure that I would look for another job.

I put it to Alice Kinghorn-Gray that we are in a situation in which councillors get elected to become MSPs and, because of the way that the elections fall, there is about a year before the council elections. Do you think that there is an argument that councillors who become MSPs should continue for that year, so as not to cause an extensive cost to the taxpayers? They can probably still do that job for that short period of time if council meetings are on Mondays and Fridays. Do you have a view on that?

Alice Kinghorn-Gray: We appreciate that those circumstances exist in relation to councillors, which is why we would advocate for that 375-day window as opposed to the situation that we propose with regard to someone who is elected to Holyrood but has a seat in the House of Commons.

Edward Mountain: May I ask another question, convener?

The Convener: I would like to pause for a moment. There is no problem with where this discussion is going, but, because of its subject, I think that, although Jackie Dunbar has not contributed to this part of it, she would like to put something on the record in relation to it.

Jackie Dunbar: Indeed—I have not contributed to it, but I wish to refer members to my entry in the register of members' interests. I was a councillor for the first year that I was an MSP. As Edward Mountain said, my decision was based purely on trying to save public money. The cost would have been horrendous, especially during Covid, when by-elections were so expensive to run.

09:30

The Convener: I am certainly content that you fulfilled your responsibility, Jackie. I return to you, Edward.

Edward Mountain: You would know about the responsibilities of declarations of interests in the Parliament better than most other MSPs, convener.

To take my point to the next step, you are content that, if you chose to stand to be an MP as an MSP, you would resign. Your proposal would be that you would resign if you were elected as an MP and that you would not have to resign beforehand.

Alice Kinghorn-Gray: I am sorry, but could you repeat the point that you are trying to make?

Edward Mountain: If an MSP stood for election to become an MP, you are content that, if they then became an MP, they would be given eight days in which to resign. I think that is the period that is being suggested.

Alice Kinghorn-Gray: Yes.

Edward Mountain: They would not have to resign before the election.

Alice Kinghorn-Gray: We think that, in line with the Welsh legislation, the eight-day period is satisfactory.

Edward Mountain: Okay. Thank you, convener. Those were just two simple questions, although I am sorry to have put Jackie Dunbar on the spot—not. *[Laughter.]*

Annie Wells (Glasgow) (Con): Good morning, panel. I wish to move on to the subject of free mail-outs. As you know, the issue of whether to provide free mail-outs to local government candidates was consulted on, and there are free mail-outs for Scottish parliamentary elections. Do

you think that that should be included in the bill? Would that support diversity in candidacy?

I see you nodding your head, Hannah, so I will go to you first.

Hannah Stevens: The issue of finance for candidacy is a huge one that has not generally had enough attention in academia or in policy and research, so I am pleased that the initiative has been specifically suggested.

Standing for election is incredibly expensive. It is more expensive than we realise—noting that we have candidate finance reporting. However, that covers just the costs of the campaign, and the vagueness around what is defined as the cost of a campaign is becoming clearer to us.

We now provide small grants to women who are standing for elected office to support them with the personal costs that they encounter in the lead-up to the campaign. Through that process, and through speaking to lots of women about their financial needs during this time, we realise how many additional costs there are that are not considered to be part of campaign finance.

Any move that can be made to level the playing field and ensure that a wider range of candidates can consider standing is to be celebrated. We strongly support free mailings as another opportunity that people can take up in exercising their democratic right and standing for election without having to rely on additional financing to support the simple messages that they will want to get out to people.

Kay Sillars: To back up what Hannah Stevens has said, standing for office is high risk, and it is very expensive as regards someone's actual life rather than just the costs of standing. It is already hard for people on lower incomes to become candidates, and it is hard for people to do it if they do not have flexible employers who will give them time off. It is incredibly difficult.

I think that we need to do more than what has been proposed, but the measures in the bill are a basic step that could level the playing field to some extent. Everyone in this room has stood for election and understands how hard it is. We have come to a time and place where it is really easy to mock politicians, to laugh at them or to undervalue their contribution, but it is a really tough job, and getting there is even harder. We need to take some serious steps to ensure that more people have the chance to stand up and get elected.

Annie Wells: I will move to a question for Alice Kinghorn-Gray. How important do you think digital imprints are for transparency for the electorate? We have had quite a lot of discussion about that, so I will put you on the spot on it.

Alice Kinghorn-Gray: The ERS has long campaigned for digital imprints and for extending from print to the digital realm. In recent years, the salience of those issues has only increased. For example, between the 2015 and 2017 general elections, there was a doubling of the amount that was spent on Facebook adverts. It is a big issue for the ERS.

Our main point is that we are concerned about the potential loophole that exists at the moment. We would like the scheme to be monitored. As things stand, it is stated that

“The imprint must be included as a part of the material, unless it is not reasonably practicable to do so.”

If that is not “reasonably practicable”—that is the issue—the imprint must be included

“somewhere directly accessible from the material.”

We would like very thorough monitoring to ensure that the scheme works as intended, that imprints appear on the material itself as much as possible, and that there is no exploitation of the loophole. That is our key message.

James Adams (RNIB Scotland): I offer not so much a view on whether that would be appropriate as an electoral administrative reform as a point about accessibility for blind and partially sighted people if the idea was considered and most of it came into place. If it is deemed important to have an imprint so that any given voter or citizen can track where an advert is generated from, who is paying for it and so on, which are important things in society, unless the people who put material out for social media, such as Twitter, or X—whether they be in a political party, an individual candidate or the beneficiary of the reason for the imprint—put alt text on their social media images, the imprint becomes redundant for blind and partially sighted people. I add that as part of what may be considered and looked at.

Annie Wells: That is really important.

Kay Sillars: I may well now have to reach out to James Adams to make sure that we do it properly. [Laughter.]

We are in the process of doing that for our digital imprints. It does not seem to involve a huge cost or inconvenience. In an age of disinformation, it is important that people can be clear about who is participating in our democracy and that what those participants say can be tracked back. I get that there are costs and all sorts of other things, but it is so worth fighting for a participative democracy that is fair and open that we have to take all that into account. I have noted a point on the other issues that have been raised.

Annie Wells: Thank you very much for that.

The Convener: I will push the point about notional spend. I come first to Hannah Stevens. There are proposals in the bill to change the notional spend, which may capture campaigners who were previously not covered. You mentioned grants, for example. Do you have any comments or concerns about an alteration in notional spend, which could either facilitate an easier progress for what you propose or turn into a challenge?

Hannah Stevens: Yes. A detailed assessment of the specifics of the language is required, to be honest. If you increase spend, there are more opportunities for fundraising, but that means that those who do not have access to that sort of fundraising have an unequal opportunity. Similarly, however, we see that there is a need to provide additional financial support to those who are candidates, in order to balance out that playing field. That concerns the detail in the language, including what are defined as campaign expenses; as I mentioned, a whole heap of things that people—specifically, women—have to spend money on as part of a campaign would not traditionally be considered as such.

Local elections are currently happening in England. We are also supporting women who will be parliamentary candidates in the upcoming general election. They are worried about the cost of living crisis and, for example, being able to pay their electricity bills. They are also taking time off work so that they can join campaigns. We see them having to balance that with needing to earn enough to continue to pay for what is happening in their lives. Would we expect paying their electricity bills to be part of their campaign expenses? No. However, there are queries about the definition of such expenses. For example, if I am a candidate looking for childcare so that I can go out campaigning, are my childcare expenses considered part of my campaign costs? We are seeing anecdotal evidence of a huge impact on candidates’ mental health. They are stressed about so many different levels of their campaigns, the abuse that they face and also the financing, including whether they are reporting correctly which expenditures should be included and which should not. They are coming to us and we are doing our best to support them, but the language on that is vague.

Turning to our ambitions, rather than being specific about exactly what should be included in the bill, we say that we should give this aspect the attention that it deserves, which, historically, has not happened in either the academic or the policy space. We need to understand the realities of candidates’ lives and experiences and ensure that they have equal access. Opening up opportunities to a wider range of candidates is a key ambition as this legislation is developed.

The Convener: Before I turn to Kay Sillars, who wants to come in, I note that you are sympathetic to the concept of notional spend so that there is transparency in expenditure. Would you go so far as to say that different levels of allowed expenditure should apply to different candidates?

Hannah Stevens: That is an interesting point, which we have not explored, but I would be interested in joining a conversation about what that could look like. I agree that individuals will be in different situations. For example, a single parent will be completely reliant on earning to support their family. Their expenditure needs will differ greatly from those of an employed person who has a fantastically sympathetic workplace that gives them paid time off to join a campaign. We have not explored that particular aspect, but I would be interested in seeing what it could look like. We certainly seek a balancing of equity rights to give different people opportunities so as to balance out the field and diversify the candidate pool.

The Convener: Thank you.

Kay Sillars: As a trade union, we are a registered third party campaigner. We fully support maximum transparency. I think that our money is the cleanest and most open money in politics. Not only this legislation but an array of trade union legislation covers what we can do and how we can participate. It is important that everyone else is held to account in the same way that we are. We do not do anything that is not open. We fully supported some of the lobbying bills; in fact, I probably called for them to be stronger. Openness is key to our democracy but also to people's trust in it. I suspect that anybody reading the record of this meeting will be laughing at me for saying that MSPs have tough jobs. We have very low levels of trust in our electoral politics. That comes in part from a lack of ability to trace money, and the fact that money gives people power. We have to be bold on that.

The Convener: Thank you. Alice, did you want to come in on notional spend?

Alice Kinghorn-Gray: I was just nodding along with Hannah Stevens and Kay Sillars. I agree with both of them. There is a balance to be struck between accessibility and transparency and, as Kay said, the ability to trace money, especially where it is open to abuse by wealthy actors and other foreign states. That is a key area.

Our position is that we would like changes to be brought in along the lines of the United Kingdom legislation, which is the Elections Act 2022. I agree with the two previous speakers on that.

The Convener: Do you have any thoughts on having different levels of expenditure to reflect the characteristics of candidates?

Alice Kinghorn-Gray: We are in a similar position to Hannah Stevens's organisation in that we have not looked at that. An interesting conversation could be had on that aspect. We, too, would be interested in joining it where appropriate.

09:45

The Convener: The next part of the bill deals with proposals for pilots during elections and with allowing the Electoral Management Board for Scotland and electoral registration officers to propose those pilots. I have a number of questions to explore that idea.

James Adams, I will come to you first. Are there any pilots that you would like to see considered? Do you think that extending the power to propose a pilot could go beyond the Electoral Management Board for Scotland and the registration officers? How might that be of value to those you represent, who experience a bit of a postcode lottery?

James Adams: The Ballot Act 1872 guaranteed the right to a secret ballot. Unfortunately, even after more than 150 years, it is still not the case that all blind or partially sighted people feel that they can vote in confidence and in secret.

After each election, a plethora of concerns and complaints is raised with RNIB and we then harass the politicians and officials. That goes on in a big cycle. In May 2022, RNIB's most recent "Turned Out" report found that only one in five blind and partially sighted people who took part in that study felt able to vote in confidence and in secret. That is anecdotal, but it basically means that most people have to trust someone else—either an election official or a friend—to help them to vote. It must be possible to work out a way around that by using modern technology or some other method.

In saying that, we recognise the excellent work that is being done by the Scottish Government in evaluating and working out the options for accessible voting, which is not straightforward. It is easy for me to say that we need to work that out, but it is not straightforward. They have to be able to test it. They are doing lots of testing and we and other sight-loss organisations are working with the Electoral Commission, the Electoral Management Board for Scotland and Scottish Government to identify ways to make voting more accessible.

At some point, we have to bite the bullet and try that out in the wild, in a real election. That is likely to be done best in the context of a council by-election, of which I think there are about 13 or 14 each year. Broadening out those who can suggest or decide to hold a pilot beyond local authorities to the Electoral Management Board for Scotland, or perhaps to the Government itself, would increase

the likelihood of it coming to pass. There could be all sorts of reasons why a local authority might not want something complicated happening in its own particular by-election, so we think that broadening that out and increasing the number of stakeholders who can be part of that discussion would make it more likely that we would be able to pilot accessible voting, once we have identified a solution that is worth testing.

The Convener: Do you have confidence in the process for identifying a problem and for identifying and piloting a solution? That would take longer than just biting the bullet and saying that something is going to happen.

James Adams: Part of the challenge is that there are 183,000 people in Scotland who are blind or partially sighted or who have significant sight loss. That is an awful lot of people and they are all individuals, so there is not one solution to enable all of them to vote as they would want to. It is hard to be able to do that.

What we can do is make it as ubiquitous as possible and broaden out the accessibility as much as possible. Over time, we can utilise technology, as it becomes available, to make the process accessible.

There are steps that can be taken to improve the accessibility of the ballot paper or to update the tactile voting device that is currently available but was found to be unlawful by the UK High Court. The Scottish Government is working on alternative ways of doing that and will be doing some informal tests and trials in Falkirk this afternoon. That is really important.

There will not be just one solution, but we need to take steps, because voting is not accessible at the moment. If the one in five blind and partially sighted people who feel confident about voting could go up to one and a half in five, that would be a big advance and would include thousands of people. We know it is a long road, but we have confidence that the issue is being looked at and taken seriously by all political parties and by the Parliament and Government in Scotland.

The Convener: Are you in agreement with an extension to the proposal that allows the Electoral Management Board for Scotland to make those proposals, subject to you and others being able to go to the board with pilots that it should consider? Do you feel that that is as satisfactory a position as we can get to at this stage?

James Adams: I am confident that that would happen, because we are in regular dialogue with the Electoral Management Board for Scotland, the Electoral Commission, the Scottish Government and anyone else who cares to listen to us about the issue. Part of the role that we and other sight-loss organisations play is to engage blind and

partially sighted people to come and do informal tests. In a real election, we would offer support where we could by issuing communications to promote the fact that accessible voting options were available, but it would be out of our control, because it would be in the context of a real event.

The Convener: I will come back to you, James. Kay Sillars wants to come in on the pilot schemes.

Kay Sillars: I think that it is important to try some of the pilots. James Adams has intimated some interesting things, but it is also important not to miss the point that we will not be able to administer ourselves out of the problem. Participation is particularly poor in local government elections, as is candidacy. When the deadline for candidates for the last local government election passed, some people were immediately elected on the same day. It is quite sad that, in an ancient democracy such as ours, elections are not more competitive. It is about people feeling that they can manifest change and that it is worth while for them to bother. Trade unionists are much more likely to vote than the population at large, which, I think, is partly because we encourage them to vote, but it is also because they are people who are used to feeling power—to making and driving change and participating in democracy in its widest sense. The pilots need to be about more than just the technicalities of voting and must also look at participation and power in the process. I am not saying no to a pilot—it is just that it is not a solution in itself.

Alice Kinghorn-Gray: I completely agree with Kay Sillars's point. We were quite disappointed that there is no provision in the bill for automatic voter registration, given that it was part of the consultation. We would very much like there to be provision for the inclusion of an AVR pilot in the explanatory notes to the bill. In Scotland, 19 per cent of people who are eligible to vote are not on the register or are incorrectly registered. It is not a panacea. The ERS is also looking at other ways to enhance our democratic culture outside elections. Democratic culture is not just about elections, but there is an opportunity to use the legislation to essentially move the dial; it would be a vital step. The Electoral Commission has done a lot of research on voter registration and the negative impact on protected characteristics and underrepresented and underregistered demographics. The ERS has done its own analysis that shows that around one fifth of the constituencies in England and Wales are the worst affected, and it is the same in Scotland. We will do more research specifically on Scotland when the census data comes out, and I will be happy to share that with the committee. I would also be interested in hearing the initial thoughts of

committee members on a potential amendment to the bill on AVR.

The Convener: That is a delightful invitation. However, I will do the terrible thing and say, “This is our evidence session and this is what we are looking for.”

Do you think that automatic voter registration needs to be piloted, or could it be achieved by a change in approach to elections whereby, for example, at a certain point, such as when people grow older or come into the country, they are automatically registered?

Alice Kinghorn-Gray: It could. It is just that the bill provides an opportunity. There is already a road map in Welsh legislation with the bill that has just been introduced. We see it as a real opportunity—it is there, waiting, and we could apply it here, too.

The Convener: Therefore, do you feel that a pilot scheme in a small geographic area is necessary or do you have confidence in solutions that exist elsewhere—you pointed to the Senedd—that could just be imported if, as a Parliament, we felt that that was the right thing to do?

Alice Kinghorn-Gray: A pilot scheme would be a good first step, and that is what the legislation in the Senedd does as well—it is to create a pilot.

The Convener: James Adams, on a slightly different point in the evidence, my understanding is that you would like to ensure that electronic polling cards could be brought in in the future. Is there a reason why we should not bring in electronic polling cards, along with physical polling cards, at the moment? What would be the advantages of electronic polling cards?

James Adams: Some blind and partially sighted people are more tech savvy than others, as is the case in the population generally. However, undoubtedly, there is a large cohort of blind and partially sighted people who, if they could register with the local authority to receive their voting card by email or whatever electronic method, would be able to use screen readers on their phones. In that way, they could read those emails and know about the election. That would increase the likelihood that they would notice that there was an election, whereas, if they got something through the post, there is clearly a chance that they would miss it if they were not able to read it.

With regard to whether we should roll that out straight away, I would be a bit more conservative with a small c on that. We always need to test things to make sure that they work effectively and do not inadvertently cause problems that we had not anticipated. It seems fairly logical—why could

we not send out both? However, I dare say that there will be some administrators somewhere who will have good reasons for why that is not as straightforward as it sounds.

The Convener: Therefore, at the very least, it is a good proposal for a pilot.

James Adams: We should definitely consider trying to do that. You could do both, could you not? In that way, you would not risk missing anybody. You could send everybody the polling card and also try to persuade folk to sign up to get a digital card. It would not have to be targeted—it could be for the general population. Over time, we could start to remove the physical polling card. If people were happy to receive it digitally, it could become the norm and that would save money on sending out polling cards.

The Convener: Kay Sillars, I will come to you first, because you mentioned this, but I want to open the question up to the whole panel. The bill will give the Scottish Government power to spend money on democratic engagement in whatever way it feels has been identified. What should the priority be for that funding? As you mentioned, Kay, and as we have talked about, processes are neither the be-all and end-all nor the answer to everything. What should the priorities be for that funding?

Kay Sillars: The funding needs to go down to local areas and local authorities, which should be able to decide what is best for their communities. That ties in with what I said earlier about the ongoing process of participation and encouraging people to vote regularly but also to participate more widely in processes, join campaigns and ask for things. If you ask and you get used to the process of asking, you are much more likely to keep asking, even if you do not always get what you want.

I feel as though I am repeating myself, and I hope that I am making sense. We need to localise that spend and the decision making and the trials to allow people to participate. For me, that is how people will begin to feel their power and begin to participate, either by standing for election themselves and being elected or just by asking tough questions of the people who are standing in elections. That is a process that people grow into during their lives.

That said, I want to return to some of the points that we made earlier. Lots of people want to participate, but the process is not very pleasant in the current circumstances. To go full circle: here I am, speaking to you and I would never stand for electoral politics in this country—never in a million years—and, patently, I am well used to putting my tuppence-worth in to conversations. *[Laughter.]*

The Convener: Thank you for that, Kay. Hannah, what would you like to see as the priorities?

Hannah Stevens: I agree with Kay's points about the localisation of spending. There are so many fantastic grass-roots community organisations up and down the country that are engaging with underrepresented and underregistered communities, and the opportunity for those groups to connect the work that they do with democratic engagement is vital. I am more about using that third sector space, rather than local authorities, as a method of distribution.

10:00

A growing amount of work is being done in strengthening our democracy space by third sector groups such as ours and others that are interested in that area, but there is real confusion around where we sit regarding funding. Is it political work? If it is seen as such, so much charitable giving is restricted. There is confusion about what is political and what is democratic outside Government, which is an issue for those of us such as my organisation with regard to our fundraising.

We would say that our work is not political at all—it is about strengthening democracy. If the Government is in a position to contribute to that funding pot, there are some fantastic organisations out there that are doing really interesting work in engaging communities, for which there is currently a lack of funding.

We support increased funding for democratic engagement. We have been lucky enough to receive some funding from the Scottish Government, and it has made a fundamental difference to the amount of work that we have been able to do. I believe that we contributed to the 2 per cent increase in the number of women who were elected in the 2022 local elections, and that is directly related to the money that we were given through the equality and human rights fund, for which we were incredibly grateful.

That approach works. I ask the Government to continue championing it and growing the fund and to really look at which fantastic organisations on the ground can support the mission of improving our democracy and getting more people engaged.

The Convener: Thank you, Hannah. This is almost becoming a shopping list. Ahlam, what do you think the priorities should be for funding to increase democratic access?

Ahlam Hamoud Al-Bashiri: I agree with Kay Sillars and Hannah Stevens. At the Scottish Refugee Council, we saw during the 2021 election and the 2022 local elections that, although

refugees were given the right to vote in local and national elections in Scotland, some of them still did not know that they had that right. Some of those people came to us and asked us to give them some reassurance on that.

We worked alongside the Electoral Commission to produce some resources in multiple languages and distribute them to the refugee communities with which we work. However, we were doing only small things, because we did not have much funding to work with. In addition, some of the refugee communities came back to us to ask why we had translated the resources into only five languages at that time—some asked, “Why did you not translate it into my language, too?”

We can do a lot of work in this area, but, much of the time, the challenge is funding. I totally agree that such work can help to encourage people to participate in democracy. I also agree with Hannah Stevens that it is not political work—it is about democracy.

The Convener: Thank you. James, what are your priorities?

James Adams: It is quite a wide area. RNIB Scotland is happy that, at present, for Scottish elections, there is still a fund to give people with disabilities the additional support that they might need to be able to access and participate in the political process. I think that I am right in saying that that includes going through the ever more byzantine methods of selection of the different parties, as people sometimes need a bit of support to get through that process and in standing for election. We are aware of a couple of examples of blind and partially sighted people who had some resources—from my recollection, I think that it was through Inclusion Scotland—and that helped them.

As you can imagine, somebody who is blind or partially sighted will need to have somebody supporting them if they want to go out canvassing, as they literally cannot read the voters' record. They will need some basic support to fill in the canvass sheets or use an app.

Society recognises that people with disabilities need additional support in a range of ways, through the social security system, through help with access to work and through other mechanisms that acknowledge that it just costs more money for somebody with a disability to participate in any given aspect of society. We want that principle to be extended to the area of participation in democracy.

I will give you an idea off the top of my head—I do not know whether this is a good idea or a bad idea; let us just go with it. We are talking about communications and people being able to receive information within the context of a democratic election. I mentioned the use of alt text and how,

on social media, if someone does not describe what an image is, blind and partially sighted voters do not know what it shows. That also pertains to parties' leaflets and the other materials that they publish. Obviously, political parties cannot know that any given address is the home of a blind or partially sighted person, unless someone happens to know that for a fact. Nonetheless, political parties should be more aware of the need to produce things in alternative formats. It would be unrealistic to do that with every leaflet, but the core corporate stuff should be available in alternative formats, and that might be something that an access-to-democracy fund could support. Understandably, political parties want to target their resources at certain things, and that might not be having lots of accessible information, but, if there were some ring-fenced fund or other money that all political parties with a certain level of representation in the Parliament or whatever could access, they could use that to produce stuff in accessible formats—not just for blind and partially sighted people, but for people who require EasyRead material and so on. That is just a thought.

The Convener: Alice Kinghorn-Gray, would you like to come in on that point?

Alice Kinghorn-Gray: The ERS is broadly in support of that proposal. We can, again, look to Wales, where the applications to a fund that exists for that purpose are in their fourth round and the process is going well.

Rather than proposing suggestions, which colleagues at the table have done a good job of, I would make a point about the need to ensure that these things are transparent and are being evaluated. It is also important not to focus only on elections, but to think about the opportunities to strengthen our democracy in the periods between elections, too.

The Convener: Hannah Stevens, would you like to come in?

Hannah Stevens: Before we wrap up, I want to mention the issue of candidates' diversity data, which is a key area of interest to us that is not directly reflected in the bill but that I want to contribute to the conversation.

There is no legislation that requires us to collect the demographic data of those who put themselves forward for election. There was a candidate survey during the most recent council elections, but it had only a 28 per cent response rate. We would advocate for the collection of that information to be mandatory and to be carried out across all elections. I know that the power in that regard is held by the UK Government, through section 106 of the Equalities Act 2010, but that is simply for parliamentary elections, and we would

advocate for that information to be collected in relation to council elections, too. Until we have that data about who is standing for elected office, we cannot look at who is not and we cannot find ways to broaden the pool of candidates. At the moment, the work that is done in that regard involves individuals scanning websites and making judgments about people on the basis of what they look like, which is absolutely not the robust way in which we should be making these decisions. I strongly encourage the committee to explore how a mandatory requirement to capture diversity data could be incorporated into the bill.

The Convener: That leads me nicely to my final statement. I know that thoughts and ideas will come to you after you leave today's meeting, so I stress that there is an open invitation for you to correspond with the committee about the evidence that you have given today and about things that have not been covered that you would like us to consider, as Hannah Stevens has done, so that we can take all of that into account.

I am conscious of the time, so I thank you all for your attendance and your contributions today, which have been very thought provoking. As I say, we are open to any further contributions that you would like to submit for our consideration, and conversations will be on-going on a number of matters.

We will have a short suspension to allow for a change of witnesses.

10:09

Meeting suspended.

10:13

On resuming—

The Convener: We resume our evidence taking on the Scottish Elections (Representation and Reform) Bill at stage 1 with our second panel of witnesses. Professor Alistair Clark is from Newcastle University, and Professor Toby James is from the University of East Anglia. I welcome you both to this evidence session.

Rather than look at specific provisions in the bill, I will kick off by asking for your thoughts on the integrity of Scotland's devolved elections, which the bill obviously relates to. Is Scotland a good example around the world? Alistair Clark, do you want to kick off on that?

10:15

Professor Alistair Clark (Newcastle University): Thank you for the invitation to talk to the committee this morning. I think that Scotland has been a good example within the UK and

around the world. There is plenty of research that shows that electoral administration in Scotland has performed to a high level.

I would make a distinction between election administration—the managing of the ballots, the ballot papers and so on—and the broader systemic issues that occur in the political process, which can also impact on the integrity of elections. Research—my own and that of others—has shown that Scotland performs well on the administrative side.

However, I do not think that there is room to rest on laurels with that, because in the registration field, for instance, the Electoral Commission found that there was a higher proportion of major errors in the Scottish registers than there was elsewhere. Therefore, Scotland performs at a high level, but there is always room for improvement.

Other more systemic issues, such as foreign influence, cybersecurity and disinformation, are probably an issue in Scottish elections as well. I see no obvious reason why Scottish elections should not be affected by those issues.

What we do about those issues is less easy to deal with. Indeed, the bill touches on only some aspects of those matters. We need to see it in those two ways and to think more broadly about some of the other aspects of election integrity as well.

Professor Toby James (University of East Anglia): Thank you for the invitation to speak with you about the bill today—it is a great honour.

Generally speaking, the bill will improve elections, but elections in Scotland are of a very good quality. I co-direct the Electoral Integrity Project, which facilitates the global comparison of election quality around the world, based on expert opinion in each particular country. We undertook a survey of Scottish experts, and the evaluation that they provided overall is of high-quality elections in Scotland. Globally, Scotland ranks 25th. Scotland's elections are higher in quality than elections for the UK Parliament, for example, and they are pretty much on a par with elections in Wales.

The area of weakness is voter registration. There are issues with voter registration across the UK because, at the moment, the whole of the UK has a single system, and that is changing. The major area for improvement is voter registration. As the Electoral Commission's research has shown, there are 1 million citizens in Scotland who are not on the electoral roll or whose details are incomplete. The major opportunity to address that is through automatic or assisted voter registration. That is the area where there is scope for action.

The Convener: That is helpful. My other question is the looking-glass one. What are the big dangers coming down the line that face all elections, not just those in Scotland? Are you able to rank—I am going to regret this question, too—the threats to the electoral system?

Professor Clark: It is difficult to rank those threats, because some of them involve forecasting events that might not happen. Interventions might take place that prevent those events from happening.

My general view is that it is about issues to do with disinformation and intimidation. It is about people putting information online that reveals how they are going to vote, which means that ballot secrecy no longer means quite what it once meant. All those issues are out there and in the mix. It is not only electoral administrators and politicians who are involved in such activities; private sector actors in the tech field are involved in them, too. Everybody is struggling with how to deal with those things, and I do not think that anybody has found an answer.

For me, those are the big issues. The administrative issues are important. Organising an election is a massive logistical exercise. In Scotland, the EMB is well on top of that and has definitely helped to improve Scottish elections. However, we need to be aware of supply chains and timetables, which the bill talks about, and so on. All of those things can impact on the integrity of elections. I go back to those broader questions, as well as the administrative questions.

Professor James: I agree with that. I would also pick out misinformation or disinformation as probably the primary threat facing all societies. That is because two things have developed: the move to an online environment, which is ever increasing, and evidence of increasingly hostile overseas actors who want to interfere in elections. There is evidence of that happening in overseas states. When we have high-profile elections, there is therefore a danger that there will be an opportunity for overseas actors who want to influence those.

The remedies for those problems are not necessarily laws. Laws can be helpful, but most remedies will involve a role for education. The term “pre-bunking” is often commonly used now. It involves thinking about potential misinformation stories that could be circulated and getting ahead of those. That could be particularly important as we go into an electoral cycle.

One area where law is relevant is with regard to the open or edited electoral register, because that allows the sale of the location of where citizens in Scotland live. That can be bought by anyone for any purpose, and it allows for the micro-targeting

of misinformation in postal format to individual citizens or citizens in marginal constituencies. That could be closed. Wales is looking at that, and I encourage the committee to think about ending the sale of the electoral register in Scotland.

The Convener: You are still of the view that the electoral register should be a public document and accessible; your point is that it should not be possible to seek remuneration by selling its contents.

Professor James: There are two versions—well, there are lots of versions of the electoral register. There is one that is for electoral purposes. That is the full electoral register, which is used to run elections. It is needed by electoral officials and by other public agencies, such as the crime agencies, for other public purposes. There is also a reason for making it available for credit referencing agencies, because they undertake a purpose. It is also important to make it accessible to citizens, in a limited way, to check the quality. Those are all important public reasons for the full electoral register to be shared.

However, the practice of selling the electoral register and making it open access—albeit that we are not talking about the whole register; people have the option to opt out of the edited version—is particularly problematic. I urge the committee to look at closing that loophole.

The Convener: In our previous session, we heard views about candidacy rights, in particular for foreign nationals with limited leave to remain. What are your views on that? What are the unforeseen consequences? What are the challenges? What are the advantages?

Professor Clark: To be honest, I do not find a compelling reason for that to be opened up. I have tried to find advantages of doing so, in thinking about why it is being proposed and why it is part of the bill, but I am afraid that it looks to me like a solution in search of a problem.

If it is enacted, it is a power that will probably be used very rarely. For reasons that I have given in my written evidence, political parties are probably unlikely to select people without long links with the party and so on. I find the justification that is given in the policy memorandum less than compelling; indeed, it seems to raise more problems than it gives answers.

Scotland already has a very welcoming and open voting regime, which I think is good. That regime dealt with a very real problem around Brexit to do with people who lived here and so on. Scotland has been in the advance when it comes to extending the vote to 16 and 17-year-olds. It has a very liberal voting regime, which is right and makes it a very welcoming place.

However, I do not see a compelling reason for having this measure. Unfortunately, it looks like a kind of tidying-up exercise. People think that the measure was left out of previous legislation and so decided to add it to the bill. I have tried to think of positive reasons for having the power, but I keep coming back to the idea that it will be there on the statute book and will end up not being used. Electoral law is complex enough without clauses that are never going to be used.

Professor James: There might be mixed opinion among academics on this, as countries are considering the issue in general. One argument in favour of the measure is about consistency. As Professor Clark alluded, the right has been granted when it comes to being able to cast a vote, so maybe it also follows for candidacy. I guess another argument for the measure is that it is a matter of principle and of making Scotland a strong and inclusive society, as it is.

One slogan from the democratic movement that has been widely used and echoed is the claim of no taxation without representation. The argument is that, if citizens are living in a society, contributing towards society and paying taxes, the decisions that a Government makes affect them and their family members so, for that period of time, there is a case for them to have a right to vote and to stand as candidates in elections. I agree that, potentially, there will be very few such candidates, for the reasons that Professor Clark set out. It is perhaps more a matter of principle and of where Scotland wants to go on that.

The Convener: Who has responsibility for ensuring that candidates can legally stand? Where does that rest? We have heard concerns about that and have had slightly different answers about who does it and on whom the responsibility should rest.

Professor Clark: That is a good question. In previous evidence to the committee, returning officers said, “We just take the forms as they are and take things at face value.” I think that there should be some form of checks on that. Most people would be surprised to learn that all of that is just taken on trust.

I imagine that returning officers would tell you that they do not have the capacity to do such checks. We then get into the situation in which the law ends up being the ultimate backstop. Unfortunately, electoral law in this regard is Victorian in how it works, and it would not result in a decision in time to prevent someone from standing. Things would happen well after the event. I suspect that the Electoral Commission would not want to get involved in that kind of issue either.

It is not an easy issue to resolve. My gut feeling is that those who handle the nomination process should be the ones to do some form of checks. That places the responsibility largely in the ball park of returning officers and their staff in local councils, but I imagine that that would be resisted.

The Convener: Along with the challenge of capacity, they may also need the authority to be able to check that.

Professor Clark: Exactly.

The Convener: Toby, do you want to add to that?

Professor James: It obviously has to be a shared responsibility. There has to be some duty on the individual candidate as well as some duty on the party, if the person is standing on behalf of a party, and the person's agents. For the electoral authorities, there is a key informational role, because the matter is complicated, and information has to be conveyed clearly so that people can stand if they want to. That potentially involves briefings for political parties.

However, as Professor Clark touched on, the key issue is checks. To what extent are checks viable administratively, and to what extent are they necessary as part of that process?

10:30

Jackie Dunbar: The bill makes provisions for disqualification in certain circumstances. Is there a significant issue with the harassment and intimidation of those involved in elections, including candidates, staff and campaigners, in Scotland? Are the provisions on disqualification orders suitable? Do they go far enough?

As you are looking at me, Professor Clark, I will pick on you.

Professor Clark: It is difficult to get a real sense of the extent to which such behaviour is a problem. There are plenty of accounts saying that it is a problem, and the Committee on Standards in Public Life did a report on it five years ago or so. The Electoral Commission tried to measure the issue in Scotland, and it came up with a figure of about 40 per cent of candidates having experienced some form of intimidation in the most recent local elections in 2022.

There are some questions in my mind. What form of intimidation are we talking about? Is it stuff that is online, or is it in person? What is the nature of the intimidation that is taking place? It is not necessarily any less serious in either of those venues, but people might experience it in different forms. However, there is a problem with it in Scotland. Some representatives might talk about issues that they have experienced, both online

and in person, since the independence referendum campaign.

It is important to make a distinction between what passes for normal robust political debate and what might be seen as intimidation, and I am not entirely clear where that line is drawn. There was one line on the matter in the Committee on Standards and Public Life's report in 2017, I think, and the committee called for sanctions to be applied. However, it did not want anything that was not already illegal being made illegal when making sanctions. In other words, it did not want mission creep through including things that were not already illegal. That seemed to me to be a reasonably sensible point.

The bill's provisions here are reasonable, and I think that it is reasonable to extend them to election workers. At elections that I have observed in Scotland, I have seen polling station workers being given the thick end of someone's lip because of something or other. I think that it is reasonable to extend such provisions to election workers, and what is in the bill in that regard is reasonable.

Professor James: As Professor Clark said, it is difficult to have a full and accurate picture in relation to data. I suspect that there are only low-level issues at the moment, but there is potential for significant issues at an important, high-level electoral event in a polarised environment. That is the real potential scenario. We have done various surveys over the years between us to look at what happens inside polling stations. Most of those have been done at UK level, perhaps only partially in Scotland or just in England, but I do not think that there is a big difference between England and Scotland in this respect.

For local elections, 90 per cent of poll workers tend to report no issues at all with party agents or members of political parties, while 10 per cent say that they might not be quite where they should be or that they have encroached somewhere into the polling station, for instance. There was a bit more of an issue with that and with campaign groups behaving inappropriately during the Brexit referendum, according to returning officers. Twenty-five per cent of respondents flagged that as an issue.

You can see how, from a local election through to an election where the stakes are very high and things have become polarised, not all such behaviour will necessarily be deliberate attempts to undermine the election. People might misunderstand the electoral process. In a high-stakes election, people who are perhaps not usually involved in elections suddenly become campaigners. Knowledge is important, but tensions can rise. It is worth monitoring the issue. I agree with Professor Clark that the bill includes an

adequate and important measure to address that, but it is something to keep an eye on.

Jackie Dunbar: The Scottish Government has asked the committee to consider whether individuals who appear on the sex offenders register should be prevented from standing for or holding elected office either in the Scottish Parliament or at local government level. I am interested in hearing your view on any such proposals.

Professor James: It would be worth looking at international best practice on that matter—for example, the Venice commission provides a code of best practice for elections. Following international practices and standards would be a good way forward. The Carter Center provides a compendium of electoral practices. Looking at what international standards are, so that international laws are not breached, would be a good way to take things forward.

Professor Clark: That would be reasonable. There are circumstances in which elected representatives are in very close contact with constituents—I am thinking of surgeries, for instance—so I can see the logic of thinking in that direction. I do not have a particular problem with it.

Professor James's point about thinking about international best practice in that regard is useful. I am not sure what international best practice would be, nor am I sure that there would be anything other than what those organisations have, but it would definitely be worth a look. I can see the logic, and I would not personally have any difficulty with that in relation to the integrity issue.

Ivan McKee: I want to touch on the bill's provisions on notional spending and spending limits for overseas third-party campaigners, which will bring Scottish elections into line with reserved elections. Professor Clark raised issues about reporting periods, timing and all that. Can I get your perspective on those issues?

Professor Clark: One of the big things that struck me in the bill was the acceptance that things need to be simplified, with the bill's provisions and the Elections Act 2022 provisions being brought together. That seems sensible to me, given that having different regimes adds lots of additional complications, but that got me thinking about what is not in the bill.

There is a very important thing that is not in the bill in relation to bringing the spending regime for donations, campaign spending rules and so on in Scottish Parliament elections into line with those for Westminster elections. There is weekly reporting during a general election period. It seems slightly odd to me that the Scottish Parliament is less transparent in that regard, reporting on a standard three-monthly schedule,

which is outwith the election cycle, so we have no idea what is going on with donations and spending during a Scottish Parliament election. That might well have been satisfactory back in 1999, but the Parliament now has far more powers and there is far more at stake in Scottish Parliament elections.

My recommendation is that, in order to improve transparency, the bill should go further in that regard, with provisions that bring the regime in Scotland into line with the regime for Westminster elections. One of the things that the policy memorandum focuses on is transparency, so it seems odd that what I have suggested has not been considered in an attempt to improve transparency.

The provisions for notional spending and the restrictions on third-party spending are fairly straightforward and sensible. The clarification that notional spending must be spending that the agent or the candidate is aware of is fairly sensible, and restricting to £700 the amount that third parties can spend is a way of trying to manage the potential for foreign influence.

However, I note that the bill goes further in that regard than the Elections Act 2022 by also including unincorporated associations in the restrictions on spending. That is an important step, because they have been shown to be avenues for money coming into politics. That divergence in the bill is important.

I encourage the Scottish Government to think about providing more transparency, to take action to further improve what is in the bill at the moment and to bring the two regimes more fully into line.

Professor James: The only thing that I will add is that I query the spending limit of £700 for overseas-based third parties. If we are concerned about overseas influence in elections, should the limit not be zero? Should we not ban overseas-based third parties from being involved in Scottish elections? Otherwise, I agree that the simplification in the bill makes sense. Professor Clark made a strong case for further transparency, which is important.

Ivan McKee: The next issue that I want to touch on is the bill's proposals on digital imprints, with the bolt-on provision on unpaid-for digital material by relevant third-party organisations. What is your perspective on that approach?

Professor Clark: To be honest, I do not think that we know how the previous Scottish regime for digital imprints worked, and nor do I think that we know how the provisions in the 2022 act will work. Unfortunately, I have not seen any research on either of those things.

I will bring to the committee's attention one positive thing and one potentially negative thing.

The positive thing is that the bill extends the imprint regime to year round, if I understand it rightly. That is an important issue. In the old Scottish regime, the requirement applied only during the campaign period. Extending that is an important transparency issue.

The negative thing is that there seems to be a loophole—to my mind, at least—in the bill, because it says that imprints are required only if it is “reasonably” possible to include them and that, if they are not included, a link must be provided to where the information is.

What can be done about that? That seems to me to provide a loophole, because people will just say, “Well, it’s not reasonably possible in this post,” or whatever the publication is. The difficulty is that, as far as I can see, the bill replicates the wording in the 2022 act. If we are going to go down that road and replicate that, I do not see that much can be done. If we want to tighten that loophole, I think that there might be divergence from the 2022 act regime.

In general, imprints in that field are a good thing but, with regard to knowing quite how they work, they are very new, and I am not aware of any research on that. Any measures that were introduced in previous years to try to get a handle on online political advertising have been shown to be fairly ephemeral. For instance, at one point, Facebook had a library of political adverts that just vanished overnight. That limits transparency and underlines the problem of having private sector actors involved in providing information.

10:45

Professor James: I welcome the bill’s provisions but, to echo earlier comments, they do not address the main problem. For example, problems with misinformation are very serious and they pose a serious threat. Existing studies point to the importance of supporting fact-checking mechanisms, journalism and the deployment of technological tools to detect misinformation and pre-bunking mechanisms. Those things have been shown to work. Digital imprints help with transparency, but it is still a big ocean and more needs to be done.

Ivan McKee: Thank you. The next issue that I want to touch on—I am sorry, do you want to come in, convener?

The Convener: I apologise, but I just want to come in on the previous point. You say that there is not much research on digital imprints, but in other democracies—I am thinking of the US—the requirement for a candidate to affirm a message that is put out to the public has existed for a lot longer. Is there research in the US on the effect of

that endorsement? Are you aware of any effect? If so, is it good or bad?

Professor Clark: That is a very good question. I am not aware of any research on that.

The Convener: Thank you. I am sorry, Ivan.

Ivan McKee: That is no problem.

On the postponement of elections and the bill’s provisions, I would like your perspective on publishing the statement of reasons, any tests that should be applied when the decision is taken and how the decision should be taken and by whom, to ensure that it is free from political influence.

Professor Clark: As I said in written evidence, the bill could be strengthened in that area. The reasons that are given in the policy memorandum are less than convincing, to my mind. The process is also less than convincing. The Scottish Government is right to be thinking about postponements, because Governments were caught in no man’s land during the Coronavirus pandemic and had to enact all sorts of retrospective legislation and things such as that.

I would like to see some form of legal test of necessity in the bill, because that does not seem to exist at the moment. We are relying on the presumption that the Presiding Officer says that it is necessary and that the chair of the EMB and the Electoral Commission say that it is necessary. We did worldwide research on what happened during the Coronavirus pandemic, and we found that the reasons for postponement were more likely to be successful if there was cross-party agreement, because that reflects societal agreement about what has to be done.

Therefore, the first thing is to have a legal test of necessity. What that test might be, I leave to the committee and the Scottish Government, but I have suggested two ideas in my evidence. One approach might be something from the Civil Contingencies Act 2004. Something around the necessity for derogations from human rights regimes might be another way of thinking about it.

A legal test of necessity would strengthen the bill, but it also needs to be strengthened by more than just consultation with the EMB and the Electoral Commission. They will have an important role in telling the Presiding Officer whether an election is deliverable—that should not be taken lightly—but, given the time to reflect and put processes in motion, some form of cross-party committee or advisory group would be preferable in that regard. It could be made up of senior politicians who could be nominated by party leaders—it could even include party leaders. In my mind, that would be preferable to get agreement about the necessity of postponing the election. To my mind, there is a danger of fairly routine but rare

events being declared as emergencies. I am not saying that that would happen, but that is why the bill needs to be tightened up a bit.

Professor James: It is vital that such provisions are included in the bill. Unfortunately, unexpected events will probably become more frequent, so it is important to have clear provisions. Independence is an important principle, as is the inclusion of party stakeholders. A good example of something working well during the pandemic came from Argentina, which had a cross-party council that pulled everyone together to make a consensual decision on whether to postpone the election. It is important to include political parties in such decisions.

Giving the EMB or the Electoral Commission an advisory role in such a scenario could be seen as being a little bit weak. You could see how the Presiding Officer could be criticised for taking a partisan position, regardless of whether that was true. So, if we think that independence is really important, there is, arguably, a strong case for allowing the EMB rather than the Presiding Officer to make the decision.

Edward Mountain: On the mechanics of the unexpected happening unexpectedly, if I remember rightly, the EMB changed the rules during Covid to allow MSPs to remain in post right up until the day prior to the election, so that, if there was a crisis, we could come back and sit. If it is down to MSPs to make the decision, I point out that, if something happens once the Parliament has been dissolved, there will be no MSPs, but there will be ministers and cabinet secretaries, because they stay in post. How do we get around that? Does some thought need to be given to that issue? I am slightly concerned that the decision would sit with the Government, as it would be the only body with people still in their positions, and those of us who might have a different opinion would not be heard, because we would not exist.

Professor Clark: That is right. That is the conundrum, without a shadow of a doubt. That is why I have suggested that there should be a cross-party group.

I could go slightly further than I have gone already. It might be possible to have some form of delegated powers in the event of an emergency, but only under very tightly controlled circumstances. That might enable something to be done. I keep saying “something”, because we do not know what might happen, but there is undoubtedly a need for more thought to be given to the issue.

The quandary is that leaving MSPs in post until a day before the election was reasonable during the pandemic, but we have a bit of leisure time here. If we end up in a position in which MSPs are

not on a level playing field with other candidates, I am sure that the other candidates will complain. I can see the logic of that argument. The issue needs to be resolved. Perhaps the advisory committee could have some delegated power in the event of an emergency.

Edward Mountain: I will push back slightly on that. I absolutely agree that MSPs remaining in post might present difficulties. My fear is about how votes would be weighted in an advisory committee. If the votes were weighted as they are in the Parliamentary Bureau, the decision would purely be down to the Government, so, if the Government had an absolute majority, the advisory committee would be a waste of time. Personally, I favour an outside organisation taking control, as Toby James sort of suggested. I will push you slightly to give an answer and then come back to Alistair Clark.

Professor James: Having an independent body making such decisions would insulate the Parliament and politicians in some regard, but politicians would still need to be included in such conversations, because they have important views and you would want to take everyone along with you. If an external body made such decisions, that would be a little bit clearer.

Edward Mountain: Alistair Clark is kind of nodding.

Professor Clark: I am kind of nodding. I see completely the logic of your argument, but it subverts the normal role of authority, which is that politicians, not officials, take the decisions. The EMB has been a wonderful organisation for improving the quality of Scotland’s elections and it has done a lot of good work. However, I am not sure that that should be put on to the shoulders of whoever the convener of the EMB happens to be. That is partly why I suggested the cross-party idea. I have also suggested, in my written evidence, that a particular majority limit—a supermajority, perhaps, or something of that sort—could be made for the advisory committee, to prevent the circumstance that you have suggested in the point that you made about the Government. This could go round and round several times.

Edward Mountain: Convener, I will leave it there—to stop it from going round and round—but I think that it needs a little clearer thought. If Covid taught us anything, it is to expect the unexpected. Some of the decisions that we made during Covid were fundamentally flawed from the point of view of democracy.

Annie Wells: I thank the witnesses for being here and for their written submissions. I will ask about election pilots. There is provision in the bill to amend the powers on pilots, which I think the

majority of our witnesses have agreed is a good thing.

We also heard from the Electoral Reform Society, in our previous evidence session, that a trick has been missed when it comes to voter registration. Will you expand on whether that should, indeed, be piloted, and, if so, the approach that should be taken?

Professor James: Yes, the bill is missing a trick. Voter registration is probably the biggest issue that Scottish and UK elections face. Many countries around the world have adopted automatic voter registration. Some have had it from the start. However, countries that have had a similar system to the UK's, in which voter registration has been an individual responsibility, have adopted bolt-on ways of increasing voter registration rates, because they have experienced the same problem as we have: ever-declining levels of voter registration.

To make that happen, you need to give electoral registration officers the right to register an elector without application, if they have confidence in who that person is and in their eligibility for the election, and you need to increase the data sources that they can receive so that they can make those registrations. You need to put that legal provision in first so that pilots can be run on that basis. Inevitably, there will then be a learning process of working out which data source is best to use and has the greatest impact.

It is unrealistic to think that we can move to fully automatic voter registration. It would have to involve adding particular groups at particular times—for example, adding 15-year-olds to the electoral register when they receive their national insurance number. That is one step. Thinking in terms of combining voter registration with voters' life moments could boost the quality of the electoral registers and save a lot of work for those who already write to those people to ask them to register to vote—which they do not do. There are cost savings to be made.

Professor Clark: I have a couple of things to add. I am not sure how you would pilot automatic voter registration. Almost by definition, that reform would need to be nationwide, as in Wales. The idea of a pilot is to do something in a localised area to try to learn lessons from it. I am not quite sure how that would work. Maybe some of the backroom administrative processes that might build into an automatic voter registration system could be trialled on that basis, but I am less sure about the actual automatic registration aspect of it. As a step on that road, you could trial assisted voter registration.

With assisted voter registration, you get public services to keep reminding voters—perhaps at life

moments, as Toby James mentioned, or things of that sort—that they have to register. That would involve saying, "It's an individual responsibility, and here's how you do it," and providing people with information. It would be possible to pilot that in various areas. If there is to be any piloting of voter registration, I would go down that avenue rather than necessarily think about automatic registration. I would assume that that would be a stepping stone towards a wider aim.

11:00

Annie Wells: I completely see where you are coming from, and using life moments is an ideal way to go about doing that.

The other challenge that we have is in improving turnout at elections, which is particularly challenging among some groups in some areas. Is there an approach that Scotland should be considering to improve turnout at elections?

Professor Clark: All countries are dealing with that issue. You tend to have higher turnout in elections for the national Parliament and lower turnout for local government elections. That is a well-established effect and it is because, rightly or wrongly, people think that there is more at stake in parliamentary elections than in local government elections. Scotland does not do too badly in local government elections. The turnout figure is around 45 per cent, which is not great, but it is much better than in England, where the percentage is generally around the mid-30s. Scotland is not quite so bad in that regard.

It is a case of keeping on reminding people about voting, whether that be telling people, in interactions with public bodies, "Remember there's an election coming up," or through adverts. Indeed, on my way here and yesterday, I saw some adverts, which are a good thing. It is also incumbent on political parties to mobilise voters. In this discussion, we always end up thinking about what the Electoral Commission can do, what returning officers can do and so on, but political parties are sometimes reluctant to understand their role in mobilising voters. Plenty of research evidence suggests that, where parties have active local campaigns, that benefits turnout, so I would encourage parties to step up to the plate in that regard.

One thing that is well beyond the scope of the bill—it always amazes me that we do not talk about it in any form when we talk about this issue—is mandatory or compulsory voting. That has been shown not just to increase turnout, as is fairly obvious, but to resolve inequalities in turnout between social groups. I have no view, one way or the other, of whether mandatory voting is right or wrong, but it strikes me as odd that, if we want to

improve turnout and resolve inequalities between social groups, we do not even speak about it. That is for a broader conversation. It is beyond what the committee can do or discuss here.

Professor James: A lot of factors shape whether an individual votes, and we cannot attempt to shape them all. In terms of pilot ideas, in addition to voter registration, one idea might include the use of digital poll cards, which the committee has heard about previously. It could make a difference if someone receives a personalised email on the day of the election, reminding them to vote.

There is also scope for introducing or piloting a vote anywhere option. That sounds easy, but it is complicated. At the moment, we have to vote in a particular polling station. Many countries have digital electoral registers, so they are integrated, which means that a person can go into any polling station and cast their vote there rather than having to go to a particular one. That would make a difference for people, but it is complicated to get to that point.

As you heard in the previous evidence session, small pots of money for community groups are really important. Sometimes, the people who have really good ideas are potentially in those marginalised groups that have low voter turnout. A lot of youth groups, for example, have been very effective at getting the vote out, and going into schools and doing voter engagement and outreach, but their funding sources are very limited and unstable. What happens, therefore, is that good ideas work in a specific small geographic area, and then people move on to other jobs and careers and those things peter out. They need stability, and learning from the effectiveness of those pots of money is important.

Professor Clark: With regard to pilots, it is important that a clear objective is set for them—rather than simply doing pilots for the sake of it—and that they are properly independently evaluated, so that it is not just the Government marking its own homework. All too often, we do not see that happening.

The Convener: I want to come back on registration. We have talked about being registered. For how long should someone stay on the register?

Professor James: We have moved to a reformed canvass system, which works very well. It is actually automatic re-registration, although it is not actually called that. We sometimes talk about automatic registration as if it is some fanciful idea, but we have automatic re-registration. Electoral authorities are using data to check that we have not moved, and they keep us on the register if other data sources verify that that is who we are.

That is as it should be—that system seems to be working particularly well.

The Convener: I come to Edward Mountain, with an indication of the time.

Edward Mountain: I get all the easy ones, convener.

For non-devolved elections, people can vote from overseas. Should they be allowed to do that, and would it be safe to allow people to vote from overseas in Scottish elections?

Professor Clark: The biggest problem with voting from overseas in non-devolved elections is twofold. The first concerns the deadlines that are set for people to do that. The second is the mode—how it is actually done. That involves sending ballot papers to remote places all around the world to tight deadlines, and they may or may not arrive in time. We hear plenty from overseas voters about not getting their ballot paper in time—for example, receiving it only after polling day and that sort of thing.

There is a need to think about the mechanics of how that would be done if voting from overseas were to be the case in Scottish elections. That thinking has not been done for reserved elections, unfortunately. There is a need to think about how those things might be dealt with—there could be some form of secure online delivery or something like that. Other countries manage these things through their consulates, for instance. That would be my main issue. We should think about how it is done so that those votes could actually play a part.

Edward Mountain: So, if it can be done, we should do it.

Professor Clark: If it can be done, I would not really object to it.

Professor James: I agree that the main issue is logistical. There have been some experiments around the world with online voting, but they have largely been unsuccessful. Postal voting does not work because of the timescales involved. The use of embassies is one way that works but, in practice, which country would you use? Would you open it up to all embassies? In practice, you are really only able to get a few people to cast their votes.

Does it matter, symbolically, so that people still feel part of the country? It probably does. Another thing to throw in is whether we want an indefinite right to vote in that respect or whether a 15-year limit, as has been set for UK parliamentary elections, is a sufficient threshold. That is something to consider. In some ways, 15 years seems long enough if people have already moved and are now part of another society. Again, however, it is a matter of principle.

Edward Mountain: That is interesting. We need to we get that right for those people, such as service personnel, who are sent away to do things on behalf of their country.

I do not know why I got this one, but the next question is on the challenges and opportunities of dual mandates. What do you think? The witnesses on the previous panel were not keen on dual mandates and thought that someone had to resign; they could not do both things. It would be a lot of work, perhaps. Do you have a view on that?

Professor Clark: The term “double jobbing” is used for that in Northern Ireland, and, in my view, it is probably best that it does not happen.

Professor James: I agree.

Edward Mountain: Okay—I will definitely leave that one there. I tend to agree in that I think that our job as MSPs is a full-time one, and I struggle to find time to do much else on occasions.

Turning to what, for me, is a very important point, Graham Simpson is producing a bill on recall, which you will have seen. In my opinion, the electorate must have a right to recall people if they are not performing. We do it in councils, so there is no reason why we should not do it in the Scottish Parliament, too, albeit that there is a slight issue for the likes of me, as a regional MSP. First, do you think that it is right? Secondly, how would you get round the problems with regional MSPs? You would have to consult people in more than one constituency, and we saw how difficult things were last year when there was a recall petition.

Professor Clark: There was the petition for Margaret Ferrier. It is reasonable to have that as a provision, but you are right about the complication of regional lists. Graham Simpson’s proposal makes sense to me. As I understand it, the equivalent of the constituency petition happens, but in a region. I was not quite clear whether the limit would be set at 10 per cent in regions, but it seemed to me a reasonable way of thinking about it.

As for how that will work, we have only limited experience from Westminster. There have been complaints, on a couple of occasions, that the system has probably not worked as well as it should have done, with reference to awareness and things of that nature. I think that there have now been five recall petitions, and things seem to have settled down. The reasons for calling them have been suspension and conviction for a criminal offence—the third one escapes me at the moment. Those grounds seem reasonable. There should be a fairly high bar for an MSP to be recalled to begin with—I would be worried if it just became part of normal political debate.

Edward Mountain: Would the next person on a regional list step up, given that the list seats are allocated according to party vote share? We could not go back out and do the whole regional list again. I do have a real concern, though, that regional MSPs should be held to account just the same as constituency MSPs, and I do not know how you would do that.

Professor Clark: That is the complication. We have seen that with local government by-elections in which other parties have won the council seat under a single transferable vote. Obviously there is a different electoral system for the regional list.

I do not really have a problem with the proposals in Graham Simpson’s bill. Perhaps political parties should do a bit more to vet their candidates to begin with. If they did, we might not end up in those sorts of circumstances.

Edward Mountain: You can try, but there is always an odd one who sneaks in.

Professor James: Recall is a really important accountability check on office holders. In an era of low political engagement and distrust of public office holders across the board, enabling citizens to realise that they can recall someone can only be strong for democracy. It would be impossible to measure, but it will hopefully encourage better conduct in office if office holders know that they are not untouchable. I would support such measures.

Edward Mountain: In the hope that I am not the odd one that sneaked in, it is back to you, convener.

11:15

The Convener: I want to press you on the Electoral Commission and the five-year plan. There has been a slight shift in power balance between Wales and up here in relation to who has the final say, and I want to explore your views as to which would be the better route to take.

Professor James: The principles of independent electoral authorities are really important. This echoes our earlier debate about who should have the final word on election postponement; in many countries, the electoral authorities have much greater independence than they potentially do in the UK.

The move to a five-year plan makes sense. It brings the commission’s activities in line with the Scottish electoral cycle. Ultimately, if there is an issue, I would support the Electoral Commission’s having the final say on what it is proposing to do.

Professor Clark: I do not have a problem with a delegated committee of the Parliament having a say on this. My working assumption is that this

would proceed largely by consensus to begin with. The Electoral Commission is, basically, a body of statute. It is responsible to the UK Parliament, it is now responsible to the Senedd, and it is also responsible to the Scottish Parliament. I have less concern about there being a role for the Parliament in that regard.

I share the concerns about the Electoral Commission's independence, but I do not think that this would be comparable to something such as the strategy document that the UK Government has tried to impose on the Speaker's Committee on the Electoral Commission at Westminster. My feeling, based on what is in the bill, is that this would be a fairly iterative process between whichever committee was involved and the commission. The commission itself says that it is generally welcoming of scrutiny.

I have probably not answered the question definitively, but I can—and do—see a bit more of a role for the Parliament in that regard.

The Convener: The other point that I want to explore relates to the legal entity that is the EMB and the proposal to make it a body corporate. Presumably, given the EMB's contractual requirements, you are reasonably relaxed about its being a legal entity. If so, I would just push past that to the proposal for two deputy convener posts—in essence, having people in two separate and distinct roles—and would seek to collect your views on that.

Professor Clark: Those proposals are, to my mind, uncontroversial. As I have said, the Electoral Management Board has been a positive development with regard to administering Scotland's elections. It has brought a consistency that was probably not in evidence before, if we think about the difficulties that we saw in 2007.

Should it be a legal entity? Yes, because that should allow it to enter into contracts and things of that sort. The e-counting system for local government elections is probably the major contract involved in Scottish elections, and that would be one thing that could be removed from the Government, for instance. No doubt there will be other things, such as economies of scale.

As for deputies, I think that that proposal is entirely reasonable, too. Things have proceeded largely on a volunteer basis up until now. Logistically, this is a complex world—and just how complex is underappreciated. Not only is electoral law complex, but the actual producing of everything that needs to go into running an election is complex, too. Having two deputies therefore makes perfect sense to me.

Professor James: It makes complete sense. I would support the proposal.

It is quite troubling, in a way, that the organisation that has played such an important role in the past and that has been so important in delivering Scottish elections is reliant on in-kind contributions from other organisations and individuals. Putting it on to a firmer statutory and financial basis is really important.

I note that the word “complexity” is coming up a lot. A myriad different organisations are involved in delivering elections. That makes no sense to the voter, and at some point, it might be worth thinking about the best way, organisationally, of delivering elections in Scotland. The variety of organisations that we have has come about as a result of historical reasons, partly through the different logics of devolution.

In many countries, there is a single electoral management body to deliver voter elections and voter registration. It has a clear remit, and it is clearer to voters where or to which website they should go if they want to raise a complaint or have an issue. We do not really have that anywhere in the UK; instead, things are becoming increasingly complex and difficult to navigate.

The bill is fine and makes a lot of sense. At some point, however, it might be worth putting a foot on the ball and thinking about what is best for Scotland.

The Convener: Okay—we now come to the convener's last mischievous question. Elections belong to the people of Scotland, but who should oversee them: the legislature or the Government?

Professor Clark: An easy question to finish with. [*Laughter.*] Ultimately, it should be the legislature. The Government will be involved in helping with the administration of elections—that is unavoidable—but the legislature should have the final word.

Professor James: I agree.

The Convener: That is excellent. If there is anything else that you would like us to consider, once you have had an opportunity to consider what you have told us today, please feel free to write to us. I hope that you will not mind if we, in turn, take the opportunity to come back to you if we have additional questions. Thank you very much for your evidence today and for attending in person.

11:22

Meeting continued in private until 11:30.

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Published in Edinburgh by the Scottish Parliamentary Corporate Body, the Scottish Parliament, Edinburgh, EH99 1SP

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