



**OFFICIAL REPORT**  
AITHISG OIFIGEIL

# Standards, Procedures and Public Appointments Committee

**Thursday 4 March 2021**

**Session 5**



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Pàrlamaid na h-Alba

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**STANDARDS, PROCEDURES AND PUBLIC APPOINTMENTS COMMITTEE**  
**6<sup>th</sup> Meeting 2021, Session 5**

**CONVENER**

\*Bill Kidd (Glasgow Anniesland) (SNP)

**DEPUTY CONVENER**

\*Patrick Harvie (Glasgow) (Green)

**COMMITTEE MEMBERS**

\*Neil Findlay (Lothian) (Lab)

\*Oliver Mundell (Dumfriesshire) (Con)

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

\*John Scott (Ayr) (Con)

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

\*attended

**THE FOLLOWING ALSO PARTICIPATED:**

Roddy Angus (Scottish Government)

Graeme Dey (Minister for Parliamentary Business and Veterans)

Iain Hockenhull (Scottish Government)

**CLERK TO THE COMMITTEE**

Katy Orr

**LOCATION**

Virtual Meeting



## Scottish Parliament

### Standards, Procedures and Public Appointments Committee

*Thursday 4 March 2021*

*[The Convener opened the meeting at 09:00]*

### Decision on Taking Business in Private

**The Convener (Bill Kidd):** Good morning, and welcome to the sixth meeting in 2021 of the Standards, Procedures and Public Appointments Committee.

Agenda item 1 is to decide whether to take item 6 in private. Do members agree to take that item in private?

As no member has indicated otherwise, we agree to take item 6 in private.

## Subordinate Legislation

### Scottish Parliament (Elections etc) Amendment (Coronavirus) Order 2021 [Draft]

09:00

**The Convener:** Under item 2, the committee will take evidence on the draft Scottish Parliament (Elections etc) Amendment (Coronavirus) Order 2021 and the Scottish Parliament general election. Joining us are the Minister for Parliamentary Business and Veterans, Graeme Dey, and Roddy Angus, Colin Brown and Iain Hockenhull, who are his officials.

I invite the minister to make a short opening statement. Following that, there will be questions from members.

**The Minister for Parliamentary Business and Veterans (Graeme Dey):** Good morning, and thank you for the opportunity to explain the Government's thinking behind the order that is before the committee for consideration.

It was not our intention to make any further changes to the legislation ahead of the Scottish Parliament election on 6 May. However, when we were approached by the Electoral Commission with the recommendation that the legislation should be amended to allow for an emergency change of proxy, I felt that it was in the best interests of the voters to make that small but important change. Therefore, I introduced the order, which will allow for an elector to change the person whom they have nominated as their proxy should their original proxy be unable to vote due to the need to follow Scottish Government or medical advice in relation to coronavirus. That change will help to ensure that everyone will be able to cast their vote on 6 May.

As we were proposing to make that change, I thought that it was appropriate to make two other changes at the same time. During the drafting process for the order, my officials noticed that a cross-reference in relation to the material to accompany absent vote applications was wrong. Actually, it has been wrong for 14 years without causing any issues, but we have taken the opportunity to correct that minor error.

Members will remember that one of the provisions in the Scottish Parliament (Elections etc) (Miscellaneous Amendments) Order 2020, which we discussed at the committee's meeting on 26 November last year, allows for an emergency proxy to be granted in a situation in which, even though the disability happened before the deadline for a normal proxy appointment, the applicant was unable to apply before that deadline. Subsequent

to the making of that order, the Electoral Commission alerted us to the risk that the definition of “disability” in the amending provision may have unintentionally limited its effect by not allowing applications where the incapacity event is short term. We are taking the opportunity to address that concern and ensure that that option is available to those suffering from a long-term or a short-term disability.

I hope that members will agree that those changes are for the benefit of the voter and that they will therefore support the order.

**The Convener:** Thank you very much, minister.

Members of the committee have the opportunity to ask questions on the issues. I am looking to see whether anybody has indicated in the chat box that they have a question. Nobody has done so, so I will run through names and we will see whether anybody has a question.

Does Patrick Harvie have a question?

**Patrick Harvie (Glasgow) (Green):** Yes—thank you, convener. Good morning, minister.

The arrangements for emergency proxies are fairly new. Are they being brought in specifically for coronavirus reasons? Will people be required to demonstrate that the need to change their proxy at the last minute is due to such a reason? Has any assessment been done of the likely demand for proxies? Will there be additional capacity, or will measures be put in place to ensure that electoral registration officers will be able to cope with the volume of applications and any last-minute changes that might take place?

**Graeme Dey:** In the context of resourcing, EROs have been well aware for some time of the possible demand that might arise, and they have been resourcing up. For example, electoral registration officers would have the flexibility to use members of staff who normally work on the valuations front to provide assistance with elections.

It is correct that the arrangements have been introduced for coronavirus reasons. For some months, and working with the committee in particular, we have recognised the situation that we are in and responded accordingly so as to maximise the opportunity for individuals to cast their votes.

On your question about whether people would have to demonstrate their entitlement to a proxy, an elector would not have to demonstrate need as such; they would simply have to explain why a replacement proxy was needed. The electoral registration officer could undertake inquiries if they felt that to be necessary—for example, they could contact the original proxy. The arrangements are designed to make the system as simple as

possible, taking into account the circumstances in which we find ourselves.

**Patrick Harvie:** That is fine, convener. Thank you.

**The Convener:** A couple of members would like to ask questions. John Scott would like to ask a question, and Gil Paterson would like to ask one on the back of that.

**John Scott (Ayr) (Con):** I want to ask a couple of questions about that. Would an elector be required to demonstrate that their request for an alternative proxy was due to coronavirus, or could that be for any reason?

**Graeme Dey:** Can I bring in Iain Hockenhull to provide detail on that, convener?

**The Convener:** Of course.

**Iain Hockenhull (Scottish Government):** Good morning. As the minister mentioned, there is no requirement to demonstrate a particular need. The ERO would undertake assessment on a case-by-case basis. They could undertake further inquiries to confirm that the application was valid, including, in relation to a replacement proxy, contacting the original one. However, no particular bar is being raised.

**John Scott:** I see. So there are no grounds on which an application might be rejected.

**Iain Hockenhull:** If the ERO thinks that there is reason for suspicion, they are always able to undertake further inquiries. However, given the circumstances of the pandemic, they would base their assessment primarily on what the person was saying.

**John Scott:** What level of proof might be required?

**Iain Hockenhull:** We could take that away and ask the registration officers to give further examples, if that would be helpful.

**John Scott:** Yes, that would be helpful.

**The Convener:** Could the minister say something about that?

**Graeme Dey:** That would be useful to help Mr Scott. I should be clear that the normal set of criteria would have to be met in order to reject a proxy application. As we know, there are criteria that qualify someone to be a proxy. The individual who was being appointed proxy would have to be 16 or over, registered to vote or in the process of being so registered, and eligible to vote in the election, and also not a proxy for more than two people to whom they are closely related. Not meeting those criteria could therefore provide grounds on which an application could be rejected, but those criteria apply to any proxy.

**John Scott:** Thanks very much.

**Gil Paterson (Clydebank and Milngavie) (SNP):** I think that my question has mostly been answered already. That response was helpful, and I am supportive of the order. However, I can see a situation possibly arising on the day of the election. My question is about a change of proxy. If the proxy was a key worker and their employer asked them to respond to an emergency—perhaps a staff shortage among ambulance drivers, for instance—would that be a reason to change the proxy?

**Graeme Dey:** I would expect so, but I will turn to my experts to confirm that. Iain Hockenhull or Roddy Angus could answer that question.

**Roddy Angus (Scottish Government):** That is not covered specifically by these regulations, which relate only to the situation in which the proxy is unable to vote due to specific coronavirus-related reasons, such as medical advice to shield or self-isolate. There might be an opportunity to apply for a new emergency proxy, but that would depend on the individual circumstances on the day.

**Gil Paterson:** I am sorry—I was referring to the emergency proxy. I am more interested in the emergency provisions at the moment, but thanks. That is a good answer.

**Maureen Watt (Aberdeen South and North Kincardine) (SNP):** Minister, in your statement to Parliament yesterday on coronavirus and the uptake of postal votes, you mentioned that political parties' transporting electors to polling stations in their cars, as they normally do, would not be allowed, unless it is family, I suppose, and they would still be allowed only two people in the car. If someone is unable to walk to the polling station and cannot be transported, would that count as a short-term incapacity so that they could get an emergency proxy up until 5 o'clock on the day?

**Graeme Dey:** May I bring Roddy Angus in on that? I want to reflect on that, because I am not entirely sure that it would.

**Roddy Angus:** If somebody is concerned about their ability to get to the polling station, they would have to use the normal procedures for applying for a postal vote or a proxy vote. They should not rely on somebody to give them a lift if they do not know that that can definitely happen. The amendments in the order would not affect that position.

**Maureen Watt:** Do you not think that they should? With the best will in the world and the best publicity in the world, there will be people who will not realise that their normal, friendly political party that they belong to or support will not be able to transport them as it has done for election after election. If they have relied on that and they are

not normally mobile enough to walk, they will not be able to vote. I would have thought that that was a fairly good reason for an emergency proxy.

**Graeme Dey:** I do not know whether that is a good reason, Ms Watt, because there has been a great deal of awareness raising about the alternative options for voting. It has been the case for some time that providing lifts—car sharing, if you like—is a no-no under the restrictions, so I am not convinced by that argument. However, I accept that we should take away from this the fact that there is a need to continue to raise awareness of access to postal voting and the proxy system to minimise the risk that you highlight, although it is a relatively small risk.

**Maureen Watt:** Are family members still able to take one member of their family—an older or infirm member of their family—in the car to the polling station?

**Graeme Dey:** The wider restrictions at the time of the election on family interaction and car travel would operate with regard to that family member.

**Maureen Watt:** What sort of supervision or oversight will there be? I can foresee that there will be breaches of the coronavirus rules in relation to this.

**Graeme Dey:** Do you mean in the context of parties or individuals?

**Maureen Watt:** Both, really.

09:15

**Graeme Dey:** As we know, individuals' behaviour is very difficult to police—if we want to use that word. As for political parties, the dialogue that I have had with the parties that are represented in the Parliament has given me confidence that a considerable degree of responsibility will be exercised in the conduct of the election. Yes, there will be instances in which individuals act in a way that is not in the spirit of the guidance, but I hope that I am not being naive in saying that I do not believe that the parties that are represented in the Parliament, which are the main parties, will act in a way that is contrary to what has been strongly agreed. That includes giving voters lifts to polling stations.

However, I take your point. We need to take away from this the thought about raising awareness and perhaps doing some messaging to explain that that option will not be available and now is the time for people to obtain a postal vote—or a proxy vote, where appropriate—to ensure that they can cast their ballot.

**Maureen Watt:** Thank you.

**Neil Findlay (Lothian) (Lab):** Minister, can you give us an idea of the potential turnout at the election in May?

**Graeme Dey:** That is difficult to judge, Mr Findlay. We are having further surveys done—such work has been done a couple of times in the past, as you are aware—to gauge public interest in taking part in the election and people's opinions on how they would prefer to take part.

The uptake in applications for postal votes has been encouraging. I do not think that the numbers will get to the higher end of what was considered possible, but there are indications that a larger number of people than usual will vote by post. It is difficult to predict turnout at this stage, but there are signs that people are taking steps to ensure that they are able to vote, regardless of the circumstances.

**Neil Findlay:** Thank you for the non-answer, minister—and I understand why you gave a non-committal response.

You said that applications for postal votes are “encouraging”. What does that mean in numbers or percentages?

**Graeme Dey:** We have some numbers. Off the top of my head, I think that, up to about a week ago, about 75,000 new postal votes had been issued. Obviously, applications are still being processed. From 15 March, we will publish postal vote uptake numbers weekly by local authority area. I anticipate that there will be an increase in proxy vote applications, too.

In the week commencing 22 March, the Electoral Commission will issue its booklet on the election, and I anticipate that there will be a further upturn in applications for postal votes at that point. I anticipate that there will be a steady stream of applications up to 6 April, because political parties will be encouraging their identified supporters to engage.

You said that I gave you a “non-answer”; I did so because I do not have a crystal ball. The election is some way off. Right now, is the election the biggest thing in the minds of the electorate? No, it is not; responding to the demands of the pandemic is the biggest thing, and that might continue to be the case. We will see how interest increases as a result of the democratic engagement that we have agreed will be possible in the lead-up to the election.

Like Neil Findlay, I earnestly hope for a bigger turnout than we had in 2016, which, if memory serves me well, was the biggest ever in a Scottish Parliament election—not that the number was anything to be pleased about. Time will tell.

**Neil Findlay:** Including the 70,000 people who have registered, what percentage are we sitting on at the moment?

**Graeme Dey:** It varies around the country.

**Neil Findlay:** What is the Scotland figure?

**Graeme Dey:** I cannot give you the Scotland figure, because the numbers that we have are incomplete by three electoral areas. I am more than happy, as a matter of urgency, to write to the committee once I am in possession and in a position to make you aware of the overall Scotland number.

**Neil Findlay:** What is being done to promote postal voting? I am sure that you will tell me that a big list of things has been done, but I do not feel as though I am tripping over adverts, presentations on social media or whatever. I see the occasional promotion, but the measures do not seem to be having much impact.

**Graeme Dey:** There was a series of television adverts on the subject; there has been social media activity; and, as you will recall, the Government funded a letter issued by local EROs to every household in Scotland, which directed people's attention to who is registered at their address, who has a postal vote and how they can go about rectifying anomalies. I received that letter where I live. Anecdotally, I hear that everybody else has, although the letters did not go out at exactly the same time. There has been direct contact, TV advertising and social media activity.

I listened to Maureen Watt's point about people expecting to get a lift to the polling station. We will take your point away, too, Mr Findlay, and have a look at what more we can do. I assume that all political parties will encourage their identified supporters to take up the postal vote option. There is a limit to what we can do, but we are certainly attempting to maximise understanding of the options. As I said earlier, the Electoral Commission booklet goes out in the week commencing 22 March. We are doing as much as we can to raise awareness. Ultimately, it is up to the public to decide whether they want to obtain a postal vote or turn up to the polling station, which a lot of people will do.

**The Convener:** Oliver Mundell, do you have a question?

**Oliver Mundell (Dumfriesshire) (Con):** No, I do not. I am fairly satisfied with what the minister has set out.

**The Convener:** You can come back in later, if required. Gil Paterson, I believe that you want to come back in.

**Gil Paterson:** Yes, if you do not mind. It is in relation to an answer that Graeme Dey gave to



Neil Findlay. The minister pointed out that there has already been an uptake in applications for postal votes. There was previously some concern that there might be a rush at the last moment to register for a postal vote. Is there any evidence—in the light of what he said, it sounds as though there is—to suggest that things are more advanced than anticipated, and that the rush that you were worried about might not materialise or might not be as bad as usual?

**Graeme Dey:** It is reasonable to assume that there will be a surge towards the end—there always is. We set out to get people to apply far earlier and we appear to be achieving that goal. There are encouraging signs, although the uptake is not massive—I do not want to suggest that it is.

There are the postal votes that have been issued so far, plus the applications that are being processed; then we will have the Electoral Commission publicity and awareness being raised more generally by political parties. I suspect that the trajectory will be fairly smooth rather than there being a massive rush at the end, although, to an extent, we are geared up for a surge in the final week or two.

I am happy to keep committee members updated on the progress that is being made. For as long as we are sitting as a Parliament, I will write to the committee and keep you posted.

**John Scott:** Can the minister provide an update on what is being done to ensure the timely delivery of postal votes for Scottish armed forces electors who are posted overseas?

**Graeme Dey:** I should say that, in a general sense—I will take the opportunity to get across this message—the Electoral Commission and the electoral authorities are engaging with Royal Mail to ensure the swift delivery of postal votes during the process, as that is obviously very important.

Service personnel who are based overseas or expect to be posted abroad in the forthcoming year are encouraged to register as service voters. That enables them to be registered to a fixed address in the United Kingdom. The Electoral Commission works directly with the Ministry of Defence to provide information and assurance around access to postal voting.

With regard to ensuring the swift delivery of votes, do you have a particular concern or case that is causing you worry?

**John Scott:** No, I am just seeking general reassurance that that aspect is being dealt with.

**Graeme Dey:** There is a standard process in place to ensure that such voting can happen. I am not aware of instances where there has been a problem. I think that there is a good working

relationship between the Electoral Commission and the MOD.

**John Scott:** Have you had any feedback from electoral administrators on the impact of moving the deadline for postal votes by 10 working day, from 20 April to 6 April?

**Graeme Dey:** I have had feedback—not directly, but indirectly—that there is some satisfaction that the arrangements are working well, in so far as the electoral administrators want the additional time at the end to process a larger number of those votes than usual. I am hearing that they are pleased that the uptake is occurring as early as it has been in the process, because they have been able to cope with that, instead of being hit with a massive surge at the end.

I understand that the electoral administrators, because of how we have set up things—which was done at their suggestion—in looking at the numbers of applications that they have and the numbers that they anticipate to get, are comfortable that they will be able to utilise the time appropriately from the deadline of 6 April to the issuing of postal votes. I understand that the first batch will be issued on about 16 April and the next batch on 26 April. The feedback that I have received through the Electoral Management Board for Scotland is that things are going as it hoped that they would.

**The Convener:** I thank the minister and his officials for their evidence in this session.

We move to item 3. I invite the minister to move and speak to motion S5M-24190.

*Motion moved,*

That the Standards, Procedures and Public Appointments Committee recommends that the Scottish Parliament (Elections etc) Amendment (Coronavirus) Order 2021 [draft] be approved.—[*Graeme Dey*]

**The Convener:** No member wishes to speak to the motion. Do you have any closing remarks, minister.

**Graeme Dey:** No, I am content, convener, thank you.

*Motion agreed to.*

**The Convener:** I confirm that members are content for me to sign off the committee's report on the instrument.

The minister will remain for the next item, although I believe that there be a change of officials.

## Scottish Parliament Practices and Procedures

09:29

**The Convener:** Item 4 is for the committee to take evidence on the Scottish Parliament practices and procedures in relation to its business in session 5. We still have with us Graeme Dey, the Minister for Parliamentary Business and Veterans. His officials are Al Gibson and Steven Macgregor. I invite the minister to make a short opening statement.

**Graeme Dey:** I welcome the invitation to offer my thoughts on issues within the committee's remit as we approach the end of the current parliamentary session—and what a session it has been.

At the start of session 5, we experienced the unfortunate outcome of the European Union referendum which, as we all know, has subsequently drawn heavily on the resources of both the Government and the Parliament. In 2017, the commission on parliamentary reform published its report. Many of the commission's recommendations are now reflected in, or have stimulated further review of, parliamentary practice. Over the course of the session, this committee has played a significant part in ensuring that individuals working in or having reason to be in the Parliament can be assured that any allegations of sexual harassment or inappropriate behaviour will be treated seriously and sensitively.

Finally, I of course have to reference the Covid-19 pandemic which, unfortunately, continues to impact on the work of the Parliament and on the lives of each and every person living and working in Scotland. As we are all aware, the pandemic gave rise to the need to put in place contingency measures for the forthcoming Scottish general election, and the Government is grateful to the committee for its scrutiny of the bill that we brought forward in that regard.

All those issues have, in one way or another, impacted heavily on both the work of the committee and my ministerial responsibilities. Workload is determined by circumstance, and it is fair to reflect on the significant activity that the committee has undertaken during the session. Although I do not need to tell you this, convener, for the record I note that the committee has led on three major bills concerning electoral matters and sponsored two of its own committee bills, on short money and MSP conduct.

The committee's bill on MSP conduct was, in turn, a product of its high-profile inquiry into sexual harassment and inappropriate behaviour. It

obviously engaged in extensive work arising in consequence of the recommendations of the commission on parliamentary reform, the consideration of which requires close analysis around the practical implications of their implementation in the context of wider parliamentary process. I hope that we will come on to that.

All that is of course in addition to the work arising from the committee's core responsibilities, which—I say this genuinely—has been a notable achievement. All the committees have risen to the challenges that they have faced. This committee has probably had a greater workload than any of its predecessor committees and it has coped admirably with that.

Many new ways of working have been developed in the Parliament, driven not only by the natural and welcome desire for reform but by the need to adapt in quick time to the circumstances that have confronted us. The work that has been done across the Parliament and the can-do attitude that committees, their conveners, and the clerks have adopted gives me confidence that the way forward for the Parliament and its processes is positive; certainly, the direction of travel is positive. I will leave it at that, convener.

**The Convener:** Thank you, minister; that is very good of you. We will now have questions from committee members. I invite Patrick Harvie to open with his questions.

**Patrick Harvie:** I thank the minister for those opening remarks. I think that other members may pursue other issues, but I will start with issues relating to the Covid impact.

First, I echo the minister's thanks to Parliament officials for the innovation and commitment that they have shown in supporting Parliament to adapt to these new ways of working in extraordinary times. I hope that that is shared across the whole committee and Parliament.

In many ways, one of the things that these times have shown is how long and how slowly we debate the potential to reform things when there is not a crisis, and how rapidly we can reform things when we have to. The minister will be aware that we have recently published a report on Parliament's practices and procedures in these times, which proposes revisions to the standing orders to allow for virtual and hybrid meetings. It will be for the Government, the Parliamentary Bureau and our successor committee to make some of those decisions in session 6, but do you have a view—either personally, or as a Government position—on how long the new procedures, such as virtual committee meetings and hybrid chamber meetings, will be necessary as a result of social distancing? To what extent

should they continue once social distancing is no longer necessary? Should they be embedded as a long-term improvement to the way in which Parliament works?

**Graeme Dey:** I agree. In normal circumstances, we take an inordinate amount of time to consider parliamentary reform and yet, as you say, when the need has arisen, we have moved swiftly—commendably so. We suspended standing orders in a variety of ways in order to make Parliament work. Members have experienced some frustration because, in adapting, we have caused some disruption, changed sitting patterns and made use of hybrid and virtual meetings for committees and the chamber. Both Patrick Harvie and I sit on the bureau and I agree with him that we have learned a lot from that.

It is difficult to say how long there will be a need under social distancing measures for arrangements such as hybrid and virtual meetings. That will depend on the pandemic. The real question is this: out of the changes that we have made, what does the Parliament wish to retain in part or in totality? Personally, I think that the flexibility to have hybrid committee meetings is useful, although it is not without its challenges for the conveners, clerks and members. We can all agree that, in the past, the Parliament should have been better at taking evidence from remote witnesses. I would hope that, having made that technological progress and been willing to work in different ways, we will retain some of that flexibility.

I have some concerns about the issue of members participating remotely, which mirror those expressed by the Liberal Democrats in their submission to the committee. I rarely find our friends in the Liberal Democrats this praiseworthy, but their summary was absolutely on the mark. When members are genuinely unable to attend Parliament in person and could vote remotely, it would be advantageous if they were able to do so. However, careful consideration needs to be given to the criteria around that. The circumstances in which members could vote remotely would have to be carefully specified. It would be to the detriment of the Parliament if that were to become the case ordinarily.

We need a critical mass in the Parliament and, when social distancing is no longer required, we will be able to host all members. As colleagues will be aware, if and when Parliament returns to what was the norm—with the public in the building, cross-party groups meeting and events being held—that generates a considerable workload for MSPs and we will need everyone to be available in general to take their share of that work.

Those are some of the things that I would retain. Moving away from general question times and

taking a different approach to First Minister's questions has been to the good. I know that FMQs have been dominated by Covid—and rightly so—but the ability for more members to ask supplementary questions is for the better. Personally, I consider that approach better than the previous general questions system that we had.

Everyone will have their own opinions, but I think that the important thing with parliamentary reform is not to tinker but to consider significant changes that could improve the operation of the Parliament. If we implement those as a trial, we should be prepared to reflect carefully at the end of it. The presumption should not be that we have trialled something so, unless there is a very strong reason for abandoning it, we will leave it in place. We should be bold and better at listening to the views of the wider MSP group in the Parliament.

Between that approach and what we have learned from smarter ways of working during the pandemic, changes can be made that will sharpen our procedures.

**Patrick Harvie:** It is useful to have an open discussion at this point. It is too early to pin down the issues and decide exactly what we should do, but it is useful to explore them. I am thinking about some of the informal processes—those outside the conduct of the chamber or committees, for example. I find it very difficult to believe that cross-party groups will not continue to meet online. Also, even after social distancing ends, if the bureau has to meet for an extra meeting on a Monday or a Friday, it will clearly continue to exercise the ability to meet online instead of asking everyone to travel through to Edinburgh.

Would it not be fair to say that the same could be done for formal processes such as committees? For example, if this committee had to meet to deal with technical or non-controversial matters that did not require substantial debate, it would be reasonable, if it met everybody's interests, for the committee to continue to be able to meet online instead of holding an extra meeting in Edinburgh.

A similar process could apply in the chamber. We are all aware that members choose not to stand for re-election for a wide range of reasons during each session. However, a number have chosen not to stand again this time because they find the nature of parliamentary work particularly onerous as it relates to family commitments and so on. That applies especially to those who come from further afield. Would it not be reasonable to say that members who come from certain geographic areas or who have other commitments could at least have the right to vote online for a certain proportion of sitting days?

Arrangements such as those could surely be beneficial if they were made permanent and embedded into the way that Parliament works.

**Graeme Dey:** I agree with some of that. I think that the Parliament needs to do more to empower conveners and committees to make decisions about how and when they sit, and it needs to take on board some of the approaches that Mr Harvie suggested.

It is perfectly sensible to have online committee meetings for the types of business and in the circumstances that he suggested; it is about flexibility. However, I suspect that the poor clerks might tear their hair out at the thought of hybrid meetings becoming a fixture. They take a great degree of organising in some instances.

As those suggestions relate to the chamber, I have reservations about the idea that we would have two tiers of MSPs—that somehow a different set of criteria would be applied to attendance for MSPs who represent an area that is considerably further from Parliament than other areas, although I am sympathetic to the demands on those MSPs' family and travel time. As I said, if we are going to retain some of these systems, we have to give careful thought to the criteria for members who would not attend.

I also think that—every member in this meeting will relate to this—if we continue to vote remotely, we have to improve the voting system. That is not necessarily a criticism of the Parliament because, as we all know, many of the problems are to do with connectivity at the members' end. However, let us be honest and say that the frustration that is felt by MSPs who are sitting for 30 or 40 minutes at the end of business so that votes can be conducted is palpable. It is also taking away from the spectacle and feel of decision time, which was the pinnacle of the day—we had the debates and we came to vote. I think that some of the drama—if we can say that it is a drama—has been lost. Again, it is about a balance. How can we accommodate members who rightly and for perfectly legitimate reasons, such as illness or family circumstances, cannot be there, but do so in a way that—

09:45

**Patrick Harvie:** That could of course be done with a limited proxy voting arrangement and does not necessarily rely on an electronic voting system.

**Graeme Dey:** Indeed. You know that I am not as much of a fan of a proxy system as you are, but the limited version that you refer to might be worth reflecting on.

That goes back to my point that reform should be driven by the members and the members' experience. We should trust the MSPs and the committees who have had the experience of trying to make these things work. I am confident that we can come up with systems that improve the working of Parliament.

To be fair, the issue also goes back to the original ethos of being family friendly. In order to keep the Parliament going and get business done, Mr Harvie and I, as members of the Parliamentary Bureau, have played about with decision times and changed processes, much to the frustration of members. I hope that we, or the successor bureau, will not have to do that in the future. Again, the question is whether we could use some of the methods that we have talked about to provide a balance. I am a fan of reform, but it needs to be significant reform. We need to learn from what we have done, pick out the best of it and use that going forward as a Parliament.

**The Convener:** We seem to have opened a creel of lobsters here—I do not mean to offend anybody, but we have three members who want to comment on the back of that discussion. We are having a good run at the issue, but we should try to keep it straightforward. We have questions from Maureen Watt, Neil Findlay and Oliver Mundell.

**Maureen Watt:** Clearly, I will not be in the Parliament in the next session, but my observation is that although, personally, I like the hybrid system, I do not really like speaking in debates down the line, so to speak. We lose something from debates, because interventions are not as common as before, and people get away with saying outrageous things, because they cannot be intervened on as they are speaking in front of a camera. Although hybrid meetings should continue, they should be the exception rather than the norm. If a member is speaking in a debate, even a members' business debate, it is important that they are in the chamber so that the debating style that we have become used to is restored, because it is important that members can be challenged on what they say.

**Graeme Dey:** As ever, Maureen Watt makes important points. We have lost something as a result of the remote contributions to debates and the inability to make and receive interventions.

I have been disappointed with the criticism that has at times been levelled at ministers when they have contributed remotely. We are contributing remotely because we are trying to protect one another's health. I make no apologies for having some of our ministerial team contribute from afar. For example, we are trying to keep portfolio ministers apart, for obvious reasons. Therefore, it is a bit disappointing to have criticism of that,

although I understand in general the points that have been made.

We have also had a problem with social distancing in the chamber. The business managers are keen to allow as many members as can safely be accommodated in the chamber. A number of members have talked about how we could have made better use of the public gallery, but we have not been able to do that, because of line-of-sight issues. Members cannot see each other, so taking interventions is a problem. We have made the best of the situation, but it has not been perfect.

Maureen Watt's point about the impact on debates is significant and must be borne in mind as we consider how we deploy hybrid proceedings in future.

**Neil Findlay:** The issue relating to ministers was about ministers leading legislation; that was the main point there.

My point concerns parliamentary questions and freedom of information. If you are going to engage with the wider MSP body, as you say that you want to do, some sort of consultation would be advisable on parliamentary questions and correspondence with ministers, some of which we are only getting back now having submitted it in October and November. People understand the volume of work, but if you are a business that is waiting on an answer this week and you get it four or five months hence, that is hopeless.

Parliamentary questions are a major issue. If you were to consult the wider MSP body and if people were being honest, they would say that some of the answers are junk currency and it is pointless putting many parliamentary questions in. That is what drives freedom of information requests. People do not get the information that they have requested, so they put in freedom of information requests, which cost more and snarl up the system.

Irrespective of who the Government is—I could not care less who the Government is—my view is that we need parliamentary questions to give proper parliamentary answers and not to start a merry-go-round of subsequent questions that do not get answers, which results in freedom of information requests and all the rest of the palaver that goes on.

**Graeme Dey:** There is some value in what Neil Findlay suggests, but I assume that he would accept that it should be a two-way discussion on the process for parliamentary questions. I wish that our response rate on parliamentary questions and correspondence was better than it is. There are reasons for that, which I will explore briefly. One is the sheer volume of requests that we are dealing with—we all know that—because of the

pandemic. I understand that members have a lot of questions, but there has been a lack of understanding about the circumstances in which our civil service has been working. I sometimes get the sense that members have forgotten that the civil service is working in the same way that they and their staff are working—from home and coping with all the restrictions that that has placed on them, which has been hugely challenging. I was talking to a portfolio minister the other day who told me that their correspondence has gone up by 2,000 per cent during the pandemic—that is significant.

My reason for saying to Neil Findlay that this needs to be a two-way exchange is that it needs to be an honest exchange. I hope that I have been candid there, but I need also to be candid about another problem, which is the nature of some of the correspondence. The Government has tried very hard to proactively put a great deal of information out there on the pandemic but, disappointingly, a significant volume of the correspondence and parliamentary questions that we get is on topics that have already been well covered in the proactive release of material, and that contributes to a snarl-up in the system.

I am happy to look at or commit my successor to looking at how we get even better at proactively putting material out there. The quid pro quo of that is that members and their staff—and I understand how overworked they are—will have to pay greater heed to that information, so that we can reduce the volume of correspondence coming in to the Government, whoever the Government is, and therefore improve the rate at which replies are provided.

I hear what Mr Findlay says about the restricted nature of some of the answers, but they may still be accurate; I am happy to look at examples that he might provide, but he makes a good point. We could have an honest and open two-way dialogue on the issue of correspondence, and I think that that would be to the benefit of the Parliament.

**Oliver Mundell:** I want to pick up on what the minister said about a two-tier system of MSPs in response to Patrick Harvie's line of questioning. I am already alive to the issue, in the sense that the most common reason for my missing votes in the Parliament—other than attending to urgent family health matters—has been that I have been attending to constituency business. Things are more challenging for members who are further away from the Parliament, and we need to be guided by what we are here to do, which is to serve our constituents.

I frequently get kickback from people about not being able to attend important local events or participate in local democracy because I have to drive for a considerable time to take part in

decision time, which lasts for a few minutes. I understand that we need a critical mass of members in Parliament and that it is important for members to participate in debates. In the future, I think that members should be in Parliament to speak and actively debate if there are no health reasons why they cannot attend in person. However, we should consider that members can spend a lot of time voting and, as Patrick Harvie said, taking part in committee meetings that take place in private or are short and administrative, which might mean that they are unable to represent constituents in another way. I would be interested in the minister's thoughts.

**Graeme Dey:** Oliver Mundell makes a solid case, which backs up my point that we should have a good discussion and proper dialogue in the Parliament about such matters. I am sympathetic to his points. However, if we were to advantage—if I can use that term—MSPs who represent areas that are some distance away from the Parliament, would we in turn disadvantage members who represent areas that are closer at hand? Would we say to them that they cannot have the opportunities that members who are a distance away have to go to events in their constituencies? Would we say that members who live an hour or 90 minutes away from the Parliament are required to vote or attend events in the Parliament?

Oliver Mundell makes a good point, but we need to have a broader discussion about how, if we do something like he suggests, we do it in a fair and equitable way, so that no disadvantage is transferred to another group of MSPs. I represent a constituency that takes me an hour and three quarters to get to from Parliament, so I am caught in the middle. We should have the discussion. It should not be a binary choice. We need to have a grown-up conversation about how we can work more effectively.

I see that Oliver Mundell is contributing to the committee from Parliament today, but if he had been contributing remotely, would it have been sensible to then ask him to drive to the Parliament to vote at 5 o'clock? No, it would not. That is where common sense needs to come into play.

**Oliver Mundell:** I appreciate that answer. I would argue that members who represent Edinburgh and the Lothians already have an advantage in that sense, because they can easily attend constituency events in the evening or pop out of Parliament during the day. I would not want to create a disadvantage the other way, but balancing constituency business with other parliamentary duties should be part of the consideration. There are ways of managing that so that it is not done to excess, but having a certain number of allocations to vote by proxy or remotely

would give members more flexibility and enable them to better represent their constituents.

That is more of a point; I am not looking to get into a debate. However, we need to have that discussion.

**Graeme Dey:** As you were saying that, I was thinking about how difficult all the parties would find it, if there were allocations, to get people to be the whips who would have to make such decisions and handle the competing demands from members. I do not mean that as a flippant point. You make a good point, and we should explore such matters properly.

**Oliver Mundell:** I think that the allocation would have to be attached to the individual rather than to the party. I just wanted to note that for the future. I will stop there, convener.

**The Convener:** It has been worth while bringing up that issue.

10:00

**Gil Paterson:** I did not intend to come in on this, but it is very refreshing to hear Graeme Dey being very open and honest about these matters, and I am retiring.

There is a problem in that the Parliament's membership is still the same size as it was when the Parliament opened. It is obvious that, when there are more powers, more ministers are needed to do the job properly. I very much welcome that and am not knocking it in any way. However, it reduces the number of MSPs who are available to people the committees. I had better not say "man" the committees; I am too old to get myself into trouble.

There is a difficulty in members holding the Government to account or in just doing the job because, with the number of committees that they have to attend, it is not possible to specialise. The number of committees that members are on in a week is getting unsustainable, and we need to look at that. The numbers on committees might need to be reduced, or more MSPs might be needed.

Whenever I have raised that matter, we have always looked to the press, because we would be criticised for wanting more MSPs, and that would cost more money. We need to bite the bullet and say, "To heck with the press." We will get that criticism anyway. My legacy to everyone who is remaining is to state that, to make the Parliament function properly, they really need to go back to basics.

What the minister has said is very welcome. Everything should be looked at and nothing should be dismissed at the outset. Everything should be

put on the table. The Parliament needs to be remodelled. To be honest, it needs that badly.

The issue is not to do with the pandemic. The pandemic has shown an extremely good side of the Parliament and its ability to move and adapt. Some things have been very frustrating. I mostly work remotely from home. If there is no good broadband, there is nothing that I know of that can be done about that. Maybe we need more money to address that. There is no question but that we have risen to the occasion. This is not a pandemic-related issue; it is on-going.

**Graeme Dey:** I whole-heartedly agree with Gil Paterson. It is not a pandemic-related issue. I am very sympathetic to that view of the sizes of committees, and I have demonstrated that. When I was appointed as a minister nearly three years ago, among the first things that I did was to work with the Parliamentary Bureau, and particularly the Conservatives, to address the issue of massive committees. We are asking too much of too few in manning—or, more accurately, staffing—committees; I do not want to get myself into trouble either. Members are on three or even four committees, and managing committees of up to 11 people is a nightmare for conveners. We need to reflect on that.

I would like to have gone further than we did, but the resistance to that was understandable, because the proportionate representation on committees would be impacted. I pay tribute to the Liberal Democrats and the Greens, who were very accommodating in so far as they could be. We were sensible in trying to make those changes and in recognising that they sit on only a small number of committees. I would not want to be in the business of trying to take away that appropriate representation, but the size of some of our committees makes them a nightmare for conveners to manage when there are evidence-taking sessions, for example.

I agree with Mr Paterson. A good look at that is needed. However, I am not entirely sure that we need more MSPs right now. My view is that we certainly need to look at the workload that we are currently placing on colleagues. Reducing the sizes of committees would be a start to tackling that.

**The Convener:** Gil Paterson is retiring, but he is not shy: I noticed that he said that it was “refreshing” to get an answer from the minister. Don’t worry—that was a wee joke.

**John Scott:** I want to go back to Maureen Watt’s point about the need for members to be present at Parliament. The Parliament is a living entity and we have an obligation to be open and accessible. There is a need to have cross-party groups too and to make this a place that people

want to come to and to be part of. George Reid said many years ago that we would be open and accessible and we must have people here to be able to do that.

When people become candidates, they sign up to coming to Parliament no matter where they live. They do not have to apply for a constituency if they do not want to undertake the travel.

I am not certain that the Parliament would have coped nearly as well as it has done if the pandemic had happened in the first week after the election. It has coped as well as it has during the past year because we all know one another. We have learned one another’s good and bad points and have learned to tolerate them, or not. That is vital. We had an intake of 50 new people after the last election. People had to find their feet and get used to new systems. I am not certain that we would have managed to cope if the pandemic had struck four years ago. We must have people here. I am sorry to disagree with Oliver Mundell, but it is important to say that.

At the moment, we are drawing on the bank of all the interactions that we have had in the past four years. The more disparate we become as a group because of more use of hybrid or virtual proceedings, the less well we will know one another, and the less well the whole thing will work.

**Graeme Dey:** This has been a very useful discussion. It has illustrated a range of views, all of which have been expressed reasonably. John Scott, who represents an area that is quite some distance away, holds a view that is contrary to that of Oliver Mundell but which is equally valid.

There is a good point about having a critical mass of people here and being open and accommodating, with everyone sharing the load of taking part in CPGs and events. That should not prevent us from having a proper discussion and seeing whether we can come up with a system that works better and takes account of all the valid points that have been made.

**John Scott:** I will move on the next section of our questions. What has influenced the use of the made affirmative procedure in response to the Covid-19 pandemic? To what extent has the use of those powers been proportionate? What have been the advantages and disadvantages of using made affirmative instruments, of which there have been 86? Will the minister talk us through how that has worked?

**The Convener:** Please do not talk us through all 86 instruments, minister, but a broad answer would be welcome.

**Graeme Dey:** Thank you for that, convener, particularly as I have to read out commentary on

all Covid regulations when we take them to the chamber.

The introduction of the made affirmative procedure was a necessary response to the pandemic and to the circumstances that we found ourselves in. As members appreciate, we have had to react immediately to events. That has not led to us bypassing scrutiny. We have a process for that in the COVID-19 Committee, for which my colleague Michael Russell has a season ticket. As a whole, the Parliament got together to think about how we could balance the need to react to circumstances quickly, including having the COVID-19 Committee to work on matters that arose and having that further degree of interaction in the chamber, for example when we considered the regulations.

We needed to have the made affirmative procedure because of the circumstances in which we found ourselves. However, the Government has been circumspect in the number of times it has used that procedure. It may sound like a large number but, considering what we have had to do in our response over the past year, the number is not that huge. The procedure has largely been restricted to lockdown regulations and international travel regulations. The latter is perhaps the perfect illustration of the need for the made affirmative procedure, because changes had to be made to the travel regulations weekly, and sometimes daily, on a four-nations basis, as information became available. There was a lot of interaction between the Governments on how to respond to that.

We have used the procedure where we have had to take swift action. I do not think that we have overused it. It has been an essential tool in our response to the pandemic and we have worked with the Parliament to put in place scrutiny of that process. When the dust settles, it will be interesting to reflect on how well we think that it worked. I do not anticipate that we will use it again other than in exceptional circumstances. That is something for us to reflect on as a Parliament.

**John Scott:** What evidence supports the argument that the powers are being used only for as long as required? Will you go back to what was normal as soon as you can, please?

**Graeme Dey:** We all look forward to the day when we can return to what you have described as “normal”, Mr Scott, and, specifically, normal processes in the Parliament. I assure you that it was purely a response to the situation in which we found ourselves. That was recognised by the Parliament. However, it would be nice, if, before too long, we could be back in a situation where the procedures that we all followed previously became once more what we do on a day-to-day basis.

**John Scott:** Thank you.

**The Convener:** Are there any further questions for the minister? Oliver Mundell had to leave for a moment but is now back. Oliver, do you have any further questions?

**Oliver Mundell:** I have nothing further.

**The Convener:** John Scott is waving at me. Do you want to ask another question, John?

**John Scott:** I just wanted to ask the minister what he considers has been achieved over the course of session 5 to improve the quality of documents accompanying bills, such as financial resolutions. Minister, can you talk us through what has been done to improve the standard of accompanying documents? That is important. Some financial resolutions have been poor. I am thinking of the environmental bill in which Mr Dey had an interest, for which the figures in the financial memorandum were—shall we say?—wild.

**The Convener:** That is your personal opinion, Mr Scott.

**Graeme Dey:** Are you referring to the climate plan, Mr Scott?

**John Scott:** Yes.

10:15

**Graeme Dey:** I recall that there was concern at that time about how the figure was arrived at.

John Scott mentioned accompanying documents. He and I served together on the Environment, Climate Change and Land Reform Committee, and one of our great frustrations was struggling to make sense of such documents. I have brought that experience with me and I have listened to fellow conveners making the same legitimate complaint. Therefore, as my officials will attest to, I have waged war on the approach that we had, in which, sometimes, officials understood instruments but members found it difficult to wade through them. We have taken the approach of creating a simple guide to instruments. Have we succeeded with that? I take the lack of criticism from conveners as a sign that we have made suitable and essential progress in that regard.

The drafting of instruments and changes to standing orders bedevils the Government and the Parliament. I looked at some of the recommended changes to standing orders from the committee and found that some of them have to be read a couple of times to be fully understood. As a Government and a Parliament, we ought to consider that. These things have to be drafted in a certain way, but we can, for example, explain simply what an instrument does. We have made progress on that, although there is probably more



progress to be made. Conversations on a different approach to financial memorandums are going on. It should be an evolutionary process. If the Parliament feels that we can do more on any of those matters, I commit my successor to engaging proactively with the Parliament to see what we can do better. Plain English is no bad thing.

**John Scott:** Thank you for being straightforward.

**The Convener:** Nobody else has intimated that they have a question. I thank the minister and his officials for their evidence. We did that in reasonable time.

## Annual Report

10:17

**The Convener:** Item 5 is consideration of the committee's final annual report of this parliamentary session. Do members have any comments to make on the report?

**John Scott:** I have a technical point to make, but I have nothing against the report. Under "Resilience of the Scottish Parliament's practices and procedures", item 5 says:

"A rule change providing for the temporary amendment of Standing Orders came into effect on 8 March 2021."

I appreciate that we expect that to happen, but can we sign off on the report today on that basis, as 8 March is in the future?

**The Convener:** I see what you mean. Does anybody else want to comment on that technical point?

**John Scott:** I do not know the answer.

**The Convener:** I do not know, either. I do not know whether anything will happen in that regard by Monday. I think that we will have to sign off on the report at our next meeting.

I have received a note from the clerk saying that we can adjust the date prior to publication if that is proved to be necessary. Is that suitable, John?

**John Scott:** Yes, of course.

**The Convener:** Thank you. It is a good thing that you are awake and keeping us all in line. That ends the public part of the meeting.

10:19

*Meeting continued in private until 10:36.*



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