



The Scottish Parliament  
Pàrlamaid na h-Alba

## Official Report

# REFERENDUM (SCOTLAND) BILL COMMITTEE

Thursday 10 October 2013

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**REFERENDUM (SCOTLAND) BILL COMMITTEE  
22<sup>nd</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:**

Liam McArthur MSP (Scottish Parliamentary Corporate Body)

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

**CLERK TO THE COMMITTEE**

Andrew Mylne

**LOCATION**

Committee Room 2



## Scottish Parliament

### Referendum (Scotland) Bill Committee

*Thursday 10 October 2013*

[The Convener *opened the meeting at 10:00*]

### Scottish Independence Referendum Bill: Stage 2

**The Convener (Bruce Crawford):** Good morning everyone and welcome to the committee's 22nd meeting in 2013—I was quite surprised when I read that number this morning. No apologies have been received.

Our only item of business is day 2 of stage 2 consideration of the Scottish Independence Referendum Bill. I welcome the Deputy First Minister, Nicola Sturgeon, and her officials. I also welcome Liam McArthur. I ask members to ensure that they have before them the bill as introduced, the second marshalled list of amendments and the second list of groupings. My aim is to conclude stage 2 today, so let us get on with proceedings.

#### Schedule 4—Campaign rules

**The Convener:** Amendment 3, in the name of Patrick Harvie, is grouped with amendment 121. I ask Patrick Harvie to move amendment 3 and to speak to both amendments in the group.

**Patrick Harvie (Glasgow) (Green):** At the tail-end of our stage 1 consideration and during the stage 1 debate it became clear that the slight overlap between purdah and the parliamentary term could give rise to some unfortunate consequences. It is perhaps regrettable that we are in the position of having to find a workaround for that situation, to which various solutions have been put forward.

Whereas the original amendment from the Scottish Parliamentary Corporate Body suggested simply removing the reference to the SPCB from paragraph 25(2) of schedule 4 to the bill, my amendment 3 seeks simply to exempt aspects of the corporate body's publications—that is, the *Official Report* and the *Business Bulletin*—that refer to the business or meetings of the Parliament, which may or may not be scheduled to happen during the short period of overlap. The new amendment—amendment 121—that Liam McArthur has lodged on behalf of the corporate body takes a similar approach.

I guess that the question is simply whether we go with my amendment 3, which was drafted in my office—not exactly on the back of a fag packet but

without the assistance of the corporate body's no doubt excellent lawyers—or with amendment 121. The committee may be minded to go with Liam McArthur's amendment 121, but I will move my amendment so that we can have the debate.

I move amendment 3.

**Liam McArthur MSP (Scottish Parliamentary Corporate Body):** Patrick Harvie has already set the scene and the background. I am here on behalf of the corporate body, following a formal decision by the corporate body. I will set out for the record the basis for the amendment that has been lodged. As Patrick Harvie said, amendment 121 is a second stab at the issue and follows a similar approach to Patrick Harvie's amendment 3, although it perhaps covers the issue a little more comprehensively.

Paragraph 25 of schedule 4 to the bill refers to restrictions on publication by public bodies. "Publication" is defined very broadly:

"publish" means make available to the public at large, or any section of the public, in whatever form and by whatever means".

The provision thus has broad application and the SPCB believes that it would prohibit a range of normal parliamentary activities within the 28-day purdah period.

As Patrick Harvie mentioned, there will be a slight overlap between the start of purdah on 21 August 2014 and the end of term on 23 August 2014. I know that the committee has already noted that point, and the corporate body is grateful that it has been flagged up. Perhaps more substantively, paragraph 25 would prevent members from lodging motions, amendments and parliamentary questions dealing with

"any of the issues raised by the referendum question".

The prohibition would in effect preclude any statement that any devolved policy area would be better or worse in an independent Scotland.

The provisions would also prevent the publication of the *Official Report* of parliamentary proceedings in written form and on the website. That would affect not only any plenary proceedings that take place the day before the start of purdah, but potentially committee proceedings that took place up to a week beforehand. The broadcasting of proceedings live and on the website would also be affected.

Publication of the *Business Bulletin* would be similarly prohibited, as would other parliamentary services such as dealing with inquiries from the public via our public information and social media outlets. Although we do not expect many committee reports to be published during that time, some reports on Scottish statutory instruments could be due to be published after the

start of the 28-day period and could therefore be caught by the existing provision.

Restrictions could also have an impact on other parliamentary activities. The Parliament has a unique function in Scottish public life and will attract worldwide attention in the run-up to the referendum. It may therefore wish to offer the facilities to host debates, discussions and other events relevant to the referendum during the 28-day period. That could be prohibited under the bill's terms, given the wide interpretation given to the meaning of publication. Depending on how far the concept of publication by the Parliament stretches, members also might not be able to engage in media activities within the parliamentary campus during the 28-day period.

We have had discussions with the Scottish Government about the SPCB amendment and fully understand and agree with the objectives of schedule 4 as they apply to public bodies. However, the SPCB is of the opinion that the references to the SPCB in paragraphs 25 and 26 are appropriate to neither the factual reporting of parliamentary proceedings nor wider parliamentary functions.

We wish to give a very specific assurance: it is the Parliament's function to act impartially at all times and we have the track record to prove that we have the robust rules, procedures and policies to uphold that. It almost goes without saying that the SPCB will be especially vigilant to maintain that record before and during the 28-day period, having due regard to the constitutional debate that will go on in the run-up to the vote.

I will move my amendment 121 and I hope that the committee will support it in preference to Patrick Harvie's amendment 3.

**The Convener:** Thank you. Does anyone else wish to contribute?

**Linda Fabiani (East Kilbride) (SNP):** I would like to add a couple of words as a fellow member of the corporate body. My starting point is the Edinburgh agreement, which was the result of work by Nicola Sturgeon and, of course, Michael Moore, then the Secretary of State for Scotland. That work was carried out with mutual respect, which has in some way underpinned the way in which we have been able to work in this committee: with mutual respect across parties and political views. It has been worth while.

The Scottish Parliamentary Corporate Body also works with mutual respect—despite political differences—with the wellbeing of the Parliament and the Parliament's reputation at its core. That comes from the Presiding Officer at the top, the members of the SPCB—me and Liam McArthur, and also Mary Scanlon and David Stewart—and, of course, the senior staff, who give us very good

advice. So I am able to back everything that Liam McArthur has said about the Parliament's function to act impartially at all times and I believe that we have the robust rules, procedures and policies that will uphold that. I am very happy to support in full the SPCB amendment, to which I was party.

**Lewis Macdonald (North East Scotland)**

**(Lab):** I would be interested to hear from Liam McArthur about a procedural point, if you like, about the purdah period and how the corporate body would proceed. He mentioned that in the nature of things the corporate body would be minded to authorise events in the Parliament that will respect both the mutual respect that has been referred to and the normal policies and procedures. Will the corporate body meet during purdah or will members maintain contact through correspondence? Clearly, everyone will be very busy in that period, one way or another, and the corporate body's ability to deal with any issues that arise will be important in light of the exemption that is offered in amendment 121.

**The Convener:** I will make a few comments before I come back to you, Mr McArthur. Your introduction covered all the issues and, importantly, the technical aspects. You put your case across well. However, your most important point was your assurance on behalf of the corporate body because, at the end of the day, the issue is about trust and whether we have mutual respect across the chamber about how we will operate within the confines of the referendum purdah period. That assurance from the corporate body is pretty essential. I was one of the first to raise the issue in the chamber during the stage 1 debate; I suggested that we take the SPCB out of coverage and I think that amendment 121 will do that.

I come back to the issue of trust. It is hugely important that Liam McArthur and Linda Fabiani have put their comments on that on the record, because we must all respect that point all the way through the process.

If no one else wants to comment, I will let the Deputy First Minister come in. First, though, because a question has been asked of Liam McArthur, I will ask him to answer it. As his amendment is not the lead amendment in the group, he would not normally have an opportunity to come back in but, unusually, I will let him answer it. I will not make a habit of this. In any case, it is the last day of stage 2, so I cannot.

**Liam McArthur:** I will make my historic intervention, then. [*Laughter.*]

I could not agree with you more, convener, on your point about trust. However, I believe that we have procedures and standing orders in place that should offer reassurance. I can probably do no

better than echo Linda Fabiani's point about the way in which the corporate body approaches such issues.

On Lewis Macdonald's question about what will happen during purdah, my understanding is that no decisions have yet been taken on whether there will be meetings, but it is standard procedure for the corporate body, when it is not meeting, to deal with issues by correspondence if necessary. If issues arose and it was not possible to get diaries to coincide to enable a meeting, there is no reason at all why they could not be dealt with by correspondence and within fairly tight timeframes.

**The Deputy First Minister and Cabinet Secretary for Infrastructure, Investment and Cities (Nicola Sturgeon):** With your permission, convener, I will take a few moments to put the Government's position on the issue on the record. The bill, as we introduced it to the Parliament, contains provisions that are firmly based on the Political Parties, Elections and Referendums Act 2000 to restrict the publication of certain material by the Government or other public bodies in Scotland during the 28-day period prior to the referendum. As we have heard, paragraph 25 in schedule 4 to the bill specifically identifies the Scottish Parliamentary Corporate Body as one of the publicly funded bodies that are covered by the restrictions.

The restrictions that are imposed by paragraph 25 are deliberately designed to prevent any suggestion that public money or public officials are involved in campaigning for a particular outcome in the referendum, so there is good reason for the provisions. Similar restrictions were imposed on the Welsh Assembly and the Westminster Parliament in 2011 in the run-up to the Welsh and alternative vote referendums.

That said, we recognise the concerns that the corporate body and others have expressed about the effect that the restrictions might have on the Parliament. I specifically recognise that the particular circumstances of the independence referendum make it unlike other recent referendums. The interest across Scotland and beyond will be intense. Liam McArthur has explained fully that, if the bill is not amended, the restrictions on the Scottish Parliament would be significantly more onerous than those faced in Cardiff or Westminster in 2011. Having listened to Liam McArthur, I understand the rationale for the amendment that has been lodged on behalf of the SPCB.

The amendment will exempt specified material that is published by or under the auspices of the SPCB from the restrictions that are imposed on publication during the 28-day period. It will also exempt anything that is published that relates to

"any meeting, debate, discussion or other ... event authorised by the SPCB ... in accordance with the SPCB's rules and policies".

It is fair to say that the Government and I have had concerns about removing the statutory restrictions, but I am reassured by the comments that have been made on behalf of the SPCB. Our concern has very much been to understand how the corporate body and the Parliament as a whole will operate in practice during the 28-day period before the referendum. I think that we all agree that it is important that the Parliament has, and is seen to have, strict rules in place to govern procedures and practices. Although all of us as politicians will have rigorous and I am sure at times heated debate, it is vital that the Parliament and the corporate body are seen to be, and are, totally impartial. Obviously, the rules will be particularly important in the run-up to the referendum.

I am particularly reassured by Liam McArthur's comments about impartiality. I agree with the convener that that is the most important point that we have to ensure comes out of the debate. It is also important that the rules, procedures and policies of the Parliament are kept under review between now and next September, not least to ensure that nothing is done that might promote or support the promotion of any material that could be perceived to be one-sided during the 28-day period. In that regard, it will be enormously helpful that the Parliament has agreed recess arrangements that will avoid it sitting for all but two days of the so-called purdah period. However, it is also important that those who schedule business in the Parliament in the last days before recess take account of restrictions on Government activity. Even if we agree the amendments in relation to the Parliament, the Government will still be covered by restrictions about what it can and cannot do, which will have implications for the ability to debate certain matters in the Parliament.

10:15

On the basis that the SPCB will continue to operate in a totally impartial manner—Liam McArthur was right to say that it has a track record of so doing—and that any use of the Parliament's facilities to host events in the 28-day period will adhere strictly to the SPCB's rules and policies, I am happy to support Liam McArthur's amendment 121. However, I ask Patrick Harvie to consider withdrawing his amendment 3, because I think that what it proposes is covered more comprehensively by Liam McArthur's amendment.

**The Convener:** Thank you, Deputy First Minister. We now go to Patrick Harvie to wind up.

**Patrick Harvie:** I echo the comments that others have made about impartiality and trust. It is

crucial that both of those are offered and accepted, so it is good that we have had that tone.

I thought that it was slight overkill to remove the SPCB from the bill entirely. My amendment was an attempt to introduce something a wee bit more specific, but perhaps Liam McArthur's amendment 121 will do that more successfully. I am very glad that there is broad support, including from the Government, for the amendment. I therefore ask permission to withdraw amendment 3.

*Amendment 3, by agreement, withdrawn.*

*Amendment 121 moved—[Liam McArthur]—and agreed to.*

**The Convener:** Amendment 42, in the name of Nicola Sturgeon, is grouped with amendments 43, 117, 45, 46 and 118.

**Nicola Sturgeon:** To give voters as much information as possible about how campaigners are funded, the bill requires all permitted participants to provide regular reports to the Electoral Commission, ahead of the poll, on any donations and loans received. In its stage 1 report, the committee asked the Government to consider whether there should be greater public access to information about donations during the referendum campaign in the interests of transparency. To that end, amendments 42, 43, 45 and 46 will extend the scope of the first pre-poll reports on donations and loans to include any donations and loans that are received before the referendum period but that are to be used to meet referendum expenses during the referendum period. That approach, which we have discussed with the Electoral Commission, will help to give voters a more accurate picture of the sources of campaigners' funding, given that the majority of fundraising will have taken place in the months preceding the referendum period.

Amendments 117 and 118 will make amendments in support of that policy and will require the campaigner to provide a declaration confirming the accuracy of the report, and they will place an explicit duty on the Electoral Commission to publish the reports as soon as is reasonably practicable.

I move amendment 42.

*Amendment 42 agreed to.*

*Amendments 43, 117, 45, 46, 118 moved—[Nicola Sturgeon]—and agreed to.*

*Schedule 4, as amended, agreed to.*

### **Section 11—Monitoring and securing compliance with the campaign rules**

**The Convener:** Amendment 48 is grouped with amendments 49, 53 to 96, 98, 101 to 104 and 119.

**Nicola Sturgeon:** The bill gives the Electoral Commission responsibility for monitoring and ensuring compliance with the regulations that apply to referendum campaigners. To do that, the Electoral Commission must have at its disposal the tools necessary to investigate any alleged breaches of the campaign rules and to sanction those who are suspected of committing a campaign offence or failing to comply with a requirement of the campaign rules. This is a vital element in promoting public confidence in the fairness and transparency of the referendum campaign.

Schedule 6 provides for the civil sanction regime that will underpin the commission's regulatory role, including a delegated power to make supplementary provision about the application of those sanctions. In my responses to the committee's stage 1 report and the report of the Delegated Powers and Law Reform Committee, I confirmed that, in order to provide earlier certainty about the civil sanctions, the Government would lodge amendments to set out the additional detail in the bill, instead of through a later supplementary order.

These amendments fulfil that commitment. In line with the Edinburgh agreement, we have sought to replicate the equivalent regime under the Political Parties, Elections and Referendums (Civil Sanctions) Order 2010. Some minor changes have been made to ensure consistency with the rest of the bill and reflect the Scottish context, such as setting the maximum amount of variable or non-compliance penalties in line with the Scottish statutory maximum. The majority of the amendments in this group set out further details about how the civil sanctions should work in practice, while others are minor technical and drafting amendments consequential on the fact that the provisions will no longer be prescribed by order.

I move amendment 48.

*Amendment 48 agreed to.*

*Amendment 49 moved—[Nicola Sturgeon]—and agreed to.*

*Section 11, as amended, agreed to.*

### **Schedule 5—Campaign rules: investigatory powers of the Electoral Commission**

**The Convener:** Amendment 50, in the name of the Deputy First Minister, is grouped with amendments 51, 52, 97, 99 and 100.

**Nicola Sturgeon:** As part of its regulatory role in the referendum, the Electoral Commission will have a range of investigatory and sanctioning powers to enable it to monitor and ensure compliance with the campaign rules. The bill

requires the commission to prepare and publish guidance about how it intends to use these powers, but the commission has pointed out to us that it has published similar guidance on its equivalent powers under PPERA that could reasonably be used for the referendum. Producing new guidance would therefore be an unnecessary duplication of work.

Amendments 50 and 97 seek to remove the obligation on the commission to produce new guidance and instead to apply the PPERA guidance to the relevant powers under the bill. The amendments also permit the commission to publish additional guidance on any aspects of its referendum role that it feels would benefit from further explanation.

Section 24 requires the Electoral Commission to prepare and publish a report on the conduct of the referendum that must include information relating to the commission's functions under the bill, including, by virtue of schedules 5 and 6, its role in relation to campaign regulation. The majority of the enforcement work undertaken by the commission will take place after receipt of spending and donation reports and in response to any concerns raised about published information. As that could be some time after the referendum, the commission's report to the Parliament could be delayed under section 24.

Amendments 51, 52, 99 and 100 seek to enable the commission to report on the use of its investigatory and sanctioning powers in the section 24 report as far as possible in the time allowed but give it the option to produce a separate follow-up report on the use of these powers and sanctions to cover anything that has not already been reported.

I move amendment 50.

*Amendment 50 agreed to.*

*Amendments 51 and 52 moved—[Nicola Sturgeon]—and agreed to.*

*Schedule 5, as amended, agreed to.*

#### **Schedule 6—Campaign rules: civil sanctions**

*Amendments 53 to 104 and 119 moved—[Nicola Sturgeon]—and agreed to.*

*Schedule 6, as amended, agreed to.*

*Sections 12 to 15 agreed to.*

#### **Section 16—Referendum agents**

*Amendment 106 moved—[Nicola Sturgeon]—and agreed to.*

*Section 16, as amended, agreed to.*

*Sections 17 to 20 agreed to.*

#### **After section 20**

**The Convener:** Amendment 110, in the name of Annabelle Ewing, is in a group on its own. I ask Annabelle Ewing to move and speak to amendment 110 and other amendments—in fact, there are no other amendments in the group, so just speak to your one.

**Annabelle Ewing (Mid Scotland and Fife) (SNP):** Thank you, convener. I was getting a wee bit worried that there was another amendment that I did not know about, but it does not exist.

The bill contains provisions at sections 17 to 20 relating to observers at the referendum, although as it stands there is no provision in the bill to require the Electoral Commission to prepare and publish a code of practice for observers. Indeed, we noted that gap in our stage 1 report and also noted that PPERA

“required the Commission to prepare and publish a code of practice for observers at elections, but this requirement only applied to referendums if provided for in the”

specific

“referendum legislation.”

There is no automatic application in this case, and the Electoral Commission recommended amending the bill to provide for a statutory code of practice in the context of the referendum, as this would demonstrate

“a clear commitment to transparency by facilitating international scrutiny of a country's electoral processes.”

In our stage 1 report, we welcomed the Electoral Commission's recommendations.

Amendment 110 would insert a new section into the bill after the current section 20, based on the relevant provisions of PPERA, to ensure a consistent approach. The new section would require the Electoral Commission to prepare and publish a code of practice for observers at the referendum. The amendment sets out what the code should cover and to whom it should apply. Observers are defined as

“representatives of the Commission ... accredited observers, and ... nominated members of accredited organisations”—

as previously dealt with in the earlier sections.

The code must specify the manner in which applications for accreditation by individuals or organisations are to be made to the Electoral Commission and the criteria to be taken into account by the commission when granting such applications. The commission should also give guidance in the code to relevant officers as to the exercise of their powers to limit the number of people in attendance at proceedings or to remove a person's entitlement to attend because of an act

of misconduct. It is likely that the code would be similar to that for other elections and referendums.

Amendment 110 provides that the Electoral Commission

“must consult the Scottish Ministers”

before preparing the code and that they

“must lay the code before the Scottish Parliament.”

I understand from the commission that that is consistent with the approach taken ahead of the local government elections in 2012. The provisions also allow the commission to revise the code at any time subject to the same requirements to consult and lay it before the Scottish Parliament.

As we have heard, it is very likely that next year's referendum will attract significant attention from outwith Scotland and that a large number of individuals and organisations will apply to be observers. I believe that a statutory code of practice for observers will help to facilitate that.

I note, finally, that the Electoral Commission supports the amendment. It states that the provision in the amendment

“will ensure that the referendum meets the highest international standards of transparency by supporting full independent scrutiny of the referendum processes.”

I move amendment 110.

**Annabel Goldie (West Scotland) (Con):** I accept the principle of the amendment but I seek clarification. The proposed new subsection (4) states that

“the Commission must consult the Scottish Ministers.”

Is that not unintentionally restrictive? I presume that the commission is free to consult whoever it wants. I take it that the purpose of the amendment is that, among other people, it should consult the Scottish ministers. I just do not want it to be restrictive.

**The Convener:** Annabelle Ewing will have the opportunity to wind-up at the end and can answer the questions then.

10:30

**Nicola Sturgeon:** The Government's view is that nothing in the bill would prevent the Electoral Commission from producing and publishing a code of practice for observers at the referendum, which is why we did not think it necessary to make explicit provision for such a code when we introduced the bill.

I have reassured the committee on several occasions that the Government is committed to ensuring that the referendum meets, and is seen to meet, the highest possible international standards of fairness and transparency. The

commission has argued that a clear statutory code of practice for observers at the referendum will help to facilitate proper scrutiny of the process and will therefore increase transparency. On that basis, and having listened to Annabelle Ewing's persuasive comments, I am persuaded of the merits of amendment 110 and I am happy to support it.

**Annabelle Ewing:** On Annabel Goldie's point, my understanding is that the proposed new section is not restrictive and that the Electoral Commission will remain in a position to consult widely, as it does on many issues. The subsection to which the member referred simply makes it clear that, whatever else the commission does, it must consult the Scottish ministers. I hope that that provides clarification. I press amendment 110.

*Amendment 110 agreed to.*

*Section 21 agreed to.*

## Section 22—Guidance

**The Convener:** Amendment 107, in the name of the Deputy First Minister, is in a group on its own.

**Nicola Sturgeon:** Amendment 107 was lodged in response to a suggestion by the Electoral Commission and will provide the chief counting officer with the power to issue guidance to counting and registration officers about the exercise of their respective functions under the bill. The power is implicit in the bill, but the amendment will remove any ambiguity by stating expressly that the chief counting officer can issue guidance as well as give directions.

I move amendment 107.

*Amendment 107 agreed to.*

**The Convener:** Amendment 122, in the name of Drew Smith, is in a group on its own.

**Drew Smith (Glasgow) (Lab):** Amendment 122 is a revised version of amendment 120, which I withdrew on Monday. It has the same purpose as amendment 120, which is to make it clear that, in drawing up guidance in advance of the referendum, the Electoral Commission should include information on what might constitute a common plan.

As members know, the common plan is referred to a number of times in the bill, and there are provisions that relate to it, to assist in the regulation of how organisations on either side of the debate work and campaign together and plan in common. In lodging amendment 122, it was not my objective to restrict the right or practical ability of organisations to work together in planning in common; rather, I sought to bring greater clarity to how the Electoral Commission might define a

common plan and therefore to how the common plan provisions will operate in practice.

From my discussions with the Electoral Commission, it is clear that the commission recognises that the term “common plan” is currently undefined and is difficult to define. In recognition of the difficulty at arriving at a fool-proof definition, and given that the common plan is a unique concept in the context of the bill, the drafting of amendment 122 is not prescriptive and would simply allow the Electoral Commission, in guidance, perhaps to give examples of what might constitute a common plan, rather than rule things in or out. I hope that the change from the amendment that I withdrew addresses the concerns about workability that the Electoral Commission had.

I move amendment 122.

**Patrick Harvie:** I welcome amendment 122 and I am pleased that the commission supports Drew Smith’s new version of his amendment.

When I have spoken at campaign events, many people have asked me how the rules will affect them. Many small organisations, in particular, which do not necessarily have paid staff and formal sources of advice, do not know where to go to find legislation and read what it says. Such organisations need clarity on what will be allowed. I hope that all members want to ensure that organisations are clear about what is expected of them, so that the rules do not end up having to be enforced.

We would prefer to have compliance rather than enforcement. Clarity around the guidance is extremely important, and I welcome the fact that Drew Smith has brought back a new version of his amendment.

**Nicola Sturgeon:** The Government is happy to support amendment 122. Although we understand that the Electoral Commission is already planning to cover the common plan rules in its guidance—I think that it made that point in a letter sent to members yesterday—the amendment will provide greater certainty and reassurance that the sorts of circumstances that could be seen to constitute common plans will be included in the campaign guidance.

With those comments, I am happy to support amendment 122.

**Drew Smith:** I thank members for contributing to the debate and for their support. I thank the Government for considering and supporting the amendment, and I thank the Electoral Commission for the discussions that it has been prepared to have with us about it. I also thank the clerks for circulating the commission’s advice on it at a late stage this morning.

*Amendment 122 agreed to.*

*Section 22, as amended, agreed to.*

*Section 23 agreed to.*

### After section 23

**The Convener:** Amendment 111, in the name of Rob Gibson, is in a group on its own.

**Rob Gibson (Caithness, Sutherland and Ross) (SNP):** I have been interested throughout this process in encouraging participation. Section 21 gives the Electoral Commission the power and the duty to

“take such steps as they consider appropriate to promote public awareness and understanding in Scotland about ... the referendum ... the referendum question, and ... voting in the referendum.”

The bill does not contain any specific provision to give counting officers either the power or the duty to promote or encourage voter participation. The Scottish Government has previously said that the bill as introduced does not prevent counting officers from promoting participation in the referendum.

The Electoral Commission will have a duty to promote public awareness, and we would all expect it to work with counting officers and others to encourage participation. However, we have heard from the commission and others that, although that may be the case, the commission would prefer a specific provision in the bill to give counting officers powers of their own in this important area.

The Electoral Commission and the electoral administrators have noted in evidence to the committee that the current position in the bill is at odds with other recent electoral legislation, including the act setting out the regulations under which the alternative vote referendum was run. That act gave the power to encourage participation to the chief counting officer and to individual counting officers.

The Electoral Commission has suggested that an amendment to the Scottish Independence Referendum Bill to give counting officers a specific power to encourage participation in next year’s referendum

“would clarify the intention of the Bill and enable counting officers to take forward their local public awareness plans with increased confidence”.

I am sure that we are all keen to do everything that we can to ensure a high turnout next September.

I move amendment 111.

**Tavish Scott (Shetland Islands) (LD):** I wish to ask Mr Gibson a couple of questions for clarity. I

note his consistent position on participation, which has been very fair throughout our proceedings.

In Mr Gibson's discussions with and advice from the Electoral Commission, has the commission clarified the role that the counting officers will play in respect of the—dare I say it—nakedly political period that we will be in? It will be a challenge for all of us, especially for those officers who are charged with taking the impartial role that Mr Gibson described in his opening remarks, in terms of the spirit and the intent.

I would like some clarity, if Mr Gibson is able to provide it, as to how the counting officers will deal with that situation. Will they be monitored by any other body or, were we to pass amendment 111, would they potentially be open to challenge? If so, what would that challenge be?

**The Convener:** Rob Gibson can deal with those questions when he winds up.

**Nicola Sturgeon:** The Scottish Government's position on this issue has always been that there is nothing in the bill to prevent the chief counting officer or counting officers from promoting participation in the referendum, and that an explicit power is not strictly necessary. However, I realise that electoral professionals are particularly keen to ensure that that point is covered in the bill, not least to ensure consistency with other legislation.

To address the point that Tavish Scott made, I know that the chief counting officer is well aware of the obligations as regards impartiality.

In light of that, and the arguments that Rob Gibson has put forward this morning and previously, I am persuaded that amendment 111 would be helpful in providing clarity about the powers that are available to encourage participation, which will make it easier for the chief counting officer and counting officers to exercise their functions. For those reasons, I am happy to support amendment 111.

**Rob Gibson:** I thank Tavish Scott and Nicola Sturgeon for those comments.

It is my understanding that counting officers who apply themselves to the election process in normal circumstances do so, and provide advice to people, in a fashion that is unequivocally not partisan, and I would not expect them to act any differently in the circumstances of the referendum. Therefore, I believe that their professional behaviour should be beyond reproach.

With regard to the monitoring of counting officers, I think that the provisions for the Electoral Commission to make reports on such issues could deal with that matter, if it arises. Tavish Scott's question about monitoring should be addressed in the context of the reports that the Electoral Commission produces on the overall procedures.

I press amendment 111.

*Amendment 111 agreed to.*

*Sections 24 to 28 agreed to.*

### **Schedule 7—Offences**

*Amendments 108 and 109 moved—[Nicola Sturgeon]—and agreed to.*

*Schedule 7, as amended, agreed to.*

*Sections 29 to 32 agreed to.*

*Schedule 8 agreed to.*

*Sections 33 and 34 agreed to.*

*Long title agreed to.*

**The Convener:** That ends stage 2 consideration of the bill.

According to the committee's published timetable, it is intended that stage 3 proceedings will take place in the week beginning 12 November. I thank my fellow committee members for their attention to detail and their robust scrutiny during stage 2, and for conducting the whole exercise in the appropriate spirit.

No further meetings are scheduled for the committee, but we may need to meet again to consider subordinate legislation. The clerks will contact members as soon as they have an indication of when that will be forthcoming, which I think may well be sooner than we expect.

I thank everyone—including the Deputy First Minister and her officials—very much for their attendance.

*Meeting closed at 10:43.*

Members who would like a printed copy of the *Official Report* to be forwarded to them should give notice to SPICe.

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