



OFFICIAL REPORT
AITHISG OIFIGEIL

Standards, Procedures and Public Appointments Committee

Thursday 10 October 2019

Session 5



The Scottish Parliament
Pàrlamaid na h-Alba

© Parliamentary copyright. Scottish Parliamentary Corporate Body

Information on the Scottish Parliament's copyright policy can be found on the website - www.parliament.scot or by contacting Public Information on 0131 348 5000

Thursday 10 October 2019

CONTENTS

DECISIONS ON TAKING BUSINESS IN PRIVATE	Col. 1
SCOTTISH ELECTIONS (FRANCHISE AND REPRESENTATION) BILL: STAGE 1	2

STANDARDS, PROCEDURES AND PUBLIC APPOINTMENTS COMMITTEE
17th Meeting 2019, Session 5

CONVENER

*Bill Kidd (Glasgow Anniesland) (SNP)

DEPUTY CONVENER

*Mark Ruskell (Mid Scotland and Fife) (Green)

COMMITTEE MEMBERS

*Neil Findlay (Lothian) (Lab)

*Jamie Halcro Johnston (Highlands and Islands) (Con)

*Tom Mason (North East Scotland) (Con)

*Gil Paterson (Clydebank and Milngavie) (SNP)

*Maureen Watt (Aberdeen South and North Kincardine) (SNP)

*attended

THE FOLLOWING ALSO PARTICIPATED:

Iain Hockenull (Scottish Government)

Michael Russell (Cabinet Secretary for Government Business and Constitutional Relations)

CLERK TO THE COMMITTEE

Katy Orr

LOCATION

The Adam Smith Room (CR5)

Scottish Parliament

Standards, Procedures and Public Appointments Committee

Thursday 10 October 2019

[The Convener opened the meeting at 09:30]

Decisions on Taking Business in Private

The Convener (Bill Kidd): I welcome members to the 17th meeting in 2019 of the Standards, Procedures and Public Appointments Committee. We have a couple of items to clear before we get under way with the real business.

Under agenda item 1, the committee is invited to decide whether to take item 4—consideration of standing order rule changes—in private. Do members agree to take that item in private?

Members indicated agreement.

The Convener: Under agenda item 2, the committee is invited to decide whether to consider its work programme in private at a future meeting. Do members agree to do that?

Members indicated agreement.

Scottish Elections (Franchise and Representation) Bill: Stage 1

09:30

The Convener: Agenda item 3 is evidence taking on the Scottish Elections (Franchise and Representation) Bill at stage 1, which will include consideration of the Representation of the People Act 1983 Remedial (Scotland) Order 2019.

We are joined by Mike Russell, Cabinet Secretary for Government Business and Constitutional Relations; Iain Hockenhull, bill team leader, elections team; and Ewan McCaig, solicitor, legal directorate of the Scottish Government. Welcome everyone, and thank you for coming along to meet us today.

If it is all right with the witnesses, we will not need any introductory remarks, unless you would like to say something, cabinet secretary.

The Cabinet Secretary for Government Business and Constitutional Relations (Michael Russell): I would not mind saying something, if that is permissible.

The Convener: It is permissible. We have only an hour, but if you would like to do an introduction, that would be fine.

Michael Russell: I promise that I will not take up much of the hour.

I thank the committee for inviting me and I look forward to working with it on the Scottish Elections (Franchise and Representation) Bill. The bill uses powers that are already devolved under the Scotland Act 1998 to address prisoner voting, which is necessary to ensure compliance with the European convention on human rights, and to extend voting rights to all foreign nationals who are resident in Scotland and who have leave to remain in the United Kingdom. It does that by allowing prisoners who are serving a sentence of 12 months or less to vote in devolved elections, and it reaffirms the existing rights of European Union and Commonwealth citizens to vote.

I hope that one of those issues is uncontroversial; the second has obviously been a matter of debate and controversy for some time. The current blanket ban on prisoners voting is untenable and unsustainable. I want to work constructively with the committee and the Parliament to find a solution that ensures that we meet our human rights obligations, and one that cannot be challenged.

I look forward to discussing those issues today, through the various stages of the bill, and, I hope, to completion of the bill.

The Convener: Thank you, cabinet secretary. That was worth while, as it gave us an idea of your direction.

Mark Ruskell will kick off the questions.

Mark Ruskell (Mid Scotland and Fife) (Green): I want to start with what I see as an anomaly in the bill. On our television screens at the moment, we see people in Syria who are dying for democracy. Many others will become asylum seekers and refugees, and a small minority of them will seek permanent residence in this country. As it stands, the bill does not automatically guarantee the rights of those people to vote in Scottish elections. They will have to seek indefinite leave to remain. It certainly does not guarantee their ability to become candidates. It offers no candidacy rights to those who seek asylum. What is your view on that? Why has the choice been made to exclude those people from a right to vote immediately on entry and while they are resident in this country, and why has that exclusion been extended to candidacy rights?

Michael Russell: We must be clear about the terminology that is used and the difference between a refugee and an asylum seeker. That is important. I am very keen to give the right to vote to everybody to whom we can give it who is normally resident in Scotland. That is the qualification, and it is a very wide qualification. Very few countries in the world provide that width of definition.

I want to make it clear that there is a difference between refugees and asylum seekers. "Asylum seeker" has come to mean a person who is seeking refugee status and whom the Government has not yet recognised as a refugee under the 1951 United Nations refugee convention.

Under the immigration rules, the secretary of state will issue a residence permit or humanitarian protection to a person who is granted refugee status, and their family members, as soon as possible after the grant of status, and it may be valid for five years—there are a lot of conditions.

The difference is that an asylum seeker will not have that right to remain as yet, and so is not a resident. I am not interested in the issue of permanent residents. People move from place to place, and people who are not permanently resident have certain opportunities to register to vote. However, there is a difference in the definition. In electoral terms, it would be extremely difficult to grant the right to vote to people who have no right to be here. Once the person has been granted refugee status—and that is nothing to do with citizenship—that right is given.

I accept that there is an anomaly in the bill around standing for election, and I want to clear that up during the bill process. We will

undoubtedly discuss how we do that at some stage.

There is a difference between refugee status and asylum status. We are absolutely determined that the bill will be as wide as it possibly can be but, even then, there has to be a limit, and that limit is the right to remain.

If I may speculate about an independent Scotland, which some people around this table would welcome and some would not, it might be possible to find a link between Scotland as a state giving that right and the right to vote. It might happen more quickly. There might be a wider definition. However, working within the current system, the distinction between the two statuses is important.

Mark Ruskell: I am still struggling to understand the real difference. If you are living in this country, you are resident here. You might have a different status as regards whether you are seeking asylum or whether you have an indefinite right to remain—

Michael Russell: You could be removed from this country. That is the issue.

Mark Ruskell: You are still a person living in this country—a citizen.

Michael Russell: You could be removed and not ever be granted the right to remain. I am not arguing that that is how I would want the law to be. I might want to see a very different law in the event that migration is devolved to the Scottish Parliament or Scotland becomes independent.

The bill is about where we are now, and that means that the status of an asylum seeker is such that the person could be here today and, regrettably—I do not support this—gone tomorrow. In those circumstances, there would be no opportunity for us to rectify that. The issue is to do with the difference between refugees and asylum seekers.

The bill is very positive, because it seeks to grant one of the widest franchises in the world, but there is a limit, which relates to the ability of an individual to remain where they are, to be on a register and to stand for office. That is solely for asylum seekers who, we hope, will all have refugee status very quickly, because that would solve the problem.

Mark Ruskell: I welcome the fact that you have committed to looking at the candidacy arrangements at stage 2; is that correct?

Michael Russell: Yes. I have worked on bills with one or two of the committee members previously, and I am keen to develop bills as they progress. The bill is the start of the process, not the end. I do not know whether you will want to raise it later, but there is also an anomaly between

European Union citizens who have the right to be candidates, and non-EU citizens. That is a hangover from the existing position of EU citizens, which is simply being replicated in the bill. We can do better than that, and I want to.

Mark Ruskell: I have some other, broader questions. You have already mentioned that immigration policy is reserved. What will be the potential impact of changes in United Kingdom Government immigration policy?

Michael Russell: Aside from the prisoner voting part, we have added the franchising element to the bill because we are concerned about the tenor and direction of UK immigration policy, which is becoming ever narrower. We want to guarantee people some rights.

If we take a wider issue that is not directly affected by the bill—that of settled status—as MSPs, we know about the difficulties that individuals are having with that. A number of people are getting pre-settled status, which is confusing and difficult. I want to make sure that the bill creates the circumstances in which we have the widest possible franchise, and that we can protect it, so that we can say who is entitled to vote here. The qualification for that is residence. That seems to me to be pretty incontrovertible. Once you are resident, you get the chance to vote. Settled status is not mentioned. The qualification is that you are entitled to be here and you are here.

The UK Government is not going to be there for ever—I hope—and I hope that wiser counsel will prevail. At the very minimum, I hope that migration policy will be devolved, but I would much rather have an independent country where we can resolve the issue ourselves. The bill is an attempt to create the circumstances that we want to have now to give that wide franchise.

Mark Ruskell: A fairly low number of EU citizens have applied for settled status, so there is still an anomaly.

How many foreign nationals could be enfranchised by the bill?

Michael Russell: I think that we are talking about 50,000 people.

Iain Hockenhull (Scottish Government): The figure in the policy memorandum is 55,000, which is a broad indicator. The exact figure, which is also given in the policy memorandum and is from the 2011 census, is closer to 59,000, but that is a figure from some time ago.

Michael Russell: We will have another figure from the 2021 census, but that is roughly where the figure lies.

Tom Mason (North East Scotland) (Con): Do you anticipate any pushback on the proposals? Refugees and people who have the right to remain will have the right to vote and change Scottish law. If we were independent, that would include decisions about going to war. They will have the right to influence legislation that could result in citizens, who need to follow any changes to the law, being conscripted, but people who have the right to remain could, in fact, leave.

Michael Russell: I do not anticipate any difficulties in that regard at all. The normal duty of a citizen is to participate, and we should welcome those who wish to play that role. Any citizen can choose to leave and go somewhere else at any time. One of the beauties of the EU is that we are able to leave and to stay in other countries; regrettably, that ability is being restricted by your Government.

Tom Mason: Yes, but we are talking about people with different statuses. Those who are not Scottish citizens would not have anywhere else to go.

Michael Russell: To coin a phrase, we're a' Jock Tamson's bairns. We should all be entitled to contribute, to vote and to be part of society.

Tom Mason: I understand that, but how do you explain that to the Scottish citizens who cannot move out or go somewhere else?

Michael Russell: I very rarely meet Scottish citizens who want to move out—except possibly as a result of Conservative Government policies.

Jamie Halcro Johnston (Highlands and Islands) (Con): I have a couple of questions in the area that Mark Ruskell talked about. What is your understanding of the residency rules and requirements? How would someone qualify under the residency requirements? What checks will be done to ensure that information is correct?

Michael Russell: Residency is checked by electoral officers. Clearly, to be on a register, someone has to be resident. The annual canvass, on which we work closely with Wales and the rest of the UK, is part of the process of ensuring that residency is recognised and recorded, so that the electoral register has that information on it. Someone just needs to be able to provide an address—there are no questions in the annual canvass about whether the person owns the property, rents the property or is bidding in at the property. The process will be applied to all people who can provide an address. They have the right to residency and they are here now. In certain circumstances, the returning officer might make further inquiries; they are entitled to do so. There will be no differences from the normal process.

Jamie Halcro Johnston: I appreciate that. However, even with the normal process, I suggest that the safeguards are not necessarily in place to ensure that we find out whether somebody is resident in Scotland, rather than just having an address in Scotland.

Michael Russell: The normal process of law applies. There is a criminal penalty if someone misleads in such circumstances.

The committee will also consider the Scottish Elections (Reform) Bill, on which my colleague Graeme Dey will give evidence. That bill deals with issues such as double registration. It is still possible to have a double registration in local government elections. We do not think that that is desirable, so there will be a penalty if someone were to have a double registration.

The law provides the regulations and the sanctions, which should be applied. They are being applied through the Scottish Elections (Franchise and Representation) Bill in an equal way for all those who are entitled to vote.

Jamie Halcro Johnston: I appreciate that the law and the penalties are there. However, the teeth need to be there to ensure that checks are done, so that the law is upheld. We are talking about widening the franchise and providing the opportunity for more people to vote in our elections. We are possibly acknowledging that there are opportunities for people to register without the checks and balances being in place.

Michael Russell: I am not acknowledging that. I am acknowledging that there is a system to register voters.

Jamie Halcro Johnston: Is it secure enough?

09:45

Michael Russell: Yes. There are penalties for people who attempt to cheat the system. I am not aware of any proposals to tighten the system in that regard. There have been proposals to tighten postal voting, which has been abused in some places. The fact that we know that it has been abused says something about the effectiveness of the law, which has caught up with those who have abused it.

Jamie Halcro Johnston: Would you support efforts to put in place more safeguards to ensure that, in the context of the widening of the franchise, the people who are entitled to vote are those who should be voting?

Michael Russell: If the electoral officers told me that they needed stronger penalties, I would, of course, listen to them. I have not heard that from the electoral officers, nor from the Electoral Commission. I have discussed with the Electoral

Commission issues such as greater penalties for those who mislead voters in election campaigns. There have been examples of cheating in relation to expenditure limits in election campaigns and referendum campaigns, in particular, in recent history, and the penalties for that could be increased. The Electoral Commission has not indicated to me or my officials that it seeks further penalties or action in relation to registration. Were it to do so, we would, of course, take what it said seriously.

Jamie Halcro Johnston: I am conscious of time, so I will move on to another question. British citizens who live overseas are able to reregister to vote in UK elections up to 15 years after they have left the UK. My understanding is that the UK Government is looking to extend that period. Have you considered similar proposals for Scottish citizens who live overseas?

Michael Russell: We have not done so. We have a very limited ability to recognise overseas voters. I think that the main category is service voters.

Iain Hockenull: That is correct.

Michael Russell: We have not considered such proposals. It is a complex business. The experience of the UK Government in that regard has been pretty difficult. However, I make the point that I have made previously about looking for good ideas. If someone lodged an amendment that seemed to be workable, we would, of course, consider it seriously. It is a very complex and expensive area. Jamie Halcro Johnston raised the possibility of not being able to make checks, but it would be considerably harder to make checks in the circumstances that he mentioned.

Jamie Halcro Johnston: Of course—I appreciate that.

We are looking at extending the franchise to a number of voters who are resident in this country. Have you looked at reciprocal agreements with other countries? Have there been discussions about ensuring that Scots who are not resident in Scotland for a short time have voting rights in countries where they do not have such rights at the moment?

Michael Russell: We have a nice system at the moment. Within the European Union, people are able to vote in certain categories of election. I think that British citizens in Ireland can vote in all Irish elections except referenda, for historical reasons.

Of course, that system is breaking down through the process of Brexit. The UK Government is following a procedure of reaching bilateral agreements. I think that it has agreements with Luxembourg and one or two other countries. Can we remember which countries?

Iain Hockenhull: It also has agreements with Spain and Portugal.

Michael Russell: We are following a different route. We are doing things unilaterally, and we hope that others will follow suit.

Jamie Halcro Johnston: Have there been any discussions with other countries to encourage Scottish residents—

Michael Russell: We are not in a position to do that. As I said, we have a limited overseas register. We will provide the opportunity to vote to people who are here.

Jamie Halcro Johnston: Surely, it would be for the other country to organise the register.

Michael Russell: We would love people to be able to vote overseas. There is a marvellous way to do that presently, and we do not want to withdraw from that way.

Jamie Halcro Johnston: We are not just talking about the European Union; the franchise extends beyond those from European Union member states.

Michael Russell: Such a system is less common elsewhere, but there are some places that have it. We encourage Scots who are abroad to—

Jamie Halcro Johnston: But nothing has been done.

Michael Russell: Not formally—we do not play a formal role in that process. I encourage anyone who is part of a society to seek the right to vote, if that is legally possible.

The Convener: Maureen Watt has some questions about candidacy rights and voting.

Maureen Watt (Aberdeen South and North Kincardine) (SNP): We live in an extremely hostile environment for foreign nationals. People might think that they are here for the long term then, all of a sudden, they find out that they are not, because of a flawed, out-of-date and, frankly, broken immigration system in the UK. What is the rationale for taking different approaches to voting and candidacy rights? Someone could stand for an election and be elected, but then find out that they were not eligible and were no longer allowed to be here, and they could just resign from the position.

Michael Russell: I would not go as far as that. I have indicated that the bill still has an anomaly in that regard. With two exceptions—which I will come to in a second—the bill should be developed to allow those who have the right to vote to stand. There is an anomaly around EU and other citizens, so we should address that.

The first of the two exceptions relates to the difference between refugees and asylum seekers, and we have to recognise that difference. It would be difficult for electoral officers to take a consistent approach when dealing with asylum seekers, because there is not even a medium-term guarantee with that group.

We did not consult on the other area, so I do not think that we are entitled to bring it into the bill, but candidacy for 16 and 17-year-olds is an area of active debate. It is an anomaly that 16 and 17-year-olds can vote but cannot stand. We did not consult on that, and I do not know what the public's view would be on that, so it will remain an anomaly.

I am keen to iron out the anomaly of EU and non-EU nationals and candidacy. I just stress the point that I made to Mr Ruskell about the difference between asylum seekers and refugees. It is an important difference and I am quite happy to provide further clarification of that so that we are clear on what we are saying. There is no desire to exclude anybody; the difference is based on a solid practical proposition.

Maureen Watt: On the situation that we are in with Brexit, if we leave—God forbid—do you envisage that EU citizens who have the right to participate in elections and stand for election will be treated just like people from the rest of the world?

Michael Russell: Yes. They will be entitled to vote and to stand just as they are now, in our franchise. We do not control the Westminster franchise. In the local authority, Scottish Parliament and national park board elections that are covered by our franchise, that will be the case. They will not just be treated like the rest of the world; they will be treated in the same way as anybody around this table.

Maureen Watt: Thank you.

The Convener: We will move on to education for newly enfranchised voters. Tom Mason has questions on that.

Tom Mason: No, my questions are more about the timeframe.

The Convener: All right, go ahead.

Tom Mason: The bill will come into force for the 2021 election. If certain parts of it are ready before then, do you anticipate that they will come into force if there is a by-election before 2021, for example?

Michael Russell: We would prefer to give electoral officers time to bed in the legislation before a major event. There should be time to build the regulations and make sure that everything is done properly. The intention is that

everything should be ready for 2021. I do not think that we would want to go sooner than that.

Tom Mason: Conversely, if everything is not completed by 2021, will parts of it be put in place with the rest to follow, or will it all be put in place in one lump?

Michael Russell: The bill is comparatively simple and it would be best to enact it in its entirety. The Scottish Elections (Reform) Bill is different but, again, we hope that that will be operable for 2021.

There could be a number of reasons why this bill might not come into force by then. The committee might reject it, for example. Providing it completes its parliamentary passage, our intention is to have it all ready for 2021.

The Convener: Thank you. I want to jump back to education for newly enfranchised voters. We have heard from a number of organisations that work with people who are new to Scotland—such as refugees and asylum seekers—some of whom might come from countries where they do not have the right to vote. What is your view on the awareness raising and education that might be required? Is the Scottish Government overseeing such work?

Michael Russell: There is a role for a number of players, including the Scottish Government, the Scottish Electoral Commission, local authorities and electoral administrators, in that work.

I have been struck by the evidence that the committee heard. It is in my mind to see whether we can enter into dialogue with some of those organisations and perhaps give them additional support to help their clients and service users. They have given convincing evidence that more needs to be done. That is positive: in a democracy, we should encourage people to vote. In parallel with the bill going through Parliament—this is not a matter for legislation, per se—I want to engage with those organisations and ensure that we take that work forward. We will encourage the Electoral Commission to do so as well. If the committee wants to engage with the organisations along with us, that would be useful.

Maureen Watt: I have a small point to make on that. We have heard from the Scottish Refugee Council and other organisations that are mostly based in the central belt. Glasgow is known as a city that welcomes refugees and asylum seekers, but it is not only Glasgow that does so. For example, Aberdeenshire Council has taken a fair number. It is not only big organisations that we need to engage with. During my time as Minister for Public Health, we used melas and other celebrations as opportunities to increase organ donation by people of different cultures. Will we ensure that the engagement is widespread, rather

than focused on just a small number of organisations?

Michael Russell: I take the point. One of the jobs that we will have to do is spread the message to Rothesay, where we have a large number of Syrian residents. I want them to actively participate in democratic processes on the island of Bute. I agree—it is not just a central belt issue.

The Convener: We will move on to the financial memorandum after Gil Paterson's question.

Gil Paterson (Clydebank and Milngavie) (SNP): Last week, I had the good fortune to visit Big Noise Govanhill and I was astonished that there were 54 different nationalities in the children's cohort. A good way to reach parents is through their children, so I wonder whether the Government will consider having a resource in schools that could be used—I use the word “use” in the best sense—to target and inform parents.

Michael Russell: That is best done by third sector bodies and the Electoral Commission. I am aware that the Government interfering in schools on election matters could be misrepresented. However, that education should happen and we will be happy to talk to organisations about how it should happen.

Jamie Halcro Johnston: I have a finance question, which is not on the area that Neil Bibby will touch on.

We have enough difficulties persuading people to vote in certain elections already. How much does the Scottish Government spend at the moment on promoting elections and encouraging people to vote? How much do you envisage will be spent on promoting voting to the extended franchise?

Michael Russell: It is the Electoral Commission that will encourage people to vote. It is an independent body, but we are happy to tell the commission that you have asked that question and ask it to brief the committee on what it does.

Jamie Halcro Johnston: It would be useful to get an idea of figures.

Michael Russell: We will act as the intermediary on that matter.

The Convener: That was useful.

We do not have Neil Bibby with us today, but we have Neil Findlay. Let us move on to the financial memorandum.

Neil Findlay (Lothian) (Lab): It is good to sit next to Jamie Carlaw.

The financial memorandum said that costs of adapting systems would be between £150,000 and £250,000. There was an excellent example of

Government speak when that was described as “over-definitive”, which I think means “wrong”. What do you expect the costs to be? Do you have any idea?

10:00

Michael Russell: We have estimated the cost range as between £150,000 and £250,000. The mention of “over-definitive” is an indication that that figure should not have been given, because someone else clearly had a different view. The discussions that officials had with the relevant organisation did not seem to be properly reported. In the circumstances, we will stick to the idea that the cost range is £150,000 to £250,000, but we need to make much more progress on ensuring that that is accurate. I have seen suggestions that it might be less than that. We need to have an accurate figure for you.

Neil Findlay: There is quite a gap between £150,000 and £250,000. I would not want to lower your salary, Mr Russell, but if I was to offer you £150,000 and say that it might go up to £250,000, that would be quite a difference.

Michael Russell: I would bite your hand off.

Neil Findlay: A man of your means would not need such an amount of money.

The financial memorandum also says that any additional money that local government might need has to come from existing funds. Where on earth is local government going to get any additional money?

Michael Russell: I have looked at that over the past week or so, and you might be surprised when you hear what I have to say about it. The money for the Scottish Parliament elections comes from the Scottish Government—we give money to the Scottish Electoral Commission—so it is anomalous for local government to have to meet an additional £200,000 out of its own resources. I want to go back to my colleagues and have a conversation about that to see whether we can assist in some way. I accept that it is anomalous and we need to look at it.

Neil Findlay: Just to be clear, your position is that local government should not use any of its own resources for that purpose.

Michael Russell: As usual, Mr Findlay, you are trying to put me in a corner and to be overdefinitive in what I say. I am saying that I want to find a way so that there is no additional financial burden on local government. If you give me the space to do that, I will undertake to come back to the committee and tell you where I have got with it.

Neil Findlay: Thank you.

Jamie Halcro Johnston: First, as someone whose name is often got wrong by others, I apologise to my valued colleague, Neil Findlay.

There will potentially be additional costs to local authorities. Might certain local authorities—perhaps those in remote and rural areas, such as the Highlands and Islands, or those with particular needs—find the costs to be proportionally higher than other local authorities? Has that been looked at?

Michael Russell: We might take a different definition of it, because the number of people that such authorities deal with will be lower than in cities.

The answer is that I do not know. It will not be a flat £200,000 divided by 32 authorities, but there will be costs for each authority. I want to do more work on that and see how we can assist. That will require us to ask local authorities what their expectations are of where the burden will lie. We need to get to the bottom of that.

Jamie Halcro Johnston: What administrative or financial concerns have been raised by local authorities so far?

Michael Russell: I have not had any discussions with local authorities myself; officials have had those discussions. I want to find out what their views are in the light of what I just said.

The Convener: I thank members for seeking stronger answers on their questions about the financial memorandum and I thank the cabinet secretary for saying that he will come back to us on that. That is great.

We will move on to discuss prisoner voting, which the cabinet secretary mentioned earlier in the meeting. Section 4 of the bill provides that prisoners serving sentences of 12 months or less have the right to vote in Scottish Parliament and Scottish local government elections. Questions have been raised with us by outside bodies, including the Howard League for Penal Reform, which described the prisoner voting proposal as being too unambitious, arguing that it represents the minimum level of compliance with our human rights obligations. What is your view on that?

Michael Russell: We consulted on that, and we know that there is a range of views on the matter. The committee has also looked at it. There are people who are dead set against any change and there are those who are very enthusiastic about having a complete change. The consultation showed us a range of opinions and we felt that the 12-month option was the one that sat most happily within that range, so that is our proposal.

I understand that the Welsh Government will propose that prisoners serving sentences of four years or less have the right to vote, and a

committee of the National Assembly of Wales moved in that direction yesterday.

Iain Hockenull: Yesterday's vote was on foreign nationals. The Welsh Government has made a public statement on prisoner voting.

Michael Russell: It wants to move in that direction.

We have proposed that prisoners who are serving sentences of 12 months or less should be able to vote. We think that there is justification for that in relation to how the justice system works. The number of people who would be affected is not inconsiderable. We think that our proposal is better than the UK Government's proposal, which has not been legally tested. I am not a lawyer, but it seems to me that our proposal is more robust in that respect. We have put our proposal on the table, and it is what we want to happen.

We recognise that we do not have unlimited time to make the changes. The original judgment on prisoner voting was in 2005, and we assumed responsibility for the franchise in 2017, so we need to get on and make the changes. In the one election that has taken place since we assumed responsibility for the franchise—the Shetland by-election—we had to take remedial action. The proposal is in the bill, and I will try to gather people around it in order to get it through.

Gil Paterson: Have you a fixed view on the matter, or are you persuadable? Given that 12 months is a short period in relation to the electoral cycle, there will be an issue with maintaining the system, even with the best will in the world. Folk will need to work on the issue all the time, so there will be no respite. For practical reasons—forget about the political reasons for the moment, although I might come back to them—it might be a good idea to extend the proposal to longer sentences, so that people would be on the register for a while. In normal circumstances, registers become out of date on the day that they are published—10 per cent of entries are out of date at that point. I see difficulties relating to the time that is taken for a conviction and the timing of elections. Extending the proposal to longer sentences would ease that problem.

Michael Russell: The proposal applies to people who are on the register anyway. There is only a very limited subsection of people who might be eligible to vote but who are not on the register—those people might be registered at the address of the prison. There is a continuous process of voter registration, so I do not think that what Gil Paterson said will be a difficulty. Some people might think that a sentence of 12 months is an arbitrary cut-off point and that we could do better, and others will have a rooted objection to prisoner voting.

I do not think that the technicalities of administering the system are complex. The Scottish Prison Service has expressed its willingness to be part of the process in relation to administration and prisoner education. Apparently, the Prison Service would be willing to host hustings, which would be an interesting experience. That is good.

Gil Paterson: That is good, and it leads me to the politics of the issue. We are trying to make life better for prisoners and to encourage them to reform and benefit from being part of society. However, I understand the argument—I agree with it—that there are people who should not get that benefit. I think that it would be better and more reasonable to have a cut-off point at four years rather than 12 months, given that it would still be low-level crime that was involved. People, particularly women, would benefit from being able to participate in a democratic vote.

Michael Russell: Twelve months is the maximum sentence that can be imposed in a summary trial, which is one that does not involve a jury. In those circumstances, there is a clear legal justification for our proposal. In our view, there should be a relationship between the seriousness of the crime and the ability to vote. Some people will disagree with that, but it is the view that we have taken. The proposal sets the line, because crimes for which sentences of more than 12 months are given, following a jury trial, are seen as more serious. The 12-month option was supported by the largest group in the consultation, but not by the majority—there was no majority for anything in the consultation. As I said, we have put that proposal on the table. We think that it is a reasonable and moderate proposal that meets the requirements and which does something significant by moving the issue on.

Some countries have a blanket approach and allow all prisoners to vote; some do not allow it at all. In some countries, the issue becomes part of sentencing policy—a judge can choose whether to disenfranchise a prisoner. In some cases, the disenfranchisement lasts beyond the prison sentence and has to be lifted by a court. There is a range of practices. We are putting ourselves in the mainstream. We are resolving the issue, as well as reflecting where people are on the matter. That is my view.

Gil Paterson: Is there an administrative reason why having a cut-off point of four years would cause great difficulties for the Prison Service, the Electoral Commission, the Government or anyone else? Is there a tangible reason why four years would not work?

Michael Russell: There is a tangible reason for choosing 12 months, which is what we have done. I have indicated what that tangible reason is.

Gil Paterson: I understand that.

Michael Russell: If there is a justification for choosing four years, people will no doubt want to make that case. I am not aware of any deal breaker in relation to administration, but I do not think that that is where the argument should be, so we support 12 months.

The Convener: You will not be surprised that the issue has excited a wee bit of interest from members.

Neil Findlay: I understand what the cabinet secretary has said, but what does removing the right to vote from people who are serving sentences of more than 12 months do? Is it rehabilitation or punishment?

Michael Russell: We are going into the realms of penal philosophy. Removing a prisoner's right to vote is an indication of punishment and disapproval. The view has been that society wishes that to happen, which is why it has been enshrined in legislation. Many people do not believe that that is correct and want to see the restriction removed entirely.

Neil Findlay: Which position do you take?

Michael Russell: I believe that, on this occasion, we should find a compromise to move things forward, because there are extreme positions on the issue. Compromise is the position that we are putting forward. The 12-month option shows that it would be useful and important for some prisoners to be able to vote. There is a means by which to do that, and we are required to do so under the European convention on human rights, so we had better get on with it.

Neil Findlay: You still regard removing a prisoner's right to vote as a punishment.

Michael Russell: I regard it as a sign that society does not wish to enfranchise all those who are serving prison sentences, but that it no longer takes the view that all those who are serving prison sentences should be disenfranchised automatically. Our proposals show that such decisions are for the Parliament to make. Some people have suggested that judges should make the decision as part of sentencing, but judges have indicated that they do not want to do that.

Neil Findlay: In effect, you are saying that removing a prisoner's right to vote is still a punishment.

Michael Russell: It is an indication of society's disapproval.

Neil Findlay: Do you think that people who are thinking about whether to commit a crime say, "Hmm—better not. I might not have the chance to vote for Mike Russell at the next election."?

Michael Russell: I have no answer to that question. I have no idea how often the image of me flits through prisoners' minds. Your image might flit through prisoners' minds, too—I have no idea.

Neil Findlay: It is difficult to follow the logic of the argument. It seems that, following the consultation, you have decided to go for something that is a bit of a compromise but which will probably keep nobody happy. There does not appear to be any principle behind the proposals.

Michael Russell: There are a number of clear principles. One is that we should observe the legal judgment, which is what we are doing. Someone who votes against the proposal because they do not want prisoners to vote at all will go against the judgment and the interpretation of the European convention on human rights. Another principle is that we believe that a blanket disenfranchisement is no longer correct and that a prisoner's ability to vote should not be removed automatically. I think that that position is reasonable enough.

Neil Findlay: Given that there are moves afoot to do away with sentences that are shorter than one year, how will that work?

Michael Russell: I am not sure that the two things are connected in any way. Here we have a principled position that we have looked at and come to a compromise on. We have justified that compromise and it is a fair thing to do.

Neil Findlay: They are not connected.

Michael Russell: I don't think so.

10:15

Jamie Halcro Johnston: I have questions on two areas, but before I ask them, I have questions about practical issues relating to the Shetland by-election, which you might or might not be able to answer.

You mentioned the possibility of hustings in prisons, but they would exclude candidates who might not feel comfortable going into a prison. If someone is a victim of crime, they might not be able to attend hustings that are held in prisons.

Michael Russell: I accept that that would be an issue for some people, and I would want to support them in that. However, we should not exclude people from the franchise on the basis that we cannot arrange hustings in prisons.

Jamie Halcro Johnston: I was not really looking for a response from you, cabinet secretary; I just wanted to point out that there are practical issues. Are you aware of any issues being raised about the Shetland by-election?

Michael Russell: No issues were raised. I answered questions on that at the Delegated Powers and Law Reform Committee. We have had no submissions—I think that I am allowed to say that. The deadline for submissions under the order is November and, to date, there have been none, so we have had no feedback. I cannot tell you how many people voted, because I do not know. We would not inquire into how many people voted, as it would be wrong for us to do so.

We took that action because, as a responsible Government that accepts the rule of law and respects human rights, we believed that we had to do so. My only regret is that, because of the timing, I was not able to take it to a committee first. The by-election date was set after the Parliament had risen for the summer and at the very first opportunity, I went to speak to the committee. I do not know whether anybody used the order, but we did the right thing.

Jamie Halcro Johnston: I appreciate that. I recognise that the information might not have come to you or might not be available. If any concerns are raised, it would be useful if they were fed back to the committee.

Michael Russell: They have to be. We have taken the position from the beginning that if we have representations under the order, we will talk about them and implement anything that is useful. So far, there have not been any.

We passed the order, the election officials put in place the arrangements that were needed and the process came to a conclusion. We do not know how many people voted and we will never know, because it would be wrong for us to inquire about that.

Jamie Halcro Johnston: Thank you for that answer.

Will the extension of the franchise exclude those who have committed offences related to electoral fraud?

Michael Russell: That is an important issue, which we need to look at as the bill progresses. There are situations in which that is true even in jurisdictions that permit prisoners to vote, no matter what their circumstances. I think that I am right in saying that, in Canada, which has introduced a much more liberal policy, the courts have decided that prisoners should be able to vote, but they have excluded those who have committed electoral fraud. Iain Hockenfull is looking at me as if I have gone beyond my brief.

Jamie Halcro Johnston: You are meant to be looking at each other for answers.

Michael Russell: I am now nervous that I might not have told you exactly the right thing. There is certainly a country—I believe that it is Canada—

that excludes from voting those who have committed electoral fraud. It is a serious issue and I will be happy to work with the committee on it.

Jamie Halcro Johnston: So, at the moment, the bill does not exclude such people, but you are willing to look at that.

Michael Russell: Absolutely—we could have the debate. If you believe that there should be no restrictions on prisoner voting, you believe that no crime should exclude prisoners from voting. If committing murder does not exclude a prisoner from voting, why should electoral fraud? There are other jurisdictions that say that if a prisoner is guilty of electoral fraud, they should have their right to vote removed. I know that there is a country that does that, so we will come back to you on whether it is Canada or elsewhere.

Jamie Halcro Johnston: That would be helpful. When it comes to public perception—I appreciate that we are looking at the bill from the legal and legislative side—I think that the public would find it difficult to see those who have been convicted of electoral fraud being given the right to be involved in the electoral process.

Mark Ruskell: Like Neil Findlay, I am struggling to bottom out what the cabinet secretary described as the underlying penal philosophy behind the proposal that prisoners who serve sentences of one year or less should have the right to vote. With that, the Government's position, in effect, is that any citizen who goes through a summary trial and is convicted of a serious crime faces a civic death.

Michael Russell: That would be the effect of what we are recommending.

Mark Ruskell: So there is no differentiation when it comes to the circumstances or the seriousness of the crime—it is just an arbitrary cut-off. If a prisoner has had a summary trial, been convicted of a serious crime and is serving a sentence of more than one year, that is the dividing line.

Michael Russell: You could make a broad assumption that the longer the sentence and the longer and more detailed the proceedings, the more serious the crime. That is a broad assumption, although there will be anomalies. You might dispute it, but that is the assumption that we are making.

The Convener: I want to ask a question that is a wee bit technical, rather than on the overarching theme.

You mentioned the idea of hustings and suchlike taking place in prisons. Will prisoners vote in their original constituency or in the constituency of the prison? If people were going into prisons to speak at hustings, you would

imagine that they would be people who were local to that area.

Michael Russell: As everybody in the room knows, there are examples of hustings in which the parties have representatives taking part who are not the local representatives, per se.

Prisoners will be registered to vote where their home is, and it is not certain in any sense that that is the same place as the prison. There are some limited circumstances in which the address of the prison would be the electoral address; that is to do with individuals who have no other address but are entitled to vote. By and large, the prisoners involved will have an address where they vote, and all voting will be done by post or proxy. No physical voting will take place. The Prison Service will have to ensure that there is privacy for postal voting, just as individuals in institutions are given privacy.

The Convener: I thank the cabinet secretary and his officials for coming along and for his commitments to come back to the committee on certain issues. We might invite you back at some future point.

Michael Russell: We will also have a stage 2 process in which we will no doubt meet again.

The Convener: That ends the public part of the meeting.

10:22

Meeting continued in private until 10:36.

This is the final edition of the *Official Report* of this meeting. It is part of the Scottish Parliament *Official Report* archive and has been sent for legal deposit.

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

All documents are available on
the Scottish Parliament website at:

www.parliament.scot

Information on non-endorsed print suppliers
is available here:

www.parliament.scot/documents

For information on the Scottish Parliament contact
Public Information on:

Telephone: 0131 348 5000

Textphone: 0800 092 7100

Email: sp.info@parliament.scot



The Scottish Parliament
Pàrlamaid na h-Alba