



Official Report
Aithisg Oifigeil

DRAFT

Standards, Procedures and Public Appointments Committee

**Comataidh nan Inbhean,
Dòighean-obrach
agus Cur-an-dreuchd Poblach**

Thursday 8 October 2026

Session 7



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Pàrlamaid na h-Alba

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Thursday 8 October 2026

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STANDARDS, PROCEDURES AND PUBLIC APPOINTMENTS COMMITTEE

5th Meeting 2026, Session 7

CONVENER

*Jenni Minto (Argyll and Bute) (SNP)

DEPUTY CONVENER

*Tim Eagle (Highlands and Islands) (Con)

COMMITTEE MEMBERS

*Jackie Baillie (Dumbarton) (Lab)

*Steven Bonnar (Uddingston and Bellshill) (SNP)

*Mark Simpson (North East Scotland) (Reform)

*attended

THE FOLLOWING ALSO PARTICIPATED:

Professor Alistair Clark (Newcastle University)

Patricia Gibson (Cunninghame South) (SNP)

Jamie Hepburn (Minister for Parliamentary Business and Veterans)

Andy Hunter (Association of Electoral Administrators)

Professor Toby James (University of East Anglia)

LOCATION

The Alexander Fleming Room (CR3)

Scottish Parliament

Standards, Procedures and Public Appointments Committee

Thursday 8 October 2026

[The Convener opened the meeting at 09:15]

Decision on Taking Business in Private

The Convener (Jenni Minto): Good morning, and welcome to the fifth meeting in session 7 of the Standards, Procedures and Public Appointments Committee. We have received apologies from Tim Eagle.

Our first agenda item is a decision on whether to take items 5, 6, and 7 in private. Agenda item 5 is consideration of the evidence that we will hear this morning on the Scottish Local Government Elections (Candidacy Rights of Commonwealth Citizens) Bill; agenda item 6 is consideration of our approach to scrutiny of the Presiding Officer's temporary changes to standing orders, and agenda item 7 is consideration of a report by the Ethical Standards Commissioner. Do members agree to take the items in private?

Members indicated agreement.

Cross-Party Group

09:15

The Convener: Our second agenda item is consideration of an application for recognition of a proposed cross-party group on Ireland.

Steven Bonnar (Uddingston and Bellshill) (SNP): Due to a relevant interest, I recuse myself from this part of the committee meeting.

The Convener: Steven Bonnar will remain at the table but will not take part in the discussions.

I welcome Patricia Gibson, who would be the convener of the proposed CPG on Ireland. I invite her to make some introductory remarks.

Patricia Gibson (Cunninghame South) (SNP): The cross-party group on Ireland has been proposed in recognition of a number of things, including, most significantly, the impact of the Irish diaspora on Scotland. Although the impact tends to be concentrated around the central belt, it is certainly not exclusive to that area. As a result, the influence of Irish culture on Scotland has been hugely significant, and it seems fitting for the Scottish Parliament to have a cross-party group on Ireland. If most MSPs go back far enough, they could probably find some Irish connection or other.

The cross-party group would seek to build on and recognise our close relationship with Ireland. The shortest crossing point between Scotland and Ireland is about 12 miles. We would seek to build on our friendship and relationship with Ireland and our shared links in history and culture. We would look at things such as our trading relationship with Ireland and how it could be developed, and we would recognise and seek to build on the importance of tourism, investment, education and, indeed, literature, because there is a Celtic cultural connection. The cross-party group wants to build on, develop and recognise those things across the Parliament.

The Convener: I do not have to drive far from my home to see Ireland, and there are strong connections between Argyll and Bute and Ireland. You have made some important points. I will ask a quick question before I bring in anyone else who has a question. Would the CPG's remit overlap with that of any other CPG in the Parliament?

Patricia Gibson: I do not think so. I do not know whether I am right in thinking that there is a cross-party group on Europe—I fear that I am not able to say definitively whether there is—but there might be opportunities and scope for us to invite members of that group if we were having a discussion about Ireland, Scotland and the wider European agenda. That could be an opportunity for even further cross-party working.

The Convener: I have one other question, which is to check that £500 or more of secretarial support per annum will not be provided to the CPG by either of the bodies that are listed as non-MSP members. If you have not checked that, there will be an opportunity, if the CPG is agreed to, for you to update your annual return with that information.

Patricia Gibson: Brigid Whoriskey, the director of Envision Business Solutions, has offered to provide secretariat services to the CPG. She has extensive contacts with the Irish community across Scotland and very close contacts with the Consulate General of Ireland. We will also have the support of a parliamentary staffer as and when required, if that is permissible.

The Convener: Do members have further questions?

Mark Simpson (North East Scotland) (Reform): I have a point to make about the paperwork. I notice that there is a convener, a deputy convener and a secretary, but there is no named contact.

Patricia Gibson: That is my fault. There was a box on the sheet—I cannot see it just now—for a contact, and I intended to write the parliamentary staffer's name in the box, but I omitted to do it. I meant to follow up to insert their name, but I have not. It is my fault, but it is covered.

The Convener: As no other member has a question, I thank Patricia Gibson for attending the meeting. We will briefly pause to let her leave the room before we move to our next item. Members should be aware that we are not suspending the meeting and are still live on air.

Our third agenda item is consideration of whether we are minded to recognise the proposed CPG on Ireland. Do members agree to recognise the proposed CPG?

Members indicated agreement.

The Convener: I briefly suspend the meeting to allow us to get set up for the next agenda item.

09:21

Meeting suspended.

09:23

On resuming—

Scottish Local Government Elections (Candidacy Rights of Commonwealth Citizens) Bill: Stage 1

The Convener: Our fourth agenda item is an evidence session as part of our stage 1 scrutiny of the Scottish Local Government Elections (Candidacy Rights of Commonwealth Citizens) Bill. The committee will hear from two panels of witnesses. First, we will hear from an electoral organisation and two academics with an interest in the bill. I welcome Professor Alistair Clark, who is the professor of political science at Newcastle University, and Andy Hunter, who is the chair of the Scotland and Northern Ireland branch of the Association of Electoral Administrators. Professor Toby James, who is the professor of politics and public policy at the University of East Anglia, joins the meeting remotely. Thank you all for joining us.

Would anyone like to make an introductory statement before we go to questions?

Professor Alistair Clark (Newcastle University): I am happy to go straight to questions.

Steven Bonnar: I thank the witnesses for attending, which is much appreciated. Do you view the change through the bill as a technical fix to existing law, or is it a significant policy decision in its own right?

Professor Clark: In many ways, it is both. It is a technical change, in that we are dealing with an oversight by the Scottish Government in the Scottish Elections (Representation and Reform) Act 2025. However, this is a piece of primary legislation in its own right and should be seen as such. The point of stage 1 is to question the principles behind a bill, so the bill should be treated in that way, even if it is correcting, or claiming to correct, an oversight.

Andy Hunter (Association of Electoral Administrators): I have nothing further to add to that. The bill is, in essence, a technical fix of what was expected to be included in the previous bill.

Steven Bonnar: Is the current legal position sustainable, and, if not, are the changes proposed in the bill the best way to bring resolution to the issue?

Professor Clark: The view that I gave in my evidence during the original bill's scrutiny process—

Steven Bonnar: Your view has not changed.

Professor Clark: No, it has not changed. My view then was that this part of that legislation was a solution looking for a problem. The difficulty is that it seems to have created more problems, which the Parliament has to pick up and resolve. Parliamentary time is limited, so it is unfortunate that we are in the position of having to constantly tidy up that aspect of the legislation.

Steven Bonnar: Andy, do you have any views on that?

Andy Hunter: From an administrator's point of view, the bill does not really change anything for us and what we do.

Steven Bonnar: Electoral law is complex, voluminous and fragmented across a few different franchises. That increases the risk of legislative error and oversights such as this one. Is the bill the right way to rectify the issue?

Professor Clark: If you are going to rectify it, this is probably the right way to do so. The question arises—I think that it was asked at last week's committee meeting—of what would happen if you just left things as they stand. My view is that very little would happen in this case. The group that will be affected by the bill did not have candidacy rights to begin with, so nothing would be taken away from anyone.

The Scottish Government claims that the change will have a minuscule effect. Only a small group of people will be affected by it, so I do not see where the demand for the bill comes from. As you said, electoral law is full of complexity and, as a consequence, full of inconsistencies, many of which are probably more important to resolve than this particular one.

Professor Toby James (University of East Anglia): I agree that this is mostly a technical change. It seems to result from an oversight in previous legislation. I guess that it is also a matter of principle, in so far as there is an inconsistency in the right to stand for election between a citizen of the Commonwealth and a citizen of a non-Commonwealth country. Although a relatively small number of people in that group might be looking to stand for election, the inconsistency does represent an inequality, and not one that seems to have been intended.

The situation is evolving. It is still early days for opening up candidacy rights in this way in Scotland. The key thing is to ensure that the situation is monitored and to see how things evolve over time. In the original evidence, I saw an argument in favour of the change, which was that it would open up Scotland as a strong and inclusive democracy that allows people to have a voice in elections and in the Parliament. That was a key argument. However, the bill opens up things

that need to be monitored, such as how the nomination process works, which I think that the committee has heard evidence about. As my fellow witnesses just suggested, the complexity of electoral law is a key issue that might lead to small but important problems such as this one recurring.

09:30

Steven Bonnar: Does it all boil down to this: if somebody has the right to vote in our elections, should they have the right to stand in our elections?

Professor Clark: No, the two things do not follow from each other. Let me be clear: Scotland has a very liberal and welcoming voting rights regime, which is right and proper, and I have no problem with that whatsoever. However, we are talking about extending candidacy rights to those who have a limited right to remain, not an indefinite right to remain. The issue is that we have never pinned down, and the original process did not pin down, the problem that the legislation was designed to resolve.

In public policy, if you are to judge whether a policy is successful, you have to know the problem that you are dealing with. In this process, that issue has not been satisfactorily addressed. Further, we are unable to judge how the legislation is working because we do not have the data. Such data is not collected, so we are left taking the word of the Scottish Government, which might or might not be reliable in this particular instance.

Candidacy rights do not naturally follow from voting rights.

Professor James: The data point is really important, because the information that is collected at the point when someone wants to stand as a candidate is very limited. A Scottish candidate survey is occasionally run. In a report that we at the University of East Anglia published two years ago, we argued that more data on candidates should be collected, because doing so would help to build an inclusive democracy. That might mean asking candidates questions about ethnicity, age, gender and so on to see who stands for elections. It would make sense to include nationality, because that would allow policy makers to have a greater insight into how things function.

I support those surveys, but we also perhaps need to systematically collect data at the point when people apply to be a candidate. Even if that means making an informal request and if it is not necessary for the administrators to handle the data, it would shed a lot of light on the process.

The Convener: I note that Professor Clark wants to come in again. I just remind witnesses

that we are looking specifically for evidence on the bill.

Professor Clark: I just have one thing to add to my previous answer, which is that, to the extent that I can discern any problem in this area, it might be argued that you need to be eligible for election in order to be represented. However, that argument is a fundamental mischaracterisation or misunderstanding of the representative process. Eligibility for election is not necessary in order to be represented. That view is what is called descriptive representation.

As all the MSPs in the room know, you are responsible for representing all your constituents. As a consequence, political parties and MSPs can already represent the group that will be affected by the legislation. It is not the case that a group is without representation just because someone from that group cannot stand for office.

The Convener: Thank you. I bring in Mark Simpson to ask questions on the bill's expected real-world impacts.

Mark Simpson: In May, we had the Scottish Parliament elections, so I am interested in hearing about any lessons that can be taken on the practical impact of allowing individuals with limited leave to remain to stand in elections.

Professor Clark: I do not think that we know because, as you have heard, we do not really collect data on that. The need to collect more data is probably the first issue that could be rectified. There is a question around who would do that work, but I think that you already explored that issue with Chris Highcock. As a consequence, the effect of the legislation on the 2026 elections is hard to discern. However, it is more than unfortunate that the first week of the parliamentary session was taken up by controversy around the issue. It was quite an inauspicious start, which had a knock-on effect on public opinion.

To go back to the Scottish Government's consultation during the original process that led to the 2025 act, the particular question on extending candidacy rights to people with limited leave to remain showed that around 88 per cent of respondents were against the proposal being implemented. Public opinion is in a very different place from elite opinion, and it was unfortunate that the Parliament spent a week after the election dealing with the consequences of that controversy.

Andy Hunter: As we have touched on, and as was touched on in last week's session, from an administrator's point of view, we do not collect data on nationalities, so there is nothing for us to take lessons on.

Professor James: As Professor Clark has pointed out, we do not know the effects because

of the absence of data—that is a really important dimension. However, one further dimension is that, in some ways, the issue has perhaps become a point of focus for some of the philosophical questions that societies face, such as who is a member of a society and who is not, and who has full rights as part of that society and who does not. Although this discussion is about candidacy rights and the opportunity to take part in an election, it reflects the conversations that we are having in many societies about who is included in them. This debate reflects broader societal questions and has just moved to the centre of public discussion.

Mark Simpson: On the point about data gaps, what could we do to fix them?

Professor Clark: You could require returning officers to collect data during the nomination process. That would be one way to do it. Andy Hunter will help me on this, but I assume that such a requirement would need legislation. It is one of the many changes that needs to be made to electoral law, but introducing such a requirement would probably be the quickest and easiest way to fix the issue.

One way that might avoid involving returning officers would be to require political parties to report the data as part of the regulation of their campaigning, both at local government and Scottish Parliament level. That is another approach that could be taken. After all, political parties are the ones that recruit the candidates, so they should know who is standing for them. However, that then puts candidate vetting procedures and such things in the frame, so I suspect that parties might not want to go down that road.

Andy Hunter: I agree that we need some additional legislation to collect more information during the nomination process. On the latter point that Professor Clark made about political parties, the only issue would be with independent candidates. Therefore, some other monitoring would be required.

Professor Clark: That is a good point.

Professor James: Both of those solutions would be good. It would make sense to review the candidate nomination process. We have previously suggested that the process is quite Victorian and tends to be paper-based. There is an opportunity to simplify and streamline the process and put it online, so that more information can be collected without increasing the burden on administrators. As you have heard in previous sessions, that burden is a real and important concern. However, there is a way to marry up the two priorities.

Mark Simpson: The Scottish Government's assessment is that the chances of by-elections arising from the proposed change are low. Do you share that view?

Professor Clark: It might be low, but it is not negligible. In the policy memorandum, the cost is estimated to be anywhere between £50,000 and £80,000, depending on the ward that is at stake. Imagine you have a couple of such cases: how many local authority jobs is that? What public services might be provided with that money? Those are hypothetical questions.

There are risks in electing any candidate; by-elections can and do happen. It is difficult to pin down an answer with any particular degree of accuracy, but the risk is not negligible.

Andy Hunter: As far as I am aware, the number of by-elections that are caused by qualification issues is very low. The vast majority of by-elections are due to a member being elected to another office or due to work or health issues. Off the top of my head, there have been only a couple of cases in recent years in which there were more technical reasons.

Professor James: I agree that the level of frequency would be low, but I would also be mindful of evaluating the change in terms of the cost of elections. We need to invest the money that elections cost. Yes, there is an argument that, if someone is available to undertake the role only for a short time, that might lead to a by-election, but those with limited leave to remain are not the only category of people to whom that might apply. For example, it might apply to people with illnesses or people whose personal circumstances change. We would not want to limit those people's roles and would want them to stand for election. Cost is important, but by-elections per se should not shape whether candidacy rights are given.

The Convener: Thank you.

Jackie Baillie (Dumbarton) (Lab): As we have established, the bill is about correcting an error, which is the omission of Commonwealth and foreign nationals. It also raises wider issues that we first explored with you all on our predecessor committee when we sought views on the proposals in 2024, so thank you very much for coming back.

I will just correct a statistic that you used, Professor Clark—77 per cent of respondents opposed extending candidacy rights to people with limited leave to remain in the country, but that still represents a substantial proportion of people who are against that proposal.

One of the arguments that has been made—I think by Professor James—is that we should align the right to vote with the right to stand for election. That seems to be the principle. Andy Hunter, you

have to administer these things, so would such an alignment of voting rights and candidacy rights offer any benefit from an administrative perspective?

Andy Hunter: I do not think that aligning the two would make any difference to administration. There are different processes in place when it comes to getting electors registered and getting candidates nominated, and returning officers and electoral registration officers serve distinct functions in Scotland.

Jackie Baillie: I guess that I kind of knew that. Candidates have a particular perspective on the process, but it is good to have that on the record.

I now turn to Professor James and to Professor Clark. You both gave evidence in 2024. Have you changed your views at all and do you have additional reflections, given the passage of time?

Professor James: My position is broadly still the same. Candidacy rights and voting rights are separate entities, but they are both part of being a citizen. Candidacy rights allow people to have a voice in the Parliament who might not otherwise have one. Votes are important because they enable people to express a preference, but being able to appear on the ballot paper can shape the political agenda in various ways and force conversations to take place.

09:45

One issue that has become more prominent around the world, including in Scotland and the United Kingdom more widely, has been foreign interference in elections. That must be considered very carefully. The main way in which it occurs is through disinformation in the information environment, where it is much easier for foreign actors to interfere in elections. I think that it was argued by your predecessor committee that candidacy rights for those with limited leave to remain could create a risk of candidates being influenced by overseas actors. If candidates are only here for a limited time, they might be put under pressure when they return. That is one evolving situation to monitor, although I am not aware of any evidence of it happening in the UK or Scotland at the moment. Also, any representative of any nationality, whether they are in the Scottish Parliament or the UK Parliament, might be influenced by various actors, whether they are companies, businesses or others. It is part of the parliamentary process and democratic politics to scrutinise candidates and politicians—that is what democracy does well.

Foreign interference is the one thing to consider, but at the same time, having a voice inside the Parliament is very important.

Professor Clark: It is a good question. To go back to what I said at the beginning, we do not actually know what problem we are trying to resolve. When preparing for this session, I did a little exercise involving looking at how many countries extended candidacy rights to those without a permanent right of residence. I hate to say it, but I struggled to find any such countries in the data sets that I looked at. I also note from the Scottish Parliament information centre briefing that none of the other UK countries is going down that route.

Let us remember what we are talking about: it is quite a narrow group of people here who have limited leave to remain; we are not talking about citizens or those with indefinite leave to remain. Therefore, such a theoretical, contextual question is important. What are we trying to resolve? That has not really been answered.

Toby James mentioned that candidates can actually shape the political agenda. That has to be a concern, and it has been an issue in Scotland. There is a Scottish MP who has been involved and implicated in an overseas influence case, unfortunately. So, foreign interference is not only a theoretical risk; it is a practical risk. The issue has, quite simply, not been taken seriously when it comes to thinking about this issue to begin with.

However, it all comes back to the question of what the original justification was for the change that the 2025 act made. I have never heard a compelling reason given for it other than general representation. However, as we have heard, that group can still be represented anyway.

Jackie Baillie: It strikes me that this is a philosophical debate rather than a pragmatic debate about what is required. I note that the Scottish MP in question was found to have no inappropriate connections.

I turn to the issue of confidence in the election process. It was Professor Clark who reminded us of the discussions that arose at the beginning of the parliamentary session about one of our colleague MSPs. Although I do not want to get into that, I felt that it caused people to question the validity of the Parliament, which was unfortunate for the body politic.

Professor Clark, I want to ask you about the importance of public confidence in the process. Is it the case that, if someone is unable to complete their term of office because they no longer have a right to remain, that will give rise to the administration costs of a by-election and could lead to a lower turnout, which will result in less public confidence in the process?

Professor Clark: Yes, my sense is that having to deal with such issues that go on to be seen as

problematic leads to the Parliament's reputation taking yet another hit. The Parliament does good work, but it is undermined when the effect of policy that has not been properly thought through leads to issues that cause controversy. The biggest problem in electoral politics is getting more people engaged with the process, so that they turn out to vote in the first place. The more parliamentary problems of such a nature hit the headlines, as they do—we spent a whole week debating the issue to which you refer—the more public confidence takes a hit. That is more than unfortunate, because, as I said, the Parliament does a lot of good work. Anything that undermines that should be a cause of concern for parliamentarians.

Jackie Baillie: You originally raised the issue of foreign nationals, on which Professor James now agrees with you. Could you expand on that? I do not want to take up too much time, otherwise the convener will start to look at me askance, but could you give us an indication of which countries you considered in your research? Did you look at countries in Europe or South America? Could you give us an indication of where you failed to find similar arrangements?

Professor Clark: Sure. I failed to find anything similar in the migrant electoral rights data set, an analysis of which was, I think that I am right in saying, recently published in *Nature*. I had a look at what migrants were offered in the countries concerned. In some cases, non-nationals were offered candidacy rights, but that was typically in situations in which a system of reciprocal rights was already in place—I am referring to the kind of arrangements that we had in place with, for example, certain EU countries post-Brexit.

On the specific narrow issue of the provision of such rights for a person who does not have indefinite leave to remain, I could not find anything, nor could I even find any examples of the question having been asked, which I think is telling. That suggests that it is not an issue, given the depth that that research went into on other matters.

That is where I looked. I also looked to see what various democracy assistance organisations had on candidacy rights, because, if nothing else, they produce a lot of reports. I could find nothing on that.

I am sorry—could you remind me of the first part of your question?

Jackie Baillie: It was you who originally raised with the committee the issue of foreign actors, your view on which Professor James now agrees with. Could you unpack that for us?

Professor Clark: That has been an issue for some time, and it is increasingly an issue. There

are various ways in which foreign actors can be an issue. We are talking not only about candidacy rights but about misinformation and influencing elected representatives. Over time, the issue of foreign actors has become more important and has been taken seriously at Westminster level. For example, there was a joint committee that held an inquiry on defending democracy, which investigated the issue in some depth.

I think that people might tend to think that local government or devolved institutions might not be that relevant in this context, but local government and devolved institutions can and do award big grants to people. There is a lot of money at stake, and, as Toby James said, there are ways in which candidates can help to shape the direction of a campaign.

My concern is that there are no mitigations against foreign actors exerting influence at that level, nor are we even asking questions about it. Indeed, when the predecessor committee took evidence from the minister on the Scottish Elections (Representation and Reform) Bill, one of the minister's officials, in responding to a question on the issue, simply said:

"We can consider that issue, but I struggle to think of a solution other than just to look out for it."—[*Official Report, Standards, Procedures and Public Appointments Committee*, 2 May 2024; c 9.]

There the matter rested.

Jackie Baillie: Wow. Thank you very much.

The Convener: Professor James wants to come in.

Professor James: I would like to clarify that, as far as my position is concerned, what has changed is the risk of foreign interference. That is an issue that should be taken seriously, and collecting data on the nationality of candidates might help with that.

At the same time, there is another danger for democracy, which is that of people whose nationality is not British or Scottish being considered a potential risk to democracy and a possible source of foreign interference. There is a real danger that we could go in the opposite direction and not include people because we consider them to pose a risk and a danger to democracy.

Another point to make is the fact that candidacy rights for people who are categorised as non-citizens are more common in local elections in various parts of the world, especially in Europe. It is less common in national elections and more common in local elections.

Jackie Baillie: Professor James is right, but we are talking about a group of people who have only

limited leave to remain, not people who have indefinite leave to remain. I would agree with his comments in relation to those with indefinite leave to remain, but I think that there is a question to be asked about those with limited leave to remain.

The Convener: As members have no further questions, I thank our witnesses for joining us. Your comments have been very helpful and they will help us when, in a few weeks' time, we prepare our report to Parliament on whether to agree to the general principles of the bill. As I said earlier, the bill is narrow, but the conversation that we have just had will help us in thinking about future work that the committee may take on. Thank you for your time.

We will have a brief suspension to allow for a changeover of witnesses.

09:58

Meeting suspended.

10:11

On resuming—

The Convener: We will now conclude our stage 1 scrutiny of the bill by taking evidence from the Scottish Government. I welcome to the meeting Jamie Hepburn MSP, Minister for Parliamentary Business and Veterans. The minister is joined by the following Scottish Government officials: Iain Hockenhull, head of elections; Angus Reid-Bryan, election team; and Lorraine Walkinshaw, Scottish Government legal directorate.

I invite the minister to make a short opening statement.

The Minister for Parliamentary Business and Veterans (Jamie Hepburn): Thank you for inviting me to give evidence on the bill. As the committee is aware, the bill is very short, so I will keep my opening remarks similarly brief.

The bill only makes one small change to elections law in contrast to the package of statutory instruments that you considered last week, which made multiple changes. This single-issue bill fixes an inadvertent gap in existing legislation. In December 2024, the Scottish Parliament voted unanimously to approve the Scottish Elections (Representation and Reform) Bill at stage 3. That bill included a provision that had intended to extend candidacy rights in the Scottish Parliament and local government elections to all foreign nationals with limited leave to remain. That was the logical extension of the expanded franchise for our elections, which, since 2020, has given a vote to people from all nations who have chosen to make their life in Scotland.

It has since become apparent that there is a gap in the legislation. Regrettably, an error means that Commonwealth citizens with limited leave to remain do not have the right to stand as candidates at local government elections in Scotland. I stress that there is no similar gap for members of this Parliament, because the oversight in the legislation applies only to local government elections and only to Commonwealth citizens with limited leave to remain.

In practice, that means that, as the law stands, a US citizen with limited leave to remain is able to stand for election as a local councillor but a citizen of Canada with limited leave to remain cannot. That is not what the Government intended, and it is also clear that, in passing the bill into law in the previous parliamentary session, it was not the Parliament's intention either. That situation cannot remain. This new bill will mean that Commonwealth citizens with limited leave to remain will be able to stand in next May's council elections, should the Parliament choose to pass it.

I take this opportunity to express my regret for the mistake. It is unfortunate that the bill is necessary, but I hope that the committee appreciates that the Government acted promptly after first identifying the issue in May during the preparation of the local government Scottish statutory instruments that I spoke with the committee about and which the committee agreed to last week. It is important that, when mistakes are identified, the Government is transparent about them and takes steps to fix the issue, as we have done in this case.

It is important that the law is clear and consistent, which is why I have introduced this legislation ahead of next May's local government elections. I encourage committee members to support the bill, given that it will bring the law into line with the will of the Parliament, as it was expressed in late 2024. My colleagues and I are happy to answer any questions that the committee might have.

10:15

The Convener: Thank you very much, minister. You have gone into some detail about the gap in the provisions of the 2025 act. What is the Scottish Government doing to ensure that such an error does not happen again?

Jamie Hepburn: With any form of legislation, we seek to avoid any error being made. Unfortunately, it can happen from time to time. In such circumstances, it is incumbent on us to at least offer the Parliament the chance to rectify the error, which is what we are doing in this instance.

The reason for this error was the way in which the franchise and candidacy entitlement have

evolved across a range of different pieces of legislation over a long time. The legislation on candidacy rights, which dates back to the 1970s, has been amended a number of times in what could probably be considered piecemeal fashion, which has caused some challenges. In effect, what has happened in this instance is that Commonwealth citizens have historically been treated differently from other foreign nationals and not been included within the legal definition of a qualifying foreign national. We sought to franchise a cohort of the population that we wanted to enable to become candidates. We thought that we had covered that by extending the definition of qualifying foreign nationals, but it became clear in cross-referring to the legislation in preparing the SSIs that the provision did not, unfortunately, include Commonwealth citizens with limited leave to remain.

The Convener: We have heard some evidence in previous sessions about the complexity and fragmentation of legislation in this area, so I appreciate your explanation. Can you explain the effect of continuing the current legal position, and emphasise again why the Scottish Government believes that the change is needed?

Jamie Hepburn: We believe that this change is needed because it will fulfil what the Parliament agreed to in the previous parliamentary session. I do not think that the Parliament intended to have a situation in which, to return to the example that I cited, a US national with limited leave to remain could stand for local government in Scotland, but a Canadian citizen with limited leave to remain could not. Similarly, a citizen of Turkey or Greece with limited leave to remain could stand for local government in Scotland, but a citizen of Cyprus could not. I happen to have a list in front of me of all 56 sovereign states that are Commonwealth nations, but I will spare you from hearing me read them all unless you really want me to do so. In effect there is an odd gap in the law, so this is a chance for the Parliament to rectify it.

The Convener: My final question is whether it is appropriate to change candidacy rights for those with limited leave to remain before the next set of local government elections.

Jamie Hepburn: That is precisely why we are introducing the bill now. We sought to give the Parliament as much clarity as early as possible in order for it to be implemented in time for the next council elections. In line with the Gould principles, any changes to elections law should ideally be in place six months before the coming election. If that is not possible, they should be in place as soon as possible. That reflects our intent with the bill.

The Convener: Thank you very much.

Mark Simpson: The Scottish Government has accepted that arising from this is an increased likelihood of by-elections, the cost of which could be up to £80,000. Why does the Government consider it acceptable to take on that additional risk?

Jamie Hepburn: It is marginal. I observe that by-elections in a local government context can arise from any number of circumstances. We are all involved in the political process and will all be aware of people who have stood for local government and then seen their life circumstances change for any given number of reasons. They might have a new job and be unable to accommodate the requirements of being a councillor, which necessitates a by-election.

We are up front about the possibility of by-elections, but I suggest that the likelihood of them being caused by this change is marginal and consistent with the possibility that, at any stage across the local government wards that we have in Scotland, there could end up being by-elections.

Mark Simpson: What happens if a councillor's leave to remain expires—would they be able to continue in office?

Jamie Hepburn: No, they would have to cease holding office, which is in line with their eligibility to stand as a candidate in the first place. However, there are any number of reasons why a person might become ineligible and cease to hold office. The 2025 act that we passed went further and broadened the grounds for ineligibility around requirements for people who have committed a sexual offence, for example, who would not previously have become immediately ineligible for elected office at a local government level but would now, because we took that step.

There are multiple reasons why a person might end up being ineligible. Bankruptcy is another long-standing reason, so this change will add to that list.

Mark Simpson: Thank you.

Steven Bonnar: Do you and the Scottish Government consider that sufficient processes are in place to ensure that individuals seeking to stand for election are qualified to do so, and might the change that is proposed in the bill heighten the risk of ineligible candidates seeking nomination?

Jamie Hepburn: I do not think that there is a substantially increased risk of that. Since the 2025 act took effect, we have cast a glance across all the by-elections and checked to see whether any of the candidates who were elected fell foul of those rules, and none of them did, so I do not think that it is a substantial risk.

Steven Bonnar: Do you accept that there is now far more foreign interference in our democracy and our election processes, both UK-wide and here in Scotland, and is there any risk that allowing this change might heighten the level of foreign interference?

Jamie Hepburn: I do not think that this change in itself heightens that risk. I do not mean this in a supercilious fashion but, to be candid, if you are a hostile state actor, you are rather less likely to seek to stand as a candidate for Clackmannanshire Council than do something by other nefarious means. We have already seen incidents of hostile state actors seeking to interfere in our election process. I will not say too much about that because there is a live case, but, as far as I am aware, those who are alleged to have been involved are not foreign nationals.

Yes, foreign interference in our domestic political system is a challenge, and we are not unique in that regard. All western democracies are susceptible to that challenge. I do not think that extending eligibility to Commonwealth citizens with limited leave to remain is likely to increase the likelihood of hostile state action. I remind people that this change is about enabling Commonwealth citizens with limited leave to remain to stand for local government elections.

Steven Bonnar: It is the committee's understanding that the Scottish Government is willing to make this change but that it does not and is unable to estimate the number of people who will gain candidacy rights as a result of it. Can you share any figures with the committee and do ministers hold any information on the number of individuals with limited leave to remain who stood as candidates in the May 2026 election?

Jamie Hepburn: To answer the latter question, I do not have those statistics to hand. Migration statistics are largely held by the UK Government. Based on the information that we can go on from the National Records of Scotland, in the year to mid-2021, an estimated 397,000 non-British nationals were living in Scotland, of whom 165,000 were non-European Union citizens.

However, lest anyone think that this is likely to lead to a significant increase in the number of candidates, I point out that there were 2,606 candidates in 2007 and 2,548 in the most recent election, in 2022. That indicates that, of the overall eligible population likely to stand for election, it is a fairly small proportion who do, and this change is unlikely to alter that.

Jackie Baillie: I agree with the minister's comment that it is unfortunate that there was an error. If he will forgive us, it has raised wider issues with the 2025 act.

With that in mind, have you considered that, if elected members have limited leave to remain and that status is subsequently removed, they will be unable to complete their term of office? Does that therefore suggest a potential lack of confidence among electors in the system? By-elections are expensive and turnout is lower, so does that potential lack of confidence in our system worry you as a result of that scenario?

Jamie Hepburn: I answered some of those points in response to Mr Simpson's question. I do not consider that the change is likely to lead to a substantial number of by-elections. Can we say that it is impossible? No, we cannot, but I go back to my wider point that, when anyone stands for any election—in this instance they are local government elections—you cannot rule out the possibility of an individual's circumstances changing and the councillor determining that they do not want to remain in office. There is a marginal risk but not a significantly heightened risk.

I caught a few of the exchanges that you had with the previous panel. There might be wider questions to consider about the approach that was taken, which was unanimously agreed to by the previous Parliament. The committee might want to look at that issue, but the proposition in this bill is very limited. Is it consistent that those who are foreign nationals from non-Commonwealth countries with limited leave to remain can stand in council elections but those who are Commonwealth citizens with limited leave to remain cannot? We need to fix that inconsistency.

If there is wider work to do that the committee decides to look at, the Government will of course engage with that.

Jackie Baillie: Thank you very much for that. I will make a number of comments. I did set out the wider context in my opening remark. I understand the narrowness of the bill that is before us. However, I also indicate for the record that at least three members of this committee, including me, did not have the opportunity to vote for the bill—you can go and check that.

Jamie Hepburn: I know that you did not vote for the bill. You had the opportunity to do so, though, Ms Baillie. You were a member in the previous parliamentary session.

Jackie Baillie: It is entirely appropriate for elected members to look again at legislation that has been passed to see whether it has been effective.

Jamie Hepburn: I think that I just agreed with that, Ms Baillie. I said that I recognise that.

Jackie Baillie: Can I move on with my questions, convener?

The Convener: Yes.

Jackie Baillie: Thank you so much.

Can someone who has a study visa balance their studies with their responsibilities and duties as an elected representative?

Jamie Hepburn: It is agreed that councillor is a part-time role and is remunerated on that basis. There is a wider question to consider about that situation, but people have to balance full-time employment with being a councillor in many instances. That is ultimately for the individual who is elected.

Jackie Baillie: My final question—although perhaps not—is this: what has the Scottish Government done to follow up on the promise that was made to the predecessor committee that it would consider mitigating the risk that extending candidacy rights to people with limited leave to remain could enable foreign actors to undermine our electoral system?

10:30

Jamie Hepburn: Again, that goes back to the wider question that was asked by Mr Bonnar. That is a wider area of work that we look to progress. Some of that is being done in collaboration with the UK Government, which has a lot of information about some of those issues. There is interaction with the UK Government at that level, but it is incumbent on us all to be vigilant.

Jackie Baillie: To press you, what interaction are you having and what are you doing at your own hand?

A civil servant told our predecessor committee:

"We can consider that issue, but I struggle to think of a solution other than just to look out for it."—[*Official Report, Standards, Procedures and Public Appointments Committee*, 2 May 2024; c 9.]

That really does not seem adequate in the face of the potential threat. What specifically have you done in relation to the commitment that was made to the predecessor committee?

Jamie Hepburn: I do not think that I said that, and I do not think that I was at the session at which that was said.

Jackie Baillie: Sorry, but by "you" I mean the Government.

Jamie Hepburn: Okay, that is helpful to understand. A range of activity is under way across the board to ensure that we have fair elections that are free of interference. I think that we all share concerns about foreign interference. We potentially saw some of that at the Scottish Parliament election. We have to interact with the UK Government about a lot of those points

because it has agency and, indeed, the agencies that are able to look at some of those areas of activity.

Jackie Baillie: I absolutely respect and understand the work that is ongoing, but I am being very specific. In relation to the bill that was passed in 2025, commitments were made by the Government to the predecessor committee. As a result, I am asking specifically what the Government has done to monitor the issue and to deal with the mitigations that might be required.

Jamie Hepburn: In terms of monitoring, if we are talking about local government elections, there have not been any held since then. I have already made the point around by-elections, and we have had a clear interaction with those who are elected to see whether any of them fell foul of the legislative provisions that we put in place. The answer was no. Interacting with those who have responsibility will be an ongoing process.

Jackie Baillie: Forgive me, but you are back here as the minister in charge, and it has been more than a year since that commitment was made. What is happening to mitigate what could be a serious impact if foreign nationals were to interfere in our elections?

I appreciate that limited leave to remain is a very small category, but nevertheless the change makes it easier for foreign nationals with ill intent to do harm. I am not asking about the bill but asking about what specifically has been done in light of the commitment that was made.

Jamie Hepburn: I am here to talk about the bill, but I am happy to write to the committee with any wider information that it might like.

The Convener: That would be very helpful, because in our last evidence session we received quite a number of comments that related to that issue. If you could provide us with a written response, that would be very helpful.

Jamie Hepburn: I am happy to do that.

The Convener: Thank you very much to you and to your officials for attending. I will briefly pause to allow you to leave the room before we move on to our next item.

Subordinate Legislation

Representation of the People (Absent Voting at Local Government Elections) (Scotland) Amendment (No 2) Regulations 2026 (SSI 2026/263)

10:33

The Convener: Our next agenda item is consideration of a negative instrument. No motion to annul the instrument has been laid.

As members have no comments, does the committee agree that it does not wish to make any recommendations in relation to the instrument?

Members *indicated agreement.*

The Convener: Thank you. That concludes our business in public and we will now move into private session.

10:34

Meeting continued in private until 11:25.

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The deadline for corrections to this edition is 20 working days after the date of publication.

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

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