Official Report

LOCAL GOVERNMENT AND REGENERATION COMMITTEE

Wednesday 10 February 2016

Session 4

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LOCAL GOVERNMENT AND REGENERATION COMMITTEE
6th Meeting 2016, Session 4

CONVENER

*Kevin Stewart (Aberdeen Central) (SNP)

DEPUTY CONVENER

*John Wilson (Central Scotland) (Ind)

COMMITTEE MEMBERS

*George Adam (Paisley) (SNP)
*Jayne Baxter (Mid Scotland and Fife) (Lab)
Cameron Buchanan (Lothian) (Con)
*Willie Coffey (Kilmarnock and Irvine Valley) (SNP)
*Cara Hilton (Dunfermline) (Lab)

*attended

THE FOLLOWING ALSO PARTICIPATED:

Joe FitzPatrick (Minister for Parliamentary Business)
Andrew Gunn (Scottish Government)
Chris Highcock (Electoral Management Board for Scotland)
Mary Pitcaithly (Electoral Management Board for Scotland)

CLERK TO THE COMMITTEE

David Cullum

LOCATION

The Sir Alexander Fleming Room (CR3)

Scottish Parliament

Local Government and Regeneration Committee

Wednesday 10 February 2016

[The Convener opened the meeting at 10:00]

Subordinate Legislation

Freedom of Information (Scotland) Act 2002 (Designation of Persons as Scottish Public Authorities) Order 2016 [Draft]

The Convener (Kevin Stewart): Good morning and welcome to the sixth meeting in 2016 of the Local Government and Regeneration Committee. I ask everyone present to turn off their mobile phones and other electronic equipment, as they affect the broadcasting system. Some committee members might consult tablets during the meeting, but that is because we provide papers in a digital format. Apologies have been received from Cameron Buchanan.

Agenda item 1 is consideration of an affirmative statutory instrument. I welcome to the meeting Joe FitzPatrick, the Minister for Parliamentary Business, and from the Scottish Government, Andrew Gunn, freedom of information policy officer and Emily Williams, principal legal officer. First of all, we will take evidence on the instrument and, under the next agenda item, the minister will move the motion recommending that the instrument be approved.

The Minister for Parliamentary Business (Joe FitzPatrick): I am pleased to speak in favour of this motion. The order, the second such to be laid by this Government, will further extend the scope of Scotland's freedom of information legislation, which has been widely recognised as effectively promoting openness, transparency and accountability.

The order proposes to extend freedom of information to a range of organisations: private prison contractors; providers of secure accommodation for children and young people; grant-aided schools; independent special schools; and Scottish Health Innovations. Those bodies undertake a range of key public functions including those relating to security, education, care and health, and bringing them within the scope of the freedom of information regime will increase the public's information rights. Once the order comes into effect, the public will have the right to ask those bodies for information under the Freedom of Information (Scotland) Act 2002 and the Environmental Information (Scotland) Regulations 2004.

The first order made in Scotland under section 5 of the 2002 act brought within the scope of the FOI regime a wide range of arm's-length organisations that were established by local authorities to provide leisure, sporting and cultural services. Evidence from the Scottish Information Commissioner that was presented in her special report to Parliament last year showed that, for most arm's-length bodies, request levels stayed the same. The report also found that becoming subject to FOI legislation had not made responding to information requests more or less difficult for the affected bodies. However, the report also noted the importance of allowing adequate time to prepare for designation. As with any new regulation, it is clearly important to be prepared for its impact from day 1.

With that in mind, I am sympathetic towards those responses, particularly from the affected bodies, that ask for a delay in commencing the order, and it is now proposed that the order come into effect on 1 September this year rather than 1 April. Moreover, consultation will shortly get under way on regulations to amend the time allowed for some bodies to respond to information requests. That is designed to accommodate the closure of schools during holiday periods.

I thank the Scottish Information Commissioner for her commitment in offering to support over the coming months those organisations that are now proposed for inclusion. Once the order comes into force, we and the commissioner will be closely monitoring its impact to inform proposals for and the preparation of future orders.

I know that some, including those who responded to the most recent consultation, are not satisfied with the rate of progress in extending coverage, but I believe that the direction of travel is now clear. Indeed, I have already announced the intention to consult on a further order later this year, with the intention of extending the FOI regime to registered social landlords. Separately, officials will consider other options for further designating more bodies, including some suggestions that were made in the recent consultation exercise.

I ask the committee to support the motion.

The Convener: From what you have just told us, it seems that this current extension is not the end of your work. We have seen moves in the House of Commons to roll back the freedom of information regime south of the border, but I take it that the Scottish Government does not intend to follow suit.

Joe FitzPatrick: I hope that it is clear from the Government's actions in this and previous orders

and from what I have said about future orders that our direction of travel is very much different from the direction being taken at Westminster.

The Convener: Thank you. I will now open it up to members' questions.

John Wilson (Central Scotland) (Ind): Good morning, minister. I want to expand on what is proposed to be covered in the change. For example, you mentioned independent special schools and private sector organisations that hold contracts for running part of the prison service in Scotland. How far do you expect such FOI requests to apply? After all, most of those organisations operate as a subsidiary of a parent company such as Serco or G4S. In those cases, how far do you think freedom of information should go? In the past, private operators have raised the issue of business and financial confidentiality in relation to the services that they provide. Can you expand on what exactly will be covered and on how far someone will be able to take an FOI request that involves a company running, say, a private prison in Scotland? Can they go to the parent company and say, "We want information on this or that detail"?

Joe FitzPatrick: The information relates to the public sector contracts that are held. That is how the legislation needs to be framed.

Andrew Gunn will be able to add to that.

Andrew Gunn (Scottish Government): The minister is right. In respect of prisons, the extension of coverage applies purely to the contracts for the provision of services at HMP Kilmarnock or HMP Addiewell. The extension would cover only the contract for a particular service and would go no further across the Serco or Sodexo remit.

John Wilson: So would management and other fees that might be charged by the parent organisation—say, Serco, Sodexo or G4S—in relation to the provision of services and payment for contracts not be subject to scrutiny under an FOI request?

Joe FitzPatrick: Fees that relate to the public contract—

John Wilson: Could that element be subject to FOI requests?

Joe FitzPatrick: It is possible that the situation will not be clear in some areas, but that is where the Scottish Information Commissioner comes in. Indeed, that is why it is important for us to have the time to work with the commissioner; we must ensure that the bodies that we are trying to cover—all of which would prefer not to be covered—understand their responsibilities and that, just as important, the public understand their rights, too. We need to do some work to make sure that that is well understood. That is one of the reasons why I am keen to extend coverage, particularly in those areas.

John Wilson: I welcome your comments about a phased approach to extending FOI regulations, particularly the extension of FOI requests to social landlords. For some time now, there has been a demand to bring social landlords, particularly Glasgow Housing Association, under FOI scrutiny.

If you do not mind, convener, I want to take this opportunity to ask about future work, just so that we are clear on the matter. Is the minister minded to extend these provisions to voluntary, charitable and other organisations that will be delivering contracts on behalf of public bodies? I am thinking, for instance, of the joint integration programmes that the charitable and voluntary sectors have been asked to deliver on a contracted basis. Many of those organisations are currently exempt from the FOI regime. Will the minister and his team consider how widely we can extend FOI coverage to those organisations? In the last session, we discussed the extension of coverage to arm's-length organisations, but as we now know, a number of health boards, local authorities and others are now giving contracts to bodies that are not covered by FOI legislation.

Joe FitzPatrick: In her special report, the Scottish Information Commissioner asked us to look at two areas, the first of which related to the question whether there was a public function. In other words, if we see that a body is carrying out a public function, we should look at extending FOI to it. The second area was loss of rights; in that respect, the commissioner and others had very much argued that there had been a loss of rights with regard to housing associations.

We need to look at those two things in deciding how to extend coverage but my officials are looking at a wide range of bodies to which we might consider extending FOI legislation. Obviously, the consultation process on the order was wide enough to give people the chance to suggest other bodies that we might need to look at.

We need to make sure that any extension happens at a rate that allows us and the Scottish Information Commissioner to support the bodies that are coming in. The experience with the leisure trusts was a positive one. Like anyone else asked to comply with new regulations, they had concerns, but in practice there was no reason for them to have been concerned because, with proper preparation, they were able to comply.

People now have a better understanding of their rights when they want information from a leisure trust, and the same goes for other arm's-length external organisations. Most of the ALEOs in

Scotland are already covered because they are wholly owned by the local authority but as I have said we need to look at bodies that might be carrying out a public function and at potential loss of rights.

Andrew, do you want to add anything else?

Andrew Gunn: I reiterate that we are taking an incremental, factor-based approach to the actual functions carried out by bodies that have been identified in terms of statutory underpinnings and public funding. There were certainly suggestions made during the consultation exercise that we will take forward.

John Wilson: I welcome the minister's positive response on ALEOs, given that organisations initially expressed a lot of fears and that those fears do not seem to have materialised. I hope that other organisations that are brought within the scope of FOI in future view it as a positive rather than a negative step forward, and I look forward to the inclusion of further organisations in FOI requests.

Willie Coffey (Kilmarnock and Irvine Valley) (SNP): Thank you very much, minister, for what I think is a really positive move, but I wonder whether you could provide a little clarification. With these kinds of announcements, the public's expectation is that with FOI requests to the prison service, for example, everything falls within the scope of the legislation. However, the fact is that there are still exemptions. How can we make it clearer to the public, perhaps before an FOI request is made, that some information will still be exempt? Often people embark on the process, only to be told at a later stage that the information they are seeking is exempt.

Joe FitzPatrick: Even if an organisation such as a local authority is entirely covered by the FOI regime, things are always going to fall outwith its scope, and it is the authority's responsibility to inform the person why information is outwith that scope and perhaps to suggest how it might be brought within scope.

The Information Commissioner's role is crucial; it is an important post. The commissioner exists so that if people disagree with what an authority is saying or has decided, they can go somewhere independent for arbitration.

Willie Coffey: Is there a case for trying to show people in advance the scope and nature of information that is accessible through FOI and perhaps what is not available?

Joe FitzPatrick: We could have a look at that. Given that this is our second order to extend the FOI regime, we should perhaps be doing some work on making sure that folk realise exactly what we are doing and raising awareness of the new rights that folk have.

Andrew Gunn: It is largely up to the authorities to make the scope of FOI clear. Obviously anything that they can do in advance is beneficial but I note that one of the obligations under FOISA is to produce a publication scheme of everything that they hold and are able to make proactively available. Anything above and beyond that is subject to request.

In the authority's response to an FOI request, either a person should be provided with the information or the authority should set out clearly why the person is not able to get the information. It should also identify the exemptions and set out why it believes that the exemptions apply in that case, with ultimate recourse or appeal to the Information Commissioner.

Joe FitzPatrick: Andrew Gunn made an important point about information being proactively released. One of the unintended benefits of FOI legislation is that a lot of public authorities have decided to proactively release information to reduce the number of FOI requests that they receive. That positive outcome might not have been expected when the legislation was passed. There is now a huge amount of information out there that people can access without having to resort to an FOI request, and I hope that the new bodies will consider taking the same approach.

The Convener: As members have no further questions, we move to item 2, which is formal consideration of the motion that the instrument be approved.

I invite the minister to move motion S4M-15235, which the committee will have up to 90 minutes to debate. Please note that officials may not participate in the debate. After the debate, the committee must take a decision on the motion.

Motion moved,

That the Local Government and Regeneration Committee recommends that the Freedom of Information (Scotland) Act 2002 (Designation of Persons as Scottish Public Authorities) Order 2016 [draft] be approved.—[*Joe FitzPatrick*.]

Motion agreed to.

The Convener: Thank you very much. I suspend the meeting briefly to allow the witnesses to leave.

10:15

Meeting suspended.

10:16

On resuming—

Local Governance (Scotland) Act 2004 (Remuneration) Amendment Regulations 2016 (SSI 2016/6)

The Convener: Agenda item 3 is consideration of four negative statutory instruments, the first of which is the Local Governance (Scotland) Act 2004 (Remuneration) Amendment Regulations 2016 (SSI 2016/6). Members will see from the clerk's note that the instrument seeks to increase the level of remuneration payable to local authority councillors by 1 per cent. That will take effect from 1 April 2016. Do members have any comments?

Willie Coffey: I declare that I have a family member who is currently a serving local authority councillor.

John Wilson: I make the same declaration. My wife is a serving councillor on North Lanarkshire Council.

The Convener: Is the committee content to agree that it has no recommendations to make to Parliament in relation to the instrument?

Members *indicated agreement.*

Scottish Local Government Elections Amendment Order 2016 (SSI 2016/7)

The Convener: The next negative instrument is the Scottish Local Government Elections Amendment Order 2016 (SSI 2016/7). Members will see from the clerk's note that the order makes provision relating to the reduction of the voting age for local elections. In addition, it makes minor changes in relation to the appointment of polling and count staff. Do members have any comments?

There being none, does the committee agree that it is content to make no recommendations to Parliament in relation to the instrument?

Members *indicated agreement.*

Representation of the People (Absent Voting at Local Government Elections) (Scotland) Amendment Regulations 2016 (SSI 2016/8)

The Convener: Our third negative instrument is the Representation of the People (Absent Voting at Local Government Elections) (Scotland) Amendment Regulations 2016 (SSI 2016/8). Members will see from the clerk's note that the regulations make further consequential provisions relating to the reduction of the voting age to 16 for local elections. Do members have any comments?

There being none, does the committee agree that it is content to make no recommendations to Parliament in relation to the instrument?

Members *indicated agreement.*

Local Government Pension Scheme (Scotland) Amendment Regulations 2016 (SSI 2016/32)

The Convener: The final negative instrument for us to consider is the Local Government Pension Scheme (Scotland) Amendment Regulations 2016 (SSI 2016/32). The clerk's note states that the regulations make amendments to the Local Government Pension Scheme (Scotland) Regulations 2014 to cover the cost capping of employer contributions and the requirement to have a scheme actuary. The definition of "revaluation adjustment" has also been amended to specify the percentage as being the change in prices.

As members have no comments, is the committee content to agree that it has no recommendations to make to Parliament in relation to the instrument?

Members *indicated agreement.*

Local Government Elections 2012 (Follow-up)

10:20

The Convener: Agenda item 4 is an evidence session on the follow-up from the Scottish local government elections in 2012. I welcome Mary Pitcaithly, convener of the Electoral Management Board for Scotland, and Chris Highcock, the board's secretary.

Would you like to make an opening statement, Ms Pitcaithly?

Mary Pitcaithly (Electoral Management Board for Scotland): No. There is nothing that I think that I need to take up the committee's time with this morning. We are happy to answer any questions.

The Convener: Thank you very much. Obviously, there were lessons that needed to be learned from the 2012 local government elections, as there always are, although there were not as many lessons as there were from some previous elections.

How are you progressing towards ensuring that any foibles of the 2012 election have been ironed out, so that we can have as smooth an election as possible in 2017?

Mary Pitcaithly: The 2012 election was very successful. I am not talking from the point of view of the politicians, who might not have got the result that they wanted, but from our point of view as administrators everything went smoothly. Before the election, we were particularly nervous about whether the e-counting system would stand up to the rigours of the count. It did and, at the end of the day, we had no concerns about it. The biggest lesson for us was about the extent to which preparation is key to the delivery of an efficient, effective and trusted election.

We have been doing a lot of preparation. Every year we have different elections to deal with. They are all run under different voting systems and have different processes for counting. It is not a continuous exercise but, since 2012, the EMB and election offices in local authorities have devoted a lot of time to keeping an eye on the 2017 election and making sure that all the lessons from 2012 are taken on board.

The Convener: In relation to those different voting systems and the use of the single transferable vote system for local government elections, can you remind us how many spoiled ballots there were in 2012? Does there need to be further education to ensure that folk understand the STV system and how to use their votes?

Mary Pitcaithly: The number of spoiled papers has been reducing gradually at every election. We always have an eye to that and to the need for voter education. We work very closely with the Electoral Commission to make sure that whatever we feel is necessary is undertaken to ensure that voters understand how to vote in any particular election.

It is confusing. Sometimes, people get confused about how many votes they have and whether it is an election in which they use a cross or numbers or whatever. The key is making sure that we give very clear messages, and the commission takes a lead on that. There needs to be a clear message to voters regarding how they can ensure that they do not run the risk of their vote not being counted.

In response to your first question, I do not have the number of spoiled papers from 2012.

The Convener: Does Mr Highcock have the figure?

Chris Highcock (Electoral Management Board for Scotland): I do not have the statistics with me now, but I can certainly pass them on after the meeting via the clerk.

The Convener: Thank you.

You talked about education. How do we ensure that staff at polling stations are trained to ensure that they can help voters, using the most simple language?

Mary Pitcaithly: Nobody can work at a polling station unless they have been through a proper training course with us. That normally happens in the week before polling day, so that the training is very current and people have had a very recent experience of being trained in what to say to, and how to assist, voters. Chris Highcock can maybe tell you a bit about what happens in Edinburgh.

We have nationally produced material, which we tailor to our local circumstances to ensure that staff who are presiding officers or polling clerks have the best and most up-to-date training that we can give them, so that a consistent message is given to voters everywhere.

Chris Highcock: The process is that every polling clerk and presiding officer goes to a face-to-face session with trainers and people from the elections team who are delivering the election.

For each election, we are cognisant of the different voting systems that are in place. For local government elections, an STV voting system is used. In the most recent major election in 2012, polling clerks and other polling staff were told to say to voters as they handed over the ballot paper, "Remember, this time it's numbers." Since that time, as far as I am aware, that approach has been repeated at subsequent by-elections

throughout Scotland. We have seen the number of spoiled ballot papers come down in that period. We can give you those statistics.

The Convener: Electronic counting often poses difficulty for party activists because they cannot see what is going on, and it causes particular problems when it comes to checking for fraud in postal voting. How do we assure those folk who look at the counts that everything has been done right to take fraud out of the system and that electronic counting is completely trustworthy?

Mary Pitcaithly: I will deal with the point about e-counting, and maybe Mr Highcock can deal with the issue about fraud, particularly in relation to absent voting.

We have not done e-counting nationally since 2012, but there have been a number of by-elections since then. In some of those, the votes have been counted electronically; in others, they have been counted manually. At each of those opportunities since 2012, we have been at pains to ensure that those who have attended the by-election count have had as good a view as possible of what was happening.

During January and into February, an exercise has been carried out to ensure that every local authority returning officer has had the opportunity to take a team of staff along to Pentland house in Edinburgh, where a mock count can be carried out. That is not a bulk test of the system; it is a test of the system that the Scottish Government has recently procured to enable us to carry out the count in 2017.

As part of that—this was certainly my experience—we were clear about the need to ensure that the observer, whether they are a candidate, an agent or, indeed, someone from the Electoral Commission or elsewhere, would have a clear view at different stages of the process. For example, if you think back to 2012, you will remember that ballot papers had to be kept flat and unfolded and put into an odd-looking receptacle that was a ballot box for that occasion. When the papers came out, there were quite a number of complaints that they were so tidy and so carefully and beautifully stacked that no one could see very much of what they looked like. This time round, ballot papers will be folded and put into normal ballot boxes, so it will be much more familiar to the voter.

At the end of the process—when the ballot boxes come back to our respective count centres—the ballot papers will be unfolded. At that stage, there will be an opportunity for people to see what is happening when the ballot papers are unfolded. I know how good prospective members and their agents are at being able to take an awful lot of information out of a scan of that process.

There will also be an opportunity to look at the papers as they go through the scanner. Each paper goes through a scanner in a relatively short time, although there is enough time for people to see the paper. Any potentially spoiled paper, or any paper that throws up any question about its validity or the voter's intention, will be shown on a large screen. Again, there is an opportunity to look at that paper in a lot of detail. We try to build into the process as many opportunities as possible for observers, including candidates and agents, to have a proper look at things.

10:30

The Convener: I would like to ask about postal voting in that regard. There must obviously be a match-up of signatures, and if there is doubt they go to individual invigilators, if I remember rightly. At certain times, people's signatures may change. They may become less steady and more shaky, but there are some folk who are a bit naughty and fill in papers for others and sign for others. Sometimes that process is done very quickly indeed and does not give those folk who are observing the count the opportunity to put a halt to proceedings if they think that there is something not quite right. How do we ensure that we provide the opportunity for observers to say, "Hang on a second, I don't think this is quite right"?

Chris Highcock: You are talking about the integrity of the postal voting process. As you point out, that is reliant on the verification of signatures and dates of birth on the postal vote statements that are sent in with the ballot papers that come back. All returning officers are encouraged to ensure that observers are given a full opportunity to observe and ask about the process as it is going on.

Usually, the matching of the signatures is done electronically. The system will scan the postal vote statement and compare that signature with the reference signature that exists in the system. A paper will only ever be rejected if a human being looks at it and makes an assessment by eye of the quality of the signature. The people who do that have generally been through training. We have had the forensic services from the police provide us with training on signature recognition so that we can understand what is a good signature and what is a bad signature.

You mentioned the deterioration of signatures over time, and we are particularly aware of that with the elderly and infirm. We have been going through a process in which every signature is now renewed after five years, so as a signature ages people get a reminder and have to complete a new form with a fresh signature and date of birth. Those signatures are now gradually getting

refreshed, as that process has been going on for the past couple of years.

The key thing is ensuring that people are given the opportunity to intervene and to ask questions as the count goes on, and if there is an issue with any particular opening we will look at that, but there are no complaints that I am aware of about people being prevented from asking questions.

Mary Pitcaithly: I have not heard that either, but if somebody does feel that it is all happening too quickly and that people are getting into a rhythm or a process whereby they are not necessarily explaining to those who are watching exactly what they are doing, they should speak to an official and ensure that their concerns are expressed. I do not think that I had anybody stand behind me last year and watch what I was doing, but the screens face the people who are entitled to be there for that process. I would not put up any barrier to someone standing at my shoulder to see what I am doing, and I would be more than happy to explain why a signature or date of birth is being rejected.

We reject only when we feel that it is absolutely necessary. For example, in the case of an older person whose signature may have changed, we will always look at the date of birth as well. If the person is in their 90s or even over 100 and the signature is not the same, but it is substantially the same and follows the same pen path and has the same characteristics, that would be fine. I actually find that it is younger people whose signatures change most. It is incredible how, between the age of 18, when someone originally applies for an absent vote, and 21, when they cast their vote, their signature can become terribly flowery, and it can be quite difficult to see that the signature is the same, but we have had some training in that.

Chris Highcock: It is always our intention to include votes rather than to exclude them. There is a tension between making the process inclusive and ensuring that the system has the right degree of integrity, but the focus is always on including votes rather than excluding them.

The Convener: Okay. We could probably have a debate about that as well, but let us not go there at present.

Mary Pitcaithly: Could I just add one small thing? The electoral registration officer is now entitled to write to somebody whose vote has been rejected, and I have found that that has had a huge impact on the numbers of signatures that are doubtful.

The Convener: Thank you—that is useful.

John Wilson: The issue of spoiled ballot papers in local government elections always comes up because of what happened in 2007. I have done some anorak analysis of the situation. In the 2007 local government elections, there were proportionally fewer spoiled papers in comparison with Northern Ireland, which has had a similar electoral system for almost 30 years. There is an issue, and it is a concern that always comes up. Has the Electoral Management Board done any analysis of the number of spoiled papers between 2007 and 2012?

Mary Pitcaithly: Yes.

John Wilson: And it is quite clear that the numbers are reducing.

Mary Pitcaithly: Yes, absolutely. We had a relatively small number of spoiled papers in 2011-12, and certainly much fewer than in 2007. Voters were using the system for the second time so it was much more familiar to them, and much more effort had been put into voter education. In addition, there were two separate papers, so the mistake that people made in 2007 when everything was on one paper was able to be remedied.

John Wilson: My follow-up question concerns the number of papers that are deliberately spoiled, not the papers on which people have put an X instead of a 1 or a 2. I have been at counts at which I have seen that people have written a novella on the back of a ballot paper and put an arrow in the box for the person whom their novella is about. I am trying to break down the figures between the number of deliberately spoiled ballot papers and the number of papers that are incorrectly marked.

Mary Pitcaithly: We are always looking for the voter's intention, and if the intention is clear we would allow the vote to be counted. It is only where the intention is not clear that the vote would not count, or where the person has made no mark or has signed the paper and could potentially be identified. They may have made more than one mark by putting two or three crosses, none of which would convey a first preference.

There are very clear rules that govern the grounds on which a vote can be rejected, and the analysis is done on the basis of each of those categories. We would have clear statistics that would show that.

With regard to whether somebody intends their vote to be spoiled because they have written something on it, sometimes people have written rude comments on the ballot paper but have also made a clear vote in favour of their preferred candidate. In that case, unless they can be identified by what they have written, we would just ignore the comments.

John Wilson: Have you seen an increase in the number of requests for absent or postal vote applications, or has that remained constant?

Mary Pitcaithly: There has been a constant increase.

Chris Highcock: The increase was particularly marked in the lead-up to the independence referendum in 2014, in which the proportion of postal votes grew dramatically. As a consequence, the level has stayed quite high and has, by and large, not increased. There was a slight blip when some people requested to go back to an in-person vote, but there was a definite uptick in postal vote applications as a result of the independence referendum.

John Wilson: That goes back to the convener's question about people going into the polling station and polling clerks—as Mr Highcock mentioned—indicating to them that there is a numerical voting system rather than just a cross. Are you clear that the information that is provided to absent voters through the postal ballot system is sufficient to make voters aware that they have to fill in numbers rather than just put a cross on the ballot paper?

Mary Pitcaithly: The main information is at the top of the ballot paper. The ballot paper follows exactly the specification in the legislation, so it will say clearly that the voter is not to use a cross but must use numbers instead.

We could also, if we used a one-piece mailer for our postal ballots, provide information in a graphic form that would show voters expressing their preferences in numbers.

John Wilson: One issue that arises frequently in the reports from the EMB and the Electoral Commission relates to the role of political parties in raising awareness of the process and of the date of an election. Despite the 85 per cent turnout in the 2014 referendum, there was a drop in turnout for the Westminster elections, and in the most recent local government elections in comparison with previous ones.

I have noticed that more and more local authorities—the majority, I believe—now prohibit the display of street furniture posters to advertise the election campaign. However, such advertising was one of the main indicators for many people that an election was taking place. You are asking political parties to raise awareness, but at the same time you are restricting their right to advertise that there is an election taking place.

Mary Pitcaithly: The decisions on the use of street furniture are taken by the local authority; that has nothing to do with the returning officers. We would, as returning officers, still have the opportunity to ensure that there is information out there. For example, we could use radio adverts and put huge banners across the high street that show the date of the election. We would do things of that nature alongside the work that is done by the Electoral Commission, which provides brochures that end up on everybody's doorstep. There is a range of ways in which we, as returning officers, separate from our responsibilities to our local authorities, would try to raise awareness.

On your specific question, we have discussed the issue with the political parties panel, but it is a matter for each local authority. The last time that I looked, more than two thirds of authorities had elected not to allow the use of lampposts and so on. There are very good reasons for that, but there must be other opportunities to ensure that the date is widely known.

Chris Highcock: Returning officers have a responsibility to promote participation, and there is a widespread effort to do that. As Mary Pitcaithly said, we often use street furniture ourselves: we put up lamppost wraps around Edinburgh to highlight the fact that an electoral event is about to happen, encourage people to vote and tell them whom to contact if they are not registered and how to participate on the day if necessary.

At present, following the extension of the franchise, there is a lot of focus on the participation of 16 and 17-year-olds. Work is going on throughout Scotland in schools to make young people aware of electoral events and to advise them how to take part and ensure that they are on the register.

The Convener: For the record, I will give the figures for spoiled ballot papers in elections. In 2003, the figure was 0.77 per cent; in 2007, it was 1.83 per cent; and in 2012, it was 1.71 per cent. Those are not huge numbers at all.

Willie Coffey: I want to ask about electronic counting systems. In the most recent election that I attended—it was a local council by-election about a year ago—the system was incredibly efficient and very quick. However, I felt that the ability among candidates and their agents to see the process unfolding was lost. Papers were pretty much bundled up and thrown into the sausage machine, and the result came out. It was impossible to see the papers—as I recall, they were even stacked face down so that folk could not see the information on them. Is there a requirement for papers to be stacked face down, or is it optional?

Chris Highcock: Once the polls have closed, there is no requirement at all to keep the ballot papers face down, so they can be kept face up. Ballot papers are kept face down at postal vote openings because the voting is still under way and there is a requirement to keep the voting pattern

secret until the polls close. Once the polls have closed, everyone is at liberty—and indeed encouraged—to keep the ballot papers face up to allow for scrutiny from observers, candidates and agents.

Mary Pitcaithly: In the scanning process, the paper is face up. It will come out of the scanner face up at the point at which you would be most able to see it.

Willie Coffey: It is too fast though.

Mary Pitcaithly: It is quite fast, which is why there are other opportunities, such as when the papers are unfolded on receipt of the box, in what we would call the ballot-box opening area. There are different processes that would allow you to have a look at the papers.

I have not used an electronic system for a by-election at all. People have appreciated the chance to be able to see the box being opened at the table in the traditional way and the votes being counted. However, I know that if a tight result is anticipated in a by-election, for example, doing that would simply not be reasonable so people would use the electronic system for a by-election as well. That tends to mean that more people are trying to crowd around a table to see what is happening at the scanning station.

10:45

Willie Coffey: That is exactly what happened with the count that I saw. It became impossible for any of the parties to have a look. It would have been helpful to have a more traditional opening process—

Mary Pitcaithly: Yes.

Willie Coffey: —and then to see a gathering up of the papers into the sausage machine.

Mary Pitcaithly: Certainly that will be the difference this time compared with 2012, when the papers came out of the boxes very neatly and were able to be bundled straight into the scanner. We could just lift a bundle and put it in. This time round, the papers will all have to be opened up— not opened, as they are not in envelopes, but opened up—and that will be an opportunity for people to see them. We will certainly emphasise to those who are doing that that they should make sure they put the papers face up.

Chris Highcock: There is always a tension between how long these things take and what degree of scrutiny is possible for observers. The board has been involved recently in some work with the Electoral Office for Northern Ireland, looking at its count process, where all the STV counts are done manually. It literally takes days

because they have to go through the various stages in transferring votes.

If you want the count to be concluded within a reasonable timeframe, the electronic count is the way to go. Certainly the administrators in Northern Ireland would be keen to have an electronic count. It is others who are less keen to move beyond the manual process.

Willie Coffey: The real-time display system at the count that I saw was a bit confusing. It might just be me who was confused but the system did not seem to be updating in real time. It looked as though it was updating in phases. At one point, it stopped altogether, despite papers still processing their way through, so people were confused about what it was telling them and how up to date and accurate it was.

Chris Highcock: It needs to be clearly communicated to observers exactly what is being displayed. The display stops once 80 per cent of the ballot papers have been scanned because the leader on first preferences does not always win the election in a by-election. Second preferences can come into play. It might look as though someone is very much in the lead but then when the other transfers go through, they may be disappointed.

Willie Coffey: The display system was never updated to show the final results. It just stopped, which was confusing.

Chris Highcock: It stopped at that point. For the system that is in development and being tested at the moment, ready for the 2017 elections, the information display has been greatly enhanced so that a different range of information will be displayed and new reports will be produced. What you mentioned was one of the criticisms of the system and it has been taken into account in the specifications for the new system that will be in place in May 2017.

Mary Pitcaithly: I can also advise members that in August, there will be a bulk test of the system in Perth. I am sure that you will be given an opportunity to go along to that test to see how it will work.

Willie Coffey: Thank you.

The Convener: Before we move on, the issue of folk crowding around tables was mentioned. Something that has certainly happened in my neck of the woods is that counts are now taking place in smaller places than they did previously, which creates that difficulty of crowding and probably adds to the tension of the entire process for everyone. People are elbowing one another to try to observe what is going on. Do you make any recommendations to your fellow returning officers

about the size of venues for counts and, if you do not, do you think that you should?

Mary Pitcaithly: We make recommendations and we discuss the matter with them as well. Other than specific recommendations, we always discuss with them the benefit of ensuring that the count centre is, quite simply, big enough to be able to cope with what they will have to accommodate—all the machines as well as all the racking and, most important, all the people who are entitled to observe the whole process.

Sometimes, the availability of venues has to come into play. There are potentially not the same opportunities that we used to have when sport centres, for example, were—

The Convener: Is the choice of venue cost driven?

Mary Pitcaithly: Not in my experience—not at all—because the cost of most counts would be covered. However, for local government elections those costs are covered by the local authority. I am not aware of any decisions being cost driven. They are more about availability.

Jayne Baxter (Mid Scotland and Fife) (Lab): Good morning. My questions follow on from Willie Coffey's question about the new e-counting system. Our notes say that it is being specified and built to build on what happened in 2012. You have touched on some of the things that are going to change, but I wonder what improvements were deemed to be necessary and how they affect the specification. Is the system going to be very different or will there be only minor changes?

Chris Highcock: As Mary Pitcaithly said, the 2012 election was perceived at the time to have been a very successful event. There were no questions about integrity and no major complaints about the process. By and large, everyone was happy with what had gone on. Our concern was to repeat that process as far as possible and to add enhancements where we could.

Working with the Scottish Government, we have gone through quite a difficult procurement process, in the sense that it has been complex and rigorous, to find someone to manage the contract for the 2017 elections and provide the e-counting system. We have now appointed the contractor to deliver that system. CGI, which used to be Logica, will be the major provider in partnership with Idox, which is the software provider that provided the system in 2012. They have the experience and know exactly how it went in 2012. They are now working through the process to deliver in 2017.

A lot of the system and the process is the same. The process and the protocols have been employed by local authorities that have held by-elections since 2012, so people understand what is involved. Observers are used to the system, as are returning officers and their staff.

A lot of the changes that are being made are to do with reporting, information and what is available to observers. In particular, as Mary Pitcaithly said, there will be a change to the process whereby ballot papers will be put into boxes folded, which will give observers a great opportunity to see what comes out of the boxes. We are having to look at that change, too, because the opening of the boxes and the unfolding of the papers will mean that it will take some time to prepare the papers for scanning. However, there will be an opportunity for observers to scrutinise what is on the papers at that point.

Mary Pitcaithly: Undoubtedly, that will slow down the whole process, so the counts will take longer than they did in 2012. Nevertheless, the view was that it was better to err on the side of the count being a bit longer but with more opportunity for scrutiny.

The process will also be much more voter friendly, to be honest. Voters were not particularly comfortable about being asked to keep their ballot papers flat. Concerns were expressed at polling stations that that would mean that others might be able to see how people had voted. There were also concerns that the ballot boxes did not look as secure as the ones that had been used traditionally. From that point of view, it was better to err on the side of putting first the interests of the voters and those who would observe the count at the end. It was felt that the trade-off of slowing down the count, potentially by a fair bit, was appropriate. We will have to resource that opening process with people, which is a whole new step in the count. It will slow us down and add to the costs, but it was felt that it was an appropriate change to make because it will help the voters and the observers.

Cara Hilton (Dunfermline) (Lab): I am interested in your views on the modernisation of electoral law and its impact in Scotland. I am thinking specifically about electoral registration. There has been a lot of concern about missing voters, and it has been suggested that there could even be hundreds of thousands of voters—especially private renters, students and minorities—missing from the system. In Fife, it could be about 15,000 voters. What has been done to address that and to minimise the impact of the changes?

Mary Pitcaithly: A huge amount of work has been done to ensure that everyone who is entitled to register to vote is able to and is encouraged to do so. From memory, I think that my colleague EROs on the EMB have stressed that, before anybody comes off the register, there will have

been nine contacts or attempted contacts with them. We sometimes discover that the people are just not there. They might have been there before, but, rather than not having been captured in the process, they have moved or left the country or they do not wish to be registered.

People may be missed, but the view is that the exercise of contacting them nine times is quite a rigorous attempt to capture them. The numbers are certainly down, but that could be because people are expressing their decision not to register. The whole process around registration is designed to ensure not only that people can register to vote but that people who are not entitled to vote do not register. It is an opt-in process. The only way to ensure that the register is as complete as possible is to move to an opt-out process, but that is not the way that registration has gone. IER is more about claiming your vote, and people may decide not to claim their vote.

Chris Highcock: There is evidence to prove that all those who have registered to vote exist. On the basis that they identify themselves through evidence that they provide through the Department of Work and Pensions or through other information, we know that everybody on the register really does exist. Previously, we did not have that evidence. As Mary Pitcaithly said, each of the people who have come off the register has been contacted by, on occasion, people knocking on their door to try and find where they are.

The issue around students has been addressed through work with the universities to make sure that students are clear about where they are registered. Students may be registered in two places, as happens if they register at parental homes and at universities. Now, with the IER, we know that these people exist. The background to IER was the need to improve the integrity of the register. It is not about excluding people; it is about making sure that those who are there should be there.

The Convener: I want to look at the situation in universities, in particular. To ensure that students were on the register, certain universities used to register everyone.

Mary Pitcaithly: Absolutely.

The Convener: That is not happening any more.

Mary Pitcaithly: That is right. It is now the individual's responsibility to register, just as it is in a household.

The Convener: From our political activity and from talking to others, we know that it can be nigh impossible to get to somebody in halls of residence. It is very difficult to ensure that those folk have the right to register to vote and that they know that they have that right. Maybe that is a bit of a regressive step. Can you comment on that?

Mary Pitcaithly: We are anxious to do what we can to ensure that our electoral registration officer colleagues are able to complete the register as far as they can. For example, we support them by giving them access to information about young voters in our area. That gives them a good start. They know whom to expect to come on to the register from the 2016-17 population, and they can chase up those who do not. I think that they find that support from local authorities very helpful.

The Convener: There are places where it is more difficult to find folk and get them to register to vote, and those places sometimes also have low turnouts. In my constituency, George Street/Harbour is a very difficult area because of the housing and the transience of the population, but some hard-to-reach populations—mainly in socially excluded areas where the level of registration is not so high—are not so transient. Do you think that your colleagues target their resource sufficiently to ensure that they explain people's right to register in such areas?

Chris Highcock: That is something for not only electoral registration office colleagues but the Electoral Commission, and I have a large role in that. Every year, in the lead-up to each electoral event, the Electoral Commission runs a large campaign that focuses on registration. The campaign is targeted particularly at segments of society that traditionally have lower registration rates. It makes a great effort to look at people who are new on the register such as young people, those in the forces and overseas voters, and a lot of material is targeted at those sectors of the population.

The returning officers in electoral registration offices also target the information at particular areas. At the moment, a lot of work is going on in schools that we hope will filter out to broader parts of society. We also target particular areas of cities and other communities.

The Convener: I think that the schools are fine. Now that we are moving to votes at 16, it is much easier to start folk on the path of voting. I am thinking more about people who, for whatever reason, are not on the register. They may have been on the register previously and have come off it, or they may have moved and done nothing about it. There are also folk who get the official letter through their door and think, "I'm not even going to open that." Those people exist, and we know that it is more likely in certain areas than in others that there will be people who are not on the register. I would be keen to get your reassurance that the targeting is being done right to ensure that everybody has the opportunity to register and then cast a vote.

11:00

Mary Pitcaithly: EROs have to follow up those who fall off the register and try to get them back on it. It is true that those numbers are more significant in some areas than in others, so that is where the majority of the work will be done. I expect regular reports from our community learning and development teams about what they have been doing to ensure that people understand the deadlines for registration.

I recently received a heartening report from the leaving care team in the council's social work service, which has made worthwhile efforts to ensure that care leavers register to vote. They might not have been caught at school, but we ensure that we speak to them. Those efforts have resulted in high levels of registration among a group who might traditionally have been excluded or who might not choose to go out of their way to register. That is the sort of thing that is being done. It is a whole-community effort that involves not only the EROs, and we do whatever we can to support them.

The Convener: I would expect nothing less from corporate parents, Ms Pitcaithly.

Mary Pitcaithly: Absolutely.

John Wilson: I have a follow-up question on the issue of registration numbers. You said that registration numbers are down. Can you tell me what you are comparing them with? We know that, in the lead-up to the referendum in 2014, there was a record number of new registrations to vote. Are you comparing the current figure to the figure for the 2014 referendum? Some of the figures that were bandied about suggested that almost 500,000 people had registered to vote for the first time in that referendum. It would be interesting to find out what level of drop-off we are talking about.

The convener referred to certain communities. I have been involved in the Local Government and Regeneration Committee for a number of years and we have examined the issue of there consistently being 5 or 20 per cent of particular communities who do not register to vote. My understanding is that, in the lead-up to the referendum in 2014, we saw a record number of registrations, particularly within those communities that did not traditionally register to vote.

Mary Pitcaithly: I think that that would have been the case. Across the country, the number of people who registered was the highest ever, and the electorate on referendum day was the highest-ever electorate. The increase was fairly consistent, so the percentage of the population who were registered would still have been lower in some parts of the country than in others. Nevertheless, there was generally an increase. We are looking at that as a high-water mark. What has happened

since then, with the roll-out of individual registration, has resulted in a drop in the figures, but what is important is what the figure is on polling day. There is still the opportunity for people to vote. The Electoral Commission and local authorities are currently—

John Wilson: Surely, you mean four weeks before polling day, because that is the last date for registration.

Mary Pitcaithly: Yes, absolutely. However, I am talking about the number of people who are entitled to vote on polling day.

The lead-up to that deadline for registration is a very busy period, although we hope that it will not be as busy as it was in September 2014, when we had offices open during the night to process applications from those who turned up at the last minute. The figure at the moment will not be the same as the figure at the registration deadline. People are still being captured as more information appears in the media about when polling day is. The Electoral Commission is about to launch a campaign that will make a specific point of saying when the registration deadline is. I think that the strapline will be something like, "You will not be able to vote unless you register." Sometimes, people just do not understand the connection between the two.

Chris Highcock: Under IER, there is increasing recognition, right across the UK, that registration is no longer a once-a-year event. It is not the case that the canvas happens and that is it; there is more of a feeling that it is an event-driven process. Over the year, there can be ebbs and flows in the registration, and the proximity of an election or referendum can drive new registrations on to the register.

Willie Coffey: Has any thought been given to issuing postal vote application forms as standard practice, even as part of the reminder process? Mary, you said that there can be up to nine reminders for people to register.

Mary Pitcaithly: All the registration forms include a box for people to tick if they want a postal vote.

Willie Coffey: It is still an opt-in process.

Chris Highcock: Yes. It is up to the individual to decide whether to request a postal vote. The postal vote process brings a lot of work to returning officers and others. Political parties like the postal vote process because it tends to support turnout. The turnout of postal voters generally holds up even when other turnout is lower, and I know that political parties make an effort to provide voters with postal vote application forms.

Willie Coffey: The system could intervene, and it would probably really improve turnout if it systematically issued postal vote application forms.

Chris Highcock: It would be a major policy direction if we were to promote universal postal voting. That is beyond our remit.

Willie Coffey: A lot of the time, you are writing to people anyway with invitations to register. Why not put in a postal vote application form with the letter?

Mary Pitcaithly: People might regard that almost as an encouragement to vote by post. That is not our role. Our role is to facilitate postal voting if people choose to do it.

Willie Coffey: Okay. Thank you.

The Convener: I am going to play devil's advocate—I always do that, as folk know. Some of the anoraks among us watched the primary taking place in New Hampshire in the United States, and there were huge queues at some polling places as the polls closed. There, folk had the right not only to vote for a candidate but to register on the day. Could we cope with something like that if people turned up on polling day and wanted to exercise their right to vote but they were not on the register?

Mary Pitcaithly: If there was sufficient time to institute a change as significant as that, we would be able to cope with it—we would have to cope with it. All sorts of changes to our processes would need to be made. There would need to be greater use of electronic registers, for example. Anything of that nature that was introduced without a significant lead-in time would be risky.

I remember speaking to colleagues from Canada about the process there, which includes the potential to register right up until polling day. However, associated with that is a much greater focus on people being able to prove who they are through use of driving licences or identity cards, for example. The evidence that I saw suggested that that tends to exclude certain groups more than others. It is much easier for some people to come in, open their wallet and bring out a driving licence or another form of identification, and it is likely that the groups that you spoke about earlier would be excluded.

Anything that requires more identification can work against certain groups in the community because of their ability to supply it. In areas where that happens, there tends to be some form of national identity scheme.

The Convener: Now you are playing devil's advocate, Ms Pitcaithly.

Mary Pitcaithly: Indeed I am.

The Convener: Mr Highcock, do you want to comment?

Chris Highcock: I agree. Another point is that the final date of registration to participate in an election varies tremendously between different parts of the world. In the European elections in 2014, it was interesting to note that the deadline for registration in some countries was in the December prior to the May elections. There is a broad spectrum of points at which the line is drawn on who can vote.

The Convener: Ms Pitcaithly, you talked about a move to an electronic register. We are still immensely paper based in the way that we conduct elections here.

Mary Pitcaithly: Oh, indeed.

The Convener: Could you cope with changes in that regard? I would say that they are inevitable.

Mary Pitcaithly: Some years ago, I was a member of the Arbuthnott commission, which the Scottish Government and the United Kingdom Government set up to look at voting systems and boundaries. One of the conclusions that we reached was that, by this time—we were looking ahead; this was 10 to 15 years ago—we would all be voting electronically and the registers would be electronic. Everything would be done electronically. We could not conceive of the system still being paper based in the way that it is.

The reality is that issues around integrity and security will always have to be paramount in any move towards a much more electronically based system. I am not sufficiently technically knowledgeable to know how far we are from that, but only one country has moved to full online voting. I think that it is Estonia or Latvia—it is one of the eastern European countries. They say that it is absolutely fine and foolproof, but other countries have piloted such approaches and decided that they are not yet sufficiently robust to satisfy people about their integrity. As some political parties would argue, an election can easily be stolen.

The Convener: I understand that Estonia has 100 per cent wi-fi coverage.

Mary Pitcaithly: Yes—that is another thing that it has.

The Convener: Maybe it is Estonia, then.

Thank you for a very useful evidence session.

Meeting closed at 11:11.

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