

FINANCE COMMITTEE

Tuesday 4 November 2008

Session 3

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FINANCE COMMITTEE **25th Meeting 2008, Session 3**

CONVENER

*Andrew Welsh (Angus) (SNP)

DEPUTY CONVENER

Jackie Baillie (Dumbarton) (Lab)

COMMITTEE MEMBERS

- *Derek Brownlee (South of Scotland) (Con)
- *Joe FitzPatrick (Dundee West) (SNP)
- *James Kelly (Glasgow Rutherglen) (Lab)
- *Alex Neil (Central Scotland) (SNP)
- *Jeremy Purvis (Tweeddale, Ettrick and Lauderdale) (LD)
- *David Whitton (Strathkelvin and Bearsden) (Lab)

COMMITTEE SUBSTITUTES

- Roseanna Cunningham (Perth) (SNP)
- Murdo Fraser (Mid Scotland and Fife) (Con)
- *Lewis Macdonald (Aberdeen Central) (Lab)
- Liam McArthur (Orkney) (LD)

*attended

THE FOLLOWING GAVE EVIDENCE:

- Peter Bales (Scottish Assessors Association)
- Brian Byrne (Scottish Assessors Association)
- Marina Curran (Scottish Government Corporate Analytical Services Directorate)
- Graham Fisher (Scottish Government Legal Directorate)
- Kenneth Hogg (Scottish Government Health Delivery Directorate)
- Robert Kirkwood (Scottish Government Health Delivery Directorate)
- Jim Mather (Minister for Enterprise, Energy and Tourism)
- Rob Wishart (Scottish Government Corporate Analytical Services Directorate)

CLERK TO THE COMMITTEE

Susan Duffy

SENIOR ASSISTANT CLERK

Mark Brough

ASSISTANT CLERK

Allan Campbell

LOCATION

Committee Room 2

Scottish Parliament

Finance Committee

Tuesday 4 November 2008

[THE CONVENER *opened the meeting at 14:03*]

Subordinate Legislation

Pre-release Access to Official Statistics (Scotland) Order 2008 (Draft)

The Convener (Andrew Welsh): Good afternoon, and welcome to the 25th meeting in 2008 of the Finance Committee. I ask members to turn off any mobile phones and pagers.

Today we have apologies from Jackie Baillie, but Lewis Macdonald is her substitute. I bid you welcome and ask whether you have any relevant interests to declare.

Lewis Macdonald (Aberdeen Central) (Lab): I do not.

The Convener: Agenda item 1 is consideration of a draft order. The order is subject to the affirmative procedure, which means that Parliament must approve it before it can come into force. The motion in the name of the minister invites the committee to recommend to Parliament that the draft order be approved. Before we debate the motion, under agenda item 2, we will have an evidence session to clarify any technical matters or to allow explanation of details. Officials can answer any questions if need be. I remind the committee that the officials cannot participate in the debate once the motion has been moved.

I welcome to the committee Jim Mather, the Minister for Enterprise, Energy and Tourism. With him are Rob Wishart, chief statistician; Marina Curran, assistant statistician; and Graham Fisher, head of the constitutional and civil law division.

I invite the minister and the chief statistician to make their opening statements, and remind the minister that he should not move the motion at this point.

The Minister for Enterprise, Energy and Tourism (Jim Mather): Thank you. It is good to be back at the Finance Committee and to see some of my former colleagues.

The order addresses the extent to which ministers and the officials who brief them and others can be given access to official statistics before they are publicly released. There has been limited debate on pre-release access in the Parliament and at Westminster but it is an important question and the right balance is a

matter of judgment. I would welcome the committee's thoughts on that.

As presented, the order reflects proposals that the previous Administration outlined in a consultation document in December 2006. It is based on the length of pre-release access that has operated for several years, which the previous Administration indicated its intention to maintain. My ministerial colleagues and I have some reservations about those proposals, given the limited amount of debate about the issue, but we are now happy to bring the order to the committee for consideration for the following reasons.

First, we are persuaded that the proposals are transparent and appropriate. The fact that they will be on a statutory footing in future is an important tightening up of the arrangements. Secondly, the proposals have now been out to consultation twice and there have been no objections from within Scotland or from the users of Scottish statistics. The only objection has come from the chair of the United Kingdom Statistics Authority, which had already publicly committed to a position on pre-release access before considering the Scottish proposals. The third reason—and my prime reason for advocating the proposals—is that the professional Government statisticians in Scotland are strongly of the view that reducing the time for pre-release access would have a negative impact on the integrity of statistics, which could adversely affect decision making and outcomes in Scotland.

We are keen for the committee to discuss and approve the order, but we can consider new issues that arise today. Fundamentally, we do not want the issue to be determined by party politics. The aim should be to agree an order to which any future Scottish Government can adhere. We have therefore suggested that the committee consider the views of the professional statisticians in Scotland, as set out in the note submitted by the chief statistician. He is happy to speak to that for the committee.

Rob Wishart (Scottish Government Corporate Analytical Services Directorate): Our paper sets out the main reasons why we as professionals regard pre-release access as an important part of the arrangements to maintain integrity. I emphasise that our views are shared by the profession in the Scottish Government.

I will flag up two reasons. The first is that open and clear regulation of what happens in the run-up to release is vital to trust and integrity. Ending or reducing that form of pre-release would not end prior access to statistics, as I have shown in the paper, but it would make it very difficult for anyone to know what is going on, and it would increase the need for ministers and their advisers to speculate on what the statistics will show. Our proposals will mean that the rules that everyone

follows in the week before publication are very clear and, critically, that the process is managed by the professional statisticians.

The second reason involves remembering what Government statistics are for: to inform debate on issues of interest to society and to inform the Government. If statisticians cannot explain the real messages behind the numbers to ministers, there is a real risk of misunderstanding and misinterpretation, and that no comment will be made. Ministers could rightly feel that they would need time to digest the information. That would be damaging to the democratic process and it would reduce the value of the information that we produce. It is therefore vital that statisticians have scope and time in the run-up to the statistics being released to ensure that ministers' comments on the statistics reflect a proper understanding and do not misquote or misinterpret the figures.

The paper mentions the various arguments against the proposals, many of which do not have a lot of substance. I would be happy to explore any of them should the committee wish it, but I will highlight two other key issues.

The length of time seems to have been the focus of political debate elsewhere. We suggest that professional statisticians should decide how much time is needed. If the committee accepts that, on balance, there should be pre-release, I suggest that we need the time to do it properly. It is essentially a practical issue, and we propose to continue with the current five days, because that is what works in practice.

Finally, on international principles, I hope that it will come as no surprise to the committee that I want the management of statistics in Scotland to be a model of best international practice, but that is not at all clear; what is available is aimed at independent statistics institutes, not at Government departments. For me, the best solution would be for statisticians to have considerable influence on what ministers say about the statistics in a system that has clear rules and makes it attractive for a range of management information to be produced under official statistics guidelines rather than through some other system. That is what the order seeks to achieve.

The Convener: Thank you. I now invite questions from members.

Derek Brownlee (South of Scotland) (Con): Are there any individuals or groups of individuals who might be or have been granted pre-release access under the current regime who would not be granted pre-release access under the proposed one?

Rob Wishart: In principle, there is no such specific group of individuals. We have changed the order so that it clarifies the purposes for which

pre-release access should be given, so that it can be given only when it contributes to the purposes that are highlighted in the order. The statisticians would judge whether any individual would serve that purpose.

David Whitton (Strathkelvin and Bearsden) (Lab): Can you give me an example of how the current situation hinders the process that you are describing? Is there a practical example of when you think something would have been better if the situation had been as you propose?

Rob Wishart: The proposals are very much in line with current practice, although there is a slight tightening up. The proposal is to remain with a time of five days in normal circumstances. As I said, that is what works well from our point of view.

David Whitton: I remember, in a previous life, having an argument with people in your department about when certain statistics should be released, most notably the unemployment figures. Is that the kind of thing that you are talking about? Special advisers and ministers have access to figures about a day in advance of publication and, if the figures are going the right way, there is always the temptation to do something with them. Is that the kind of thing that you are trying to get rid of?

Rob Wishart: We use the time period to argue against such things. We would not consider making any attempts to influence whether statistics were published or what they said. It is currently very clear that ministers and their advisers do not get involved in that sort of discussion, and the order does not impinge directly on that sort of thing other than to say that in the period when they have access to the figures, they should not be engaged in that sort of activity because they can engage only in the activity that the order permits.

David Whitton: In case anybody gets overexcited by what I said, I should probably make it clear that officials in your department rightly prevented my enthusiasm from getting the better of me.

14:15

Lewis Macdonald: I, too, have experience of the matter, but from a different perspective. My question is primarily for the minister. He said that the order largely reflects proposals that the previous Administration outlined, which ministers had reservations about, and that those reservations are now behind them. Where does the order diverge in substance—if anywhere—from the proposals that were consulted on? Were ministerial reservations dispelled because of changes that were made or as a result of the consultation?

Jim Mather: We originally thought that we would have different rules for different types of statistics, but respondents to the first consultation favoured a smaller set of rules to avoid confusion. The order therefore focuses on market-sensitive statistics, which is what it should do. We now have pretty much what has worked in the past, which is the best laboratory for anything, with important statutory backing and extra safeguards.

Lewis Macdonald: So, essentially, the aim is to have past practice and what was consulted on, with the simplification of the various rules.

Jim Mather: Exactly.

James Kelly (Glasgow Rutherglen) (Lab): I believe that there have been 10 leaks of statistics since 2002. What procedures are in place to try to stop leaks? Has anything new been considered to enhance the regulations in that area?

Rob Wishart: We investigate any leak that occurs. I cannot say that we have been hugely successful in identifying the source of leaks, but we have attempted to tighten up arrangements. If procedures have not been followed, we try to ensure that they are. Quite a clear set of rules already exists for staff and recipients of statistics. We try to ensure that we have not missed any angles.

The order will make it a statutory duty to comply with the current arrangements, which are purely voluntary—there is a code. That is the big difference that will occur. We will take a number of actions, if the committee and the Parliament approve the order, to ensure that people are fully aware of the requirements that they must meet. I could go through the specific arrangements relating to materials that are marked “Restricted” or “Confidential”. Record keeping of who has the information will be enhanced. Specific arrangements will be in place.

Derek Brownlee: Any wider political interest in the subject will probably be about instances of leaked information, which James Kelly mentioned. I want to discuss the sanctions that will be available. Let us take a hypothetical example. If a person who has leaked information and breached the conditions of the order is identified, are the available sanctions solely those in paragraph 7 of the schedule to the order? If I have read that paragraph correctly, there is an implicit threat that future access to statistics might not be granted to a person if they breach the rules.

Rob Wishart: That would be one sanction, but things would depend on the circumstances. If someone leaked material that had been classified as restricted, they would be subject to any rules that apply to such behaviour. The cases that may arise may often involve people who are not fully aware of the rules or do not understand them.

Obviously, we would ensure that they were aware of the rules in such cases. As I said, things would depend on the circumstances, but the main sanctions are what is set out in the order and whatever other action is appropriate as a result of leaking restricted material.

Derek Brownlee: There will be inadvertent leaks and cases when the leak has no negative consequences; it is important not to go overboard.

It is easy to understand that there are other sanctions that you might apply if the leak involved a member of the professional staff, because that is also an employment issue. I am not for a moment suggesting that ministers would leak information, but supposing that, in a hypothetical situation, a minister was minded to leak information, it would not really be realistic to have professional statisticians saying, “Bearing this in mind, I’m not going to give you pre-release access in future.” There is an imbalance in the relationship and the power, is there not?

Rob Wishart: There is. Another factor is that leaks will be made publicly known. Although the arrangements for me to produce an annual report are in a state of flux, I will undoubtedly make an annual report of some sort to the new statistics authority. In addition, under our arrangements I am obliged to report any leak to the UK Statistics Authority, which will make that information publicly available. In the case of the hypothetical situation that you described, in which a minister is found to be responsible for a leak, the leak would be made known publicly.

Derek Brownlee: That is helpful. I do not want to stray out of the remit of the Finance Committee, but I wonder whether the minister might be able to tell me whether such a leak—again, I stress that it is hypothetical—would be a breach of the ministerial code.

Jim Mather: I am not sure. It would mean substantial damage to the reputation of the individual involved and the Government. The sanction is serious.

Jeremy Purvis (Tweeddale, Ettrick and Lauderdale) (LD): This is a statutory provision. Which body or which individuals will be responsible for investigating whether there is a breach?

Jim Mather: I would assume that the committee system of the Parliament would kick in. The committees would take a lively interest in the matter and would apply sanctions. I look for clarity from Rob Wishart on that.

Rob Wishart: The UK—

Jeremy Purvis: I am sorry to interrupt but, other than the Standards, Procedures and Public Appointments Committee, which is responsible for

breaches of the members' code, I am not sure which committee would be responsible for investigating whether there is a breach of the ministerial code, or statutory codes such as this one.

The Convener: Would it not be for the First Minister to become involved in that?

Jim Mather: I assumed that we have 100 or so active scrutineers on the benches who would be keen to put the balloon up at any breach of the ministerial code or good practice.

The Convener: It would be helpful if, after further investigation, the minister would confirm that to the committee.

Jim Mather: We would be delighted to do that.

Jeremy Purvis: I cut across Mr Wishart a moment ago. I am not sure whether he was going to add anything on that.

Rob Wishart: I was simply about to say that, if it wishes, the UK Statistics Authority can investigate any issue that arises. We have a commitment to openness with that body. The order refers to the fact that the Freedom of Information (Scotland) Act 2002 would not be used as a reason to limit access to information. Generally, the UK Statistics Authority will report to this Parliament. In so far as the authority raises issues, the committee or the Parliament is at liberty to decide what it wishes to do about those issues. That is quite a powerful element.

Jeremy Purvis: Further clarification would be helpful. Committees such as this one would have no locus for investigating any alleged breaches by officials. I may be incorrect, but I do not think that the ministerial code covers it either. Mr Brownlee started to ask what read-across there is to the ministerial code. It is not outlined in the draft order.

Jim Mather: Apart from highlighting the standard provision, I think that all I can say is that we will have to do some homework on that and report back to the committee separately.

The Convener: Mr Purvis, you have raised a number of questions that we can seek clarification on.

Jeremy Purvis: I would quite like to raise another, if that is possible.

The Convener: Okay.

Jeremy Purvis: On conditions of pre-release access, paragraph 5(6) of the schedule refers to

"Any accidental or wrongful disclosure of the statistics, or any broad indication of the contents of the statistics".

That kind of "broad indication" might be a leak of information rather than a leak of the statistics themselves. Under the various Administrations

since the Parliament's establishment, there have been cases in which what was arguably a "broad indication" of information was given to the press outwith the formal publication of statistics. The order neither suggests what might constitute a "broad indication" nor indicates whether it would cover a leak of information or, indeed, how that would be determined under the code of conduct for members and the ministerial code. Do you have any more information on that?

Rob Wishart: The interpretation used would be that of the responsible statistician. That wording has been used because it is very hard to draw a line in such matters; for example, a statement that unemployment is going up is a fairly broad indication of something that anyone might be able to guess. I think that anything that falls between that and a quotation of the actual figures becomes a matter of judgment and an investigation would have to examine whether the comment was made with knowledge of the information.

The Convener: The order contains a clear duty to report

"Any accidental or wrongful disclosure of statistics ... immediately ... to the person responsible".

Jeremy Purvis: I understand that. I am also interested in finding out about the kind of dispute that a responsible statistician and a minister might have over what constitutes a

"broad indication of the contents of statistics".

After all, the matter might well become a policy, rather than a statistical, consideration. What method is set out in the schedule for determining that? Under the legislation, does responsibility for that lie with the responsible statistician rather than with the minister?

Rob Wishart: Under the terms of the Statistics and Registration Service Act 2005, ministers remain responsible for those matters. As the explanatory note makes very clear, however, ministers effectively leave a lot of these judgments to the responsible statistician.

I am very clear about the procedure that we have followed in the past, and I do not think that the order changes anything in that respect. If I consider that the code has been breached, I make a report on that basis. The UK Statistics Authority, the Parliament and the Permanent Secretary might also make a judgment on the matter; as a professional statistician, I have to judge whether the code has been breached.

Jeremy Purvis: Does the Parliament receive information from the UK Statistics Authority when it is published, not before?

Rob Wishart: There are no specific arrangements for giving Parliament access to that information.

Jeremy Purvis: So how would we be able to investigate any potential breach?

Rob Wishart: The information is made available to the UK Statistics Authority as soon as possible. If a leak has had enough of an impact to make Parliament aware of it, members can take action, as they will with anything that becomes publicly known or emerges as an issue. If there has been a leak, it will be self-evident in many cases, although not in every case. My report to the UK Statistics Authority happens relatively quickly.

The Convener: Mr Purvis, you have had a fairly good run. Are there any final points?

14:30

Jeremy Purvis: I am concerned by this. It has been indicated that there is a role for Parliament, but Parliament will know about something only if we read it in the paper. We will not know the content of a report to the UK Statistics Authority, and no mechanism exists for presenting to Parliament the information that will be presented to the UK Statistics Authority. The schedule to the draft order concerns statistics in a wholly devolved area. There could therefore be a deficiency in transparency; nothing in the schedule binds the UK Statistics Authority to presenting information to this Parliament. There would be a black hole in the information.

The Convener: Do you wish to respond, Mr Wishart?

Rob Wishart: The Statistics and Registration Service Act 2007 requires the authority to be accountable to this Parliament. Arrangements are not yet in place—they are still at an early stage—but the authority's practice is to make everything that it does publicly available. I would therefore expect any report to be publicly available. If this Parliament approached the authority to say that you wished access to reports of any leaks or other breaches, I think that the authority would be obliged to provide you with that information. We can certainly follow that up if you wish us to.

Graham Fisher (Scottish Government Legal Directorate): Under the Statistics and Registration Service Act 2007, the Statistics Board has to provide the Scottish Parliament with an annual report. That act is the enabling act for the draft order that we are discussing.

The Convener: Do you wish to pursue the issue, Mr Purvis?

Jeremy Purvis: No. If there is a commitment to come back to the committee with more information, that is welcome.

Lewis Macdonald: Paragraph 5(7) of the schedule says:

“The individual—”

who could be the minister—

“must not seek to change format, content or timing of the publication of the official statistics, except in accordance with sub-paragraph (8).”

The meaning of the terms “timing” and “content” is fairly clear, but “format” is perhaps a wider term. Does paragraph 5(7) mean that a minister whose response to a statistician was, “I don't like the way you've written this news release and I think you should write it differently,” would be in breach of the law?

Rob Wishart: Paragraph 5 says that individuals may “comment” but may not “seek to change”. Press releases take two forms, as you may well know: there can be a statistical press release or a ministerial statement. Clearly, the ministerial statement is the prerogative of the minister. The statistical press release would be subject to the order, which says that the minister must not seek to change it.

The term “format” really means “presentation”. A long-established part of our procedures is that ministers should be involved in deciding neither the figures nor how they are presented.

Lewis Macdonald: So, in a hypothetical situation, if a minister felt that a certain set of statistics demonstrated positive progress, but the statistician felt that the statistics showed only a standstill, there could be two Government news releases saying quite opposite things.

Rob Wishart: Yes. But we would seek to persuade the minister of—

Lewis Macdonald: But if the minister sought to persuade you, he would be breaking the law. Is that right?

Jim Mather: Yes.

The Convener: There seem to be no more questions. The questions so far underline the importance of the work that you undertake and the need for absolute integrity.

We move now to the second item on our agenda, and I invite the minister to make an opening statement in the debate on motion S3M-02766, if he wishes, and then to move the motion.

Jim Mather: What you have seen today is a reinforcement of the primacy of the responsibility of professional statisticians in the delivery of statistics in Scotland and a desire to build on what

works, which will be augmented by important statutory backing and extra safeguards.

I move,

That the Finance Committee recommends that the draft Pre-release Access to Official Statistics (Scotland) Order be approved.

The Convener: I invite contributions from members. Under the standing orders, the debate on the motion cannot last longer than 90 minutes.

Jeremy Purvis: I will not take up that amount of time, convener. I certainly do not object to the order, but there are a number of areas where clarity would be helpful. I acknowledge that the minister has made a commitment to come back to the committee about that. I will not oppose the motion.

The Convener: I invite the minister to wind up the debate.

Jim Mather: I take on board Mr Purvis's point about clarity. We are keen to address the points that need to be clarified as a result of today's exchanges and to build on the relationship with and involvement of the UK Statistics Authority so that Mr Purvis can be confident that there will be comprehensive accountability to Parliament.

Many members will have noted the frequency with which the UK Statistics Authority has come up here and engaged with us, socially and at ministerial level. I expect that to continue. The key point is that we have a proposition that maintains the primacy of the responsibility of statisticians, recognises what is happening in practice and looks to augment that and put it on a firmer footing.

The Convener: The question is, that motion S3M-02766 be agreed to.

Motion agreed to.

That the Finance Committee recommends that the draft Pre-release Access to Official Statistics (Scotland) Order be approved.

The Convener: The committee will now communicate its decision formally to the Parliament by way of a short report. Are members content for that to be circulated and agreed by e-mail?

Members indicated agreement.

Health Boards (Membership and Elections) (Scotland) Bill: Financial Memorandum

14:37

The Convener: Item 3 is evidence on the financial memorandum on the Health Boards (Membership and Elections) (Scotland) Bill. We were unable to take evidence on the financial memorandum last week because of illness. We agreed last week that at today's meeting we wanted to take evidence from a health board and from electoral registration officers, as well as from Scottish Government officials. Unfortunately, the health boards that we invited were not able to attend. However, I am pleased to say that we have with us Peter Bales and Brian Byrne from the electoral registration committee of the Scottish Assessors Association. I welcome the witnesses to the meeting, thank them for agreeing to come at such short notice and invite them to make a short opening statement.

Brian Byrne (Scottish Assessors Association): I really just want to say what the association does. There are 14 Scottish assessors who are electoral registration officers and we have an electoral registration committee. There is a 15th electoral registration officer, who is not an assessor, who also attends the committee. He is from Dundee. Our answers to the questionnaire represent the views of all 15 electoral registration officers.

The Convener: Do you want to add anything, Mr Bales?

Peter Bales (Scottish Assessors Association): No.

The Convener: I invite questions from members. Jeremy Purvis and Joe FitzPatrick will take the lead, but all other members are welcome to ask questions—they should simply catch my eye. Jeremy Purvis wishes to go first.

Jeremy Purvis: Good afternoon. I hope that the witnesses have had the chance to read some of the local authority submissions that we have received. Their own submission was gratefully received by the committee.

Clackmannanshire Council's submission identified that there might be hidden costs associated with the operation of the elections—that some of the costs of running the elections that the bill proposes might not be captured by the financial memorandum. If the witnesses agree, are they able to expand on what those hidden costs might be?

Brian Byrne: As you said, Clackmannanshire Council's submission is mainly about running the elections. We deal with registration prior to elections. We would say that the costs will be fairly minimal, but they will not be non-existent, given that we will have to try to capture 16-year-olds in time to register.

Jeremy Purvis: I was interested that Clackmannanshire Council's submission said:

"It is apparent through past experience that, in every major election event, there will be some costs incurred by the ERO which cannot be recovered through the Returning Officers Charges Order. This accounts for part of the 'hidden subsidy' that Councils contribute to centrally funded elections."

Brian Byrne: That is because electoral registration is not really part of the election, so money that is spent on it cannot be reclaimed as an election expense. There will always be some additional expenditure on registration in the run-up to an election or when the rules for an election are changed. Technically, it is not election expenditure, so it cannot be reclaimed that way.

Jeremy Purvis: The financial memorandum states quite clearly that the bill will involve no costs for local authorities. Do you have any comments about the costs that it puts forward on preparations for the elections?

Brian Byrne: One part of the financial memorandum says that there will be no costs, but elsewhere the financial memorandum says that the costs will be minimal. It is more likely that there will be minimal costs than it is that there will be no costs. There will be some costs, but we are not talking about tens of thousands of pounds.

Jeremy Purvis: I will move on to postal voting. What would your responsibilities be if, following the pilots, a decision were taken to hold all-postal voting elections? What impact would that have on EROs?

Brian Byrne: If a simple postal voting system were used that did not involve any personal identifiers, the impact would be minimal. We would provide a list of all the voters and the returning officer, whoever that might be, would arrange for the ballot papers to be issued. If it were decided that a more secure system should be used, the registration officer would have to collect the security information—signature, date of birth and verification that the person was who they said that they were—and then pass it on to the returning officer.

Joe FitzPatrick (Dundee West) (SNP): My reading of the bill is that personal identifiers will not be used.

Brian Byrne: In those circumstances, postal voting is okay.

Joe FitzPatrick: Our role is not to discuss the politics of whether personal identifiers should be used; it is simply to consider what is in the bill. It is good to hear that the impact on you would be minimal.

Lewis Macdonald: On the same subject, from a professional point of view, would you be content to run a postal ballot that did not require the use of personal identifiers?

14:45

Brian Byrne: As I said, we would not run the ballot; we would provide the registration information. That is a fairly simple job for us if there is no security element. It is really a matter for the organisers of the election to decide whether they are happy to have a national park board-type election or whether they want a local government-type election, either for the status of the election or for the security of it.

Lewis Macdonald: But should the view be taken that any such election would have to be secure and free from the risk of fraud, there would be a cost associated with the collection of personal identifiers for people who are not currently postal voters.

Brian Byrne: If the voting were all postal and the election had to be fully secure—like a normal election is—security information would have to be collected from every voter. At the moment, that does not happen.

Lewis Macdonald: I understand from some of the submissions that we have received that, at the moment, broadly 85 per cent of electors are not postal voters.

Brian Byrne: On average, about 15 to 20 per cent of voters are postal voters.

Lewis Macdonald: How many people in Scotland are not postal voters? In broad terms, is it just over 3 million?

Brian Byrne: Yes.

Lewis Macdonald: So, if it cost £1 to collect security information for each of those voters to make an all-postal ballot secure, we would be talking about an additional £3 million or so.

Brian Byrne: Yes. It would cost at least £1 for each voter.

Lewis Macdonald: On the basis of your experience of postal votes.

Brian Byrne: The other thing about collecting personal identifiers is that some people drop off the register because they do not want to give identifiers, for whatever reason. So, if the process were extended to every voter, some people would drop off the register.

Lewis Macdonald: For clarity, is the £1 cost per registered voter the average cost of getting security information from people whom you have to chase up several times and from those who respond immediately?

Brian Byrne: Yes.

Jeremy Purvis: With regard to the operation of the pilot schemes, I understood from the 12 September letter from the Cabinet Secretary for Health and Wellbeing that the system of operating the franchise for the pilot schemes could be different from that which would be in place if the elections were rolled out. You have raised concerns about the software systems when it comes to extending the franchise to 16 and 17-year-olds. The simpler system will operate for the pilot schemes. Is it your understanding that the simpler system will be used for the full elections if the pilot schemes are rolled out?

Brian Byrne: I do not know whether the simpler system will be used for the full elections. If the system that is used is not simple, it will create lots of problems because 14 and 15-year-olds will have to be on the register in advance. For the pilot schemes, the suggestion is that the register should be kept strictly to 16-year-olds, who will apply when they reach the age of 16. It is more reactive than proactive.

Jeremy Purvis: We are keen to focus on the cost element of the systems rather than the policy element.

Brian Byrne: Sorry.

Jeremy Purvis: However, I would have thought that there are policy issues around capturing the details of 15-year-olds on a public record.

Brian Byrne: That would have a financial effect as well. The likely policy would be to protect the names, which would have a cost.

Jeremy Purvis: Will the information that you have provided on the upgrading of the software to make it consistent throughout Scotland still apply if the elections—other than the pilots—were rolled out across Scotland and operated under a rolling electoral system for 16 and 17-year-olds?

Brian Byrne: To get people who are younger than 16 on the register in time would incur the costs that we have suggested.

Joe FitzPatrick: But if the simpler system were used, there would not be that additional cost when the elections were rolled out.

Brian Byrne: Minimal changes would be required, but it would depend on the software system. Some software systems would find that easier than others.

Jeremy Purvis: I have a final question that follows on from the points that Lewis Macdonald raised about postal ballots. At the moment, are personal identifiers used for those who have registered as postal voters? Both within a pilot area and under the measures in the bill, if identifiers are not to be used, a parallel system will operate for postal voters. If a postal voter registers during an election cycle to be an elector in a health board election, identifiers will not be required and, therefore, will not be captured by EROs. The registration process will have to be duplicated for any local government or national Government election, at which stage personal identifiers will be requested. Is that correct?

Brian Byrne: As I understand it, if the proposal is to have a fully postal ballot without identifiers, no application will be needed. Every elector on the registration list will get a ballot paper and there will be no identifiers. I am not sure if that is what you mean.

Jeremy Purvis: It is. That will work on the basis of an all-postal ballot in perpetuity.

Brian Byrne: Yes; an all-postal ballot with no security.

Lewis Macdonald: Your submission refers to the national park elections as an alternative model to the local government elections. Do you provide the registers for those elections?

Brian Byrne: Yes.

Lewis Macdonald: Are they simple postal registers with no security checks?

Brian Byrne: Yes.

Lewis Macdonald: What is the turnout in national park elections?

Peter Bales: I believe that it was around 60 per cent in the Cairngorm area.

Lewis Macdonald: But there were no checks on the identity of those who cast postal ballots.

Brian Byrne: No.

The Convener: As there are no more questions and no final comments from our witnesses, I thank them for their attendance and their evidence.

We move on now to our next set of witnesses. I welcome officials from the Scottish Government bill team to the committee. Kenneth Hogg is deputy director of health delivery, and Robert Kirkwood is a policy officer in the bill team. You are welcome. I am told that you do not wish to make an opening statement; can you confirm that?

Kenneth Hogg (Scottish Government Health Delivery Directorate): Yes.

Jeremy Purvis: I will start with a straightforward question. Will the costs to the national health service of delivering the full elections—not just the pilots, which we will come on to in a moment—be met by NHS boards in the areas in which elections will take place, or will central funds be provided to compensate boards for those costs?

Kenneth Hogg: In the first instance, the costs of pilots that fall within the current spending review period will be met from central Government additional funding without calling on health boards' allocated resources. If the pilots are then rolled out nationally, the elections will fall within a future spending review period and the costs of those elections will be taken into account then.

Joe FitzPatrick: What is the procedure for moving from the pilots, about which we have quite good detail, to rolling out the scheme?

Robert Kirkwood (Scottish Government Health Delivery Directorate): We will have the pilot elections, and there will then be a full evaluation. The evaluation report will come before Parliament before any decision is made on a roll out.

Joe FitzPatrick: Will the report go to the Subordinate Legislation Committee or elsewhere?

Robert Kirkwood: It will go to a committee, but the procedure will depend on whether there is a change to the bill; if there is, the affirmative procedure will be used.

Jeremy Purvis: I want to return to the question whether health boards will be required to cover the costs or whether the elections will be funded centrally. Mr Hogg said that the matter will be taken into account by ministers in the next funding round. The revised financial memorandum states that the costs will be £16.65 million. Is that correct? Has there been a change since September?

Robert Kirkwood: No.

Jeremy Purvis: So there is no change. Are you saying that no policy decision has been taken on whether the costs will be added to boards' baselines? I am not clear about that, because your answer was simply that costs will be taken into account.

Kenneth Hogg: To an extent, the question whether the funding will be identified separately or will come from within boards' allocations is slightly academic. We are saying that the costs of the elections will need to be included in the sums of money that are given to health boards in their general allocations. The health boards will be the mechanism through which the costs are met, but the Government will have a responsibility for ensuring that the boards are given sufficient funding to meet the costs of the elections as they

are rolled out. Clearly, a lot will be learned from the pilots. That is why the proposal is to run pilots first, to have a full independent evaluation and then to consider that before deciding whether and how to roll out fully. There is certainly no attempt not to take into account the full roll-out costs of the elections.

Joe FitzPatrick: On that point, my understanding is that those decisions would be for the next spending review.

Kenneth Hogg: That is correct. The bill will commit expenditure to the pilots and nothing else. The pilots will run for a two-year period. The earliest date on which pilots could commence is 2010. A report would then be laid before Parliament, at the earliest during 2012. Therefore, the earliest date at which full roll-out could happen would be following 2012, so that is at least one, if not two, spending review periods away. The bill sets an end date by which the pilots must be rolled out if they are to be rolled out, otherwise the whole scheme falls.

Jeremy Purvis: You will appreciate that the issue is not academic. I will not put words into your mouth but, in answer to my question, you indicated that additional resource will be provided to health boards to ensure that they are compensated properly for the costs of running the elections. However, in answer to Mr FitzPatrick, you said that that is for the next spending review period, on which you cannot give any more information. There is no policy information in the financial memorandum about the on-going costs to the NHS, whether or not the cost is to the boards. The financial memorandum simply sets out the overall cost to the NHS in Scotland; it does not say whether boards will receive the exact amount of money to cover the operation of elections in their areas. That is not an academic point; it is a real point about the operation and costs of local health board elections. However, you have indicated that a policy position has been taken that the boards would be centrally recompensed, which is helpful. I ask you to comment on whether that is accurate.

Kenneth Hogg: I think that that is correct. My difficulty is that I do not know what health boards' general allocations will be in future years—not just in future budgets, but in future spending reviews. However, the costs of running the elections, if they are rolled out, would need to be fully and explicitly taken into account in the setting of health boards' budgets for future years.

Jeremy Purvis: I am grateful to you for putting that on the record. The committee will try to cross-reference what you have said with the information that the cabinet secretary has given us, because I could not find that point in that information.

I will move on to the operation of the elections. Those who have provided information to us have assumed that the elections would use existing returning officers, who are by and large officers of local authorities. Is that how the elections will operate?

Robert Kirkwood: Yes, that is right.

15:00

Jeremy Purvis: Submissions from some local authorities, including Clackmannanshire Council, refer to the possibility of hidden subsidies. Is the cost of the time of the returning officers and their staff taken into consideration in the financial memorandum?

Robert Kirkwood: Yes, the costs of the elections will be fully reimbursed by the Scottish Government.

Jeremy Purvis: That is helpful. Where are the costs for the pilots and for any on-going elections factored into the tables that appear in the 12 September letter from the cabinet secretary?

Robert Kirkwood: They are included in two areas. The baseline cost is taken from a number of Electoral Commission studies on local government elections in England. The counting machines line is an average cost that was taken from the 2007 local government elections in Scotland. Within that, provision is made for returning officers.

Jeremy Purvis: That is helpful. If my understanding is correct, the £1.21 million baseline cost is based on a 60 per cent turnout and a cost of £2.60 per single transferable vote. It would be difficult to have a read-across on that from south of the border, where STV is not used. The financial memorandum does not state that the baseline cost takes into account charges for the time of local authority chief executives, who will be required to operate and manage the elections and to act as returning officers.

Robert Kirkwood: The baseline cost figure includes stationery, the provision of ballot papers, postal costs, the provision of assistance points for people who wish to use them, the opening of the postal votes and a post-election survey to see how people managed with the postal vote.

An issue on which we require further clarification is the personal fee that is paid to returning officers. At the 2007 elections, that fee was in the region of £3,500. In an earlier conversation, officials from the Convention of Scottish Local Authorities thought that the personal fee would not be requested in the pilot elections. However, some of the submissions to the committee state otherwise, so we will need to reflect on that.

Jeremy Purvis: I also asked about the situation in the event of a roll-out of the elections.

Robert Kirkwood: If the 14 returning officers chose to request the personal fee, the cost would be in the region of £50,000.

Jeremy Purvis: What about the costs of returning officers' staff?

Robert Kirkwood: That is included in the Electoral Commission figures and in the counting machines line.

The Convener: James Kelly has waited very patiently to ask a question.

James Kelly: I apologise if I sound pedantic, but I just want to be clear about the funding of the elections, on which I am a bit confused. It has been made clear that the pilot elections will be funded centrally and, in the event of roll-out being agreed, the costs will be incurred in a future spending review. In that future spending review, will the elections still be funded centrally by the Scottish Government, or will the costs be allocated against health board budgets, or has that decision still to be taken?

Kenneth Hogg: The pilots could be run in 2010 at the earliest, which means that they fall within the current spending review period. It is therefore necessary to identify the pilot costs separately in addition to the allocations that already exist for health boards as part of the 2007 spending review outcome. We have not done that, because we do not yet have health board budgets for future years, but the funding for the elections would flow through the health boards' allocations as part of future spending reviews. The Government would then take that into account in setting the amount of money to be given to health boards in their general allocations.

Lewis Macdonald: I draw the officials' attention to the evidence that a number of health boards have submitted. I will quote NHS Grampian's submission, as that board covers the area that I represent, but its comments reflect those that a number of other boards have made. It states:

"NHS Grampian recommends that costs are met by additional funding specifically targeted at direct elections"—

in other words, ring-fenced funding.

It concludes:

"Given that the Financial Memorandum indicates that Health Boards would be required to meet the costs"—

in the way that Mr Hogg has just described—

"it would appear that NHS Grampian's recommendation of additional funding has not been accepted."

Is that a fair description of the position?

Kenneth Hogg: It is not fair if the suggestion is that health boards would get the same amount of money as they would have got if we had not pursued the elections.

Lewis Macdonald: Have you discussed with health boards how the pilots will be funded, and how the potential roll-out of elections will be funded?

Robert Kirkwood: Health boards were involved in our consultation, within which the funding of elections was discussed. It was clear at that point that they wanted separate arrangements to be made, and that is what we will do for the pilots.

Lewis Macdonald: Can you explain why you—or ministers—have not accepted that argument for any future roll-out?

Kenneth Hogg: Perhaps I can comment on that. We have not “not accepted” that argument—it is simply that the bill only commits expenditure for the pilots, so we have addressed the issue in relation to the pilots now, within the current spending review period.

There is not currently a commitment to further expenditure. When that time comes, we would need to be clear about the way in which the expenditure will flow, and from which sources.

Lewis Macdonald: Does the Scottish Government believe that it has adequately addressed the points that health boards have raised with it? Have you discussed with health boards the evidence that they have submitted?

Kenneth Hogg: We are certainly well aware of the view that the costs to health boards of running elections should be provided in addition to the funding for front-line services that boards would have received anyway. That view has been clearly expressed and understood in the Scottish Government.

Lewis Macdonald: Do you share the disappointment of, I suspect, a number of committee members at the fact that health boards have not been able to attend this meeting to express their views directly?

Kenneth Hogg: It would be wrong of me to comment on the actions of other parties.

Lewis Macdonald: Have you discussed with health boards their attendance at this meeting?

Kenneth Hogg: We have not discussed the health boards' attendance at this meeting.

Alex Neil (Central Scotland) (SNP): To be fair to the health boards, we decided only last week to invite them. We cannot fairly criticise them for not being able to turn up today, although it would have been helpful if at least one of them could have done so.

The measure focuses on the pilots, which you will then evaluate to decide whether the elections will be rolled out to the other health boards in Scotland. I have two questions. First, have you decided on the criteria for selecting which areas will host the pilots? I suggest that, in light of the daft decisions on accident and emergency provision, Ayrshire and Lanarkshire would be good candidates.

My second question is about the long term. You are right to suggest that questions about what will happen if elections are rolled out are a bit academic, but if they are rolled out, is it envisaged that they will be held throughout Scotland at the same time? If so, will all the expenditure fall once every four years, assuming that the members serve for four years, or will it be evened out so that, if the cost is £16 million, it will be £4 million a year?

Kenneth Hogg: I will answer the first question and ask my colleague Robert Kirkwood to answer the second.

Health boards have not yet been identified for the pilots. They will need to be identified by the time the regulations are laid following the bill's passage. Ministers are minded to opt for two pilot boards that are geographically representative, and we therefore lean towards using one predominantly urban board and one predominantly rural board, but the decision has yet to be made. I make the link between that and the cost, however, given the questions that members have asked. Elements of the cost of the pilots will vary depending on which boards are chosen. The £2.86 million figure for the pilots in the financial memorandum is based on an assumption that 20 per cent of the population will be covered by the two boards.

Alex Neil: So it is assumed that that 20 per cent will be representative of the wider population.

Kenneth Hogg: Indeed. In practice, the costs could be less or more than that depending on which boards are chosen. I will give a couple of worked examples, sticking with the model of one predominantly rural board and one predominantly urban board. At the lower end of the spectrum, if we took moderately sized health boards such as Fife and Dumfries and Galloway, the total cost of the pilots would be just over £2 million rather than £2.86 million. On the other hand, if we took two of the largest boards in each category—say, Lothian and Highland—the cost would rise to just over £3.5 million. In either case, the cost would be fully met by the Scottish Government, but I want to be clear about the assumptions that underpin the costs in the financial memorandum.

Alex Neil: You said that the cost could vary from just over £2 million to just over £3 million

depending on which two boards are picked for the pilots. Is there a cap on how much you are prepared to spend on the pilots?

Kenneth Hogg: Ministers have not set a cap, but in practice there would be one if we chose the two largest boards because that would produce a ceiling for the maximum amount of money that could be spent. Given ministers' preference for a representative sample, it is highly unlikely that the maximum will be spent.

The Convener: I am anxious to avoid a bidding war around the table.

Alex Neil: My second question was about the possible bulging of the costs.

Robert Kirkwood: I draw members' attention to proposed new paragraph 66 of the financial memorandum, which shows that the costs will be fairly front loaded. The bulk of the costs will be met in year 1, but there will be recurring costs for members' remuneration in years 2, 3 and 4.

David Whitton: For clarification, and to pick up what my colleague Lewis Macdonald said, have you spoken directly to the boards that sent in evidence to reassure them about the costs that they said they were facing?

Robert Kirkwood: No—we have not spoken to the boards since they submitted evidence.

David Whitton: Do you recognise as accurate the figures in their evidence?

Robert Kirkwood: We recognise the figures, but we have an issue with some of them. NHS Highland might have misinterpreted some figures.

David Whitton: Which ones?

15:15

Robert Kirkwood: NHS Highland's submission refers to 20 elected members. We proposed two pilot board areas with 10 elected members each, rather than 20 elected members in one pilot board area. NHS Highland's extrapolation of costs is therefore a bit out.

David Whitton: To ensure that I fully understand, are you saying that there is no chance of any money being taken from front-line services to pay for direct elections to health boards?

Kenneth Hogg: If elections were fully rolled out, the costs of running them throughout Scotland would be taken into account in the sums of money that are given to health boards as part of their general allocations.

David Whitton: You say that the costs will be taken into account, but that is not exactly what I asked. The evidence to the committee from various health boards is that if they have to pay to

run the elections, the money will have to come from front-line services. Can you give boards a guarantee that they will not have to take money from front-line services to pay for directly elected health boards?

Kenneth Hogg: An absolute guarantee exists for the pilots, because they fall in the current expenditure period.

Jeremy Purvis: Mr Kirkwood asked us to look at paragraph 66 of the amended financial memorandum, which we are doing. It says:

"The estimated roll out costs are set out in the table copied below",

which gives us the figure of £16 million. It also says:

"The intention is that the costs will be met from existing budgets."

Will you explain that? That does not say that the pilots are outside the spending review and that any further costs will be taken into consideration. That says clearly that

"The intention is that the costs"

of the roll-out

"will be met from existing budgets."

Kenneth Hogg: The expenditure would be made by health boards from their allocations. The bill gives boards a power to make those payments. What is not in the scope of the financial memorandum or of the discussion is the size of health board budgets in many years' time, when the roll-out might happen. Even estimating the costs at that time will depend largely on what is rolled out, which will be informed by the evaluation and the experience of the pilots.

The Convener: I am concerned about the questions that officials are being asked—there are questions that they can and cannot answer. If the committee has concerns, it can make them known in the report.

Jeremy Purvis: I understand that. I was trying to clarify what is in the financial memorandum. I want that to be crystal clear. The financial memorandum says:

"The intention is that the costs will be met from existing budgets."

That means that boards would pay for elections, if they were rolled out. Whatever the cost was, boards would receive that money in addition to their baseline grant.

Kenneth Hogg: The decision would be for future spending reviews and budgets.

Jeremy Purvis: So the decision has not yet been taken. Is that correct?

Kenneth Hogg: By definition, that must be the case, because those budgets do not yet exist, whereas the budgets for the pilots do exist.

Jeremy Purvis: I am sorry—

The Convener: The official has given the answer. If members have concerns, they can put them in the report.

Joe FitzPatrick: One difficulty is that the spending that we are discussing would take place not only after the current spending review period, but—potentially—after a general election. The ministers and the Parliament that decide on the roll-out could be different.

Kenneth Hogg: Indeed.

Joe FitzPatrick: Obviously, I would expect far more SNP members.

The Convener: We are in danger of having a debate around the table, whereas we are here to seek information.

Lewis Macdonald: Further to the question of funding—not for the roll-out, which, as has been said, may be some time off, if it goes ahead, but for the pilot schemes—Mr Hogg has said that there is an absolute guarantee that the pilot schemes will be funded in full. However, Mr Kirkwood disagrees with the figures that have been presented by NHS Highland on the basis that he thinks that they overstate the likely costs. On what basis will you agree with health boards and the electoral registration officers what the costs will be?

It is disappointing that the health boards are not here to comment on the matter directly and to be subject to scrutiny for the assessments that they have made. Your giving a guarantee to fund in full presumes some discussion or agreement with health boards over what part of officers' time and what part of the shared resource across the health boards are being absorbed by these elections that might be used for other purposes. Has that work begun? If not, how will it be taken forward?

Kenneth Hogg: Once the specific health boards have been identified, we will work closely with them over the period leading up to and beyond the pilots to establish how the elections will be held and what costs will be incurred. For some of the cost elements, there will be a direct correlation between the size of the board and the cost that is generated.

Lewis Macdonald: Do you intend to provide a global sum within which you expect boards to meet the costs? Or will you take an itemised approach involving so many hours of officers' time plus so much additional expense? What will your general approach be?

Kenneth Hogg: The approach has yet to be finalised.

Lewis Macdonald: It appears that the £16.65 million that has been identified includes a substantial portion of remuneration and expenses for those people who are elected to boards. Do you accept, for example, NHS Highland's view that the travel and subsistence costs of elected members in a large rural area will be different from those of elected members in urban areas? If so, which of those do you reflect in your global sum?

Robert Kirkwood: We recognise the differences between all health boards and the requirements of their members. The figure that we cite in the financial memorandum is a working figure that we can extrapolate to boards. It is taken from an average board, given the fact that we do not yet know which boards will be used for the pilots.

Lewis Macdonald: The figure could end up being quite a lot more or less, depending on which boards are used for the pilots.

Robert Kirkwood: Yes.

Lewis Macdonald: Does it include the election expenses of those who seek to be elected?

Robert Kirkwood: Election expenses have perhaps also been misunderstood. We have proposed a cap of £250 on what someone seeking election could spend. That is not £250 that would be given to someone who sought to be elected, to pay for their election expenses.

Lewis Macdonald: They or an organisation would pay for their expenses; the Government would not.

Robert Kirkwood: That is correct. The £250 is purely a cap on what someone could spend.

The Convener: We have had quite a long session and I remind the committee that we still have a major item on the agenda. I will give the final question to James Kelly.

James Kelly: The financial memorandum sets baseline costs of £1.21 million. Mr Hogg earlier alluded to the fact that the costs could vary, depending on the areas that were selected for the pilot elections. Do you not think that the financial memorandum should have reflected that by giving upper and lower limits for the baseline costs?

Kenneth Hogg: We can certainly provide further worked examples in writing if that would be helpful to the committee.

James Kelly: Yes, that would be helpful.

The Convener: Do you have any final comments?

Kenneth Hogg: Just one point of detail that refers back to an earlier question pertaining to cost. Part of the £1.21 million is the cost of £2.60 per vote. We specifically chose to base our costings on the five English pilots because they used STV, whereas other, more local examples did not. The English pilots were a more reliable basis on which to calculate the costs.

Also, your previous witness referred to the additional costs of running elections with personal identifiers. I can confirm that the intention is not to use personal identifiers, partly because of the additional cost and partly because of the administrative complexity that that would have brought to the process. We are keen to keep the process as simple and cost effective as possible; therefore, the extra £1 per vote on top of the £2.60 will not be incurred.

The Convener: Thank you for that clarification.

Jeremy Purvis: Will that apply to the rolled out elections, or is that the case only for the pilots?

Kenneth Hogg: That decision has been taken for the pilots and there has been no change to that for the roll-out. Were there to be a change from the pilots to the roll-out, the matter would return to Parliament under affirmative procedure. There would need to be a second parliamentary approval for that at that time.

Jeremy Purvis: So, the estimated costs of the roll-out in the table and the amended financial memorandum do not include the cost of seeking personal identifiers for postal voters.

Kenneth Hogg: That is correct. The figure of £16.65 million does not include the cost of using personal identifiers.

The Convener: I thank Robert Kirkwood and Kenneth Hogg for their attendance and for their expertise, which has been of great assistance to the committee.

As previously agreed, we now move into private session to consider a report on capital investment.

15:26

Meeting continued in private until 17:02.

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