



The Scottish Parliament  
Pàrlamaid na h-Alba

## Official Report

# REFERENDUM (SCOTLAND) BILL COMMITTEE

Thursday 3 October 2013

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**Thursday 3 October 2013**

**CONTENTS**

<b>INTERESTS.....</b>	<b>Col. 585</b>
<b>DEPUTY CONVENER.....</b>	<b>586</b>
<b>SCOTTISH INDEPENDENCE REFERENDUM BILL: STAGE 2.....</b>	<b>587</b>

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**REFERENDUM (SCOTLAND) BILL COMMITTEE**  
**21<sup>st</sup> Meeting 2013, Session 4**

**CONVENER**

\*Bruce Crawford (Stirling) (SNP)

**DEPUTY CONVENER**

\*Lewis Macdonald (North East Scotland) (Lab)

**COMMITTEE MEMBERS**

\*Annabelle Ewing (Mid Scotland and Fife) (SNP)

\*Linda Fabiani (East Kilbride) (SNP)

\*Rob Gibson (Caithness, Sutherland and Ross) (SNP)

\*Annabel Goldie (West Scotland) (Con)

\*Patrick Harvie (Glasgow) (Green)

\*Stewart Maxwell (West Scotland) (SNP)

\*Stuart McMillan (West Scotland) (SNP)

\*Tavish Scott (Shetland Islands) (LD)

\*Drew Smith (Glasgow) (Lab)

\*attended

**THE FOLLOWING ALSO PARTICIPATED:**

Nicola Sturgeon (Deputy First Minister and Cabinet Secretary for Infrastructure, Investment and Cities)

**CLERK TO THE COMMITTEE**

Andrew Mylne

**LOCATION**

Committee Room 6



## Scottish Parliament

### Referendum (Scotland) Bill Committee

*Thursday 3 October 2013*

[The Convener *opened the meeting at 09:30*]

#### Interests

**The Convener (Bruce Crawford):** Good morning. I warmly welcome everyone to the 21st meeting of the Referendum (Scotland) Bill Committee. I remind everyone to switch off their mobile phones, please. No apologies have been received.

I warmly welcome Lewis Macdonald and Drew Smith to their first meeting. We should also record our thanks to James Kelly and Patricia Ferguson for their contribution to the committee's work.

In accordance with section 3 of the code of conduct for members of the Scottish Parliament, I invite our new members to declare interests that are relevant to the committee's remit.

**Lewis Macdonald (North East Scotland) (Lab):** I have no relevant interests to declare.

**Drew Smith (Glasgow) (Lab):** I have no relevant interests to declare.

**The Convener:** Thank you both.

## Deputy Convener

09:31

**The Convener:** Item 2 is the choice of a deputy convener to replace James Kelly. The Parliament has agreed that only members of the Labour Party are eligible for nomination as deputy convener of the committee. I therefore invite Labour members to indicate who will be their nominee.

**Drew Smith:** I volunteer to nominate Lewis Macdonald.

**The Convener:** I presume that you are happy to accept the nomination, Lewis.

**Lewis Macdonald:** I am happy to accept.

*Lewis Macdonald was chosen as deputy convener.*

## Scottish Independence Referendum Bill: Stage 2

09:31

**The Convener:** Item 3 is stage 2 of the Scottish Independence Referendum Bill. I welcome the Deputy First Minister, Nicola Sturgeon, and her officials.

Everyone should have a copy of the bill as introduced, the marshalled list of amendments and the groupings paper, which sets out the amendments in the order in which they will be debated.

There will be one debate on each group of amendments. I will call the member who lodged the first amendment in the group to speak to their amendment and other amendments in the group and to move their amendment. I will call the Deputy First Minister to speak on every group. Members who have not lodged amendments in a group and who want to speak should indicate that by catching my attention in the usual way.

At the end of each debate, the member who moved the lead amendment will have the opportunity to wind up. Only members of the committee are allowed to vote in any division. In a vote, it will be important that members keep their hands raised until the clerk has recorded their names. I will ensure that the clerks have time to do that—I probably rushed things a bit the last time we considered a bill at stage 2.

As well as disposing of amendments, the committee is required formally to consider each section and schedule and the long title. I will put the questions at the appropriate point.

Given the number of amendments, it seems certain that the committee will need two meetings to complete stage 2. My aim today is to get through as many amendments as possible up to group 15; I do not intend to go beyond that point. We let Liam McArthur know that yesterday evening, so that he would not have to attend today's proceedings—he will turn up next week.

Let us get on with the proceedings.

*Section 1 agreed to.*

### Schedule 1—Form of ballot paper

**The Convener:** Amendment 4, in the name of the Deputy First Minister, is grouped with amendments 5, 22 and 23.

**The Deputy First Minister and Cabinet Secretary for Infrastructure, Investment and Cities (Nicola Sturgeon):** Amendments 4, 5, 22 and 23 relate to the position of the official mark on

the ballot paper. The bill provides for the mark to appear on the back of the ballot paper. The issue was raised during evidence at stage 1, and I explained then to the committee that the reason for putting the official mark on the back was to enable voters to demonstrate to polling staff that their ballot papers were genuine, without revealing how they had voted.

However, after discussions with returning officers about their clear preference for moving the official mark to the front of the ballot paper, I agreed to lodge amendments to move the position of the official mark. I hope that the amendments will increase the efficiency of the count while maintaining the security of the ballot and protecting voters' identity.

I move amendment 4.

**The Convener:** No one has indicated that they want to speak. In the circumstances, I guess that the Deputy First Minister does not need to wind up.

*Amendment 4 agreed to.*

*Amendment 5 moved—[Nicola Sturgeon]—and agreed to.*

*Schedule 1, as amended, agreed to.*

*Section 2 agreed to.*

### After section 2

**The Convener:** Amendment 6, in the name of the Deputy First Minister, is in a group on its own.

**Nicola Sturgeon:** Amendment 6 relates to the position of the children of service personnel, which has been discussed extensively by the committee. Committee members are familiar with the issue, and I have made it clear, throughout all the discussions that we have had prior to today, that the Government is committed to ensuring that every young person who should be entitled to vote in the referendum is able to exercise their entitlement to vote. However, existing United Kingdom legislation does not allow the children of those with a service qualification—unlike the position of spouses and civil partners—to register to vote by making a service declaration themselves. As the voting age has been lowered to 16, and given that 16 and 17-year-olds are more likely still to reside with their parents, it is possible that that could have the effect of preventing some young people who live outside Scotland to be with their parents in the services from registering to vote.

I have made it clear in my correspondence with the committee that the number of young people so affected is likely to be extremely small. Nevertheless, it is important that they are afforded the same opportunity to vote in the referendum as

their peers whose parents reside in Scotland. We have been committed to finding a solution to enable such young people to register to vote and I am, therefore, pleased to bring amendment 6 to the committee. The amendment is the product of constructive discussions with electoral registration officers and the Electoral Commission—I thank them for their positive and pragmatic contributions.

Amendment 6 amends the Scottish Independence Referendum (Franchise) Act 2013 to provide a mechanism for young people aged 16 or 17 on the date of the referendum to register to vote in the referendum if they can demonstrate that they would be resident in Scotland were it not for the fact that they reside elsewhere to be with a parent or guardian who has a service qualification. Such young people would be included in the register of young voters, assuming that they meet all the other requirements for registration in that register.

Under the terms of the amendment, the young person will make their own service declaration, the form of which will be largely the same as that for those who are currently able to make service declarations. The declaration will be a one-off and will apply only to the referendum, and entitlement to vote in the referendum by this method will be subject to residence criteria. Completely in line with normal practice, applications will be for electoral registration officers to determine, and such decisions will depend on the circumstances of individual cases.

As I have told the committee, officials have had initial discussions with the Electoral Commission about how best to publicise the arrangements. Subject to the committee's agreement to amendment 6 today, I will report back to the committee on the outcome of those discussions before stage 3.

I am confident that these proposals present a workable and practical solution to an issue that has been identified by committee members. I repeat that the number of people affected is likely to be very small. Nevertheless, even if only one or two people are affected, it is important that we do everything that we can to ensure that young voters are able to participate in the referendum, and the amendment achieves that.

I move amendment 6.

**Drew Smith:** I welcome the efforts of the Deputy First Minister and her officials. We have come to a good solution for those 16 and 17-year-olds.

An issue that has been raised with me is the position of 18-year-olds who still reside with a parent or guardian in a service base or somewhere similar. I presume, from the Deputy First Minister's letter to the committee, that

because we are able to amend only the register of young voters we cannot do anything to assist those people. However, I seek clarification from her that that is the case.

I also ask the Deputy First Minister whose responsibility it is to promote the right to vote to those 16 and 17-year-olds. Is that balanced between the Electoral Commission and the Ministry of Defence as the employer? Does she have any more information that she is able to share in responding to the debate?

**Annabelle Ewing (Mid Scotland and Fife) (SNP):** I would be interested to hear what the Deputy First Minister has to say about that, but I think that we touched on the issue in our earlier deliberations. The voting system for 18-year-olds is set by the UK Government, under the Representation of the People Act 2000, and we have already identified that that is where responsibility for the issue lies.

**Nicola Sturgeon:** Drew Smith's own analysis of the situation regarding his first point is correct: such 18-year-olds would be termed overseas voters, and overseas voters are not on the local government register. It is of course the local government register that is being used for the referendum. That is the position, and we are not able to alter it.

On Drew Smith's second point, which was about promoting the arrangements, the MOD has a big role to play. It has responsibility not just to promote the arrangements for registration to the children of service personnel but to promote the arrangements to service personnel generally to ensure that we are challenging a myth that has been perpetuated in some quarters that service personnel will not have the right to vote in the referendum if they are not in Scotland, which is clearly not the case.

As I said in moving amendment 6, we are discussing the promotion of the arrangements with the Electoral Commission, and I am happy to feed back on that and to factor into that feedback any input that the MOD might have.

*Amendment 6 agreed to.*

*Section 3 agreed to.*

#### **Schedule 2—Further provision about voting in the referendum**

**The Convener:** Amendment 7, in the name of the Deputy First Minister, is grouped with amendments 8 to 10, 13 to 16, 24, 25, 108 and 109.

**Nicola Sturgeon:** This group of amendments relates to absent voting. The issue was raised at stage 1, including during the stage 1 debate in the chamber. Members will be aware that the bill

currently provides that the deadline for an application to vote by proxy is 5 pm on the 11th working day before the poll. The intention of that was to standardise the cut-off dates that run across schedule 2 to the bill. Given that the date of the referendum is already known and is known far in advance, it was felt that a cut-off date 11 days before the poll would give individuals more than sufficient notice to decide how they wish to vote. However, both the Electoral Commission and the electoral administrators have raised the matter as a potential issue, and they have requested that the bill be amended in line with the usual practice in Scottish Parliament and local government elections, so that the cut-off date for applications to vote by proxy in person should be 5 pm on the sixth day before the date of the poll, to provide another method of voting for those who cannot vote in person on polling day but who are too late to apply to vote by post.

We have carefully considered the best way to amend the bill to meet the concerns raised by electoral administrators and the commission and do so in a proportionate way that best addresses those concerns. Changing the bill to move the proxy application deadline to the sixth day before the poll would require extensive amendment to schedule 2, which might give rise to some unintended effects. In addition, and perhaps more saliently, we do not believe that that would necessarily address the specific concerns that have been raised, given that making such a change would not help anyone whose plans unexpectedly changed after the six-day cut-off point. The Icelandic volcano situation was raised as an example of why this needs to change and changing the cut-off date to six days before would not necessarily help people caught up in a situation like that.

Instead of amending the bill along those lines, we propose to extend the eligibility for making an emergency proxy vote. That would achieve the same end, and it would more appropriately address the concerns that have been expressed given that many people might be unexpectedly called away from home or prevented from returning home after the suggested six-day cut-off.

The bill currently provides for people who have suffered a disability after the cut-off date to appoint a proxy to vote for them in person up until 5 pm on the day of the referendum. Among its suggestions for amending the absent voting arrangements, the Electoral Commission suggested that the bill be amended to extend eligibility to appoint an emergency proxy to those who have been called away unexpectedly for occupation, service or employment reasons. We propose to extend that slightly further to include any individual who is unavoidably and unforeseeably away from home on polling day. That will enable some people to

apply to vote by proxy who would otherwise be unable to participate in the referendum.

The bill currently provides that emergency proxy applications on the grounds of disability require no independent verification. However, EROs have expressed concerns about the potential for misuse, so we also propose to introduce requirements for attestation for all emergency proxy applications.

09:45

Any person making a false statement or providing false information in an application for an emergency proxy vote, as with any postal or proxy vote application, would be committing an offence under paragraph 4 of schedule 7 if they tried to gain a vote to which they were not entitled or to deprive another person of a vote. Such an offence is a corrupt practice that carries a maximum penalty of two years' imprisonment, an unlimited fine, or both.

We also propose to amend the bill so that counting officers are able to issue postal ballot papers before the cut-off date, when it is practicable to do so, and to expand the offence provisions, along with other amendments, to prevent voters from attempting to vote by proxy as well as voting in person or by post.

We consider that the changes that we propose to make to the bill in this area at stage 2 will help to ensure that we put the interests of the voter first, by avoiding as far as possible any unnecessary barriers to voting, but do so in a way that helps to ensure that the referendum is conducted to the highest possible standards of probity. I hope that members will think that we have arrived at the right balance.

I move amendment 7.

**Lewis Macdonald:** As the Deputy First Minister has indicated, this is one of the areas in which the bill as introduced is not wholly in line with existing best practice, and a number of the Government's proposed amendments are not supported by the Electoral Commission, so I shall focus my comments on those amendments, particularly amendments 7 to 10, 14 and 16, most of which have been commented on directly by the Electoral Commission this week.

Best practice in this context should be to follow as closely as possible the existing technical rules as to who can vote, how they can vote and in what circumstances. I welcome the fact that, in the main, the bill meets that standard and that the Government has moved its position in a number of areas to meet that standard. However, I believe that, for proxy votes, it does not. Whereas normal practice, as the Deputy First Minister has

indicated, is to have a deadline for applying of six working days before the poll—in this case, 10 September 2014—the provision in the bill is for the deadline for ordinary proxy votes to be a week earlier, on 3 September 2014. That remains the case in spite of the amendments. The Electoral Commission has affirmed that it wants that changed to 10 September 2014, and I therefore ask why ministers have not proposed to make that amendment at this stage, and whether they will revisit the issue at stage 3.

Those who apply for an emergency proxy vote under the provision that the Deputy First Minister has outlined after 3 September will face a new requirement that their application should have a supporting attestation from their employer or from another person. That is reasonable for very late applications, despite the inconvenience, because of the need to prevent fraud, but those who apply for a proxy vote between 3 September and 10 September, who under existing practice would simply be applying for an ordinary proxy vote, now face an additional inconvenience, which represents an additional disadvantage compared with existing best practice at elections and referendums.

I have not heard a good reason why the ordinary proxy vote date cannot be moved. The Deputy First Minister mentioned that there might be consequential requirements for amendments to schedule 2. She has already shown a willingness, in the area of the list of offences, to make significant and substantial consequential amendments in order to achieve the desired outcome, and I think that she should look again at this area.

Under the Government's amendments, emergency proxy votes are now to be available where voters find out late that they will be away from home and unable to vote in person for work reasons, but not for voters who are unable to vote in person for reasons that keep them at home because they are caring for family members. That appears to be at variance with the approach suggested by the Electoral Commission, and again it is an area in which I would ask the Government to think again.

Finally, the Electoral Commission has also raised questions about amendment 14—and 16—which makes provision for cancelling postal votes where the voters in question then apply for proxy votes, but which does not make any provision where, for example, a postal vote is cancelled because the voter decides to vote in person, nor does it require the ERO to notify the counting officer when a proxy vote has been granted to someone who already has a postal vote. If the Electoral Commission says that those things should be spelled out in the bill, I am inclined to

believe it, and I wonder if the minister will tell us whether she also agrees with it and, if so, whether she will lodge further amendments in that area at a later stage.

**Stewart Maxwell (West Scotland) (SNP):** I welcome the Government's shift, which is welcome. I accept the logic that states that an erupting volcano will not necessarily want to erupt between the 11th and the sixth day before a poll; it may well want to erupt between the sixth day before and the polling day itself. Shifting the day itself does not change the emergency situation.

The procedure that has been suggested for allowing people to access an emergency proxy vote is very sensible, and I very much welcome the fact that it has been widened to include a number of other groups.

I accept what the Deputy First Minister has said—and I hope that she will explain it further—about why what she called an extensive number of amendments would be required to make the shift from 11 to six days. Of course, we might not know what the unintended consequences might be but a series of amendments at this stage could indeed have unintended consequences that we would be unaware of. I would be concerned about taking on at this stage large-scale amendments or major changes to schedule 2 that might cause a problem further down the line, given the care that we have taken to get a bill that we can all support, that is of the gold standard and which meets the criteria that we and the people of Scotland are after. I would welcome further explanation of the situation, but I accept that there is a risk that, at this stage, I am not keen to take on.

**Patrick Harvie (Glasgow) (Green):** Echoing some of the points that were made earlier, I would welcome a general indication from the Deputy First Minister of whether these stage 2 amendments are, if you like, a work in progress and whether the general intention is to develop schedule 2 further at stage 2 or whether what we are being asked to approve today is the final draft.

**Nicola Sturgeon:** Picking up on Patrick Harvie's point first, I remain open to further discussions if members have any further amendments that they wish to lodge. For example—and this goes to the latter part of Lewis Macdonald's comments—we received the Electoral Commission's briefing note fairly late last night and we will want to have further discussions about some of the points that it has raised. We will be happy to report back on those discussions, which might give rise to further amendments before stage 3. As in all of these things, I am open minded with regard to further suggestions that might come forward and am happy to take on board committee members' comments and have further discussions around the issue.

However, we have been and are continuing to try to strike the right balance, recognising a situation in which people, for unforeseeable reasons, are unable to apply in time for a postal or proxy vote under the deadline in the bill and giving them the ability, in a proportionate way, to retain their right to vote through another mechanism. As I have said, amending the bill as originally recommended by the Electoral Commission would be very complex, and I will give members some more detail about that.

To ensure that the bill stays within devolved competence, which, as members will appreciate, it has to do, the scheme set out in the bill has to differ in some ways from other electoral legislation. In certain areas, including the absent voting provisions, the bill—and indeed the previous version that was issued for consultation—is drafted to reflect the intention of measures in other legislation but uses different drafting to keep the bill within devolved competence. As we cannot simply replicate UK electoral law in relevant parts of the bill, amending the bill to move the proxy application deadline to six working days before the poll would require really extensive amendment to schedule 2 that might have unintended consequences. By definition, you cannot always say what certain unintended consequences might be—after all, if you knew what they might be, you would be able to avoid their happening—but the complexity of the amendments that would be required would introduce a degree of risk that, as Stewart Maxwell has suggested, should not be introduced at this stage. Nevertheless, I will continue to have discussions to see whether there are any further steps that we can take before stage 3.

I repeat the earlier point that, with regard to the people who would benefit from these provisions, simply changing the cut-off date from 11 to six days will not necessarily help someone who, the day before the poll, finds themselves called away for work reasons or unavoidably detained and unable to get back in time. For people in those circumstances, these amendments provide a solution that not only makes things technically more manageable for the Government and those scrutinising the bill but is more practically effective for the people who might want to make use of the provisions.

I ask members to support these amendments but I give an undertaking that I am happy to have further discussions and see whether there are any further amendments that we could lodge in advance of stage 3, particularly with regard to the points in the Electoral Commission's briefing that we received last night and which we might want to move further on.

**The Convener:** The question is, that amendment 7 be agreed to. Are we agreed?

**Members:** No.

**The Convener:** There will be a division.

**For**

Crawford, Bruce (Stirling) (SNP)  
Ewing, Annabelle (Mid Scotland and Fife) (SNP)  
Fabiani, Linda (East Kilbride) (SNP)  
Gibson, Rob (Caithness, Sutherland and Ross) (SNP)  
Goldie, Annabel (West Scotland) (Con)  
Harvie, Patrick (Glasgow) (Green)  
Maxwell, Stewart (West Scotland) (SNP)  
McMillan, Stuart (West Scotland) (SNP)  
Scott, Tavish (Shetland Islands) (LD)

**Abstentions**

Macdonald, Lewis (North East Scotland) (Lab)  
Smith, Drew (Glasgow) (Lab)

**The Convener:** The result of the division is: For 9, Against 0, Abstentions 2.

*Amendment 7 agreed to.*

*Amendments 8 to 10 moved—[Nicola Sturgeon].*

**The Convener:** Does any member object to a single question being put on amendments 8 to 10?

**Lewis Macdonald:** We would be happy to abstain en bloc, if that suits the convener.

**The Convener:** The question is, that amendments 8 to 10 be agreed to. Are we agreed?

**Members:** No.

**The Convener:** There will be a division.

**For**

Crawford, Bruce (Stirling) (SNP)  
Ewing, Annabelle (Mid Scotland and Fife) (SNP)  
Fabiani, Linda (East Kilbride) (SNP)  
Gibson, Rob (Caithness, Sutherland and Ross) (SNP)  
Goldie, Annabel (West Scotland) (Con)  
Harvie, Patrick (Glasgow) (Green)  
Maxwell, Stewart (West Scotland) (SNP)  
McMillan, Stuart (West Scotland) (SNP)  
Scott, Tavish (Shetland Islands) (LD)

**Abstentions**

Macdonald, Lewis (North East Scotland) (Lab)  
Smith, Drew (Glasgow) (Lab)

**The Convener:** The result of the division is: For 9, Against 0, Abstentions 2.

*Amendments 8 to 10 agreed to.*

**The Convener:** Amendment 11, in the name of the Deputy First Minister, is grouped with amendments 12, 21, 26 and 106.

**Nicola Sturgeon:** Amendments 11, 12 and 106 are technical amendments that arise directly from requests made to us by electoral administrators to standardise our provisions on the computation of time with those in other electoral legislation.

Several points in the bill require the calculation of a date. For example, rule 1(1) of schedule 3 states:

“The counting officer must publish notice of the referendum not later than the twenty-fifth day before the date of the referendum.”

The bill provides a list of days that are to be disregarded for the purposes of calculating such dates. Our original policy decision was not to include days appointed for thanksgiving or mourning in that list, as the referendum date will be known well in advance and so any such dates could be absorbed into the timetable.

However, the Electoral Commission and electoral administrators have strong views about inclusion for the purposes of consistency with existing legislation. Therefore, we have decided to lodge amendments to allow such days to be disregarded for the purposes of the computation of time.

Amendments 11, 12 and 106 take account of the views of key stakeholders and will bring the bill into line with existing electoral legislation. Therefore, I commend them to the committee.

On the same grounds as I have given for supporting my amendments, I am also content to support Annabel Goldie's amendments 21 and 26.

I move amendment 11.

**Annabel Goldie (West Scotland) (Con):** I have registered an interest that is de minimis but unusual: the Law Society of Scotland gave me a lift in a taxi for which it paid because I was accompanying a gentleman who was coming to the Parliament for a meeting. In the circumstances, I have put that in the register of members' interests because amendments 21 and 26 emanate from the Law Society of Scotland. They are on the same theme as that to which the Deputy First Minister referred.

Amendment 21 would ensure that, under the bill, days of public thanksgiving or mourning would be disregarded when calculating the deadline for publication of the referendum notice.

Rule 1(2) in schedule 3 provides that certain days are to be disregarded, including Saturdays, Sundays, Christmas eve, Christmas day and bank holidays. In the referendum rules in the Parliamentary Voting System and Constituencies Act 2011, rule 2(1) in part 1 of schedule 2 provides that

“any day appointed as a day of public thanksgiving or mourning”

is to be disregarded. The aim of amendment 21 is simply to achieve consistency, avoid any ambiguity or doubt and have the arrangements on the face of the bill.

10:00

Amendment 26 is in a similar vein. Again, it is to ensure that days of public thanksgiving or mourning are disregarded when the deadline for notification of a polling or counting agent's appointment is calculated. The rationale is as I have previously described. Rule 14(5) provides that certain days are to be disregarded in the calculation of that time period, but they do not include days that are allocated to public thanksgiving or mourning. I lodged amendment 26 to ensure consistency with my proposed wording for rule 1(1) in schedule 3.

I reassure members that I sought clarification from the bill team and I am told that, just as the Interpretation Act 1978 states that the use of the masculine embraces the feminine, which I thought was a very nice concept, “a”, although singular, embraces the plural if there is more than one day. I reassure members on that front.

**The Convener:** I am glad that you made that point clear at the end. As no other member wishes to comment, I ask the Deputy First Minister whether she wishes to wind up.

**Nicola Sturgeon:** I thank Annabel Goldie for that welcome clarification at the end of her contribution.

*Amendment 11 agreed to.*

*Amendments 12 to 16 moved—[Nicola Sturgeon].*

**The Convener:** Does any member object to a single question being put on amendments 12 to 16?

**Lewis Macdonald:** Yes.

**The Convener:** I will go through the amendments one by one.

*Amendments 12 and 13 agreed to.*

**The Convener:** The question is, that amendment 14 be agreed to. Are we agreed?

**Members:** No.

**The Convener:** There will be a division.

**For**

Crawford, Bruce (Stirling) (SNP)  
Ewing, Annabelle (Mid Scotland and Fife) (SNP)  
Fabiani, Linda (East Kilbride) (SNP)  
Gibson, Rob (Caithness, Sutherland and Ross) (SNP)  
Goldie, Annabel (West Scotland) (Con)  
Harvie, Patrick (Glasgow) (Green)  
Maxwell, Stewart (West Scotland) (SNP)  
McMillan, Stuart (West Scotland) (SNP)  
Scott, Tavish (Shetland Islands) (LD)

**Abstentions**

Macdonald, Lewis (North East Scotland) (Lab)  
Smith, Drew (Glasgow) (Lab)

**The Convener:** The result of the division is: For 9, Against 0, Abstentions 2.

*Amendment 14 agreed to.*

*Amendment 15 agreed to.*

**The Convener:** The question is, that amendment 16 be agreed to. Are we agreed?

**Members:** No.

**The Convener:** There will be a division.

#### For

Crawford, Bruce (Stirling) (SNP)  
 Ewing, Annabelle (Mid Scotland and Fife) (SNP)  
 Fabiani, Linda (East Kilbride) (SNP)  
 Gibson, Rob (Caithness, Sutherland and Ross) (SNP)  
 Goldie, Annabel (West Scotland) (Con)  
 Harvie, Patrick (Glasgow) (Green)  
 Maxwell, Stewart (West Scotland) (SNP)  
 McMillan, Stuart (West Scotland) (SNP)  
 Scott, Tavish (Shetland Islands) (LD)

#### Abstentions

Macdonald, Lewis (North East Scotland) (Lab)  
 Smith, Drew (Glasgow) (Lab)

**The Convener:** The result of the division is: For 9, Against 0, Abstentions 2.

*Amendment 16 agreed to.*

**The Convener:** Amendment 17, in the name of the Deputy First Minister, is in a group on its own.

**Nicola Sturgeon:** Paragraphs 46 and 48 of schedule 2 provide that counting officers and the designated organisations are entitled to receive copies of certain registration documents relating to the polling list in order to enable them to fulfil their respective roles and responsibilities under the bill. Paragraph 53(1) requires secure destruction of those documents within one year of the referendum.

Paragraph 49 provides that permitted participants are entitled to receive, for the purposes of the referendum, a copy of the register of local government electors, any updates to that register and associated lists, but there is no requirement in the bill for those to be destroyed. Amendment 17 is a technical amendment that adds copies of the local government register and related documents to the registration documents that must be destroyed within one year of the referendum.

I move amendment 17.

*Amendment 17 agreed to.*

*Schedule 2, as amended, agreed to.*

### Section 4—Chief Counting Officer

**The Convener:** Amendment 18, in the name of Annabel Goldie, is in a group on its own.

**Annabel Goldie:** Amendment 18 deals with section 4, which covers the chief counting officer. The effect would be to clarify the basis on which a chief counting officer could be removed. Obviously, section 4 requires the Scottish ministers to appoint a chief counting officer for the referendum and, logically, section 4(5) allows the Scottish ministers to remove the chief counting officer if they are satisfied that he or she “is unable to perform” his or her functions

“by reason of any physical or mental illness or disability.”

That is different from section 5, which covers other counting officers and which allows the chief counting officer to remove a counting officer from office if he or she is satisfied

“that the counting officer is for any reason unable to perform the counting officer’s functions”.

Amendment 18 would simply expand the grounds of removal for the chief counting officer, with particular reference to the criminal conviction of the chief counting officer. It would be unfortunate and inappropriate for the chief counting officer to be convicted of an offence following his or her appointment and for him or her to remain in post. I do not think that that will happen, but when we legislate we have to anticipate everything. Amendment 18 would specifically ensure that the Scottish ministers would be empowered to take appropriate action in that unforeseen, perhaps unlikely, but certainly very unwelcome event.

I move amendment 18.

**Nicola Sturgeon:** My starting point on the issue is that the chief counting officer should be—and should be seen to be—independent of Government. Because of that, it is right that the reasons for removing the chief counting officer are limited. That is why the bill restricts the power of removal to situations in which the chief counting officer cannot perform his or her duties for reasons of physical or mental illness or disability. Amendment 18 makes it clear that the Scottish ministers “may” remove the chief counting officer from office if the postholder is convicted of a criminal offence. Having heard Annabel Goldie’s comments on the amendment, I am minded to support it, and I encourage members to do likewise.

**Annabel Goldie:** I thank the Deputy First Minister for clarifying the Scottish Government’s position, which is helpful.

*Amendment 18 agreed to.*

*Section 4, as amended, agreed to.*

*Sections 5 and 6 agreed to.*

### Section 7—Correction of procedural errors

**The Convener:** Amendment 19, in the name of the Deputy First Minister, is grouped with amendment 20.

**Nicola Sturgeon:** As it stands, section 7 allows the chief counting officer and other counting officers to correct their own errors and those of various relevant persons who are listed in section 7(3), including registration officers and those who assist them.

However, electoral professionals have pointed out that the bill does not specifically mention errors by deputies of the chief counting officer or counting officers. Although it might be implicit in the bill that the officers could correct errors of their deputies, our amendments seek to put the position beyond doubt. Amendments 19 and 20 to section 7 will insert reference to the deputies of those officers and place beyond doubt their power to correct errors that are made by their deputies and, in the case of the chief counting officer, the deputies of counting officers. They are technical amendments.

I move amendment 19.

*Amendment 19 agreed to.*

*Amendment 20 moved—[Nicola Sturgeon]—and agreed to.*

*Section 7, as amended, agreed to.*

*Sections 8 and 9 agreed to.*

### Schedule 3—Conduct rules

*Amendment 21 moved—[Annabel Goldie]—and agreed to.*

*Amendments 22 to 25 moved—[Nicola Sturgeon]—and agreed to.*

*Amendment 26 moved—[Annabel Goldie]—and agreed to.*

**The Convener:** Amendment 27, in the name of Annabel Goldie, is in a group on its own.

**Annabel Goldie:** Amendment 27 concerns a provision devoted to removal of disorderly persons from polling stations. The bill states that:

“the presiding officer may order the person to be removed from the polling station.”

If someone creates a rumpus, is exceedingly difficult and distracts other people from legitimate exercise of their lawful franchise, it could be very tiresome if a presiding officer were to feel inhibited by the absence of clarity in the bill. The amendment proposes the insertion of the word “immediately” so that the presiding officer is explicitly empowered in such a situation to do what he or she thinks would be fit.

I move amendment 27.

**Nicola Sturgeon:** Amendment 27 confirms that a person who causes problems in a polling station should be removed “immediately”, unless that person has yet to vote and wishes to do so. We are content to support the amendment on the grounds that it will provide additional clarification about the powers of presiding officers to keep order in polling stations.

**The Convener:** Annabel—do you wish to wind up?

**Annabel Goldie:** I have nothing more to say. I thank the Deputy First Minister for her support.

*Amendment 27 agreed to.*

**The Convener:** Amendment 28, in the name of the Deputy First Minister, is in a group on its own.

**Nicola Sturgeon:** Amendment 28 relates to attendance at counting of votes. It is obviously an important part of any election or referendum that the counting of votes be carried out transparently. Rule 29 of schedule 3 therefore sets out those who are entitled to attend the counting of votes. Counting officers need to notify interested parties of the timing and location of that count to allow them to attend.

Schedule 3, rule 29(2) provides that they should do that by publishing notice of the time and location of the count. Electoral administrators have expressed concerns that that might be taken to imply that they must post their public notice and that this could have implications for general management of the count. The committee subsequently raised that issue in its stage 1 report.

To address the concerns of the electoral administrators, and in line with my response to the stage 1 report, amendment 28 will amend rule 29(2) to make it clear that counting officers need notify only the chief counting officer, the referendum agents appointed for the local area and any counting agents appointed to attend the count. The amendment will bring the bill into line with existing electoral legislation, which does not require that notice of the count be posted publicly.

I move amendment 28.

*Amendment 28 agreed to.*

**The Convener:** Amendment 29, in the name of Annabel Goldie, is in a group on its own.

**Annabel Goldie:** Amendment 29 is a technical amendment. It concerns decisions on ballot papers, as provided for in schedule 3. The provision in schedule 3 at rule 33 simply states:

“The decision of the counting officer on any question arising in respect of a ballot paper is final.”

In fact, section 31 of the bill allows for challenge by judicial review. Amendment 29 would tie up a

loose end and provide coherence. The amendment provides that where there can be a challenge to the referendum result by way of judicial review, rule 33 would reflect the possibility of a challenge under section 31.

I move amendment 29.

**Nicola Sturgeon:** The bill states:

“The decision of the counting officer on any question arising in respect of a ballot paper is final.”

Amendment 29 in the name of Annabel Goldie would explicitly provide that the decision of a counting officer would nonetheless be subject to judicial review, if that decision were to affect the number of ballot papers counted or votes cast. Section 31 of the bill provides for judicial review; it is arguable that it is implicit that that provision already covers the decisions of counting officers on ballot papers.

However, Annabel Goldie’s remarks have persuaded me of the merits of amendment 29. I am, for the third time this morning, happy to support Annabel Goldie’s amendment in the interests of ensuring that the bill is absolutely clear.

**Annabel Goldie:** This experience is innovative and refreshing.

**Nicola Sturgeon:** It will probably not last. *[Laughter.]*

**The Convener:** Was that you winding up, Annabel?

**Annabel Goldie:** Indeed, it was.

*Amendment 29 agreed to.*

*Schedule 3, as amended, agreed to.*

*Section 10 agreed to.*

#### Schedule 4—Campaign rules

10:15

**The Convener:** Amendment 112, in the name of Lewis Macdonald, is grouped with amendments 113, 114 and 30.

**Lewis Macdonald:** It is in the nature of the referendum campaign that over the next few months, organisations will work together that would ordinarily work towards very different objectives. The political parties involved in the yes Scotland and the better together campaigns are obvious examples of that. It is also reasonable to expect that ad hoc organisations will be formed to advance an argument on one side or the other of the campaign that will dissolve once the referendum has passed. However, what would not be reasonable would be for political parties, the designated lead organisation on either side or,

indeed, anyone else to form an organisation on its initiative simply to allow spending and campaigning to be done outwith the limits imposed on the parent organisation by the bill’s terms. Such practice would clearly be contrary to the spirit of the legislation. The amendments in this group are intended simply to ensure that such practice would also be contrary to the law.

Our proposal is that no one should be able to register as a permitted participant who is already a director, an employee or a contractor of another such permitted participant and that no organisation should be recognised as a permitted participant if it is mainly run or funded by another such body or shares with that body its primary decision maker. Those restrictions would not prevent bodies from working together to a common plan, as the bill already provides for that. We will seek to strengthen and clarify that provision. The amendments seek to remove any temptation for campaigners either to increase their spending opportunities or to mislead voters about the breadth of their support by setting up bodies that have no independent existence but are registered as if they did.

The committee recognised those concerns at stage 1. I know that members took the general view that public scrutiny and the oversight of the Electoral Commission would help to ensure that any front organisations would not be set up at all or would be dissolved as soon as they were found out. However, I am not sure that experience elsewhere suggests that that will necessarily be the case, and public scrutiny and oversight might not be enough on their own. That is surely particularly true for a referendum on a profound constitutional change, because any penalties exacted after the event will certainly pale into insignificance compared with what is at stake for both sides.

When the referendum group no to AV gave its evidence at stage 1, it supported a general approach similar to that of the amendments. The group identified that the objective of the common plan provisions in the bill was to prevent the evasion of spending limits by the creation of what it called dummy organisations. It argued that it would be far easier and more effective for the Electoral Commission to prevent evasion if it were able to reject registration by such organisations than if it could only seek to detect them and penalise abuse after the event. For that reason, it recommended that that part of the bill should be amended, which is what we propose to do.

I move amendment 112.

**The Convener:** The Deputy First Minister will speak to amendment 30 and other amendments in the group.

**Nicola Sturgeon:** I acknowledge the intention behind Lewis Macdonald's amendment 112 and I have some sympathy for what he is trying to achieve with it, but I cannot support amendments 112, 113 and 114. I will outline my reasons for that, and then I will outline the reasoning behind my amendment 30.

The Edinburgh agreement confirmed that the regulations for the independence referendum campaign should be based, as far as possible, on existing United Kingdom legislation for elections and referendums. Amendments 112, 113 and 114 would depart from the Political Parties, Elections and Referendums Act 2000 regime in a way that I think is untested. For example, it is not clear what the consequences of the proposed changes would be, particularly around defining managerial responsibilities or decision making on behalf of the body. I am therefore concerned that the amendments could lead to unforeseen and unintended consequences. For those reasons, I ask the committee to reject Lewis Macdonald's amendments.

As I said, though, I have some sympathy with the intention behind the amendments. Although the committee has said that it is generally satisfied with the rules regarding campaigners working together, I acknowledge that some members have expressed concerns about the possibility of a campaigner or an individual setting up multiple campaigns that appear to be separate organisations but are in fact run by the same people, with the intention of circumventing spending limits. It is absolutely right that anybody who wishes to participate in the debate should be able to do so; indeed, they should be encouraged to do so. However, it is also important to have robust controls in place to ensure that campaigning activity is seen to be fair.

The bill already provides for circumstances in which campaigners are working to a common plan, to prevent campaigners from setting up separate organisations to increase their spending capability. I hope that Lewis Macdonald will be reassured to some extent by the Government's amendment 30, which will ensure that each registered campaigner has a different responsible person. That will make it harder for a single campaigner to try to circumvent spending limits by establishing multiple campaign groups.

Amendment 30 is based on a similar provision made in the enabling legislation for the referendum on the parliamentary voting system in 2011 and it has been recommended by the Electoral Commission.

With those remarks, I ask the committee to support amendment 30 and—albeit recognising the good intentions behind them—to reject amendments 112, 113 and 114.

**Tavish Scott (Shetland Islands) (LD):** I recognise the tone of the Deputy First Minister's remarks. I believe that Lewis Macdonald has come up with a decent stab at an issue that we dealt with quite extensively in committee evidence in the summer—I think that is a reasonable effort.

At that time, I expressed my concern about the court of public opinion, as it were, being the test as to how this issue would be scrutinised. If we are all objective about it—as Lewis Macdonald has indicated—in the aftermath of whatever happens next September, I suspect that that and the penalty regime that is envisaged in the legislation will be neither here nor there.

It appears to me that the balance of the argument supports some tightening of these rules and therefore of the law. I think that these amendments go some way towards addressing what we did, after all, tease out in evidence.

**Annabelle Ewing:** I take a different view. I recall well our discussions on the issue in earlier meetings. It is important to note that the Electoral Commission supports the provisions of the bill as drafted in this respect, which would serve to indicate that it does not support Mr Macdonald's amendments.

I recall that Mr Macdonald himself put forward a submission to the Scottish Government's consultation on the referendum in which he said that it should be for the Electoral Commission to set not only the limits on expenditure but the rules of conduct for the campaigns. I think that that is the way to proceed. I think that he was absolutely right in his earlier submission to the Scottish Government and therefore I do not quite see why he has changed his position on that.

I certainly welcome the Deputy First Minister's amendment 30, which would indeed make it harder to circumvent the rules. I therefore support amendment 30, but I cannot support Mr Macdonald's amendments.

**Patrick Harvie:** Can Lewis Macdonald, when he is winding up on this group, indicate whether this is the only approach to the issue that he considered or whether he thinks that there may be other ways in which the issue could be addressed? I am minded to reserve my judgment on the amendments that are in front of us, but I would welcome an indication as to whether Lewis Macdonald is open to variations on this theme as we move on.

**Annabel Goldie:** Initially, I thought that perhaps Mr Macdonald was being a little fussy, but then I am the epitome of fussiness, so I looked at the amendments more closely in the context of the schedule and I think that he has a point. I think that there is a little gap within the text and the phrasing of the schedule and I am minded to think

that these amendments help. I therefore propose to support the amendments.

**Lewis Macdonald:** I am grateful for the comments from the minister and from members and of course I welcome amendment 30 and I will support it. I see it as a step in the right direction. However, it is not an adequate step. That is why I lodged my amendments.

Annabelle Ewing rightly says that the general approach that my party colleagues and I have favoured is one in which the Electoral Commission should set the parameters within which the Parliament legislates. However, it is finally for the Parliament to legislate. The amendments strike the right balance because they are not punitive.

Patrick Harvie asked whether I had considered other approaches. I had suggested that this approach was the right one; the question was at which level a debar should be imposed. A debar at the level of 50 per cent seems to me to be a sensible compromise. Any organisation that is funded by more than 50 per cent is clearly not wholly independent.

It may be argued that an organisation funded at 40 per cent is not likely to be wholly independent either but, in recognition of the need to seek compromise and meet the views of colleagues around the table, 50 per cent struck me as a good point at which to pitch it.

The Deputy First Minister said that the proposed changes might have consequences in relation to defining managerial responsibilities or decision making. Such issues would be raised by any set of amendments in this territory. I would invite the Deputy First Minister and committee members to accept that these amendments take us forward.

However, if the Deputy First Minister, or indeed the Electoral Commission, have any points that they wish to clarify, there would be no difficulty in lodging amendments at stage 3. If these amendments are passed, I am sure that I and others would be open to discussion about how to refine them further in order to ensure that they achieve their objective and no more than their objective.

The issue of openness and transparency must be absolutely at the top of our agenda, as a committee and a Parliament. It is for that reason that I will press the amendments.

**The Convener:** The question is, that amendment 112 be agreed to. Are we agreed?

**Members:** No.

**The Convener:** There will be a division.

**For**

Goldie, Annabel (West Scotland) (Con)  
Macdonald, Lewis (North East Scotland) (Lab)

Scott, Tavish (Shetland Islands) (LD)  
Smith, Drew (Glasgow) (Lab)

**Against**

Crawford, Bruce (Stirling) (SNP)  
Ewing, Annabelle (Mid Scotland and Fife) (SNP)  
Fabiani, Linda (East Kilbride) (SNP)  
Gibson, Rob (Caithness, Sutherland and Ross) (SNP)  
Maxwell, Stewart (West Scotland) (SNP)  
McMillan, Stuart (West Scotland) (SNP)

**Abstentions**

Harvie, Patrick (Glasgow) (Green)

**The Convener:** The result of the division is: For 4, Against 6, Abstentions 1.

*Amendment 112 disagreed to.*

*Amendment 113 moved—[Lewis Macdonald].*

**The Convener:** The question is, that amendment 113 be agreed to. Are we agreed?

**Members:** No.

**The Convener:** There will be a division.

**For**

Goldie, Annabel (West Scotland) (Con)  
Macdonald, Lewis (North East Scotland) (Lab)  
Scott, Tavish (Shetland Islands) (LD)  
Smith, Drew (Glasgow) (Lab)

**Against**

Crawford, Bruce (Stirling) (SNP)  
Ewing, Annabelle (Mid Scotland and Fife) (SNP)  
Fabiani, Linda (East Kilbride) (SNP)  
Gibson, Rob (Caithness, Sutherland and Ross) (SNP)  
Maxwell, Stewart (West Scotland) (SNP)  
McMillan, Stuart (West Scotland) (SNP)

**Abstentions**

Harvie, Patrick (Glasgow) (Green)

**The Convener:** The result of the division is: For 4, Against 6, Abstentions 1.

*Amendment 113 disagreed to.*

*Amendment 114 moved—[Lewis Macdonald].*

**The Convener:** The question is, that amendment 114 be agreed to. Are we agreed?

**Members:** No.

**The Convener:** There will be a division.

**For**

Goldie, Annabel (West Scotland) (Con)  
Macdonald, Lewis (North East Scotland) (Lab)  
Scott, Tavish (Shetland Islands) (LD)  
Smith, Drew (Glasgow) (Lab)

**Against**

Crawford, Bruce (Stirling) (SNP)  
Ewing, Annabelle (Mid Scotland and Fife) (SNP)  
Fabiani, Linda (East Kilbride) (SNP)  
Gibson, Rob (Caithness, Sutherland and Ross) (SNP)  
Maxwell, Stewart (West Scotland) (SNP)  
McMillan, Stuart (West Scotland) (SNP)

### Abstentions

Harvie, Patrick (Glasgow) (Green)

**The Convener:** The result of the division is: For 4, Against 6, Abstentions 1.

*Amendment 114 disagreed to.*

*Amendment 30 moved—[Nicola Sturgeon]—and agreed to.*

10:30

**The Convener:** Amendment 31, in the name of the Deputy First Minister, is grouped with amendments 32 and 33.

**Nicola Sturgeon:** The timetable for designation of lead campaigners that is provided for in the bill is the same as the one that is set out in the Political Parties, Elections and Referendums Act 2000. It provides that applications for designation must be made within the first 28 days of the referendum period and that the Electoral Commission must make a decision within a further 14 days.

That means that it could be six weeks into the 16-week referendum period before the designated organisations are confirmed. Subject to parliamentary approval of the bill, there will of course be a longer period between the enactment of the bill and the start of the referendum period than has typically been the case for PPERA referendums.

In light of that and the fact that referendum campaigning is already well under way, the Electoral Commission has recommended that it would be beneficial to decouple the designation process from the start of the referendum period. In this case, we and the commission think that a minor adjustment to the PPERA approach is justified.

Bringing forward designation will provide earlier certainty to campaigners and voters about the identity of lead campaigners and enable lead campaigners to make effective use of the benefits that are available to them during the whole 16-week referendum period. The proposed approach might also help to facilitate collaboration between lead and other campaigners, to ensure that messages to voters are consistent, and it will give the Electoral Commission more time to consider alternative arrangements in the event that it is unable to designate for one or both outcomes.

I note that the committee agreed with the proposed approach in its stage 1 report. On the basis of our discussions with the Electoral Commission, the amendments in this group provide for designation to be confirmed around a month before the start of the referendum period. That will allow sufficient time for the benefits of

early designation to be realised, while avoiding potential risks associated with designating too far in advance of the referendum period.

The referendum will take place on 18 September, so applications for designation will have to be submitted between Thursday 20 March and Wednesday 16 April next year. The Electoral Commission will have to make its decision between Thursday 17 April and Friday 2 May.

I hope that the committee agrees that the amendments strike a reasonable balance.

I move amendment 31.

*Amendment 31 agreed to.*

*Amendments 32 and 33 moved—[Nicola Sturgeon]—and agreed to.*

**The Convener:** Amendment 34, in the name of the Deputy First Minister, is grouped with amendments 35 to 39.

**Nicola Sturgeon:** The amendments relate to the campaign rules on payment and return of referendum expenses.

Amendments 34 and 38 are minor technical amendments to the provisions on the payment of late claims in respect of referendum expenses, in line with the Electoral Commission's recommendations. As a result of amendment 34, it will be for the Electoral Commission to determine whether late claims may be paid without referring to any special reason. Amendment 38 will simplify the process for a permitted participant who has been granted leave to pay a late claim.

Amendments 35 to 37 relate to the Electoral Commission's power to appoint an auditor to report on referendum expenses in certain circumstances. The bill provides that where a permitted participant's referendum expenditure exceeds £250,000, an auditor's report must be provided with the expense return. Given the spending limits in the bill, the requirement will apply only to the three largest registered parties and to designated organisations.

The bill gives the commission power to appoint an auditor if it appears that the permitted participant has not done so within three months of the end of the referendum period. The commission suggested to us that the power should be removed, as it will not be able to confirm that an audit is needed until the expense return has been submitted. The power is not currently available to the commission under PPERA. Amendment 35, accordingly, will remove the power.

Where the commission is aware that an audit is required but has not been carried out, it may impose a compliance notice under paragraph 3(1)(b) of schedule 5, to require an audit to be undertaken. In addition, failure to deliver the audit

return will be an offence to which civil sanctions will apply, subject to the committee and the Parliament's approval of the relevant amendments.

Amendments 36 and 37 are consequential on amendment 35. They are minor amendments, which will bring provisions more closely in line with PPERA.

The bill provides that when a permitted participant submits the referendum expenses return, they must include a declaration confirming that all relevant donations received were from permissible donors, or if not, that donations were handled according to the provisions relating to impermissible donations.

On the Electoral Commission's recommendation, amendment 39 replaces the reference to "received" donations with a reference to donations that have been "accepted". The intended purpose of the declaration is to encourage permitted participants to pay particular attention to the accuracy of the return and confirm that accepted donations are indeed from permissible donors or, if it is discovered that an impermissible donation has been mistakenly accepted, that it has been handled correctly. That serves as a reminder to check the permissibility of donations declared as accepted. Given that these amendments are in line with Electoral Commission recommendations, I hope that the committee will feel able to support them.

I move amendment 34.

*Amendment 34 agreed to.*

**The Convener:** Amendment 115, in the name of Drew Smith, is grouped with amendment 116.

**Drew Smith:** Amendments 115 and 116 seek to make a reasonably simple change to the level of spend made by an individual or group that would trigger registration by replacing the current figure of £10,000 with £7,500.

There are two elements to these amendments. First, general evidence that the committee heard about the level of donations or spend that should trigger reporting or registration suggested, broadly speaking, that it is more transparent for lower amounts of money to trigger reporting or registration because it allows the public to see the origin of more of the money that is spent in a campaign.

That said, there is always a balance to be struck between transparency and practicality for campaign groups, and I do not intend to discourage donations or spending. After all, as the Deputy First Minister commented in speaking to a previous group of amendments, people have the right to campaign and, as we recognise, the public's requirement for information costs money.

In reducing the level at which spend should trigger registration, I am seeking to aid transparency without creating a requirement that would discourage spend or prove too onerous for campaign administrators.

If we agree that a lower trigger point aids transparency but that that trigger point should not be so low that it becomes administratively cumbersome, the question, then, is what the figure should be. Making £7,500 the new level at which spend should trigger registration is a good and logical proposal, given that the bill already reflects electoral law elsewhere by providing that campaign donations of £7,500 should be declared. If the view is that the public should be made aware of when a campaign benefits from a £7,500 donation, I find it somewhat anomalous that spending the same amount of money is not subject to the same transparency. Put simply, if donating £7,500 to someone else triggers transparency provisions, spending £7,500 should do the same.

I move amendment 115.

**Stuart McMillan (West Scotland) (SNP):** On Drew Smith's point about striking a balance with regard to transparency, the committee comments on this issue in paragraph 2 on page 34 of its stage 1 report and agrees with the Electoral Commission's recommendation of £10,000 as the limit. In paragraph 1.8 of its advice note on spending limits for the referendum, the commission recommends

"a spending threshold for registration as a campaigner of £10,000."

The committee has simply taken the commission's advice that £10,000 is a legitimate amount of money in this respect.

With regard to Drew Smith's comment that lowering the threshold to £7,500 would not result in a cumbersome administrative burden, I believe that it would create an additional layer of bureaucracy for smaller organisations that want to participate in the referendum.

For those reasons, I am not minded to support a reduction in the limit to £7,500.

**The Convener:** I would like to say a couple of words on this particular issue. Throughout the process, we have used the Electoral Commission as a guide and a starting point for how the committee acts. Unless something significant comes along, we should not unpick what the Electoral Commission is doing—otherwise, in effect, we would be cherry picking elements of the Electoral Commission's advice to us in a way that was never expected at the beginning of the process.

All parties accepted the advice provided by the Electoral Commission at the beginning of the process. Indeed, all parties encouraged one another to do exactly that. It would be difficult to start cherry picking at this stage, unpicking the rules on which elements of the Electoral Commission's advice we can and cannot support, especially given the evidence that has been taken.

**Patrick Harvie:** On the general point about accepting the Electoral Commission's recommendations, it seems to me that increasing the reporting threshold would fly in the face of the Electoral Commission's recommendation about a reporting threshold, whereas reducing it would do the opposite and would come within what has been recommended. I am, therefore, minded to support amendment 115 unless I hear a compelling case against it from the Deputy First Minister.

**Tavish Scott:** Convener, I was not going to say anything until you made that impassioned defence of the Electoral Commission. I take your point, up to a point, that legislators have a responsibility to assess the arguments that have been made by an independent body and, as Stuart McMillan said, to reflect on the evidence that has been provided. However, Drew Smith has made a reasoned argument—which Patrick Harvie has extended—for our ability, as legislators, to make an assessment of that evidence.

I take your point about cherry picking, convener, but I think that it is reasonable for legislators to say that there is a consistency argument and to apply that. It would be difficult for the Electoral Commission to argue against the consistency argument, particularly in the context of Patrick Harvie's remarks.

**Lewis Macdonald:** Earlier we debated postal and proxy voting, and the Scottish Government and the majority of the committee chose to take a different approach to postal and proxy voting from the recommendations of the Electoral Commission. That was entirely legitimate, and it seems entirely legitimate now to do as Patrick Harvie says, which is to implement the wishes of the Electoral Commission—only more so—and accept that an inconsistency has been exposed, which Drew Smith has articulated clearly. Drew Smith's amendments would allow us to address that inconsistency.

**Stewart Maxwell:** I accept what Drew Smith says. There is always a question of balance in these things, and we could argue about the figures. On Lewis Macdonald's point about departing from the Electoral Commission's recommendations, throughout the process we have been very careful to ensure that, when we have departed from the Electoral Commission's

recommendations, it has been for very good reasons. That is the important point.

In relation to the recommended figure of £10,000, I seek clarification of something—perhaps the Deputy First Minister can provide it, or Drew Smith when he responds to the debate. My recollection is that the PPERA rules say that the figure should be £10,000. Is that the case? I wonder whether any member can clarify that. If so, the proposal would represent another departure. We would need a very good reason for departing from both the Electoral Commission's recommendation and the PPERA rules, which I suggest that we do not have at this stage.

**Annabel Goldie:** We all acknowledge that the Electoral Commission's role in all of this is pivotal. Its general role is one of providing advice and protecting the public interest, and the two amendments propose a tightening of the public interest and making more specific what that protection is. As has been pointed out in support of the amendments, they would also achieve consistency in the bill.

Intellectually, I cannot see why, if a certain figure for a donation to one of the campaign groupings is considered appropriate for reporting requirements, that should not apply to the activity of an individual. There is a compelling logic that it should.

I do not think that agreeing to the amendments in any way impugns the Electoral Commission. The commission put forward a figure, but we are the politicians and, if there is an inconsistency in the bill, we make a judgment whether or not to address it. I am attracted to addressing the inconsistency. To address it is not prejudicial, dangerous or risky; it is helpful.

10:45

**Nicola Sturgeon:** I find the amendments and the debate that we have just had a little bit ironic. I am sure that members will recall with great clarity that, when the Government first issued a bill for consultation, we proposed a threshold of £5,000 for registration as a campaigner, but the commission then published its recommendations on spending limits, in which it considered that that threshold was too low. It specifically recommended a threshold of £10,000. With the greatest respect to Patrick Harvie, I am not sure that he is right to say that moving downwards as opposed to upwards would be staying within the spirit of the Electoral Commission's recommendations. The commission deemed the initial recommendation of the Scottish Government—albeit it was lower than £7,500—to be too low.

The irony that I find in this discussion comes from the fact that, before the Electoral Commission published its recommendations, I was told in no uncertain terms by Drew Smith's party, as I clearly recall, that any departure on the part of the Scottish Government from the Electoral Commission's recommendations—specifically on spending limits, I seem to recall—would be completely unacceptable and outrageous. Of course, the Scottish Government did not depart from the Electoral Commission's recommendations—we accepted them in full, and they are reflected in full in the bill.

The commission stated that, based on evidence from previous elections and referendums, and in light of the commission's recommended maximum spending limits for different types of campaigners, it could see no reason for departing from the PPERA registration threshold. This is an important point to make. If we were to pass the amendments in this group, we would not just be departing from the Electoral Commission's recommendations; Stewart Maxwell is absolutely right: we would be departing from the thresholds that are laid down for other referendums in PPERA.

I would strongly argue that, far from addressing an inconsistency, which some members have suggested the amendments would do, we would be creating an inconsistency with the rules that are in place for other referendums. Having been encouraged in the strongest possible terms and having taken the decision to accept the Electoral Commission's recommendations—and having started from a much lower point than the figure proposed in Drew Smith's amendments—it would be rather strange for us, at this point and in the absence of any good argument, to go against PPERA and to go against the Electoral Commission.

A lower threshold would create a larger administrative burden for smaller, local campaigners, which it is important to avoid. A £10,000 threshold will allow us to ensure robust expenditure controls, while reducing the risk of inadvertent non-compliance and therefore helping voters to engage with the debate without unnecessary barriers.

For all those reasons, including my desire at all times to follow the advice of the Opposition, to stay consistent and to follow the advice of the Electoral Commission, I ask members to reject Drew Smith's amendments 115 and 116.

**Drew Smith:** I am always happy to surprise the Deputy First Minister with an attempt at compromise.

Based on the debate that we have had, I do not think that the argument about departure from the Electoral Commission's recommendations flies,

but there is an illogicality in saying that if someone provides £7,500 to another organisation—Better Together, Yes Scotland or whomever—the public needs to know that they have done that because they are influencing the debate and there is a need for transparency around that, whereas if the person sets up their own campaign and spends the same amount of money themselves, that is absolutely fine. That is the inconsistency that the amendments address.

I do not think that there was any disagreement in the discussion that, in general terms, reducing the level of spend at which registration would be required promotes transparency, and I do not feel that a clear argument was made as to why £7,500, as opposed to £10,000, would be administratively onerous on any of the campaigns. I therefore press amendment 115.

**The Convener:** The question is, that amendment 115 be agreed to. Are we agreed?

**Members:** No.

**The Convener:** There will be a division.

**For**

Goldie, Annabel (West Scotland) (Con)  
Harvie, Patrick (Glasgow) (Green)  
Macdonald, Lewis (North East Scotland) (Lab)  
Scott, Tavish (Shetland Islands) (LD)  
Smith, Drew (Glasgow) (Lab)

**Against**

Crawford, Bruce (Stirling) (SNP)  
Ewing, Annabelle (Mid Scotland and Fife) (SNP)  
Fabiani, Linda (East Kilbride) (SNP)  
Gibson, Rob (Caithness, Sutherland and Ross) (SNP)  
Maxwell, Stewart (West Scotland) (SNP)  
McMillan, Stuart (West Scotland) (SNP)

**The Convener:** The result of the division is: For 5, Against 6, Abstentions 0.

*Amendment 115 disagreed to.*

**The Convener:** Amendment 1, in the name of Patrick Harvie, is grouped with amendment 2.

**Patrick Harvie:** Amendments 1 and 2 relate to some of the arguments that we have heard in debates on other groups around the possibility of common plans and co-operation between groups, and the fear or concern that that could be used as a tactic to circumvent spending limits. That was debated in the chamber at stage 1, when I had an exchange with James Kelly, trying to make the argument that that concern should in some way be sharper for small bodies than for large ones, particularly the designated organisations.

Paragraph 19 of schedule 4 is not about the spending limits. It is about how expenses are declared when they are part of a common plan. In particular, paragraph 19(2) of schedule 4 requires that, where there is a common plan involving small organisations—which is my concern in this case—

expenses have to be declared as having been incurred by both individuals or bodies, although in fact they will have been spent only once.

I can see why there is a case in favour of that, but my concern is that small organisations or individuals may find themselves breaching a reporting threshold and committing an offence inadvertently, not because they have in fact spent more money than they were supposed to but because they have been involved in a common plan and had a reporting requirement that they may not have been aware of. If an individual, a small community group or a small political party that is not given its own spending limit in the legislation were to spend a small amount of money on, for example, running a website or a series of public meetings, and if a larger organisation that was expecting to breach the £10,000 threshold were to publicise that website or those public meetings and spend large amounts of money on a postal campaign or paid advertising campaign, the individual or small organisation could be required to declare, perhaps very late on in the campaign, spending that it had never intended to incur and had not in fact incurred but which it was expected to report as if it had—as if the money had been spent twice.

Amendment 1 removes the reference to paragraph 17 in paragraph 19(2) of schedule 4, so it removes the possibility that a small organisation or individual in that situation would be committing an offence.

Amendment 2 says that paragraph 19 of schedule 4 would then apply where any of the individuals or bodies involved in the arrangement was a permitted participant, so that removes the application of that provision to those who do not intend to breach, or do not have any realistic expectation of breaching, the £10,000 threshold.

There may be good arguments against the amendments, but even if there are, I would ask the Deputy First Minister, in responding, to reflect on the situation that I am describing. We still do not yet know the definition of or rules for a common plan or what counts as a common plan. What is the situation of an individual or a very small organisation that finds itself, perhaps at the last minute, expected to report as though it had spent a large amount of money that was actually spent by somebody else, if it finds that it has broken the law entirely unintentionally, not by spending more money than it was supposed to but by incurring a requirement to report it as if it had?

I move amendment 1.

**Stewart Maxwell:** I have a question for Patrick Harvie. He makes an interesting point, but I am slightly puzzled by his definition of what is small. He mentioned an individual, a small community

group and, I think, a small political party. That is quite a range for the definition of small. Perhaps when he sums up, he could define what he means by small, as that is important to the amendments.

**Lewis Macdonald:** My concern is not with Patrick Harvie's intention, which I hear clearly; it is that the real dichotomy is not between large organisations and small ones but between registered participants and unregistered participants. Experience elsewhere suggests that, if participants who are not registered can play a large role in a referendum campaign, they can have a large influence on the outcome even if, technically, they are small organisations. That comes back to the discussions that we have had this morning about the importance of transparency on who spends what and on whose behalf.

I understand what Patrick Harvie is seeking to achieve but, although his amendments would apparently assist small organisations, as he puts it, the effect would actually be to enable what we might call large organisations or permitted participants to use non-registered participants more easily as a channel for spending money. I know that that is not Patrick Harvie's intention, but the concern is that the provisions might be open to abuse in that way. Therefore, on those grounds, I am not inclined to support his amendments.

**Nicola Sturgeon:** Like other members, I have a lot of sympathy with the principles and intentions that underpin Patrick Harvie's amendments. The campaign regulations in the bill are designed to ensure, on the one hand, that expenditure controls are fair and transparent and command the confidence of both sides of the debate, and, on the other, that they are not overly burdensome to smaller campaigners who intend to spend only a small amount of money or who will make only a small contribution to the work of another campaigner. We have tried to strike the right balance on that, but it is not completely easy.

We are talking about pretty complex provisions, so we need to be careful not to make piecemeal changes that could have unintended consequences. I absolutely accept that the amendments would act to prevent an individual or small community group from inadvertently breaching reporting regulations, but Lewis Macdonald is absolutely right that, at the other end of the spectrum, there is a danger that the amendments would open up a loophole for, and would almost encourage, an organisation that would otherwise campaign and report as a registered permitted participant to campaign instead as a group of individuals or smaller organisations, all of which could stay under the limit and therefore not be obliged to register or report, even though the totality of the campaigning

influence would be exactly the same as that of a bigger organisation.

I hope to recommend a compromise, because I recognise that there is perhaps more work to be done on the issue. My officials will meet the Electoral Commission tomorrow to discuss how common plans will be handled in the commission's guidance and to try to ensure that the bill achieves the policy intention in a way that is clear and practicable and avoids unintended consequences. I am happy for Patrick Harvie's amendments to form part of that discussion. I can then report back to Patrick Harvie and to the committee on the outcome of those discussions ahead of stage 3, to allow him to make an informed decision on whether to resubmit the amendments at stage 3 or to agree on other amendments that would meet the principles and intentions in a better way.

I ask Patrick Harvie to seek to withdraw amendment 1 and not to press amendment 2, to allow for that further discussion, so that we can either be collectively satisfied that the commission's guidance will deal with the issues or have amendments at stage 3.

**Patrick Harvie:** I thank members for the debate. I recognise that there is a tricky balance to strike between, on the one hand, not overburdening people and placing them in a position in which they might inadvertently and entirely innocently commit an offence, perhaps even without knowing it, and, on the other hand, preventing genuine attempts to subvert the rules or find workarounds.

On what is small, the effect of the amendments is the spending threshold that is in paragraph 17. I have not attempted to define "small" in any other way.

11:00

Stewart Maxwell talked about the reference that I made to political parties. There are some very small political parties that spend a few tens or hundreds of pounds a year, unlike the range of small to large parties that exist in the Parliament. Some very small political parties will also want to campaign, and I am still concerned that some organisations of that scale might find themselves being required to report expenditure that they did not make themselves but which was made by a larger organisation that can be expected to know what the rules are and to have to register and report as a permitted participant.

I am not asking for unregistered organisations to play a larger role or to be allowed to spend more money. It is simply a question about what the reporting requirements are. Having said that, I am grateful to the Deputy First Minister for indicating that there is some scope to discuss the matter further. It may be that amendments 1 and 2 are

not the best way of addressing the issue. I hope that another way of addressing it can be found.

*Amendment 1, by agreement, withdrawn.*

*Amendments 2 and 116 not moved.*

*Amendments 35 to 39 moved—[Nicola Sturgeon]—and agreed to.*

**The Convener:** That ends proceedings for today. As previously agreed, we will come back to stage 2 next week. Members are, of course, entitled to lodge further stage 2 amendments on any parts of the bill not dealt with today. The deadline for lodging such amendments is 12 noon on Monday 7 October.

The next meeting is scheduled for Thursday 10 October, when the committee will consider the bill again at stage 2.

I thank the Deputy First Minister, her officials and members of the committee for attending today.

*Meeting closed at 11:02.*

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