



OFFICIAL REPORT
AITHISG OIFIGEIL

Standards, Procedures and Public Appointments Committee

Thursday 17 December 2020

Session 5



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**STANDARDS, PROCEDURES AND PUBLIC APPOINTMENTS COMMITTEE
25th Meeting 2020, Session 5**

CONVENER

*Bill Kidd (Glasgow Anniesland) (SNP)

DEPUTY CONVENER

*Patrick Harvie (Glasgow) (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)

Anas Sarwar (Glasgow) (Lab)

Adam Tomkins (Glasgow) (Con)

CLERK TO THE COMMITTEE

Katy Orr

LOCATION

The Sir Alexander Fleming Room (CR3)

Scottish Parliament

Standards, Procedures and Public Appointments Committee

Thursday 17 December 2020

[The Convener opened the meeting at 09:30]

Scottish General Election (Coronavirus) Bill: Stage 2

The Convener (Bill Kidd): I welcome members to the 25th meeting of the Standards, Procedures and Public Appointments Committee in 2020. Our first item is stage 2 proceedings on the Scottish General Election (Coronavirus) Bill.

I welcome Graeme Dey, Minister for Parliamentary Business and Veterans, and his accompanying officials. I highlight the fact that officials are not permitted to speak on record during the formal proceedings. I also welcome Anas Sarwar and Adam Tomkins, who have lodged amendments to the bill and are attending the meeting remotely.

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

Given that this is a hybrid meeting, I emphasise that voting in divisions will be by show of hands. It is important that members keep their hands clearly raised until the clerks have recorded their votes.

I also wish to say at the outset that, if we have any tied votes on any amendments, I will, as convener, vote as I voted in the division. I will do that consistently throughout the process. I hope that that is all clear to everybody.

Sections 1 and 2 agreed to.

Section 3—Closing date for application to vote by post or amend existing absent vote arrangements

The Convener: We come to the first group, on the deadline for application for postal votes. Amendment 18, in the name of Anas Sarwar, is the only amendment in the group.

Anas Sarwar (Glasgow) (Lab): Good morning, convener, and good morning to the committee. Thank you for your time this morning.

At the outset, I emphasise what I said in the stage 1 debate: I want us to have consensus on this bill. It is important for the public message that the political parties represented in the Parliament

are all on the same page regarding the conduct of the election.

I realise that I have a number of amendments this morning, and I can promise you brevity—I will be to the point, as I do not want to hold up the committee for any longer than necessary.

Amendment 18 is a simple one. In the stage 1 debate last week, many colleagues said that it felt counterintuitive that we were encouraging or expecting more people to sign up for postal votes at the same time as bringing the deadline forward by two weeks. My amendment is intended to tease out more detail about the rationale behind bringing that deadline forward, given that that is counterintuitive and that we expect more applications. The danger is that a late surge of applications could have the opposite effect, whereby people are disenfranchised and unable to get their postal vote, rather than having an overrun electoral registration officer service.

Alongside that, it is important to emphasise that there should be adequate resourcing for EROs. I recognise that that comes under a separate amendment, so I will come to that in more detail later.

I come to my final point on this amendment before we open it up for discussion. There is a mitigation here: to avoid a late flood we should have an early public information campaign. I am keen to hear from the minister how early we can have such a campaign and what the scope of it may be. I realise that some of that detail is contained in a later amendment, but I think it is connected to this amendment. How early will that public information campaign be, and how soon will the booklets go out to households? Those things could mitigate the earlier deadline. In an ideal world, the campaign should start if not at the end of January then at least at the beginning of February, so that there can be an early onset. I look forward to the discussion.

I move amendment 18.

Patrick Harvie (Glasgow) (Green): Anas Sarwar is raising issues on which many of us have expressed concern. However, it would be more consistent with the evidence that we took at stage 1 for such concerns to be addressed by scaling up capacity for postal vote registration.

The evidence at stage 1 did not necessarily tend towards the removal of section 3. In closing the debate on the amendment, perhaps Anas Sarwar could reflect on whether the way to address the concerns is to continue to put pressure on all relevant organisations by saying that even an upper estimate of a 40 per cent take-up of postal voting might not be enough and that we need to prepare for greater capacity, rather than removing the provision from the bill.

Gil Paterson (Clydebank and Milngavie) (SNP): I have a similar concern. We are told that we are looking at a take-up of under 40 per cent and that we are preparing for take-up of 50 per cent. My concern is that, if we overpublicise postal voting, we might put fear in people's minds that there are dangers involved in turning up to vote. What is the critical mass? We are told that it would take six months to plan and put in place the mechanisms for an all-postal ballot. I understand that that is why we will remain as MSPs until the day before the election—so that the Parliament can vote in the case of an emergency. I ask the Government to tell us what the critical number is. Does it become unmanageable at 55 per cent or at 60 per cent? I do not know, and I have not asked that question before, but I have been looking for that information and I cannot find it.

Jamie Halcro Johnston (Highlands and Islands) (Con): I have real concerns about that. I recognise some of the points that have been made, and I appreciate, to some extent, where Anas Sarwar is coming from. The resource issues have come up repeatedly during our evidence taking. However, the concern was also expressed that there will be applications right up to the deadline, whatever the deadline is, and it is a question of whether that volume is manageable. If section 3 were removed, would we simply create a situation where there was a huge volume of applications coming in at a late stage and a shorter period in which to process and verify them? I would be interested to hear Anas Sarwar and the minister address that in their contributions, because the potential to cause a backlog at a very late stage, which could cause delays or disenfranchise people, is a concern.

Maureen Watt (Aberdeen South and North Kincardine) (SNP): I understand why we have a deadline for postal vote applications. It is not just about checking that the postal vote application is correct but ensuring that ballots are returned as early as possible, because more verification and scrutiny is done when the ballots are returned, and we do not want to have to wait for results because we are waiting for postal ballots. During the stage 1 debate, I asked the minister—he did not have time to give me an answer—whether we can ensure in the advice that is sent out that, as far as possible, people can get votes right up to the normal deadline and that nobody is disenfranchised by that two-week period. I know that people can arrange a proxy vote until later anyway.

John Scott (Ayr) (Con): Thank you, convener. I agree with Patrick Harvie on this. Two issues are being conflated, and section 3 should remain, for the reasons that we heard in evidence from experts about the need for the early deadline.

Neil Findlay (Lothian) (Lab): The conservative nature of what is being said—that we simply cannot organise this, it is all so difficult and we do not have the resources—is depressing. A couple of years ago, the Greeks organised two referendums in a fortnight. We knew that an election was coming and that Covid would potentially pose these problems, yet we are sitting here at the very last gasp still debating how we can maximise the number of people participating in the election.

Gil Paterson suggests that if we overpromote postal voting people will be afraid to turn out, but people will be afraid to turn out anyway because we are in the middle of a Covid crisis. We are not promoting people not participating in the normal way of voting at any other time; we are not in normal times, but in extraordinary times. More people than ever will want to exercise postal votes and we should do everything possible to ensure that we enable them to do that as effectively as we can.

The Convener: Jamie Halcro Johnston can come in quickly—I was prompted by hearing Neil Findlay say that people were being conservative at the moment.

Jamie Halcro Johnston: I am not sure whether we can intervene at this stage. I am sure that the member will recognise that there will be potential bumps along the road, whatever resources are in place. For example, there could be outbreaks of coronavirus or a large number of proxy votes could be needed.

The idea of bringing the deadline forward is to allow there to be capacity in the system. I am sure that the member would agree that we do not want to get into a situation where the same people are having to administer postal votes and deal with late proxies, as well as a number of other things that always come up during elections. We ought to be concerned about that when we are deciding on amendment 18.

The Convener: Would the minister like to respond?

The Minister for Parliamentary Business and Veterans (Graeme Dey): Yes. There is a lot to respond to.

What we have heard is an illustration of why amendment 18 is useful in so far as it provokes discussion. As you might imagine, we are opposed to the amendment. I will go through our reasons for that and I will then respond to the points that members have made.

I understand why reducing the amount of time in which people can apply for a postal vote has attracted attention. It is counterintuitive when we are talking about aiming to significantly increase

postal voting from 18 per cent of the electorate to 40 or even 50 per cent. I say to Mr Findlay that that figure is worth reflecting on—I would contend that we are hardly being conservative in our ambitions with that planned increase.

However, by moving the deadline from 20 April to 6 April, section 3 of the bill makes a change that was directly requested by electoral professionals. Indeed, it is probably one of the key changes in the bill from their perspective, given that electoral registration officers will have to process around 900,000 new applications to achieve that increase to 40 per cent. Processing postal vote applications poses a challenge for EROs ahead of any polling day, with many people choosing to apply on or close to the application deadline.

Amendment 18 risks it not being possible to process the expected increase in applications. Electoral professionals have been clear that that would risk some people effectively losing their vote. While in-person voting would remain an option for those individuals, if voters have chosen to apply to vote by post, it is safe to assume that they either cannot or do not want to vote in person.

From my perspective, it would be unacceptable if those who have applied for a postal vote by the application deadline were denied their vote because it could not be processed in time. It would impinge on the legitimacy of the election. Rather than increasing participation, amendment 18 could end up depriving people of their vote if they cannot vote in person or by proxy, which I know is not what Mr Sarwar wants.

Electoral professionals have also made it clear that that is not a problem that can be resolved by resources alone, and the committee took evidence to that effect. We have already agreed an initial allocation of £3 million to assist EROs with that and further funding will be made available as actual costs are incurred. I will expand on that in a second, if I may.

It is a question of training, managing systems and having the necessary expertise in place. That takes time; we need to give the experts in our electoral community the time that they need to do their jobs. That means building in resilience to ensure that all the postal vote applications can be processed and postal votes issued in time.

Supporting amendment 18 would ignore the expert advice that we have received and open us up to a risky course of action that could prevent some voters from voting, which is unthinkable.

09:45

I will respond to some of the points that have been made. Mr Sarwar is correct that the

mitigation that he seeks is to be found in early information campaigns. From my perspective, those need to be delivered locally, so that the interaction is between local EROs and electors.

As members appreciate, this is an expedited bill and we are moving through it quickly. We are looking to have a meeting at the beginning of next week with the Electoral Commission and the Electoral Management Board for Scotland to tease out exactly what is happening on the ground with regard to those campaigns, although, obviously, we have a broad idea. At the moment, in some constituencies, there is already a higher than average uptake of postal votes. In some constituencies, within the £3 million that is available to them, the EROs have already committed to localised campaigns. We will actively encourage others among the 15 EROs to do just that, using whatever means they feel appropriate. A £2 million budget is sitting there and the Government is committed to putting more money into that if it is needed. That interaction between the EROs and the local electorate is pivotal, with campaigns tailored to local circumstances. I will be happy to report back to members at stage 3 about how we have progressed that.

Maureen Watt talked about processing close to the deadline. In 2016, 3 per cent of postal votes were not counted because of issues that were identified in the ratification process. Therefore, there is an issue there, which is one of the things that has fed into the bill. We need to give maximum opportunity to the electoral authorities to maximise the chance of postal votes being deemed valid.

With regard to Patrick Harvie's point about capacity, the capacity that is provided for at the moment is not just for 40 per cent; it allows for a surge to 50 per cent. I think that the committee received evidence from Pete Wildman about that. We have a capacity to handle 40 per cent, with a bit of leeway in the final couple of weeks up to the deadline, in case of a significant surge, such as 40 per cent going up to 50 per cent.

Therefore, I give the assurance that Anas Sarwar was seeking. We can counter the downside of an earlier deadline by getting that information out earlier and encouraging a smooth but significant uptake of postal votes if people feel that they need them.

The Convener: I call Anas Sarwar to wind up and press or withdraw amendment 18.

Anas Sarwar: I will pick up on a few points. I think that Neil Findlay is right that it seems as if we have a "can't do" attitude to some of that, rather than a "can do" attitude. It is important that we increase the awareness that people can use their postal vote, but we should also make it easier to

vote. There are examples from other parts of the world where they make their processes easier and smoother and increase the time for the electorate to vote rather than decreasing the time. Again, I emphasise the counterintuitive nature of what we are discussing.

I have a few things to add. One is that we need much clearer reassurance about when the public information campaign will start. If it is to be successful, it has to start very early. I do not think that there is any risk of overpublicising the ability to use a postal vote. If we are asking people to think twice, three, four or five times before they go to a local shop, restaurant or supermarket, people will naturally think three, four or five times about whether they go to the local polling station, so that argument does not hold water.

It is important that the EROs have the necessary scale and capacity. We should not be saying that there is a risk of disenfranchising the electorate because EROs might not be adequately trained or resourced. We have a responsibility to protect our democracy by ensuring that they are adequately resourced. We must also ensure that we process applications early.

In the spirit of consensus, I will not press the amendment. However, we need clarification ahead of stage 3 about when, specifically, the public information campaign will start, what it will include and what additional resources will be provided to local EROs for them to process the applications. If we cannot get that ahead of stage 3, I may well have to lodge an amendment similar to amendment 18 again at stage 3. I hope that, in a spirit of consensus, we can work together to reach a reasonable resolution.

Amendment 18, by agreement, withdrawn.

Section 3 agreed to.

Section 4—Report on uptake of postal voting at closing date

The Convener: Amendment 1, in the name of the minister, is grouped with amendments 2, 3, 19 and 20.

Graeme Dey: Section 4 sets out the requirements for the report that the Scottish ministers are obliged to publish after the new deadline for postal vote applications. The report is intended to outline the numbers of voters in Scotland who have registered for a postal vote or who have an application for a postal vote pending. The report will be made at a time when registration officers will be extremely busy processing the expected increase in postal vote applications. Although it is vital that we have data on progress with postal voting levels, we need to ensure that collating data for the report under section 4 does not distract registration officers from that

processing task. The Government amendments in the group seek to achieve that by responding to concerns raised by registration officers.

Amendment 1 changes the reference to 7 April in section 4(1) to reflect that the figures used in the preparation of the report will be the most current information available, but not necessarily the exact figures as at that date.

The purpose of the report is to indicate the number of voters who are likely to be registered for postal votes at the election. Amendment 2 makes some changes to the information that is required to be set out in the report, to ensure that the picture is as clear as possible. Requiring that the report state the total number of voters registered to vote at the election provides context to the other figures. That detail, alongside the number of postal votes granted, allows for the calculation of the percentage of postal votes already granted and the maximum number that could be granted. Some pending applications will be duplicates or will be rejected for other reasons.

Amendment 3 is a minor change to reflect the fact that the report will be based on the information that is available at 7 April—preparation of the report cannot begin until after that date.

Turning to the other amendments in this group, I note that Mr Sarwar and Mr Findlay also seek to amend the report that is outlined in section 4. Although I sympathise with their intentions, I am afraid that I cannot support amendments 19 and 20.

The principle behind amendment 19 is laudable, but the idea requires further refinement. It is not clear from the amendment whether the intention is for the report to contain detail on the additional resources provided by the Scottish Government, and it is rather confusing to be focused on resources that are provided specifically as at 7 April 2021, rather than more generally. However, I recognise the merit of having clear information on resourcing, and in the spirit of co-operation and consensus that Mr Sarwar has emphasised, I ask him not to move amendment 19 on the understanding that I will prepare or work with him on a similar amendment for stage 3.

Mr Findlay's amendment 20 is more problematic. Electoral professionals advise that the number of people "entitled" to vote at the election would be extremely difficult to determine accurately. My amendment 2 responds to that, by referring to "registered" persons instead. Although the Government would compile the report, gathering the data would have to be undertaken by EROs. For example, they would have to investigate instances of people who have not yet been registered to vote. I am sure that members will agree that placing additional demands on

EROs' time would not be a welcome move for the May 2021 election. They must be allowed to focus on registering voters, especially given the expected increase in postal vote applications.

I understand Mr Findlay's intent, but we have already collaborated with stakeholders to carefully craft amendment 2, which will give us valuable illustrative data on voter numbers without causing unnecessary additional work. That will include sufficient data to allow the calculation of numbers of registered voters who have not applied for a postal vote. Conversely, amendment 20 would require EROs to down tools at a time when they should be allowed to get on with the task of registration.

I hope that colleagues will support amendments 1, 2 and 3. I ask Mr Sarwar not to move amendment 19, and to work with me on a suitable stage 3 alternative. I ask Mr Findlay not to move amendment 20. I urge members not to support either of those amendments if they are moved.

I move amendment 1.

Anas Sarwar: I am happy to work with the minister on his suggested reworking of amendment 19 for stage 3. I think—and hope—that we both want the same outcome from the amendment.

Amendment 19 was designed purely to seek that a plan be published and made available on the amount of resource and funding that will be available to EROs for the costs of additional postal voting, including the costs of public information about and the processing of postal votes. However, I take the minister's point. I am happy not to move amendment 19 and to work with him on a suitable amendment for stage 3.

Neil Findlay: Amendment 20 would require ministers to report on the number of electors who have not applied for a postal vote by 7 April 2021, which is a month before the election. It would mean that ministers must report on the number of persons who are entitled to vote at the election; the number of those who have been granted a postal vote for that election; the number of pending applications for a postal vote; and the number who have not applied for a postal vote. That would allow electoral registration officers to plan for safe voting, including the safe provision of personal protective equipment and any other health and safety materials and, if there were concerns about turnout, further promotion of the election and of the reasons why voting will be safe.

The inclusion of the number of voters who have not applied for a postal vote would show the number of potential voters on the day. That would give organisers an idea of the capacity issues that they might face. The amendment involves the

straightforward provision of a number and should not be onerous in any way.

Patrick Harvie: I am pleased that the Government seems willing to work with Anas Sarwar on a replacement for his amendment 19. When I read the amendment, its intention seemed reasonable, although I was not clear about what resources it referred to. Greater definition might be beneficial at stage 3.

On Neil Findlay's amendment 20, I am still a little unclear as to why information on the number of electors who have not applied for a postal vote would be relevant and needed. Electoral administrators will never be able to know in advance precisely how many people are going to turn up to vote in person. Turnout is a far bigger variable—a far bigger unknown—than the number of people who have not applied for a postal vote. There will always be that level of uncertainty about how many people are going to turn up to vote in person, and I am not entirely clear why the information sought by amendment 20 would be relevant and of use.

The Convener: I ask the minister to wind up.

Graeme Dey: First, I thank Anas Sarwar for his constructive approach on amendment 19.

The point has been made that the number of electors—the people who are registered to vote—is a bit of a movable feast. Patrick Harvie is correct about that.

To summarise, my amendments will deliver pretty similar outcomes to those that Neil Findlay is seeking, but in a way that is more practical and pragmatic and is in keeping with what is being asked of the electoral professionals.

Amendment 1 agreed to.

Amendment 2 moved—[Graeme Dey]—and agreed to.

10:00

Amendment 19 not moved.

Amendment 20 moved—[Neil Findlay].

The Convener: The question is, that amendment 20 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Findlay, Neil (Lothian) (Lab)

Against

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

Harvie, Patrick (Glasgow) (Green)

Kidd, Bill (Glasgow Anniesland) (SNP)

Paterson, Gil (Clydebank and Milngavie) (SNP)

Scott, John (Ayr) (Con)

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

The Convener: The result of the division is: For 1, Against 6, Abstentions 0.

Amendment 20 disagreed to.

Amendment 3 moved—[Graeme Dey]—and agreed to.

Section 4, as amended, agreed to.

After section 4

The Convener: Amendment 21, on the return of postal vote to be free of charge, is in a group on its own.

Anas Sarwar: Amendment 21 is simple. It connects to what I said at the outset of our discussion this morning. The bill cannot simply be about raising awareness of the ability of people to vote by post; it also needs to be about making it easier for people to apply to vote by post.

I recognise and accept that, when an ERO sends out an application form, it includes a freepost return mechanism. However, my understanding from the Government and the minister is that the Electoral Commission will be sending a booklet to every household in the country that tells people about their ability to vote by post. Again, I think that it is counterintuitive that we would send that booklet to every household but not provide them in that mailing with the ability to vote directly. If we are sending every household a booklet, surely we should also be sending every household, with that booklet, an application to vote by post, a link to where they can get more applications and a free return mechanism for the application. If we fail to do that, we will be adding a layer of process instead of reducing layers of process.

I will tell you what I mean by that. In political campaigns, we have probably all had a response mechanism built into the communications that we have had with the electorate, but there will be no response mechanism built in with the booklets. When someone gets a booklet, instead of them reading it, recognising that they can vote by post, completing the form and sending it straight back in, we will have to hope that they, one, open the envelope; two, read the booklet; three, get to the bit where it tells them the information about their local ERO; four, go to the website of the ERO's office, if they have access to the internet at the time; five, find on that website how they can email the ERO; six, send the email to the ERO; seven, receive a mailing from the ERO; eight, open the mailing from the ERO; nine, read the mailing from the ERO; and ten, return the postal application to the ERO. All that adds complication and adds to process, instead of making it easier.

Conversely, people can go to the website and find the ERO's phone number and phone it. If they do so, they have to hope that the ERO answers the call—that might be difficult for the ERO to do, given the number of people we think might be trying to make contact. They might be on hold for a long time and then they will have to go through the process of the ERO responding to them with the application.

The third option that someone has when they go to the ERO's website involves printing off the form themselves, going out to get a stamp and an envelope, putting the application form in the envelope and posting it off, which means that they have to pay to get the right to vote in the election.

All that is, simply, counterintuitive when we are trying to make it easier for people to vote. If they are getting a booklet through the post anyway, why not include an application form in that booklet, as well as a mechanism for them to respond? I accept that that means that applications will be sent much earlier to one central place, if we decide to do one national mailing, along with the booklets, rather than going by local authority areas. However, it could be argued that that is why we are bringing the deadline forward by two weeks, because that gives us the ability to take the required actions early enough to sort out the postal votes.

Again, we can talk up the awareness campaign, but the issue is not just about making people more aware; it is about making it easier for people to exercise their democratic right, too. That is why I hope that we can get reassurance on those points from the minister and get support for my proposals.

The freepost mechanism that I am talking about does not represent a massive cost to the electorate. I understand the dangers of a freepost mechanism. I have a freepost mechanism and, sometimes, I get unpopular things through it. However, that is not a reason to disenfranchise the entire electorate.

Minister, I encourage you to consider my proposal carefully, and to ensure that that booklet goes out as early as possible. We are relying on every member of the electorate being fully informed. We must be honest: most of the electorate are not fully informed most of the time, and they are certainly not fully informed about the process that we are going through right now. We must make things as easy as possible for people. When they get that booklet, they must be encouraged to open it and it must then be easy for them to take the action that is required in order for them to exercise their democratic rights.

I move amendment 21.

Patrick Harvie: I feel a little bit the same about this amendment as I felt about Anas Sarwar's amendment 19, in that it raises important issues and is addressing something that we should address, but I am not entirely clear that it provides the way to achieve that.

We should be looking to reduce as much as possible any barriers in terms of cost and difficulty to people being able to exercise their vote, including a postal vote. The Government therefore needs to respond in a constructive way to the amendment. I do not know whether that means agreeing to the amendment or responding in a different way. I am interested to hear what the minister has to say about that.

Anas Sarwar's argument that the booklet from the Electoral Commission is the way to deliver the mechanism by which people can exercise their democratic rights, whether that involves an application form, a freepost envelope or something else, is a good one. However, the amendment is about the Scottish ministers making provision, so I am not entirely sure that it would achieve the solution that he has sketched out.

I want us to achieve what Anas Sarwar is asking us to achieve, but I am not quite clear that this amendment is the way to do that. I would like to hear something substantial from the minister about what he intends to do either by way of an alternative amendment at stage 3 or by way of other action that does not require a change in the bill.

Neil Findlay: This is a test of how serious we are about opening up voting to as many people as possible. Anas Sarwar eloquently explained all the steps that someone must go through to get a postal vote, and all the barriers that there are to that. His proposal would give us a cost-effective way of giving every voter the material that they need to register for a vote. It would be straightforward and simple, with no financial barrier. For the life of me, I do not know why anyone would oppose such a move.

The amendment is a genuine test. We can offer up a lot of warm words and rhetoric about our desire to see more people voting at elections and taking up the option of a postal vote, or we can take the opportunity to do something practical and pragmatic about it. I appeal to members to support the amendment.

Jamie Halcro Johnston: I recognise some of the points that Anas Sarwar made, but I am still slightly unconvinced. He highlighted quite a long list of barriers, but I am not sure how the amendment would change things, certainly in some of those cases.

I am concerned that the amendment would put the onus on the Scottish ministers. To some

extent, I agree with what Patrick Harvie said. It would be interesting to hear from the minister whether he can do some more work with Anas Sarwar to bring back an amendment that is more suitable or will have slightly more of an impact. As I said, I have concerns about the amendment at this stage.

Graeme Dey: Amendment 21, in the name of Anas Sarwar, seeks to create a new section that would place a duty on the Scottish ministers to

"make ... provision ... to ensure that postal voting in relation to the 2021 election is conducted at no ... cost to the voter."

That would include

"in particular ... the provision of freepost envelopes".

The Scottish Government does not support the amendment; it is a solution in search of a problem. As I explained to the committee in my letter of 26 November,

"Each postal vote is already cast at no cost to the individual voter, using a first class"

addressed

"Envelope ... supplied by the Returning Officer."

The parliamentary election rules require that the returning officer includes such an envelope in each voting pack unless it is sent outside the United Kingdom.

I appreciate that Mr Sarwar may be seeking to make the application process free in every case, but that is not the effect of the amendment. In any event, electoral registration officers have already committed to issuing first-class addressed envelopes with all postal vote application forms that they send out ahead of the May election. The cost of that will be met from the £3 million of additional funding that has been allocated—

Neil Findlay: Will the minister take an intervention?

The Convener: I do not think that we have time. Everybody has had a chance to speak. I am sorry, but we have to press on.

Neil Findlay: I will be very quick, convener.

The Convener: Okay—make it very short, please.

Neil Findlay: Does the minister accept that, in order to contact the electoral registration officer, many people write to them, and that requires money?

Graeme Dey: I do not accept at all that people would write to the ERO, Mr Findlay. There are various means of contact. I will come on to that issue, because I think that you slightly misunderstand the processes that are followed.

As I said, the cost will be met from the £3 million of additional funding that is allocated to address the anticipated increase in postal voting. As a result, all those who obtain an application form directly from an ERO will avoid postage costs.

It should also be noted that, as a result of the recent reforms to the annual canvassing process, voters can now send in their applications by email. They can download the form and complete it, and then scan or photograph it and send it in with their signature on it.

I consider that encouraging members of the public to apply for a postal vote via a registration officer is the best option. It would certainly be preferable to establishing separate freepost addresses for each individual registration office.

I want to pick up on a couple of points that have been made. A number of members highlighted the fact that the booklet comes from the Electoral Commission. We are seeking to engage with the Electoral Commission on the timing of the booklet, and to request that the commission provides in the booklet the contact details for local EROs, including details of the opportunity to download a form or whatever. That dialogue is on-going.

I do not want to get into the territory, as Anas Sarwar did, of listing a whole range of difficulties, but a number of difficulties would arise from the approach that he proposes. This may seem to be a small difficulty, but it is an example. If we were to send out a postal vote form in the booklet, we would be dependent largely on when the booklet went out. We would not want to create a surge late in the day; we are currently in discussions with the Electoral Commission on the timing of the booklet. Another point is that, if only one form was sent out, other members of a household would then be required to get in touch with the ERO.

There is also a risk of duplication. People might have applied for a form and not heard back from their local EROs. They might then think that they might as well send it in again, which creates further challenges for EROs in the process.

I therefore ask Anas Sarwar not to press amendment 21 and, if he does press it, I urge the committee not to support it.

10:15

The Convener: I think that we gave that a good run. I call Anas Sarwar to wind up and say whether he wishes to press or withdraw amendment 21.

Anas Sarwar: I am disappointed by the minister's response. It is unfortunate that he talked about a solution in search of a problem; in fact, there is a problem, and I am in search of a solution. I would have hoped that the minister

would be helpful in trying to find that solution rather than simply come with a snappy soundbite.

I think that other members perhaps get the point that I am trying to make. I am happy to accept the point that Patrick Harvie made that the amendment as drafted may not be the solution to the problem that I am raising. I would have hoped that the minister would have agreed to work with us to try and find an amendment that would work at stage 3.

Before I make a decision on whether to press the amendment, if the minister is not willing to find common ground about how we can come together on either a stage 3 amendment or a practical solution that does not require an amendment, I urge Patrick Harvie and Jamie Halcro Johnston to work with us on behalf of the other parties to find a solution to what I think is a problem.

Although we are sending out a booklet to every household, how many of us read the booklets that come through our household doors? How many of the electorate are going to read that booklet page for page and go and find out which of the 32 local authorities and 32 listed phone numbers and email addresses in a wider booklet relate to them?

That goes back to Neil Findlay's point about whether we are serious about this. If we are, we have to find out how we make it easier for people to apply to vote by post and not simply how we make them more aware of how they apply to vote by post. If we are spending the money to post a booklet to every single household in the country, why would we not take the opportunity, in that very mailing, to give people the application form?

I do not buy the argument about duplicate applications. People will know if they have a postal vote. If there is the odd duplicate application, people can be informed of that fact. There might be duplicate applications from people phoning the EROs to double check whether they have a postal vote.

I also do not accept the point about single-person households. For example, more than 40 per cent of households in Glasgow are single-person households. Someone can apply and then also go on to see whether they want additional application forms.

As I said, before I decide whether to press the amendment, Patrick Harvie and Jamie Halcro Johnston should feel free to intervene to say whether they are willing to work with us to find a solution to the problem, in the form of either an amendment or a practical exercise, because I would hope that we want the same thing here.

The Convener: As Patrick Harvie is willing to intervene, I invite him to speak. However, it will have to be quite a short intervention.

Patrick Harvie: Very briefly, I am happy to reflect on the whole discussion, including the comments of Anas Sarwar and the minister, to see whether there are other opportunities to address the issue, either at stage 3 or in another way. There are substantial issues here, and we should all be open to discussing them and trying to find a solution.

The Convener: As we have allowed Patrick in, we had better let Jamie in as well, as he was also mentioned.

Jamie Halcro Johnston: Very briefly, I take the points that have been made during the discussion, but I cannot support the amendment as it is at the moment. We will review our position at stage 3 if there is further discussion between Anas Sarwar and the minister and something comes back then. However, I am afraid that I cannot support the amendment.

The Convener: I call Anas Sarwar to press or withdraw amendment 21.

Anas Sarwar: I was not asking whether Jamie Halcro Johnston was going to support the amendment, because I took it from his earlier comments that he was not going to support it. I was more looking for an encouraging response about whether we can try and make it easier for people to vote by post.

I am happy to have that conversation with Mr Harvie and to try again with the minister, separate to the committee. At this stage, I therefore will not press the amendment. However, I intend to come back at stage 3 with something along those lines, or modified along those lines, to make sure that we are being serious about encouraging the electorate to vote and to exercise their democratic rights.

Amendment 21, by agreement, withdrawn.

Section 5—Power to provide for all-postal votes

The Convener: Amendment 22, in the name of Neil Findlay, is grouped with amendments 4 to 7 and 23.

Neil Findlay: Amendment 22 would restrict the regulatory powers of ministers to provide for an all-postal ballot, and ensure that such a decision would be taken only when necessary for Covid-related reasons. In my view, parliamentary scrutiny and approval are essential in that regard, so I am interested to hear what the Government proposes in relation to ensuring that Parliament would be involved in such a move. My amendment seeks to restrict the powers to ensure that they are used only for Covid measures.

I move amendment 22.

Graeme Dey: I think that there is broad agreement that an all-postal election is undesirable and should be viewed as a measure of last resort. That has certainly been the Government's view throughout the process. We have also stressed that the power in section 5 is a contingency measure, given that an all-postal election could be delivered only if the election were to be postponed.

Mr Findlay's amendment 22, and an aspect of Mr Tomkins's amendment 7, propose that there must be a coronavirus-related reason for making regulations for an all-postal vote. I have to say that I cannot envisage any circumstances that were not tied to coronavirus in which the power to arrange an all-postal vote next year would be used. However, as amendment 22 reinforces that position, I am happy to accept it.

Government amendments 4 and 6 will make the delegated power to make provision for an all-postal election subject to affirmative procedure. That provision will implement—indeed, it will go further than—the recommendation of the Delegated Powers and Law Reform Committee in its stage 1 report on the bill. On reflection, we agree with the DPLRC that the power's significance, if it were to be used, is such that there should be appropriate parliamentary scrutiny.

Amendment 5 provides an additional safeguard in the exercise of the power of Scottish ministers to provide for an all-postal vote. The amendment is a response to concerns regarding the width of the power that were expressed by the DPLRC in its stage 1 report. The effect of amendment 5 will be that ministers must lay a statement of reasons for making any regulations under section 5, which must include

"information on the responses received from the persons"

whom ministers are required to consult before making the regulations—those being the Presiding Officer, the Electoral Commission, the convener of the Electoral Management Board for Scotland and the chief medical officer.

Mr Tomkins's amendment 7 overlaps the other amendments in the group; it, too, seeks to make use of the power subject to affirmative procedure, but imposes different restrictions. Overall, the Government amendments and Mr Findlay's amendment cover two thirds of amendment 7.

The remaining aspect of amendment 7 sets out that the regulations can be made only "with the consent of" the Presiding Officer, the Electoral Commission and the convener of the Electoral Management Board for Scotland. I am not persuaded that such a limitation is required. The proposed change—to apply affirmative procedure—should be a sufficient check.

Parliament should decide, having had the opportunity to consider views that those persons and bodies put forward.

As a result, I ask Mr Tomkins not to move amendment 7, and I ask the committee not to support it, if he does.

Mr Sarwar's amendment 23 would require ministers to publicise arrangements for an all-postal ballot. An all-postal ballot is an emergency contingency measure, but the amendment treats it as a certainty. Furthermore, the reference to "adequate" resourcing is too vague for inclusion in legislation. Amendment 23 contrasts with Mr Sarwar's amendment 25 in group 7, which seeks to prevent the Government from issuing information in relation to the 2021 election.

However, I do not disagree with the idea that an all-postal vote would need to be clearly publicised. Much of that would be done by the Electoral Commission; therefore, I do not think that the focus on Scottish ministers in amendment 23 is appropriate.

I invite Mr Tomkins and Mr Sarwar not to move their amendments in the group. I invite the committee not to support them, if they are moved, and to support the amendments in my name in the group.

Adam Tomkins (Glasgow) (Con): Thank you for accommodating me.

Having a power in the bill to provide for the eventuality of an all-postal ballot in next year's election—where that election is delayed due to the coronavirus—is sensible. However, that power should not be in the hands of ministers, or of ministers alone, and should be exercisable only for reasons relating to the coronavirus. We are therefore pleased that the Government supports Neil Findlay's amendment 22, which we also support. The power should be subject to affirmative procedure, so for that reason we are also pleased to support Graham Dey's amendments 4, 5 and 6.

As the minister said, the amendments cover the substantial ground that I sought to cover with amendment 7. Therefore, if amendments 22, 4, 5 and 6 are accepted by the committee, I will not move amendment 7.

The question that I put to Anas Sarwar regarding his amendment 23 is the same as the question that the minister has put to him. Why is there an apparent conflict between what he is requiring Scottish ministers to do in his amendment 23 and what he says in his amendment 25, which provides that any information relating to the 2021 election must be provided by the Electoral Commission, the

convener of the EMB or EROs, and not the Scottish ministers?

Mr Sarwar spoke forcefully in last week's stage 1 debate. I agreed with him when he said that Scottish ministers must understand that they are participants in an election and cannot therefore be its referees. Why then should there be a duty on Scottish ministers to promote public awareness of the election when that is already a statutory responsibility of the Electoral Commission? For that reason, I ask Mr Sarwar not to move amendment 23, which conflicts with the laudable aims that he seeks to achieve elsewhere.

I will not press amendment 7 if amendments 22, 4, 5 and 6 are accepted.

Anas Sarwar: I agree with all the comments that have been made about amendments 22, 4, 5, 6 and 7.

Amendment 23 is a probing amendment to provoke a discussion or comment about something else. It is not an amendment that I plan to press. The matter relates to use of radio, television, postal and online communications. I am not asking the Government to conduct those communications; rather, I want to find out from the minister whether, for the benefit of Parliament, the Government will publish a schedule of activity for the public information campaign that the Electoral Commission will conduct. That campaign will be funded by the Scottish Government. I want Parliament to know what the schedule of activity would look like, what its scope would be, when it would begin and whether it would include radio, television, postal and online communications. I am making a request to have that schedule of information published.

I will not move amendment 23.

Neil Findlay: I have nothing to add. I thank the minister for accepting amendment 22.

The Convener: So, you are pressing amendment 22.

I did not give the minister an opportunity to come back in.

Graeme Dey: To pick up on Anas Sarwar's point, I accept that it is not unreasonable to ask for publication of the planned schedule. I am happy to give a commitment that we will do that, in due course.

The Convener: Neil Findlay will wind up and press or seek to withdraw amendment 22.

Neil Findlay: I have nothing to add. I press amendment 22.

Amendment 22 agreed to.

Amendments 4 to 6 moved—[Graeme Dey].

10:30

The Convener: We now move on to amendment 7, in the name of Adam Tomkins. [*Interruption.*] I am being told that I am jumping ahead.

The question is, that amendments 4 to 6 be agreed to. Are we agreed? Thank you very much.

I was circumventing democracy there—sorry about that.

I call amendment 7, in the name of Adam Tomkins, which has already been debated with amendment 22. I ask Adam Tomkins to move or not move amendment 7, please.

Adam Tomkins: I am sorry, convener, but you need to say what the result of the previous question was. I do not know what the result was, because I am not in the room. Were amendments 4, 5 and 6 agreed to?

The Convener: Yes, they were. I beg your pardon.

Amendments 4 to 6 agreed to.

The Convener: I am sorry. That was to do with the external visuals. I had not picked up that people cannot see that amendments have been agreed to.

Adam Tomkins: As amendments 22, 4, 5 and 6 have been agreed to, I will not press amendment 7.

Amendment 7 not moved.

The Convener: I apologise, Mr Tomkins. That was my fault.

Section 5, as amended, agreed to.

After section 5

Amendment 23 not moved.

Section 6 agreed to.

Section 7—Dissolution of current Parliament: consequential modifications

The Convener: The next group is called “Dissolution of the current Parliament: consequential modifications”. Amendment 8, in the name of the minister, is grouped with amendment 9.

Graeme Dey: Amendments 8 and 9 are technical amendments to ensure the correct policy intention, in line with normal electoral arrangements. The amendments concern, first, the date when a person becomes a candidate for the 2021 election and, secondly, the timing of the duty on electoral registration officers to supply electoral registers to local authority returning officers.

The rules are usually calculated by reference to dissolution of the Parliament. However, given the planned dissolution of only one day, section 7 instead ties the rules to the expected start of the campaign recess. The policy intention is for both rules to kick in 28 days before the poll takes place, but under the Scotland Act 1998, the day of the poll itself must be included in the calculation of that 28 days. Therefore, the number of days stated in section 7 of the bill at introduction has to be reduced by one.

The effect of amendment 8 is consequently that a person’s legal status as a candidate will begin on 25 March 2021, not 24 March 2021, in line with the usual arrangements.

Amendment 9 will make the same change as regards the timing of the duty to supply electoral registers.

I move amendment 8.

Amendment 8 agreed to.

Amendment 9 moved—[Graeme Dey]—and agreed to.

Section 7, as amended, agreed to.

Section 8—Power to provide for polling on additional days

The Convener: The next group is on multiple days for polling. Amendment 24, in the name of Anas Sarwar, is grouped with amendments 10 to 15.

Anas Sarwar: Amendment 24 is a probing amendment in order to provide an opportunity to discuss the rights and wrongs of multiple days of voting. During the stage 1 debate last week, several members referred to multiple polling days. Patrick Harvie and I suggested that we should think about multiple polling days for not just this but future elections and that we could take advantage of the circumstances of the pandemic in order to test the impact of multiple voting days.

I will make a couple of additional points. First, we are assuming that we will have a massive influx of postal vote applications, but what if we do not have that massive influx? If we have a minimal number of applications for postal votes, the polling stations will be busier than we expect. What would be the impact of that and how would we react?

I note from what the minister said last week and from the private discussion that we want to limit numbers to around 800 electors per polling box. The minister is right, but that does not take into account individual polling stations, particularly in urban areas. For example, in Glasgow there is a polling place in the First Minister’s constituency that has more than 4,500 electors at one polling place, despite having multiple boxes. That is a

high level of footfall going into one polling place but, technically, it looks like multiple polling boxes with a spread of 800 electors per box. We need a clearer understanding of the arrangements on the day and whether we should have a fuller discussion about the impact of one or two polling days.

My second point relates to Mr Dey's amendments 10 to 14. Who should decide whether we have multiple polling days? Fundamentally, it should be for the Parliament to decide, because the Parliament is responsible to the people. I accept that the Electoral Management Board for Scotland has a duty and a role in that, but it is not directly answerable to the Parliament. The Scottish ministers are answerable to the Parliament and it should be for the Parliament to decide whether there are multiple polling days. Having the caveat that the recommendation will come from the Electoral Management Board is perhaps trickier. What happens if the Electoral Management Board says that it neither recommends nor does not recommend multiple polling days, but the Parliament decides that we should have a poll on multiple days? We should be able to do that. I do not wish to disparage anyone's character, but multiple polling days means more work for some people, so it should be for the Parliament to decide whether we have more than one day or not, rather than it being conditional on a recommendation from the Electoral Management Board or the Electoral Commission. I do not think that the Parliament would want to make that decision without having thought about all the implications, so I do not think that we need that condition. We might not be in that situation anyway. However, I do not think that that condition should be there and I lodged amendment 24 in order to have these wider discussions.

I move amendment 24.

The Convener: The minister will speak to amendment 10 and the other amendments in the group.

Graeme Dey: The question whether and how additional days of polling should be arranged is difficult and that is reflected in the amendments that have been lodged. As with most aspects of the bill, many complex questions arise as to how we ensure the smooth running of the election, whatever the conditions on polling day.

As the committee heard at stage 1, those who run elections need to know the date of the poll well in advance, so that they can plan and issue clear communications; crucially, that allows them to book venues and recruit staff. A late decision to switch to multiple days of polling could appear an understandable reaction to a sudden surge in the

virus, but it would be expensive and, worse, confusing for voters.

It seems likely that physical distancing will still be a feature of our lives in May. That could mean that it will take longer to cast each vote, which could result in small queues at polling stations, although postal vote uptake would alleviate that. Therefore, at face value, there is something to be said for the approach of Mr Sarwar's amendment 24 in committing today to a second day of polling.

However, throughout the process, we have worked closely with our electoral community. In my stage 1 evidence, I indicated that I had asked Malcolm Burr, the convener of the Electoral Management Board for Scotland, to consider in detail the question of multiple days of polling. He delivered his assessment last week, concluding that only one day should be required. Mr Burr's advice is careful and considered and reflects experience and analysis of, and reflection on, the by-elections held this autumn. It also takes account of the vast experience of returning officers in running Scottish Parliament elections and their plans for the number of polling stations in May 2021. In parallel with the legislative process, considerable work is being done at a local level on the practical challenges and the measures that will be in play for the election.

We have been balancing our approach between uncertainty about virus conditions and the requirements for planning, and I remain convinced that the flexible approach in the bill is the right one and that opting for rigidity now might result in the need for more legislation in the spring. I hear what Mr Sarwar says about the probing nature of his amendment and that he is looking to promote a discussion about the merits of taking more than one day to stage an election. I am not unsympathetic to that, but I feel that now is not the time to experiment with new approaches to voting and that there are enough uncertainties around elections in the current climate. Between that position and, more importantly, the advice that we have received from electoral professionals, our approach is the right one.

We have the advice of electoral professionals, but I want to retain the flexibility in the bill. We do not know what might happen in the next couple of months, so it is important that we have that power, just in case it is needed. However, I listened to the concerns expressed at stage 1 regarding the breadth of the power of the Scottish ministers to provide for polling over additional days. Amendments 10 and 11 narrow the exercise of that power. Amendment 10 relates to the power of ministers to provide for polling on additional days, and it prevents use of the power without a recommendation by the convener of the Electoral Management Board for Scotland. Again, I stress

that it is about listening to electoral professionals and being guided by them, but with the Parliament having the final say.

The effect is that ministers may decide whether to provide for polling to take place on one or more specified days only if polling on those days is recommended to ministers by the convener of the Electoral Management Board for Scotland. The requirement to consult the persons and bodies listed in section 8(5) before laying draft regulations remains as an additional safeguard. That will allow ministers the flexibility to respond swiftly, but only if electoral administrators feel that there is a need.

Amendment 11 adjusts section 8(2), to clarify which days may be specified as additional polling days. In any recommendation made to ministers, the convener of the EMB may specify as additional polling days only those days that are consecutive to the day of the poll, unless they consider that there is reason to depart from that presumption, and, in any event, they may specify only one of the eight days falling immediately after the day of the poll.

Amendments 12 and 14 make the delegated power to provide for polling over multiple days subject to the affirmative procedure, going further than the recommendation of the Delegated Powers and Law Reform Committee in its stage 1 report. As I made clear to the committee, this is a contingency power, but, on reflection, we agree with the DPLR Committee that, if that power were to be used, its significance is such that parliamentary scrutiny would be appropriate.

Amendment 13 requires ministers to lay before the Parliament a statement of the reasons in support of the change, including information on the responses received from the Presiding Officer, the Electoral Commission, the convener of the EMB and the chief medical officer.

Adam Tomkins's amendment 15 also seeks to limit the discretion of ministers in this area. As the Government amendments do, it seeks to apply the affirmative procedure. However, it also applies a number of other restrictions along the lines of those that we discussed in relation to group 4 and an all-postal election. As I said then, it seems excessive to grant a power of veto to each of the Presiding Officer, the Electoral Commission and the EMB convener. The Government's amendments are much more in accord with the committee's call for enhanced parliamentary scrutiny of a decision to opt for multiple days of polling. They place the initiation of a change to the days of polling in the hands of the convener of the EMB, but they also enhance parliamentary scrutiny of any change. They are to be preferred to amendment 15. That said, I see no difficulty in restricting the use of section 8 to circumstances where the Scottish ministers consider it necessary

for reasons relating to the coronavirus. If Mr Tomkins does not press his amendment 15, I propose to prepare a stage 3 amendment on that point along the lines of Mr Findlay's amendment 22, which we discussed earlier.

10:45

To avoid any doubt, I repeat that, at present, neither I nor the electoral administrators expect the use of the power to be necessary, but the bill is designed for worst-case scenarios. Consequently, I contend that, in those circumstances, further restriction beyond that set out in the Government amendments is not needed and nor should we commit to a second polling day at this time.

I therefore invite Mr Sarwar and Mr Tomkins not to press their amendments in the group; if they do so, I invite the committee not to support them. I ask the committee to support the amendments in the group in my name.

The Convener: I call Adam Tomkins.

Adam Tomkins: Something very bizarre is happening on BlueJeans, convener, because I can see Michael Russell talking to a different committee, rather than what is going on in the committee that I am addressing. I hope that that is not reciprocated and that Michael Russell cannot hear or see me.

I fear that this will do the minister absolutely no favours whatsoever, but I agree with everything that he has just said. It is important that we have a degree of flexibility in the bill in relation to the power to provide for polling on additional days. However, that flexibility should not be in the hands of ministers to the extent that it would be if the bill were passed in its original form. I therefore welcome all the minister's amendments in the group, which are amendments 10 to 14. As with section 5, which we discussed a few minutes ago, so too with section 8. I will not press my amendment 15 if the amendments in the name of the minister are agreed to.

I have nothing to say in addition to that, except that I am still seeing on my screen the proceedings of another committee and not the proceedings of this one, so it would be helpful if somebody in the IT or broadcasting departments could fix that.

The Convener: It would indeed. That is a wee bit strange, but there you go.

I call Anas Sarwar to wind up. [*Interruption.*] I am told that other members may wish to speak first. I apologise. I am just being democratic again.

Patrick Harvie: The Government amendments in the group will make welcome changes in

relation to the advice of the convener of the EMB, the affirmative procedure and the statement of reasons. I am pleased to hear that Adam Tomkins welcomes those amendments as they will end the situation in which the power is solely in the hands of ministers. That is the appropriate approach.

On Anas Sarwar's amendment 24, we should be open to wider reform in the area. I said during the stage 1 debate—in a purely personal capacity, because my party does not have a formal position on this—that there is a case for having not only more than one day of polling, but an early voting period, as happens in some other countries. That debate should be in the context of consideration of a wider range of measures that we should take to maximise democratic participation and to maximise registration, turnout and political engagement during the election process.

Over the years, we have lost elements of the participative nature of and theatre around elections. I am thinking about things such as placards. Ten years ago, if you walked round the kind of areas that Anas Sarwar talked about in the week or fortnight before an election, it would have been abundantly clear visually that an election was happening, but we do not have that now. There are good reasons why we do not have that particular type of activity, but we need to reflect on the fact that we have lost some of the ways in which people are encouraged to engage with elections.

Having an early voting period is only one way of encouraging that, and it should be considered alongside issues such as where polling places are. Should they be in or next to supermarkets and shopping centres rather than in schools? Should there be a wider range of options for how we deal with those challenges? Those issues deserve debate in their own right.

At one level, the argument is that an election during a pandemic might be an opportunity to trial something like that. The flip side of that argument, though, is that if we make changes because of the coronavirus, at our next election, that reason would have disappeared. The people who recognised that coronavirus was the reason for any changes would say, "Well, there isn't a pandemic on now, so we should go back to the way it was done before." We would not have advanced the deeper argument about which changes we should contemplate for the longer term.

There has been electoral innovation in recent years. For example the franchise has been extended to 16 and 17-year-olds and there have been limited changes on prisoner voting and on extending the franchise to base it on residence rather than citizenship. Such innovations have been debated on their own terms, instead of

simply being seen as an immediate change for a temporary circumstance. I would like us to continue to debate the wider range of measures, including an early voting period, that might have long-term, permanent value in our electoral system. At the moment, though, I am cautious about committing to that by supporting amendment 24, particularly in the light of the evidence that we have taken that, in the current circumstances, electoral administrators are advising a single day's polling.

I am grateful that we have had this debate. We need to debate more widely and over the longer term the approach that we should take to elections in general. I am not convinced that we should do it specifically in the context of an election during a pandemic.

Maureen Watt: I dare not comment on whether the minister or Mike Russell is easier on the eye for Adam Tomkins, but I hope that Mr Tomkins has got the situation sorted out.

Patrick Harvie and Anas Sarwar said very much what I would have said. We have had lots of extensions to the franchise and changes to the way in which we run elections. I agree that we should keep looking at that and be innovative, but in the midst of a pandemic is not the time to consider making such changes. However, I hope that Parliament looks at that in future sessions.

Neil Findlay: I do not know who is easier on the eye, but I know who is easier on the ear. *[Interruption.]* I will give you the benefit of that one, Mr Dey.

If we had the problem on polling day that we saw in the first South African election after apartheid, with queues miles long and people waiting ages to vote, I could understand why we were taking such a conservative stance on all these issues. It is about opening up voting and participation. However, at best, 55 per cent of people vote in elections. That number is pathetic, and yet we are seeing real conservatism regarding increasing that figure. I would have thought that people would be up for that during this crisis; I would have hoped that people would have been up for it at any time, but it seems not. That is a pretty depressing situation.

The Convener: As soon as Neil Findlay mentioned conservatism, John Scott's hand went up.

John Scott: I agree with the minister's position—there is no need for amendment 24. Anas Sarwar expects—or hopes—that 50 per cent of the electorate will vote by post and thinks that there might not be the capacity for that. If that number did vote by post, it would vastly reduce the number going to polling stations, and there is therefore no need for an election over two days.

If Neil Findlay is correct that only 55 per cent of the electorate will vote, that means that the number of people who will go through polling stations will go down to half of 55 per cent, which is only 27.5 per cent, so I do not think that there is a need for polling over two days. I agree with others that we can look at the issue in the future if we want to, but I do not think that a compelling argument has been made for the change just now, especially given that the EMB is content. We have to accept that people will do their job and that, when the EMB says that it will be able to carry out the election in one day, it will be able to do so. Mr Burr's letter, which was cited by the minister, also gives us that confidence. I am not saying that we should not make changes or look at the matter in the future, but I do not think that now is the time to make the change.

Anas Sarwar: I find some of the responses from members a little depressing, given the lack of ambition in opening up and encouraging our democracy. There is a risk here. I have certainly not set the ambition at 50 per cent of the electorate applying for a postal vote; I am open minded about how people eventually vote. However, there is a disconnect between raising awareness and the ease of applying to vote by post, and what that means will happen at polling stations. What will happen if we do not make it easier for people to apply to vote by post? If fewer people than we expect apply for a postal vote, more people than we expect might go to polling stations in a socially distanced election.

In relation to legacy, Patrick Harvie made lots of important points. One point that struck me was, if the change was made just for a coronavirus election, what reason would there be to make it for future elections? We have the opportunity, because we will have a coronavirus election, to make it easier for people to vote and to drive up turnout to 60, 70 or 80 per cent of the electorate. We could then say to people that, even during a pandemic, we had record levels of turnout, as there have been in other parts of the world. That would show that, when we make it easier for people to vote and increase the options for how they can vote, people will engage in the electoral process. If we do not make the change, it will be a missed opportunity.

If there will be a lot more people at polling places, rather than polling boxes, we still need a response to that. What will be our reaction, late on, to ensure that we do not have long queues but hold an adequately socially distanced election that does not pose a risk to those who are voting or to poll workers?

I do not plan to press amendment 24, but I would like to make a point about the other amendments in the group. I wholly support the

principles of the amendments from Graeme Dey and Adam Tomkins. I agree with amendments 11 to 14, but I have a concern about amendment 10. My understanding is that, if amendment 10 is agreed to, Adam Tomkins's amendment 15 will not be moved.

I say this not as a slight on the convener of the Electoral Management Board—we, of course, have to take its advice very seriously—but I emphasise that I do not think that we should make the change conditional on a direct recommendation from the Electoral Management Board. What if the EMB does not make a recommendation on holding an election over multiple days, but Parliament thinks that it should be held over more than one day and we are able to deliver that? On that basis, I ask to work with the other parties to find suitable wording so that, ultimately, the matter is in the hands of Parliament, not in the hands of the convener of the Electoral Management Board, with Parliament just affirming that position.

On that basis, I will not press amendment 24. I ask that the minister and other parties work together on finding better language than that in amendment 10. If there is a vote on amendment 10, I ask members not to support it at this stage, but to support amendments 11 to 14.

Amendment 24, by agreement, withdrawn.

Amendment 10 moved—[Graeme Dey].

The Convener: The question is, that amendment 10 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Halcro Johnston, Jamie (Highlands and Islands) (Con)
Harvie, Patrick (Glasgow) (Green)
Kidd, Bill (Glasgow Anniesland) (SNP)
Paterson, Gil (Clydebank and Milngavie) (SNP)
Scott, John (Ayr) (Con)
Watt, Maureen (Aberdeen South and North Kincardine) (SNP)

Against

Findlay, Neil (Lothian) (Lab)

The Convener: The result of the division is: For 6, Against 1, Abstentions 0.

Amendment 10 agreed to.

Amendments 11 to 14 moved—[Graeme Dey]—and agreed to.

11:00

The Convener: I call Adam Tomkins to move or not move amendment 15, already debated with amendment 24.

Adam Tomkins: Before I do so, convener, could you please declare the results for amendments 11 to 14?

The Convener: Did you not pick up on that? I beg your pardon. Amendments 11 to 14 were all agreed to.

Adam Tomkins: Thank you, convener. On that basis, and in light of what the minister said about the provision in my amendments about reasons relating to coronavirus, I will not move amendment 15.

Amendment 15 not moved.

Section 8, as amended, agreed to.

After section 8

The Convener: The next group concerns information on elections. Amendment 25, in the name of Anas Sarwar, is the only amendment in the group.

Anas Sarwar: I am sure that the committee will be pleased to learn that this is my final amendment, after which that will be me for the morning.

I raised this issue in the stage 1 debate last week, and there have since been offline discussions with the minister and others. The principle behind the amendment is simple, although there is, obviously, a bit more detail. The principle that it recognises is that the Scottish Government is a participant in the election rather than a spectator. That is why any information in relation to the election that is being communicated should be communicated by what we might think of as a neutral source, by which I mean the Electoral Commission, the Electoral Management Board or the EROs.

For the avoidance of doubt, when the amendment refers to

“information in relation to the 2021 elections”,

that does not include election communications from political parties. I do not want any part of this amendment to have the effect of restricting political parties from communicating with the electorate in any way.

I welcome the fact that we are going to have a public information campaign led by the Electoral Commission, rather than the Scottish Government, and that the information booklet will be sent out by the Electoral Commission, rather than the Scottish Government. I also welcome the commitment from the Scottish Government that it will write to the 169,000 people who are shielding about their ability to vote by post. However, I believe that that communication should come from the Electoral Commission rather than from the Scottish Government. Further, again, I make the plea that,

when we write to that shielding group, we include an application form and a freepost mechanism. It would be counterintuitive to encourage people who are shielding—the most vulnerable category in society—to go out to buy a stamp and an envelope to send an application form back or to make them have to navigate an ERO helpline or use the ERO website or email address in order to apply for a postal vote.

Will the Government clarify whether it is planning any other communications with regard to the election process and the ability to vote that we might not have picked up on, and in whose name such communications will be going out?

The minister told me that one of the reasons why the communication to the 169,000 people in the shielding group must be a Scottish Government communication is that it involves Scottish Government data. I remind the minister that we gave the shielding category data to supermarkets, so if it is okay to do that, it is okay to give the data to the Electoral Commission.

I urge the minister to ensure that any communications come from the Electoral Commission. If, as he intimated last week, he wants to include a comment from the chief medical officer, there is no reason why such information could not be on an Electoral Commission communication. Last week, the minister commented on my paranoia, but I think that the paranoia might be on the other side. We all want to make sure that no questions can be asked about the conduct of the election. Using neutral sources—the Electoral Commission, the Electoral Management Board for Scotland or ERO offices—for all communications relating to the conduct of the election is an important principle, which I hope has the unanimous support of the committee and the Parliament.

I move amendment 25.

Patrick Harvie: The point of principle that Anas Sarwar set out is one with which we would all agree. The information about the conduct and process of the election needs to be politically independent. However, I think that the amendment goes significantly further in that regard than we have ever seen for other elections. I do not think that the current circumstances justify a significant departure from our previous expectations. There is a danger that amendment 25, as it is currently drafted, would inhibit the provision of necessary information that is politically independent and comes from sources other than those mentioned in the amendment. In particular, I am not clear why the exemption at subsection (2) refers to communications from “political parties”, rather than candidates.

The arguments around the chief medical officer having been a clear, consistent and politically impartial voice during the pandemic are well made. I do not see a reason to say that it is inappropriate or politically loaded to involve the CMO in election communications—I do not think that it is.

The principle is well understood and agreed, but the amendment goes significantly further than merely maintaining that important principle, and there could be serious unintended consequences.

Graeme Dey: Amendment 25 causes me great concern, and I am afraid that it has not been thought through. It would greatly restrict who can provide information to those who are

“entitled to vote at the 2021 election”.

It would mean that only the Electoral Commission, the convener of the Electoral Management Board for Scotland and electoral registration officers could provide information. As returning officers, who are responsible in law for delivering elections, are not listed, they would be prohibited from any form of communication with the voters. They would not be able to publicise the date of the election, or send out poll cards telling people where they are to vote, even though they have a statutory duty to do so.

In the amendment, an exception is made for “election communications from political parties”,

but under the terms of the amendment as drafted, independent candidates would be excluded from providing information about the election to voters. That is surely not what Anas Sarwar intended, but that would be the consequence, which would create obvious difficulties in the conduct of the election.

The provisions could also prevent the NHS, the chief medical officer and others from issuing information about the election in the context of the virus to shielding persons. As Patrick Harvie identified, the CMO is the impartial source of information on whom people in the shielding category have come to rely. He is credible and established.

I have an update for the committee, because the discussion has been on-going in the lead up to, and after, stage 1. I have had confirmation this morning that the chief medical officer is content to issue a communication to advise those who are on the shielding list about how to apply for a postal vote, should they wish to do so, and of the deadline for applications. The communication will not be issued on behalf of the Scottish ministers, but would be produced in consultation with the Electoral Commission, which would provide the form of words that is to be used.

The point was raised about any intended Scottish Government communication in the context of the election. As we speak, there is no such plan. On Monday, I will meet the Electoral Management Board for Scotland, the Electoral Commission and the EROs, to further discuss, as I identified earlier, what the information campaign will look like in detail—on a very localised level, I hope—and I aim to be in a position to advise Parliament about that in the context of the stage 3 debate next week.

The Convener: I call Anas Sarwar to wind up on amendment 25, and to press or withdraw it.

Anas Sarwar: I take on board the comments that were made by Patrick Harvie and by the minister.

I seek a commitment from the minister that, if any communications were to be decided on by the Scottish Government, there would be full consultation with the Parliament, and that those communications should come from a neutral source unless the Parliament agrees otherwise.

On communication with people who are in the shielding category, I seek clarification on branding. I know that the wording will be approved by the Electoral Commission, but will it have Scottish Government branding or NHS Scotland branding? The CMO is employed by the NHS, so there is no reason why there should be Scottish Government branding on such communications.

I take the point about individual candidates and third-party campaign bodies, but if we can get reassurance and a guarantee from the minister that communications will be neutral, that those to people in the shielding category will also come from a neutral source, and that none of them will have Scottish Government branding, I will be content not to press amendment 25 and will not feel the need to bring it back at stage 3.

The Convener: Minister, do you choose to come back on that?

Graeme Dey: I am happy to come back, convener, and I will resist the temptation to use the word that I used in the stage 1 debate—“paranoia”. I offer some reassurance. As I understand it, the branding will be that of the chief medical officer, as it has been in other communications with the shielding category.

On the point about communications from the Scottish Government, I think that we have demonstrated throughout that the principal source of information on the election has been the Electoral Commission, and, as I have indicated, we are also looking to the EROs for localised information campaigning.

I hesitate very slightly to give a binding commitment of the type that Anas Sarwar is

looking for because if, perhaps, the election had to be cancelled at short notice, and consequences were flowing from that, it might be necessary for a communication to go out from the Scottish Government. I stress the words “might be”. I will therefore stop short of giving the member that absolute guarantee, but I point to the direction of travel in the election, whereby the sources of information have been other than from the Scottish Government direct.

Anas Sarwar: I thank the minister and I do not think that he needs to worry about paranoia. I would hope that a Government minister would take every opportunity to say that there will be no political interference in the conduct of an election in our free and fair democratic process. I note the minister’s slight caveat and add one of my own, which is that if the Government intended that the Parliament should cancel an election, I am pretty sure, or at least I would hope, that the Government would consult other political parties before making any such announcement.

I will take the conversation with the minister and other political parties offline. I am content not to press the amendment.

Amendment 25, by agreement, withdrawn.

Section 9—First meeting of new Parliament

11:15

The Convener: Group 9 is on the nomination of the First Minister following the election. Amendment 16, in the name of Graeme Dey, is the only amendment in the group.

Graeme Dey: I noted earlier that there is an expedited process for the bill, which members are well aware of. Nevertheless, the evidence-taking process has given us cause to reflect on the bill as drafted. As a result, the committee considered earlier a technical amendment that we lodged. Amendment 16, too, is based on our reflection on what came out through the evidence-gathering process.

Amendment 16 is consequential to the power given to the Presiding Officer in section 9 of the bill to fix the day on which the Scottish Parliament is first to meet after the 2021 election.

Under section 46 of the Scotland Act 1998, the new Parliament must nominate one of its members for appointment as the First Minister within 28 days of a general election. As the first meeting of a new Parliament normally takes place within seven days of the election, in practice, the minimum time available to the Parliament for nomination of the First Minister is 21 days. Section 2 of the bill removes the usual period that is allowed for the first meeting of the new Parliament.

Instead, section 9 of the bill requires the Presiding Officer to fix a day for the first meeting of the new Parliament, which must be as soon as reasonably practicable after the poll. That is because we anticipate that the counting of votes will take longer than usual and, if there is a need for additional polling days, as we have discussed, the Parliament might not be able to hold its first meeting for a longer period than usual.

The effect of amendment 16 is that any postponement of the first meeting of the new Parliament beyond a seven-day period is not counted towards the period of 28 days that is allowed for the nomination of a new First Minister. That would apply whether the election goes ahead on 6 May 2021 or is postponed by the Presiding Officer under section 11 of the bill. That is simply to ensure that any delay to the first meeting of the Parliament for public health reasons does not have a knock-on impact on the usual timetable for nominating a First Minister.

I move amendment 16.

The Convener: As members do not have anything to contribute on the amendment, does the minister care to wind up?

Graeme Dey: I have nothing to add.

Amendment 16 agreed to.

Section 9, as amended, agreed to.

Section 10 agreed to.

Section 11—Power of Presiding Officer to postpone election

The Convener: Group 9 is on the power of the Presiding Officer to postpone the election. Amendment 26, in the name of Neil Findlay, is grouped with amendment 27.

Neil Findlay: Amendments 26 and 27 seek to restrict the power of the Presiding Officer to postpone the Scottish general election. The contingency measure of the Presiding Officer being able to take such a decision should come into play only if he considered that it were necessary to do so for a “reason related to coronavirus”. The principle is similar to that of amendment 22, which the Government accepted, so I hope that the Government will also accept amendments 26 and 27.

I move amendment 26.

Patrick Harvie: I can see that, at some level, it might be attractive to remove the word “appropriate” and retain only the word “necessary”. Although it is framed in the bill as whether the Presiding Officer

“considers it necessary or appropriate”,

I worry that the removal of the word “appropriate” would imply that that is more of an objective test than a judgment, and that—in what I hope will be an unlikely circumstance—if the Presiding Officer felt the need to exercise the power, there could be a legal challenge on the basis of whether it could be proved necessary rather than judged appropriate.

I will be interested to hear what the minister says on amendment 26, but I have qualms about it.

The Convener: No other member wishes to speak. I therefore call the minister.

Graeme Dey: As members will be aware, the Presiding Officer has always had a power to advance or postpone the election by one month. For the 2021 poll we have replaced that with a power to defer the poll by whatever period or periods the Presiding Officer thinks necessary or appropriate. However, those periods cannot delay the poll by more than six months in total.

Amendments 26 and 27 would seek to restrict that power so that it could be exercised only for a reason related to the coronavirus, and even then only if the Parliament could not safely meet. However, the power needs to be broader, because it could be required for a reason unrelated to the coronavirus, such as a terrorist attack or the demise of the Crown.

Let me be clear: I do not expect that the Presiding Officer will need to exercise the power. Under section 11(3), he can only exercise it for a coronavirus-related reason if he is satisfied that the Parliament cannot meet. However, other circumstances could arise where reconvening the Parliament is difficult or unachievable, despite the delay to dissolution under the bill. I trust the Presiding Officer to make that judgment; I am sure that other members do, too.

I hope that we will never see that occasion arising. However, in my opinion, it is essential that the Presiding Officer retains what I see as a power in reserve, which can cover issues unrelated to the coronavirus, as he has been able to do since the establishment of the Parliament.

Given the issues that I have outlined, I ask Mr Findlay not to press amendments 26 and 27. However, should he do so, I urge members not to support them.

The Convener: I call Neil Findlay to wind up and press or withdraw amendment 26.

Neil Findlay: Amendment 26 is important. The bill’s title is the Scottish General Election (Coronavirus) Bill, therefore it does relate specifically to the virus. Amendment 26 seeks to point out that such interventions should take place only for Covid-related reasons.

I press amendment 26 and I will move amendment 27.

The Convener: The question is, that amendment 26 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

FOR

Findlay, Neil (Lothian) (Lab)

AGAINST

Halcro Johnston, Jamie (Highlands and Islands) (Con)
Harvie, Patrick (Glasgow) (Green)
Kidd, Bill (Glasgow Anniesland) (SNP)
Paterson, Gil (Clydebank and Milngavie) (SNP)
Scott, John (Ayr) (Con)
Watt, Maureen (Aberdeen South and North Kincardine) (SNP)

The Convener: The result of the division is: For 1, Against 6, Abstentions 0.

Amendment 26 disagreed to.

Amendment 27 moved—[Neil Findlay].

The Convener: The question is, that amendment 27 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

FOR

Findlay, Neil (Lothian) (Lab)

AGAINST

Halcro Johnston, Jamie (Highlands and Islands) (Con)
Harvie, Patrick (Glasgow) (Green)
Kidd, Bill (Glasgow Anniesland) (SNP)
Paterson, Gil (Clydebank and Milngavie) (SNP)
Scott, John (Ayr) (Con)
Watt, Maureen (Aberdeen South and North Kincardine) (SNP)

The Convener: The result of the division is: For 1, Against 6, Abstentions 0.

Amendment 27 disagreed to.

Section 11 agreed to.

Sections 12 to 14 agreed to.

Section 15—Commencement

The Convener: Amendment 17, in the name of the minister, is in a group on its own.

Graeme Dey: Amendment 17 deletes section 15(2) from the bill. The effect of that is to remove ministers’ power to make transitional, transitory or saving provisions in connection with the coming into force of any of the provisions of the bill. That fulfils the Delegated Powers and Law Reform Committee’s recommendation in its stage 1 report that the power was unnecessary.

On reflection, given the power to make similar provision that is already present in section 14 of

the bill, we agree with that committee's recommendation and so have lodged amendment 17, which I ask members to support.

I move amendment 17.

The Convener: No member wishes to raise any points. I therefore invite the minister to wind up.

Graeme Dey: I am content, convener.

Amendment 17 agreed to.

Section 15, as amended, agreed to.

Section 16 agreed to.

Long title agreed to.

The Convener: That ends our consideration of the bill at stage 2. The bill will now be reprinted as it has been amended at stage 2 and will be published on the website at 8.30 am tomorrow. Following the Parliament's approval of motion S5M-23471, consideration of the bill at stage 3 is scheduled for the meeting of the Parliament that will take place on 23 December 2020. The deadline for lodging stage 3 amendments is 12 noon on Monday 21 December. Amendments should be lodged with the legislation team by that time.

I thank Anas Sarwar and Adam Tomkins for their contributions. I also thank the minister and his officials for attending. That ends the public part of our meeting. The committee will now move into private session.

11:26

Meeting continued in private until 11:32.

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