



**OFFICIAL REPORT**  
AITHISG OIFIGEIL

# Standards, Procedures and Public Appointments Committee

**Thursday 27 August 2020**

**Session 5**



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Pàrlamaid na h-Alba

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**STANDARDS, PROCEDURES AND PUBLIC APPOINTMENTS COMMITTEE**  
**13<sup>th</sup> Meeting 2020, 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)

\*Gil Paterson (Clydebank and Milngavie) (SNP)

\*John Scott (Ayr) (Con)

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

\*attended

**THE FOLLOWING ALSO PARTICIPATED:**

Graeme Dey (Minister for Parliamentary Business and Veterans)

Al Gibson (Scottish Government)

Kenneth Pentland (Scottish Government)

**CLERK TO THE COMMITTEE**

Katy Orr

**LOCATION**

Virtual Meeting



# Scottish Parliament

## Standards, Procedures and Public Appointments Committee

*Thursday 27 August 2020*

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

### Interests

**The Convener (Bill Kidd):** Good morning, and welcome to this 13th meeting of the Standards, Procedures and Public Appointments Committee in 2020. The first item today is to ask John Scott, who is joining the committee, to declare any relevant interests.

**John Scott (Ayr) (Con):** I have no relevant interests to declare.

**The Convener:** Thank you very much for coming along and being part of the committee. I know that you have experience of dealing with important parliamentary issues. John Scott comes on to the committee to replace Alexander Stewart, and I put on record my and the committee's thanks to Alexander for his work with us. He was not with us for long, but he made a good contribution, so our thanks go to him. We welcome John Scott to the committee.

## Decision on Taking Business in Private

10:01

**The Convener:** Our next item is for the committee to decide whether its consideration of code of conduct rule changes, standing order rule changes and our future work programme should be taken in private at future meetings. Do members agree to take those items in private?

No one has registered any other direction, so we will take it as read that the committee is agreed on that.

## Subordinate Legislation

### Scottish Parliament (Disqualification) Order 2020 [Draft]

### Representation of the People (Electoral Registers Publication Date) (Coronavirus) (Scotland) Regulations 2020 [Draft]

10:02

**The Convener:** Item 3 is subordinate legislation. The committee will take evidence on two draft Scottish statutory instruments. Joining us today to discuss the draft instruments are Graeme Dey, Minister for Parliamentary Business and Veterans, and Mr Dey's officials Jamie Bowman, Al Gibson and Kenneth Pentland. I invite the minister to make a short opening statement.

**The Minister for Parliamentary Business and Veterans (Graeme Dey):** Good morning, convener. I thank the committee for the invitation to appear before it today to give evidence on the draft Scottish Parliament (Disqualification) Order 2020. This order is an established item of business in advance of each Scottish Parliament election. The draft order before the committee today is the sixth such order, but it is the first since the Scotland Act 2016 devolved full competence over disqualification to the Scottish Parliament.

Section 15 of the Scotland Act 1998 sets out the circumstances in which a person is disqualified automatically from membership of the Parliament, for example by virtue of being a judge, a civil servant or a member of the armed forces. Section 15 additionally provides an order-making power to disqualify specific office-holders from membership of the Parliament, thus allowing for separation between the legislature and the holders of various public offices. That serves to help reinforce their independence from one another.

We consulted widely with policy officials and sponsor teams in the Scottish Government and with Parliament officials on the entries pertaining to the Scottish Parliamentary Corporate Body. With the help of the Secretary of State for Scotland's officials, we gathered responses from the United Kingdom Government, the Welsh Government and the Northern Ireland Executive, as offices throughout the UK are relevant to these measures.

The draft order updates the list of disqualified offices to reflect the relevant appointments that have been abolished, renamed or created since the 2015 order was made. A total of 61 new disqualifications have been added, 19 have been removed and nine minor amendments have been made to existing disqualified offices. All told, there

are 537 posts on the list that we are considering today.

To give you an example, we have added non-executive members of Scottish Forestry and Forestry and Land Scotland to the order, as such agencies were established on 1 April 2019 and ministers are responsible for determining the overall policy and resource framework in which those agencies operate. Non-executive members of those agencies are not civil servants and would not otherwise have been disqualified. As I have said, the list is extensive given the breadth of the public body landscape across the United Kingdom, but members should not see the order as a constraint on the wide talent that is available to the Scottish Parliament, as those in a disqualified office can of course opt to step down from such positions and seek to bring their breadth of experience to the Scottish Parliament. I wrote to the Presiding Officer, the chairman of the Electoral Commission and representatives of the main political parties to draw their attention to the Government's laying of the draft order and, in particular, to its effect and scope.

That is probably enough from me, and I will happily take questions from members.

**The Convener:** Thank you for that outline. Do any members have anything that they would like to contribute? I do not see anything at the moment.

**Mark Ruskell (Mid Scotland and Fife) (Green):** The big context of all the orders that we are discussing this morning is the Covid crisis. What kind of assessment has been done on the potential impact of the Covid crisis on next year's Holyrood elections? I am particularly interested in how that might affect the conduct of the elections and the pressures that could be placed on EROs.

**Graeme Dey:** That is a very good question, Mr Ruskell. Members are probably aware that the Government is currently consulting all the relevant electoral authorities and the other parties about the conduct of the election next year. As Mr Ruskell is probably aware, we will have to bring out the conduct order later this year, but it is possible that primary legislation will need to accompany that. I do not want to say too much when we have not had the opportunity to discuss the issue directly with the political parties, but it is self-evident that we have to look closely at how an election is conducted safely and in a way that maximises the opportunity for everyone to cast their vote. There is an extensive piece of work going on at the moment. I hope to have detailed discussions probably next week with the parties and the Parliament to gauge their views, and we will take it forward from there. Mark Ruskell is right to highlight that, because it is clear that the Covid crisis could impact the conduct of the forthcoming election.

**Mark Ruskell:** It raises a lot of questions. The question that I have in mind is about turnout. If certain communities are in lockdown and other communities are not, how would that affect turnout? That could be very significant for the result of the election. Have those kinds of issues been worked through and who is analysing them independently for the political parties and those of us who have a vested interest to consider what the complications might be?

**Graeme Dey:** I can offer assurance on both fronts. All those items are being looked at in detail but, clearly, discussions with the political parties may throw up other things that we have not immediately captured. In relation to independent involvement in determining the best way forward, we are for example in discussion with the Electoral Commission and the Electoral Management Board, so we are looking holistically at how we deliver that in the most appropriate way. We are alive to Mark Ruskell's point about particular groups; for example, those who had to shield during the Covid crisis may be a group for whom access to postal votes is particularly important.

It is difficult to expand on that in great detail, because I want to talk to all the parties of the Parliament and continue discussions with the electoral authorities. We can then come up with a set of proposals to address any issues that they may well have. We need to satisfy everyone, including the public, because we need to ensure that the public have confidence in the process next year. It is inevitable that there will be changes to elements of the electoral process, but we will proceed with two ambitions: to conduct the election as safely as possible and to ensure that the maximum number of people are able to exercise their vote.

**The Convener:** We have a couple of other questions. Maureen Watt will go first, followed by Jamie Halcro Johnston. We also have a question from John Scott specifically on the process for disqualification.

**Maureen Watt (Aberdeen South and North Kincardine) (SNP):** In your discussions with electoral registration officers, have they indicated to you that, in getting information for the register this year, they are under pressure as a result of Covid and lockdown?

**Graeme Dey:** If you do not mind, I will bring in one of my officials to answer that question in detail, because they have been having dialogue on those matters. Perhaps Kenneth Pentland can pick that up, if he is on the line.

**Kenneth Pentland (Scottish Government):** Officials are in regular contact with the Scottish Assessors Association, which represents the EROs. From attending the association's meetings,

we know that officers are under pressure this year as a result of both the impact of Covid and the redeployment of resources to other areas. In addition, it is the first year that the organisation is implementing a newly reformed canvass. Any changes to do with electoral law need to be made in tandem with the United Kingdom Government and the Welsh Government. The SAA is liaising with its equivalent organisation, the Association of Electoral Administrators, which is reporting the same issues, such as officers being under pressure in relation to resources.

The small change that a delay of two months represents will allow the SAA to process the returns from the canvass over a slightly longer period, and it will take some of the pressure off.

**Maureen Watt:** What effect might any local lockdown have on the capacity of EROs to publish their electoral register by February 2021?

**Kenneth Pentland:** The EROs will have to do what is required of them under electoral law in publishing a register. They will also have to be vigilant in relation to any Scottish Government guidance around Covid, and they will respect that guidance.

The EROs have a number of routes for communicating with electors, especially following the implementation this year of the newly reformed canvass process. The process does not require face-to-face door knocking and following up at houses. I do not pretend that EROs are not working under very difficult circumstances this year, but they are not feeding back that it will not be possible for them to publish a canvass that is as accurate and complete as possible under the circumstances.

**Maureen Watt:** I have a couple of other short questions.

The whole process is all to be done on computer now. I am concerned about people who do not have access to a computer, especially when there is limited access to libraries and community centres where people can log on and get help with the process. When I was briefly in my office, although it was not open, somebody came to my door very distressed about whether he was on the register or not. Fortunately, I could check and reassure him that he was, because he had the paperwork. However, I worry about some people not being on the register because they do not have access to a computer.

I have one final question—I am sorry, convener. Are we already seeing an uptick in registration for a postal vote for next year's election from people who are returning their forms or responding online?

10:15

**Graeme Dey:** I am not entirely au fait with the numbers to which Ms Watt refers in respect of returned forms, but I can say that substantial work has been done on our behalf with the public to gauge the appetite for postal vote engagement in the election, and the indications are—not surprisingly, in light of the Covid crisis—that there is an increased appetite for postal votes. One of the issues that we are exploring is how we can meet that demand.

To go back to your first point, the answer lies in the piece of work that we discussed at the committee a few months ago. The process of maximising the number of people on the register has various strands, and I am optimistic that the approach that we are taking all round will help to address the type of issues that Maureen Watt has highlighted. However, if she has any more specific concerns, I am happy to engage with her directly on them and to write to her about them.

**Jamie Halcro Johnston (Highlands and Islands) (Con):** My first question is along the same lines as those that Maureen Watt asked. Obviously, there will be groups that will potentially be harder to reach and access. Where are they? Are there geographical difficulties? Are there difficulties in getting voters of a certain age or people from different social backgrounds on to the register? Who are the harder-to-reach groups? What is being done to reach them?

**Graeme Dey:** I will bring in Kenneth Pentland, as he has direct engagement with the EROs.

**Kenneth Pentland:** The Electoral Commission publishes a report on the completeness and accuracy of the register annually. It tends to find that there are gaps in respect of younger people—particularly students—and people in private rented accommodation who might move around more frequently.

The legislation on the reformed canvass that the committee saw a couple of months ago is partly meant to address that issue. If a person has lived in the same property for 20 years, they do not need as intensive a follow-up process from their registration officer because, as long as the data matches and shows that they are living in the same property, it is not as essential for them to be chased up. However, EROs need the discretion to tailor more of their resources and efforts to getting students and younger people who move around more frequently on the register.

There are probably other groups for which the register is not as complete as other groups, but students, young people and people in private rented accommodation stand out.

**Graeme Dey:** Again, if Mr Halcro Johnston wants to write to me about any specific concerns—given the area that he represents, I suspect that he is thinking about remote rural areas in particular—I will come back to him with as much detail as possible.

**Jamie Halcro Johnston:** Thank you for that. One issue that might be of interest to hear about is care homes, given the additional restrictions on them and the additional work involved. Maybe I will send some information to the minister about them.

I have two final, simple questions. How confident are you that the canvass will be as robust and accurate as it can be, compared with those of previous years? Are the canvass process and the EROs on target to achieve what they need to achieve by the deadlines that have been set?

**Graeme Dey:** It is as robust as it can be, given the challenges that we face. However, we are also aware that there is a rolling register element, which means that the process of updating is ongoing. We cannot pretend that Covid might not have an impact of some kind, but I think that the process is as robust as it can be.

In response to your point about meeting deadlines, I would say that this is an extension. If an individual ERO has completed or feels that they have completed the register ahead of the date set, there is nothing to stop them publishing prior to the extended deadline.

EROs have been encouraged to engage proactively with the political parties in their locality to make people as aware as they can be of the progress that is being made. I am therefore optimistic that the canvass will be as robust as it is possible for it to be in the present circumstances.

**John Scott:** Can you provide us with more detail on the process for making changes to the order? You mentioned a significant number of changes, but could you give us more information on how you will go about that? You have added 61 new disqualifications, removed 19 and there are 537 on the list.

**Graeme Dey:** I have an expert on that in the room. Al Gibson is here to assist and he will give you the detail you are looking for.

**Al Gibson (Scottish Government):** As the minister said, the process is best explained by the select criteria for considering who should and should not be disqualified from being a member of the Scottish Parliament. Those criteria have been in place since devolution, and the list of bodies contained in the order reflects those offices that are deemed to fall under criteria, such as political impartiality or those offices in which remuneration



is over £10,000. Those criteria are all applied across the board and have been since 1999.

The process for reviewing those bodies and the rationale for the changes come from the changing landscape of public bodies across the UK. We identify that with a control that is conducted across Scottish Government policy leads and sponsor teams to refine the list of bodies. Bodies that are no longer in existence would be removed, and new bodies are always coming on stream. It has been a few years since the making of the most recent order, so that means quite a lot of change.

We have worked with colleagues in the Office of the Secretary of State for Scotland who in turn, on our behalf, help us co-ordinate returns from all UK Government departments. That involves a wide range of people, with, one might argue, potentially differing views on how they interpret the criteria. However, ultimately the relevant Government official across the UK is asked to consider the terms of the order as from the most recent order, and whether any changes are required. The process is then simply one of co-ordination of that, as the minister explained. The UK Government entries are then combined with any changes that we have received from the Scottish Government exercise and approved for the order.

**The Convener:** We will move on to Mark Ruskell, who has questions on absent voting issues.

**Mark Ruskell:** I have a couple of follow-up questions. I was looking at the absent voting—or you could call it the proxy voting—statutory instrument that is before the committee and I was trying to work out how it would work in practice. Let us say that I have a persistent cough or a high temperature six days out from the election and I am shielding or self-isolating. I could then nominate somebody to vote for me. What if I was an elderly person and I was not online; how would I go about doing that? What would the issues be in relation to filling out forms if I was shielding and I should not be in contact with other people? I am just trying to get my head around the practicalities of the order and how it will work in practice in that situation.

**Graeme Dey:** I anticipated that the committee would be looking for that level of detail; that is why I have my officials with me. Kenny Pentland can answer that question.

**Kenneth Pentland:** As I am sure Mark Ruskell is aware, the emergency proxy is already available to people on medical grounds. For example, if an older person who was not online had a medical emergency but still wanted to vote, they would follow the same kind of process, involving contacting the ERO and making an application.

Mark Ruskell makes an interesting point about physical distancing in such a situation. The ERO will have to be aware of and adjust to that requirement. I could go back to the Scottish Assessors Association to get a more detailed answer for you.

With the legislation, the key point is that this group of people who are self-isolating at short notice will have had no recourse to the vote but at the very least they will now have the same option in front of them as someone who has had a medical emergency six days before an election.

**Mark Ruskell:** Yes, but it is a particular type of medical condition, which means that they cannot be in direct contact with other people. I accept that there are issues to work through there.

Minister, you mentioned that there might be a need for primary legislation. I am interested in how much legislation will be needed ahead of the next Holyrood election to make all the reforms that we have agreed to previously through this committee and the ones that are Covid related. Are there any issues in terms of the length of the parliamentary session that is left?

**Graeme Dey:** No, I do not believe so. In the context of possible primary legislation, we are working through the options. It would be reasonable to assume that there might be some expedited element to that legislation but I would want Parliament to have sufficient time to work through any proposals.

I do not want to appear evasive in any way, Mr Ruskell, but we are at the stage of commencing detailed dialogue across the Parliament, so it is difficult to give you specifics. However, by way of guidance, I would anticipate that if we were to require primary legislation, it would have completed its parliamentary process by around the end of this year.

**The Convener:** Okay, thank you very much—

**Graeme Dey:** Sorry to interrupt, convener. Given the role of the committee, I would be happy to write to the committee to keep it updated about possible legislation as matters progress if that would be helpful.

**The Convener:** That seems perfectly reasonable. Thank you very much for that, minister.

**Neil Findlay (Lothian) (Lab):** I just want to check something in the committee briefing papers about the order. Apparently, office-holders can be disqualified from being members of the Scottish Parliament or from being members of Parliament, but only for particular constituencies or regions. Is that correct?

**Graeme Dey:** I will bring in Mr Gibson to answer that.

10:30

**Al Gibson:** Yes, Mr Findlay, that is correct. That is not applied to all the listed office-holders, but it is relevant to those who appear in a separate part of the schedule and references those who hold the post of lord lieutenant and so on. Those people are distinct in terms of their area in that regard, but the requirement applies to all the other office-holders across the board.

**Neil Findlay:** So the lord lieutenant of West Lothian, for example, would not be able to stand in a West Lothian constituency. Is that how it works?

**Al Gibson:** That is correct.

**Neil Findlay:** Thank you. That is helpful. Are national health service boards included in the list? I had a quick look, but I could not see them.

**Al Gibson:** They would be included. On some occasions, entries are generic in nature as opposed to specifying particular boards, as in Fife NHS Board, for example. We therefore have entries that are generic and that might indeed refer to the statutory reference. We can certainly confirm which reference that would be, but there is a general suite of bodies that would naturally be included in the order.

**Neil Findlay:** Finally, if someone was a member of an NHS board, the Coal Authority, Creative Scotland or any of the others on the list and they stood down, is there a cooling-off period between that and their saying "I am now going to be a candidate"? Can they say "Right, that's me. I'm standing down from this board", then be a candidate the following day?

**Al Gibson:** When someone submits their consent to nomination, the expectation set out in the Electoral Commission guidance is that an individual will confirm at the point of submission that they are not disqualified from membership of the Parliament. The general understanding is therefore that separation would be achieved by that point, so that somebody would be a candidate because they would be stepping aside from their public role.

Again, as members know, the terms and conditions of appointment for many public offices include reference to political impartiality. We have seen in practice that those issues are taken up by the individuals themselves with chairs or chief executives on a case-by-case basis. To my knowledge, the impact of that is that separation occurs before the consent to nomination is submitted.

**Neil Findlay:** Okay. Thank you.

**John Scott:** Further to Mark Ruskell's question, what testing has the minister done of the likely effect on turnout? I suspect that the elderly and shielded are likely to be affected disproportionately, as the two groups almost go hand in hand. What impact assessment have you done of the effect on the turnout of the elderly if Covid is still as prevalent as it is today?

**Graeme Dey:** We have done some significant market research on people's attitudes to voting, for example. Mr Scott raises a reasonable point, because the question is whether any particular group would be less inclined to go out and vote in the traditional manner if they were fearful or had been shielding. That is a perfectly good point to make, Mr Scott. One possibility is therefore to encourage postal vote uptake by the shielding group, for example, or by anyone who might feel particularly vulnerable in the circumstances. That is all being looked at, but I do not want that to sound evasive.

We are at the point where we have identified all the aspects of the situation and are now beginning to have detailed discussion about how we might best address it. That will be a matter for the whole Parliament, and all the political parties and the various electoral authorities should feed into that process. There will be initial discussions with the parties to make them aware of the work that is being done. Starting from next week, that dialogue will ramp up. As I said earlier, the committee clearly has a locus in that, and I will be more than happy to write to it to keep its members updated.

**John Scott:** Thank you. Will you have time to do that between now and the election, given the Gould committee's suggestion that statutory instruments should have at least six months before the election in which to settle, so to speak?

**Graeme Dey:** Mr Scott is referring to the conduct order having six months to settle in. Primary legislation might be a slightly different matter, but our aim would be to have that done in very good time to allow for everyone to understand exactly what the look of the election might be.

I stress that, when it comes to primary legislation, in some instances we would simply be putting in place contingencies that might not be needed, depending on the circumstances. Our approach will be about preparing for the possibilities. For example, we will consider whether it might be advisable or necessary to conduct the election over two days—it might, or it might not. Also, a socially distanced count would, self-evidently, be a different beast from the ones that we politicians are traditionally used to. All those issues are being considered, along with voter accessibility and the need to ensure that everyone has the appropriate opportunity to cast their votes.

Mr Scott is right: the process is quite extensive and there is a lot to think about. However, it is well under way, and I anticipate that, with a fair wind, we could have any necessary legislation through the Parliament by the end of the year. The one caveat that I would place on that is that it might be necessary to have an additional emergency amendment to the conduct order. Members will appreciate that circumstances might change, but our will and our intention would be to give the Parliament an appropriate opportunity to consider the matter and also to put the order in place sufficiently early to ensure that everyone will know what the election will look like.

**John Scott:** For the public record, you have not said so, but I suppose that, if changes needed to be made, much of that process—or at least some of it, at any rate—could also be done by statutory instrument rather than by primary legislation. That would be another way to do it.

**Graeme Dey:** Yes. I will bring in Al Gibson to add to this, but my understanding is that certain aspects of such a change would require primary legislation. However, you are right, Mr Scott, that we could frame things in such a way that we could make any more immediate changes that are required by statutory instrument, albeit that that would be under a process that allowed this or another relevant committee to scrutinise it in detail.

**Al Gibson:** As the minister has said, that would depend very much on the nature of the changes and whatever policy might be agreed by political parties and others. The moves that were required would define whether measures would have to be introduced through primary or secondary legislation but, either way, each would find its place.

**John Scott:** Thanks very much.

**The Convener:** We will move to our next question. Hold on a second—I can see Gil Paterson waving his hand and he was doing so earlier, so perhaps we should hear from him first and then from Maureen Watt.

**Gil Paterson (Clydebank and Milngavie) (SNP):** Thank you, convener—I thought that you were signing off without coming to me, so you gave me a fright.

**The Convener:** I am sorry about that.

**Gil Paterson:** We first discussed the changes that would allow EROs to contact people by telephone well before Covid. I take it that the EROs are now working from home, but the budget that was set at that time envisaged a regular amount of face-to-face contact. I take it that, as a result of the changes, there is a time constraint that is causing pressure, but is there also a budget

pressure that needs to be looked at? There will be more direct contact, because it is coming through the telephone.

**Graeme Dey:** I am not directly aware of any approach as yet along those lines but, clearly, if there was an evidence issue, the Government would look at it.

**Gil Paterson:** At this stage, are the differences between the practice in the past and the new practice showing up how fast the new method is compared to what we used to do?

**Graeme Dey:** I will bring Kenny Pentland in, because he will be alive to any evidence of that.

**Kenneth Pentland:** For most EROs, this year's canvass began on 1 July, so it is still early. I also get the impression from EROs that, because this is the first year of a newly reformed canvass, they are taking a cautious approach. That means that they are more likely to choose route 2 of the reformed canvass, which is more similar to what has happened in previous years. They are not going to send lots of potential electors down route 1. We do not yet have evidence and we think that they will take a cautious approach to the new communication options at their disposal, but I am sure that, after this year's canvass, we will have something to evaluate.

**Gil Paterson:** I am happy with that. Most of the other questions have been covered.

**Maureen Watt:** My questions are about the things that have come up in the meeting, one of which was the provision on lords-lieutenant. It does not apply to all lords-lieutenant, does it, or am I getting that wrong?

My second question is on people who are in the shielding category; we have a database of all those people. In order to relieve stress for people who are already stressed because they are in that category, is there a way to get all-party agreement that those people are automatically sent a postal vote form? They would not have to fill it in, but at least that would be one thing less thing for them to worry about.

**Graeme Dey:** I think that Ms Watt has been reading my mind on that second point. We are going to explore something along those lines; if we can access that data and there is agreement, it is an option. I am not going to say that we will definitely do it, but it is a sensible option to explore. That perhaps illustrates the depths that we are going into on that. We are trying to determine how we best afford everyone the opportunity to vote if circumstances are different from what we would all consider the usual. As I have said repeatedly, I will be more than happy to write to the committee to keep it updated on that.

I will bring Al Gibson back in on the question about lords-lieutenant.

**Al Gibson:** That aspect of the order can be confusing. It is not the case that all lords-lieutenant are dealt with in the same way as the other office-holders set out in the order. The aim is to recognise the local nature of those disqualifications. As I mentioned to Mr Findlay, the office-holder concerned would be disqualified, but that would be restricted to the area in which they operate—if that is the correct term—or officiate.

Again, if it would be helpful, I am happy to clarify that in writing.

10:45

**Jamie Halcro Johnston:** I have a quick practical question that covers some issues that have already been asked about. We have seen a number of outbreaks of Covid in workplaces and some cases among school pupils, although they were not necessarily directly linked to a school. If there was an outbreak in a workplace, a school or anywhere else a number of days before an election and after it was possible for individuals to have a postal vote, obviously people would not be able to vote in person if they were being told to quarantine. Would it be possible for them to have a proxy vote? Would the local electoral bodies be able to turn that round? What additional support might they need to do it?

**Graeme Dey:** I will bring in Kenny Pentland on that, because we are working through that issue at the moment.

**Kenneth Pentland:** In general, the options that are available to everyone and which might be more relevant because of Covid are postal votes, the standard proxies—which we have not been talking about today, and which people can apply for if they have a good amount of time—and then the emergency proxies. The minister mentioned the survey of public attitudes towards alternative voting. That has now been published on the Electoral Commission website, so you can get a sense of the voters' perspective. However, we are working with the EROs to gauge their capacity, because there might be an uptake of some forms of voting in the circumstances. That forms part of the discussions that we are having with the EROs, the Electoral Management Board and the commission. We are having on-going intensive engagement in the run-up to the election.

**Graeme Dey:** It is an on-going process. Just as we will hear thoughts from the parties in the Parliament, so we will continue to listen to the EROs, who may come up with something else, and we will have to be responsive to that. I cannot sit here today and say that everything will be perfect. In the circumstances that we are operating

in, it would not be particularly wise to suggest that. However, the intention is to do as much as we can to ensure that the election is conducted safely and to maximise the number of people who are able to cast their vote.

**Jamie Halcro Johnston:** I appreciate that, and the fact that the process is on-going, but my concern is that a large group of people might be disenfranchised if they cannot vote in person because they have restrictions on their movement and cannot get a proxy vote. Also, there is an issue about the integrity of the polling station near an outbreak. If there are concerns that people who are meant to be quarantining are accessing the polling station, that might discourage other people. It is important that those matters are considered when you look at the issue.

**Graeme Dey:** I give you the undertaking that those matters will be considered. This has been an important discussion because, although we are considering two particular instruments, we have strayed into the wider context. The points that members have made illustrate just how complex the issue is. It has been useful to hear members' thoughts, which we will take away and feed into our considerations over the next few weeks.

**Jamie Halcro Johnston:** I appreciate that we may have wandered off topic, but I think that the discussion has been helpful.

**Graeme Dey:** It has been useful.

**Neil Findlay:** Will you share the market research that you mentioned with the committee?

**Graeme Dey:** As was indicated, the research was published on the Electoral Commission's website this morning, so it is readily accessible. It is interesting and, obviously, a snapshot in time, so we may well repeat that market research.

We will also get a direction of travel from the 11 council by-elections that are scheduled for later this year. For example, someone touched on the uptake of postal voting or proxy voting. I recognise that the scale of, and interest in, a council by-election is somewhat lower than it would be in a national election. Nevertheless, we will begin to see percentage variations in the number of people who pursue a postal vote or a proxy vote, which will also help to inform our planning.

**The Convener:** Would it be possible for the minister's team to send us the link to the research?

**Graeme Dey:** Absolutely. Kenny Pentland is on the line, so I will ask him to email the link to the clerks. If the committee has any questions about the research, please feel free to engage with us directly.

**The Convener:** Thanks very much—and thanks, Kenny.

Three more members have questions, so I ask them to keep them direct and to the point.

**Mark Ruskell:** The minister has acknowledged that the situation next year will not be perfect. One option would be to push the election back to, say, autumn 2021. Is that still under consideration?

**Graeme Dey:** That issue was aired on the floor of the chamber a few months ago. I have been clear throughout the discussions that have taken place that it is still the Government's intention to hold the election as scheduled. We are not actively looking at pushing it back. If we were in considerably different circumstances from those that we are in at the moment, the Parliament might need to consider that option, in conjunction with the Presiding Officer. However, right now, no consideration is being given to pushing the election back. All our efforts are being directed to ensuring that the planned election goes ahead as safely as possible, while taking account of the need to maximise the opportunity for voters to cast their votes and feel comfortable doing so.

**Gil Paterson:** I have a similar question—it looks as though Mark Ruskell and I are tuned in to each other. In the event of a general lockdown, as took place in March, does the Government have contingency plans for the nuclear option? Would it be practical to have an all-postal ballot for an election? Are we equipped to do that?

**Graeme Dey:** It would be extremely challenging capacity-wise to have an all-postal ballot, and the market research backs up the point that, even if that was a popular option, there will always be a sizeable percentage of the electorate who do not want to vote by post. Either they want to vote in person because that is the traditional way, or, for whatever reason, they do not trust the postal voting system.

It would be extremely difficult and, in practical terms, pretty much impossible resource-wise to have an all-postal ballot. It would take an enormous amount of time and effort to process that volume of postal votes, so I do not think that that is a practical option.

However, in the context of what you describe as “the nuclear option”, all things need to be considered. This is about contingency planning for all possibilities, but I do not want to set any hares running. I half expected Mr Findlay to ask whether any thought was being given to postponing the election, because he asked that question in the chamber a little while ago, when he admitted an interest. That is not something that we are actively looking at, but it has to be a remote possibility. Again, it will come down to discussions taking place and a view being arrived at. It is not just a

matter for the Government; it is also a matter for the Parliament and the Presiding Officer.

I am optimistic that, with the work that is being done and with good will all round, we can find a way to conduct the election safely and appropriately on the date that we are looking at, with the caveat of Covid-19. If things were to change markedly, that would obviously have an impact, but all the work that is being done is designed to deliver the election to the timelines that we are looking at.

**Gil Paterson:** I appreciate that—thank you, minister.

**The Convener:** We have a couple more questions, one of which will be asked by Neil Findlay, so you might get your wish, minister. First, we will hear from John Scott.

**John Scott:** My question is more granular. What scenario planning have you done for a situation where, say, a school that was to be used as a polling station had to be closed the day before the election? That might have a marked effect on the inclination of people who would normally go to that school to vote to do so—it might significantly reduce that.

We all know that there are polling stations in each of our constituencies where the turnout is significant relative to the overall outcome of the election. What scenario planning have you done with regard to that type of incident happening in May, at the end of the winter period, when—if I can put it in this way—the maximum amount of winter-period germs will be about?

**Graeme Dey:** That really is a granular question, but you are right to raise it. Those are the kind of nitty-gritty issues that could come into play.

I do not recall us looking at that particular example, but our ERO colleagues are doing their own scenario planning, and I have asked that the layout in some polling stations be looked at. In a school, it is often the case that people walk through a door into a classroom and walk out through the same door. Consideration needs to be given to whether we can have one-way systems to help to improve social distancing.

You make a very good point about a scenario in which a polling station has to be closed at short notice and moved elsewhere. I will certainly take that away and engage with the Electoral Management Board on it, and I will be happy to write back to the committee about it, because it is a reasonable question.

**The Convener:** We will have to draw matters to a close soon, but first we will hear from Neil Findlay.

**Neil Findlay:** I am glad that the minister mentioned our exchange in the chamber on the election. I recall that exchange and his somewhat uncharitable answer. Here we are discussing the matter again, and I think that it is a very apt discussion to be having.

From what the minister says, although he is not giving too much away, I think that there must be a plan B under the table, because surely we do not want to get to December or January and start planning at that point. Who knows what will happen then? The minister is perhaps being a bit cagey in what he is saying about scenario planning. If he is not scenario planning, he certainly should be, because who knows how this will go?

11:00

I make a plea that, if there are any concerns, they are aired as soon as possible in order to be fair to our constituents, given the cases and organisations that we have been dealing with for the past X years and might have raised many times in the Parliament—this is about people's futures and their families' futures. If there are discussions about potential changes, I make a plea for them to be aired with members as soon as possible.

**Graeme Dey:** Mr Findlay, that is absolutely the intention. I have been as open as I can be. I am not in any way holding back in what I am saying to the committee. Any reluctance that you interpret in what I have said to you relates purely to the fact that we have to discuss the matter as a Parliament. Parties might take a completely different view, and I am looking to develop a consensus on the best way forward and to get into the level of detail about how we conduct the election that Mr Scott and other members mentioned.

I reiterate that, right now, all our work is being done with a view to the election taking place in May next year in a safe and appropriate way. Do we have contingency plans for other eventualities? Of course we have to consider that. However, as things stand, two things are at play. First, where are we now? Secondly, what sensible measures ought we to put in place, including options that we might not require to use?

I go back to a point that was discussed in the meeting of the Parliament to which you referred, and which ties in with what you say about giving people the maximum notice of what is going to happen. If there have to be changes to the nature of the election, people should be aware of them at an early stage. For example, if people will need to access a postal vote, the earlier they do that, the better for everyone.

I think that, in three weeks' time, I will be in a better position to write back to the committee and update it on the Parliament's views on the matter. Mr Findlay can feed into the process through his party, and if the committee has particular views, I will be more than happy to hear them. We need to build a consensus so that the Parliament is satisfied that any measures that are taken are appropriate and reflect the best interests of the voters.

**The Convener:** Is that okay, Neil?

**Neil Findlay:** Yes.

**The Convener:** Thank you.

We have had a good kick at the ball. I thank the minister and his officials for their evidence, and I invite the minister to move motion S5M-22418.

*Motion moved,*

That the Standards, Procedures and Public Appointments Committee recommends that the Scottish Parliament (Disqualification) Order 2020 [draft] be approved.—[*Graeme Dey*]

**The Convener:** Thank you, minister. It seems that you have nothing further to add and no member wants to add anything. The question is, that motion S5M-22418 be agreed to. As we have the sound off, I ask whether any member disagrees.

I see no indication of disagreement, so the motion is agreed to.

I confirm that members are content for me to sign off the committee's report on the draft order.

We move on to agenda item 5, and I invite the minister to move motion S5M-22491.

*Motion moved,*

That the Standards, Procedures and Public Appointments Committee recommends that the Representation of the People (Electoral Registers Publication Date) (Coronavirus) (Scotland) Regulations 2020 [draft] be approved.—[*Graeme Dey*]

**The Convener:** As no member wishes to speak, I will put the question, which is that motion S5M-22491 be agreed to. Does any member object?

No member objects, so the motion is agreed to.

I confirm that members are content for me to sign off the committee's report on the draft regulations.

I thank the minister and his officials for attending. We will move into private session for the next item.

11:06

*Meeting continued in private.*

11:17

*Meeting continued in public.*

## **Subordinate Legislation**

### **Scottish Local Government Elections Amendment Order 2020 (SSI 2020/239)**

### **Representation of the People (Absent Voting at Local Government Elections) (Amendment) (Coronavirus) (Scotland) Regulations 2020 (SSI 2020/240)**

**The Deputy Convener (Mark Ruskell):**

Welcome back, everyone. Agenda item 6 is consideration of two Scottish statutory instruments that are subject to the negative procedure.

The Delegated Powers and Law Reform Committee considered the Representation of the People (Absent Voting at Local Government Elections) (Amendment) (Coronavirus) (Scotland) Regulations 2020 at its meeting on 25 August, and it did not raise any points in relation to the regulations.

As members have no comments, does the committee agree not to make any recommendation in relation to the two instruments? Please indicate now if you do not agree.

I see that all members of the committee agree to make no recommendation on the instruments.

11:18

*Meeting continued in private until 12:00.*





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