



The Scottish Parliament
Pàrlamaid na h-Alba

Official Report

LOCAL GOVERNMENT AND COMMUNITIES COMMITTEE

Wednesday 2 March 2011

Session 3

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LOCAL GOVERNMENT AND COMMUNITIES COMMITTEE

7th Meeting 2011, Session 3

CONVENER

*Duncan McNeil (Greenock and Inverclyde) (Lab)

DEPUTY CONVENER

*Bob Doris (Glasgow) (SNP)

COMMITTEE MEMBERS

*Patricia Ferguson (Glasgow Maryhill) (Lab)

*Alex Johnstone (North East Scotland) (Con)

*Alasdair Morgan (South of Scotland) (SNP)

*Mary Mulligan (Linlithgow) (Lab)

*Jim Tolson (Dunfermline West) (LD)

*John Wilson (Central Scotland) (SNP)

COMMITTEE SUBSTITUTES

Brian Adam (Aberdeen North) (SNP)

Malcolm Chisholm (Edinburgh North and Leith) (Lab)

Alison McInnes (North East Scotland) (LD)

David McLetchie (Edinburgh Pentlands) (Con)

*attended

THE FOLLOWING ALSO ATTENDED:

Sarah Boyack (Edinburgh Central) (Lab)

Jim Mather (Minister for Enterprise, Energy and Tourism)

Alex Neil (Minister for Housing and Communities)

THE FOLLOWING GAVE EVIDENCE:

Sue Bruce (City of Edinburgh Council)

Chris Highcock (Interim Electoral Management Board)

John McCormick (Electoral Commission)

Andy O'Neill (Electoral Commission)

CLERK TO THE COMMITTEE

Susan Duffy

LOCATION

Committee Room 1

Scottish Parliament

Local Government and Communities Committee

Wednesday 2 March 2011

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

Decision on Taking Business in Private

The Convener (Duncan McNeil): Good morning and welcome to the seventh meeting in 2011 of the Local Government and Communities Committee. As usual, I ask members and the public to turn off their mobile phones and BlackBerrys.

Agenda item 1 is to consider whether to take in private consideration of our legacy paper, which is item 10 on today's agenda, at this and subsequent meetings. Are we agreed?

Members *indicated agreement.*

Local Electoral Administration (Scotland) Bill: Stage 2

10:00

The Convener: Agenda item 2 is consideration of stage 2 amendments to the Local Electoral Administration (Scotland) Bill. I welcome to the meeting Jim Mather, the Minister for Enterprise, Energy and Tourism, who is accompanied by Scottish Government officials Stephen Sadler, head of the elections team; Fiona Campbell, policy executive; and Deborah Blair, solicitor.

Sections 1 to 14 agreed to.

Section 15—Education about electoral and democratic systems

The Convener: Amendment 1, in the name of the minister, is grouped with amendment 2.

The Minister for Enterprise, Energy and Tourism (Jim Mather): The bill sets out to extend the Electoral Commission's remit to include local government elections in Scotland. However, we do not intend to confer a greater range of responsibilities for elections in Scotland than that which exists for England and Wales. Since the bill's introduction, the commission's function of promoting awareness of systems of local government has been removed under the Political Parties and Elections Act 2009 and amendments 1 and 2 are necessary to reflect the fact that it no longer has an education function in relation to local government systems that could be extended to include local government systems in Scotland.

I move amendment 1.

Amendment 1 agreed to.

Amendment 2 moved—[Jim Mather]—and agreed to.

Section 15, as amended, agreed to.

Sections 16 and 17 agreed to.

After section 17

The Convener: Amendment 3, in the name of the minister, is in a group on its own.

Jim Mather: Amendment 3 is a technical amendment that seeks to enable any issues arising as a result of the Electoral Commission's work in relation to Scottish local government elections to be considered by the Scottish Public Services Ombudsman rather than by the United Kingdom ombudsman. It does not amend the bill's purpose or any of its substantive provisions.

I move amendment 3.

Amendment 3 agreed to.

Sections 18 to 21 agreed to.

Long title agreed to.

The Convener: That ends stage 2 consideration of the bill. I thank the minister.

I suspend the meeting for a few moments.

10:03

Meeting suspended.

10:05

On resuming—

Electoral Management

The Convener: Agenda item 3 is an evidence-taking session on the management of elections in Scotland. I welcome to the meeting John McCormick, electoral commissioner, and Andy O'Neill, head of office, Scotland, from the Electoral Commission; Sue Bruce, returning officer and regional returning officer for Lothians, from City of Edinburgh Council; and Chris Highcock, secretary of the interim electoral management board. I invite the Electoral Commission to make its PowerPoint presentation.

John McCormick (Electoral Commission): Thank you, convener. It is good to be here and I thank the committee for the invitation to give evidence. I will quickly hand over to my colleague Andy O'Neill, who will take us through his presentation.

Andy O'Neill (Electoral Commission): Good morning and thank you for inviting us. The purpose of this short presentation is twofold: first, we will look at the planning for the 2011 electoral events, the Scottish Parliament election and the referendum on voting systems for electing MPs, which will be held on 5 May; secondly, we want to reflect on the recommendations that the committee made in its report, published on 10 June 2008, on what was—and indeed still is—known as the Gould report. After the presentation, the four of us will answer any questions that the committee might have. At one point, I will hand over to one of my colleagues from Edinburgh to tell the committee about more coalface issues and challenges with regard to the administration of the election.

The committee's 2008 report focused on the 2007 local government elections—after all, you are the Local Government and Communities Committee—but the fact that there were combined elections led the committee to consider the Scottish Parliament elections. I felt that 12 of the committee's 17 recommendations were relevant to the Scottish Parliament elections while the other five, which were largely on adjudication of local government ballot papers and e-counting, related specifically to local government elections. As you know, we are not e-counting the Scottish Parliament election or the referendum in May. Those 12 recommendations have greatly informed the debate about the development of electoral administration over the past three years.

I grouped those 12 recommendations into eight larger recommendations and then came up with four types. Given that recommendations on the

establishment of a chief returning officer, consideration of the Northern Ireland model, giving the committee a scrutiny role and the involvement of equalities groups in the EMB have been taken into account—indeed, you have just had stage 2 of the Local Electoral Administration (Scotland) Bill—I will say no more about them. As you will be aware, the further engagement work that was recommended has been taken forward not only by us but by the committee, particularly in its seminar last year in which we were involved. All that work is going on in the background. Moreover, two other recommendations, on decoupling Scottish Parliament and local government elections and bringing forward the deadline for nominations for both sets of elections, are now set out in electoral law for the Scottish Parliament, which is a good thing.

I will not dwell too much on the various structural changes that have been made and the underlying foundations of electoral administration, which we have all been working on since 2007. However, as you will be aware, Ron Gould published his report in October 2007. We submitted a response to the report and then conducted what we termed an examination of the structures of electoral administration throughout the UK. Before that, however, we put together an initial report in which we concluded that the electoral administration process in the UK was at breaking point. Although our subsequent examination was UK-wide, we did a lot of work in Scotland, engaging with politicians, parties, administrators, Government departments and, most important, the voter.

In August 2008, just after the Local Government and Communities Committee published its report, we published a snappily entitled report, “Electoral administration in Scotland”, in which we recommended establishing an EMB.

The administrators, in a move that we suggested, established an interim electoral management board, which had Tom Aitchison, the then regional returning officer for the European Parliament election in Scotland, at its head as its elections convener, as we dubbed the post—he had a power of direction for the European elections anyway. We reported on that and said that it was a good idea. The Scotland Office and the Scottish Government endorsed the suggestion within hours of our report being published.

The Local Electoral Administration (Scotland) Bill introduces a statutory board and a statutory power of direction for an elections convener. The key points are the last two points on the slide entitled “Where is the EMB today?”, in that while that is the position in a statutory sense for local government, it is not yet the case for elections to the Scottish Parliament, the UK Parliament or the

European Parliament. Assuming that the Scotland Bill is passed in another place, to use the euphemism, it is suggested that this Parliament will be able to make the statutory provisions for the Scottish Parliament to give the EMB and its convener a power of direction. That still leaves the elections to the UK Parliament and the European Parliament, and the Electoral Commission would like that issue to be addressed in the future.

On the underlying foundations work that has been going on, Mr Gould famously said that we need to put the voter first. I think that we all thought that in 2007 and people certainly still think that that is the case, but they think about it a lot more than perhaps they did prior to 2007. The Electoral Commission produced a toolkit for its staff to try to ensure that every time they did something they thought about how it would impact on the voter—would it be a good thing or a bad thing? If it would be a bad thing, they should not do it.

Since 2007, performance standards for returning officers and electoral registration officers have been introduced for all parliamentary elections. Such standards have not been introduced for local government elections but I presume that, under the Local Electoral Administration (Scotland) Bill, they will be. We publish annual reports on performance standards and that has led to an improvement in the standard of performance of ROs and EROs. I think that it is fair to say that the standard of ROs and EROs in Scotland is slightly higher than in England—that is a statement of fact.

National oversight has become much more important in the light of the work of the EMB, even though that has happened in a voluntary way. Now that the EMB exists, it is invited to events such as this and, in October 2009, we produced “Making your mark: Design guidance for voter materials”, which is good practice guidance for the exciting matter of forms—to people like me, a ballot paper is a form. The Scotland Office and the Scottish Government have done work on various ballot papers, but national oversight is now more important, whether someone is at the kitchen table filling in their postal vote or in a polling booth. When a voter looks up in the polling booth on 5 May, they will see a poster that has been developed in accordance with the “Making your mark” guidance on good design practice. The poster will be colour coded and it will be in plain English, so it will help the voter to complete the ballot papers. Previously, if a voter looked up they were confronted with the legalese that was passed by institutions such as the Scottish Parliament, so the poster is much more voter friendly.

I move on to specific preparations for the election events on 5 May. All the legislation is in

place. Another thing that Gould produced was the six-month rule, which we all talk about. The legislation for the Scottish Parliament election did not quite make the six-month rule but, that said, it was well known what the conduct order included in it.

On 11 November, we analysed the development of the rules for the referendum, which will be combined with the election on 5 May. We indicated that we were content that clear rules existed, that strong planning arrangements, supported by Government, were in place—I can talk about the planning arrangement later—and that the combination rules were in the bill that went through the UK Parliament a couple of weeks ago. To clarify, all the returning officers in Scotland are also counting officers. There are two posts, but they are the same people. The count for and the administration of the referendum is done on the basis of Scottish Parliament constituencies; the EMB was keen to ensure that that was the case.

10:15

One of the key issues in the on-the-ground planning was to avoid the fragmentation—another word that became current in the debate on the Gould report. The electoral management board meets monthly. There is an elections and referendum steering group, which is called by the chief counting officer, who is the chair of the Electoral Commission. The group meets monthly. The elections convener of the EMB is the regional counting officer for Scotland, so there is a connection. That is how we bind together the two planning processes.

We asked all the counting officers and returning officers to produce their plans and risk registers to the chief counting officer by 28 January. We received them all on time. We analysed them, and the commission considers that none of the counting officers is in a high-risk situation. We have produced guidance and instructions, which I can go through later. The EMB will produce guidance later on the adjudications. There is lots of communication between everyone who is involved in the process. There are circulars and alerts from us, the chief counting officer sends a weekly e-mail to all the counting officers, and the EMB produces bulletins to inform its members directly. You will be grateful to hear that I have no intention of going through all that.

Those are some of our guidance and instruction modules, or the products as we call them. Throughout the UK, we have produced about 600 such items in the past few months. For example, there is the polling station poster that I talked about a minute ago. There is guidance on candidate returns for candidates and agents, and nomination forms. Those are on our website.

There are things that we will produce later, such as the verification and count protocol, which will come out after tomorrow's referendum in Wales about powers for the Welsh Assembly. We want to learn from the experience of Wales, which is why we are not producing the protocol until then. We will produce adjudication booklets and place mats, which you have probably seen lying about.

Alasdair Morgan (South of Scotland) (SNP): What is a place mat?

Andy O'Neill: Place mats are the large sheets, giving examples of doubtful and acceptable ballots. If you ask Alex Haswell, he will give you one.

Moving on to more planning issues, integrity matters. We have worked with the parties on revising the code of practice on postal votes. We have worked with the Association of Chief Police Officers in Scotland to ensure that the police are aware of the law surrounding elections. We have produced revised guidance for the police that is specific to the events in May. We have organised training events for the police, and the single points of contact for the police in all areas are in place. The police are working with counting officers and returning officers. About 60 international observers are registered on our list, and we will run briefings for them nearer the time. If you know of anyone who wants to observe the events in May in Scotland, all the information is on our website or you can direct them to me.

I hand over to colleagues to talk about planning challenges.

Sue Bruce (City of Edinburgh Council): Thanks, Andy. As you heard earlier, I am the returning officer for Edinburgh and the Lothians and I am a member of the electoral management board.

The planning challenges have dominated the thoughts of returning officers since before the 2007 election. Members should be reassured to know that the electoral management board not only has considered all the recommendations of the Gould report but has been a focus for activity to ensure that the challenges that all returning officers and support staff in Scotland face are collectively understood and are handled consistently throughout Scotland.

There will be different franchises in the forthcoming event in May: the UK Government dictates the rules for the referendum, and we are in local government territory for the Scottish parliamentary election. We will face a number of planning issues. Andy O'Neill talked about the voter having the best possible experience; but, while planning and administering the election, returning officers also provide a service to candidates and agents.

We have to consider access to polling stations. For a variety of reasons, some polling stations might have changed or their location might have varied. We must ensure that clear information goes out, so that voters know where they are going and can get there in time.

Most returning officers have experienced a significant increase in the number of postal votes to be handled. That increase can help when we get to the count, because postal votes will already have been physically verified and smoothed out; but those votes will add to the number of boxes that we have to count on the night. Another challenge arises because of the time between issuing postal votes and receiving them back. In among such challenges, we also have public holidays, the royal wedding and all the things that happen in normal life. We must ensure that our systems are up and running and we must work hand in glove with Royal Mail to ensure that postal votes get back to us. Returning officers check the numbers of postal votes coming back, and most returning officers do a sample check to ensure that people who applied for a postal vote got it. That helps us to keep on top of any postal votes that have not arrived, in case any duplicates have to be issued. That is monitored and managed.

Especially for this election, an important issue is the number of papers that electors will receive. At the planning stage, there has been considerable discussion with our printers—asking, for example, how much paper can be squeezed into one envelope, including instructions and return envelopes. We must ensure that voters have absolute clarity. As Andy O'Neill said, people might be completing the papers on their kitchen table, so we have to ensure that everything is as clear as possible when they open the envelope. All of those issues are in our minds.

The electoral management board lobbied successfully for Scottish parliamentary boundaries to be used for the referendum. That has been extremely helpful for us, because it gives some consistency for the voter as well as for those of us who are administering the vote.

The size of this election is a challenge for us all. One challenge has been in finding enough staff and information assistants. We also need enough people for the count, and so on and so forth. We very much want to avoid people queueing and being closed out. In some cases in England last year, voters were very unhappy at being unable to exercise their franchise, even though they had turned up before their polling place had closed. We need to manage the numbers and ensure that there are enough polling places, and enough polling stations within those polling places, to allow every voter who turns up the opportunity to cast their vote. We have therefore kept our numbers at

a manageable level. Chris Highcock will confirm this, but I think that 800 is the maximum number that we would have at any polling place in Edinburgh, for example.

Chris Highcock (Interim Electoral Management Board): Yes, in Edinburgh that is the case.

Sue Bruce: We do not want to create conditions in which people are kept queueing for an inordinate amount of time. If people take the trouble to turn up and vote—as they should do—we must ensure that their experience is as smooth and painless as possible.

I have mentioned postal voting, the three ballot papers and the increased volume—not only of paper in the envelope but of overall postal voting. We expect that 25 per cent of the votes that we will be counting will have come in via postal vote. The good thing about postal voting is that it gives a degree of certainty to the elector, but it means that we have to be absolutely on the ball in receiving those ballot papers back.

Of course, we will issue information across all returning officer areas on the dates, the times and the venues for postal vote opening. As you know, there will be room for observers to come along and watch that process, to see not only the volume, but that postal votes are managed to their satisfaction and that the process is open, transparent and secure.

Some areas of our work are outsourced. For the past few elections, the printing and the filling of envelopes have been outsourced and, in some cases, the management of postal votes has been, too. The key thing to emphasise is that, as returning officers, although we might outsource the activity, we do not outsource the accountability. We remain accountable for those activities and for ensuring that the correct processes are observed, and we have people to keep track of any processes that take place outwith our direct control. Clearly, we are accountable for the outcomes. We also carry out absent voter identifier—AVI—checking to ensure that we have all the appropriate information and to check that if someone has registered as an absent voter, they do not turn up and try to cast another vote.

The timing of counts is always an interesting issue that is on the surface of our considerations. Post-Gould, returning officers have come out and said quite clearly that they think that daytime counts are a sensible thing. However—there is always a “however” in a debate like this—we know that there is a degree of urgency, given that people are waiting to find out whether they have been re-elected. We respect the fact that there is excitement during the night about how the process is going.

The directions from the chief counting officer for the AV referendum, Jenny Watson, who is based in London, have impacted on the degree of latitude that returning officers in Scotland have. She has decided that verification must take place by 1 pm on the Friday and that the referendum count must start at 4 pm precisely. Therefore, although, as a returning officer for Edinburgh and the Lothians constituencies, my preference in a clinical sense would be to count the next day, we will be counting overnight because we cannot risk having recounts or any delays that would impact on the start of the referendum count, which would lead to an interruption in the Holyrood count. We want the Holyrood count to be cleared completely before we start on the referendum count at 4 pm.

There are mixed views on that across Scotland. Those of us with large constituencies have more risks to manage during the course of the count. Some of our colleagues take in boxes from islands and other much more remote and distributed areas. There is a real logistical risk that they will start the count but will not get all the boxes in and so will not be able to complete it in time to start the referendum count at 4 pm on the Friday. Having said that, the chief counting officer has instructed that all three elections must be fully checked out simultaneously at the beginning of the count evening, so we cannot just do the Holyrood boxes; we will have to do the referendum boxes as well. We will not be able just to do a run-through to check that the right papers are in them; we will have to properly verify them and do the first rush past them.

That will put pressure on us. I anticipate that in Edinburgh and the Lothians, it could be—I do not know; when do you reckon that we will have concluded that first part, Chris?

Chris Highcock: It will be 5 or 6 in the morning, at least.

10:30

Sue Bruce: We and, I am sure, other colleague returning officers will try to get as much information and as many briefings as possible out to candidates and agents in advance to give a detailed breakdown of the tasks that we have to go through before we can get to the count per se, because you will want to know how to manage your night as well. We also have broadcast organisations and so on to keep posted. The scenario that we face this time round is much more complex even than the one that we faced in 2007 because of the direction by the chief counting officer, which will affect not just the referendum count, but the Scottish Parliament election count. I am not sure how widely people are tuned into that particular point, but that is the

instruction that we have been given, so we will have to deliver on it.

Because of that, there is considerable pressure on venues. We will have to move out to Ingliston for our count centre, because it is the only site in our constituency area that is big enough to enable us to do the simultaneous counts all at once, and to do that we will need to bring in 850 counting staff, which is a significant number, plus all the other ancillary staff that will be required for the event. There is a practical issue about people being reliable and turning up. If you are running a count during the night, you need to do sufficient contingency planning to cover the possibility that people might not turn up. A pressure on all returning officers at this time is to have a big enough venue and sufficient staff to cover all the tasks that we have to do. I have mentioned absent voter identifier checking.

Finally, the decision on the night-time/daytime issue is one for the returning officer, but we take account of all the pressures that are on all the parties—with a small P—in looking at what we have to manage during the course of the night.

Planning has been going on constantly since the Gould report. Prior to the Gould report and the establishment of the EMB there was a Society of Local Authority Chief Executives and Senior Managers elections portfolio group, which was in permanent session in the run-up to the 2007 election. As you know, that has now developed into the now-endorsed EMB.

We have collectively been working out the practicalities so that all returning officers in Scotland, whether they are experienced or new, have a support network around them that enables them to get information, ask questions, test out ideas and so on. The EMB will continue with that role, working jointly with the Electoral Commission, which clearly has a scrutiny role as far as returning officers are concerned. That will continue.

The chief counting officer came up last week to meet all the returning officers and all their representatives. The summary of her visit was that she felt reassured about the degree of planning that had gone into the preparations for the May election and the referendum in Scotland. I now hand back to Andy O'Neill.

Andy O'Neill: I will quickly take the committee through the public awareness activities that will be undertaken in the weeks leading up to 5 May. Various pieces of legislation allow returning officers, electoral registration officers and us to undertake public awareness activities—the latest being the Parliamentary Voting System and Constituencies Act 2011, which gives us the power to undertake public awareness work in relation to the referendum. More important is the

last bullet point on the slide that you are now seeing, which refers to the public awareness network, which is something that we set up and which the EMB is now taking forward with our support. In essence, it is a network of all the communication officers in councils and the EROs to ensure that we can get the biggest bang for our buck from the money that we spend on public awareness. It is fair to say that Scotland is leading the way on this, with colleagues elsewhere in the UK developing such structures.

The objectives and target audience for the public awareness campaign in the next 10 weeks are slightly different from those of the traditional Electoral Commission campaigns. The campaign is much less focused purely on registration and also targets all eligible voters. It seeks to ensure that all eligible voters are aware that the elections and referendum are taking place and to increase the number of people who feel that they can cast their vote with confidence, whether they are at their kitchen table or in the polling place. That is the underlying theory behind the campaign.

The campaign is based around a booklet. We seek to ensure that people are aware that the booklet is coming and read it. There will be a door drop to 26 million households in the UK, about 2.4 million of which are households in Scotland.

There are four versions of the booklet, as obviously there are different sets of elections taking place throughout the UK. In Scotland—and today we are only interested in Scotland—the first part of the booklet talks about the Scottish parliamentary elections: what the Parliament does and how to fill in the ballot papers. The second part talks about the referendum: what the question is about and how to fill in the ballot paper. The back end of the booklet is about how to register for a vote, how to get a postal vote and how to do a proxy vote—that sort of stuff.

If members want to look at it, the draft wording for the booklet is on our website and has been for some time. It has been user tested and is in plain English. It has also been tested by academics to ensure that when the booklet talks about first past the post, the alternative vote and suchlike, we have got it right. As the slide you see now says, the booklet will be landing between 4 and 16 April.

There are two phases in the campaign. The first is from 1 to 15 April and is supported by television, radio and online advertising. It tells people that the booklet is coming and to look out for it. The second phase, from 25 April to election day, reminds people that the booklet is out and tells them that if they have not received it, they should go to our website or contact us and we will send them one.

There will be a TV advert. It is still being made, so we cannot show you it today, but it will start with a flock of birds heading towards a conurbation—I suppose that that is the best way of describing it. As we get nearer the town, we realise that the flock of birds are actually booklets, which finish up going into people's letterboxes. That is why there are birds on the current slide; they are nothing to do with Hitchcock. I am sure that it will work.

The campaign is supported by our aboutmyvote website. We have a call centre and Electoral Commission staff will take the more complicated questions that we often get and which call centre staff cannot answer. We will also support the campaign through media work. We will do that work around major milestones, such as when the booklet and reminders come out, registration dates and polling day. We will supply images to the press if they need them. We are undertaking media briefings: we have a collective one next Tuesday and we will then do them as and when journalists need them to explain everything.

We will obviously evaluate the campaign. We will do tracking research and a booklet audit, which is a mechanism of ensuring that it actually goes out. We will also seek to ascertain call centre and website statistics to evaluate the process.

We are also seeking to work with various stakeholders, not least the electoral administrators, charities working with young people, older people and disabled people, and student unions. Some of our likely partners are Shelter, the National Union of Students, Action for Children, the Scottish Youth Parliament and the Scottish Commission for the Regulation of Care. We will work with all those organisations in the coming weeks to try to get the message across.

We will supply stakeholder materials, such as posters and adverts that people can put in local and council press, as well as templates for press releases, which are useful for electoral registration officers and returning officers so that we get a consistent message across the whole of Scotland, which is particularly important as we are dealing with the Scottish Parliament elections and a referendum together. We will also supply frequently asked questions to councils' EROs so that consistent answers are given to queries.

You will be pleased to know that that is it for the presentation. We will be happy to answer questions.

The Convener: Thank you. Alasdair Morgan has our first question.

Alasdair Morgan: I will ask about postal ballots. Am I right in thinking that last year's Westminster elections were the first in which the signature and date of birth were checked?

John McCormick: The first UK parliamentary elections.

Andy O'Neill: The first time that we checked AVIs in Scotland was in 2009 for the European Parliament election.

Alasdair Morgan: So last year was the first substantial election involving such a number of voters in which we used the system. What was the rate of rejection of those votes because either the signature or date of birth did not match?

Chris Highcock: The rate varied across the country, but on average it was about 3 to 4 per cent. In Edinburgh, the rate was about 3.5 per cent.

Alasdair Morgan: Is that figure publicised at all?

Chris Highcock: It is reported to the Electoral Commission.

John McCormick: It is in our report.

Alasdair Morgan: There was a great brouhaha at the last election about the rate of spoiled ballot papers. I know that we are not talking about spoiled papers, but the issue is beginning to be of the same magnitude. You are saying that the vote of 3 to 4 per cent of people never gets near to being looked at. Those people think that they have voted, but it is not counted because they have given the wrong date of birth—I am surprised to find that—or their signature does not match the one that they gave on application. Three to 4 per cent is an astonishingly high figure. Is there not huge concern about that?

John McCormick: One important issue is that the law on checking postal votes gives returning officers no discretion. Returning officers reported that concern to us; it is in our report on the last UK election.

I have watched returning officers verifying postal ballots and it can be pretty clear to everyone in the room, watching them, that in some instances, although someone has filled in the form incorrectly, they have registered their vote. For example, someone might have put the day's date as their date of birth, put the date in the wrong place or have signed their partner's form before putting both forms in an envelope. Technically, however, the vote cannot be registered. That is of great concern to a number of returning officers. They want to be able to exercise discretion and say, "The intention here is clear."

Generally, returning officers can do that. I referred earlier to the place mats, and the rule is that the intention must be clear and unambiguous. However, for postal ballots, I have watched returning officers say, "The intention is clear in this case, but the law does not entitle me to accept the

vote." The issue is a live one. I think that Sue Bruce has been in that position.

Sue Bruce: Yes, indeed. It is exactly as John McCormick said. I can think of a number of occasions on which it was clear that the signature matched the one that was recorded previously, but it was in the wrong place or it was given on the husband's form. As John McCormick said, returning officers have absolutely no discretion within the law on the matter; we have to go by the letter of the law. I think that the EMB wants to see some room for manoeuvre there.

Chris Highcock: The Electoral Commission has done a lot of work on the design of the postal vote statement for these elections to ensure that, as far as possible, the form makes it clear what the elector has to say where they have to say it. More plain English has been used to make it a lot clearer how the form is to be completed. For example, the date of birth has the first two digits of the year filled in as "19". One common mistake is for someone to put the day's date as their date of birth. Putting in the "19" emphasises that the elector has to enter their date of birth not the day's date.

It is in our interest to operate in the interest of the voter. We do whatever we can, even at the postal voting stage, to find out what the voter's intention is. We are not trying to exclude anyone's vote intentionally. However, we have to operate within the law.

Alasdair Morgan: Those 3 to 4 per cent of people go on blithely not knowing that their ballot did not get to the counting stage, which is somewhat different from someone spoiling their paper. The person has cast their vote in good faith, but it never gets near the count and the person never finds that out. I assume that they could repeat the same mistake the next time.

Sue Bruce: The advice that is being given is being clarified. Every time that there is an election, we look with the Electoral Commission at ways of improving advice and clarification. We have a discussion with the commission and through the EMB on regular occurrences that we spot that prevent ballot papers from being accepted to see whether the advice to electors can clarify the point. It might be worthwhile trying to get a requirement for two out of three matches into law. One thing that is of increasing importance to Scotland, given our demography, is the degeneration in an older person's signature. Over time, the signature might not match the original and the ballot paper cannot therefore be let through. We could look for matches in handwriting styles, for example. In some of these circumstances, it would help if papers could go through with two out of three matches.

Alasdair Morgan: However, as it stands, you cannot say with any confidence that the rejection rate at the coming election will not be 3 to 4 per cent.

John McCormick: As Chris Highcock said, we have done everything that we can within the law to try to build on the lessons of the last election. Where we have seen people make genuine mistakes, we have tried to correct that in our materials. "Making your mark: Design guidance for voter materials", which Andy O'Neill mentioned, was a massive piece of work. It applies to all elector-facing materials, as we call them in the jargon: the ballot papers, the notices on entering the election place that tell people how to vote and the postal vote materials. However, you are right that one issue is that the law is fixed and the returning officer must operate within the law in rejecting a vote if it does not fulfil the criteria. As Chris Highcock said, we hope to have addressed some of the issues in the materials.

10:45

Chris Highcock: In our briefings to candidates and agents to prepare them for the elections, we stress that it is in the interests of everyone for them to say to people who have a postal vote that it is important to ensure that the signature that they provide on the postal vote statement matches the signature that they provided when they applied for a postal vote and that they put their date of birth on the statement. We are all involved in the election; it is an issue not only for the administrators but for candidates and agents. We look to you to help and support electors as much as we do.

Alasdair Morgan: It is almost, but not quite, getting to the stage, I feel, of instead of encouraging people to get postal votes, encouraging them not to get postal votes, because if they go to the polling station they are more likely at least to cast a ballot paper. Do you have in mind a target figure for the rejection rate at this election?

John McCormick: We would not set such a target; we just want to reduce the rejection rate.

The Convener: Another way of asking the question is to ask whether, if you had additional discretion on top of the changes that have been made, you would expect the figure of 3 or 4 per cent for rejected postal ballots to reduce. Set to one side the design of the paper: if you had additional discretion, what would you expect the figure to be?

Andy O'Neill: It is impossible to tell. We observe AVI checking when the returning officers and their staff undertake it and we see that a lot of people who were born in the 1900s and 1910s

have put down the wrong date of birth. The matter is one of electoral law, because returning officers work within the current law. I assume that if the law were changed to give returning officers discretion, we would see a reduction in the number of votes that are not allowed into the count. However, the legislation on AVI checking is there to protect postal voting. If I were a postal vote fraudster and the law was changed, I might fake an age of 80 or 90 rather than 39 or 49 or whatever. It is a very difficult balancing act. When AVI was introduced in England, we raised these issues with the UK Government department that was then responsible for the issue and after every election we keep pressing for matters to be taken forward but, as yet, they have not been.

Sue Bruce: The case that springs to my mind as being slightly clearer is where a voter has put their date of birth on the today's date line and today's date in the date of birth box, which is a clear mistake. We can see that it is a clear mistake and that the details match up, but the law does not allow us to allow the vote.

The Convener: I get that point. As practitioners, you know that there is a significant issue, because you see it at every election, but there is no discretion. I hope that the ballot paper will assist.

Jim Tolson (Dunfermline West) (LD): I will follow up Alasdair Morgan's questions about postal voting. In his response, Andy O'Neill touched on electoral fraud, which is the issue that I want to raise.

There was no mention in your presentation of electoral fraud and I seek reassurance that Scotland has learned lessons from England, where it was a more significant problem. Beyond what you said to Alasdair Morgan, can you reassure us that, as far as is practicable, actions have been taken to prevent electoral fraud, in particular through the postal ballot?

Ms Bruce said that potentially 25 per cent of votes could be postal votes, which is a significant number in any area. What sample testing is being done to ensure, given that what suits one person might not always suit another, that both the postal voting process and, in particular, all the information that you have outlined will go into the envelopes, is clear and concise for everyone?

Chris Highcock: Every single postal vote that is returned to a returning officer in Scotland has the identity of the voter verified. Every single postal vote that comes back is accompanied by a postal vote statement, which states, "I am the person to whom this postal vote was sent." The elector signs it and puts their date of birth on it. There is 100 per cent postal vote checking. By law, I think that it needs to be only 25 per cent—

Andy O'Neill: It is 20 per cent.

Chris Highcock: Sorry, 20 per cent. However, in Scotland, since the approach was introduced in 2009 for the European elections, the practice has been to check every postal vote. It is not about sampling; the complete set of votes that come back is checked. That has been directed for the referendum this year, too.

Andy O'Neill: All postal votes in Scotland will have the AVIs checked.

You asked about information for voters on how to fill in the ballot paper and so on. The postal voting quick start guide gives information in diagrammatical form so that people can fill in the three ballot papers. There is a direction that that guide should be the same throughout Scotland or, if it is not the same, it must achieve the same objectives. Printers use different make-ups of ballot packs, so we cannot get total uniformity.

On the issue to do with integrity, members must remember that we have been working with ACPOS and that returning officers and their staff are keen to work with the police to ensure that everyone is aware of the potential for electoral fraud. People are working together. We have promulgated the code of practice on postal voting with the parties, which have all signed up to it.

The incidence of electoral fraud in Scotland is very small, but we are not complacent. Much work is being done behind the scenes to ensure that people are prepared.

Jim Tolson: Part of the security issue is to do with the printing. I assume that you will not have an electoral registration officer or indeed a police officer standing at the printers while all the noisy machines are printing out ballot papers. From my experience over the years, I know that machines sometimes jam and other things can go wrong, which can mean that there is an issue to do with where all the ballot papers have gone or that there is a vague possibility that the papers have been reproduced but not delivered through the proper channels. What assurances can you give us in regard to that?

Andy O'Neill: As Sue Bruce said, she outsources the printing of the postal votes but she does not outsource the responsibility. One of the recommendations of the chief counting officer is that every returning officer and counting officer has a member of staff in the printing place when the postal packs are being printed, for security reasons and to ensure that what goes out is correct. I can give you that assurance.

Jim Tolson: That was helpful.

Sue Bruce: That is right. We will have staff on site at the printers, checking the probity and integrity of the process and checking the quality of the product. They check for correctness and they

do sampling of postal vote packs as they are assembled. It is an interesting exercise for people to do periodically. We make sure that people are there for every stage of the process, because the accountability rests with the returning officer.

Chris Highcock: We are passing the details of 60,000 postal voters to a printer. Part of the contract that we have is to do with information security, so there are assurances in the contract in that regard. Printers get the data, and when they have been used they are destroyed. We check that, as part of the contract.

Jim Tolson: On a separate issue, Ms Bruce talked about the checks that will take place when the ballot boxes come in after the count for the Scottish Parliament elections and the referendum, on the night of Thursday 5 May and into the early hours of the next day. Are you suggesting that because of all the checks and verification that must be done, the actual count for the Scottish election will not begin until 5 am on the Friday morning?

Sue Bruce: Yes. As I said, the instructions from the chief counting officer do not allow us just to check boxes for the right colour of paper; we must do a more detailed check on all three boxes concurrently. We have to get the boxes in—for Edinburgh, that is a sizeable number of boxes. Once the check is completed we can move on to the Scottish parliamentary count. That is why we think that the Scottish parliamentary count per se will start much later into the early morning.

Jim Tolson: You have not set a definite time for that. The count will start as required.

Sue Bruce: Yes.

Andy O'Neill: It is fair to say that the timing of counts will vary throughout Scotland. In Clackmannanshire the volume of votes will be different from the volume of votes in Edinburgh, so I guess that if things go smoothly Clackmannanshire will do the second-stage count much quicker than Edinburgh will do it.

Sue Bruce was talking about the rummage: in the 1999 and 2003 elections we just sorted the ballot papers into colours. Although the chief counting officer has instructed people to do a full verification, it must be done anyway because it is the law. Although there is an instruction, it is primarily the law and must be done.

Bob Doris (Glasgow) (SNP): I will ask briefly about postal votes again. Clearly, you all want some discretion in dealing with, for example, voters putting the date of birth in the wrong place or signing each other's papers, but that is governed by electoral law. It is a given that you—returning officers and the Electoral Commission—would all like changes made. Should

recommendations for electoral reform come from the electoral management board for Scotland in partnership with the Electoral Commission and be made to where the power lies, which is with the United Kingdom Government? Recommendations could not go to the Scottish Government. What would you like the process to be? We would like to know, so that as a committee we can be clear about how to take the issue forward.

Andy O'Neill: The Electoral Commission is responsible for reporting both on the referendum and on the Scottish Parliament elections, and we will do those things separately. Obviously, we will seek people's views on the administration of the election and we would expect the EMB to give us its views on that. I confidently expect that there will be views on AVI checking. It would then be for us and others, if they so wished, to make recommendations to the UK Government. There are some devolved issues for postal voting, but it is mainly a reserved matter. We would, therefore, make recommendations to the UK Government, as we have done in the past. However, this committee can also make recommendations on the issue.

Bob Doris: The EMB may have a specific view on what discretion it would like, so its voice should clearly be heard. Perhaps that is something that we could explore.

John McCormick: The different bodies that represent the returning officers and the local authority chief executives can make representations, too. The first important step will be to see, when we report on this year's elections, whether the improvements that have been made to the printed materials have had an effect and whether people's greater experience of filling in postal vote forms has had an effect. When you have done it once or twice before, you may feel more confident about it the third time and make fewer mistakes. It will be important to reduce the number of spoiled ballot papers. That will be the benchmark for everybody who has an interest in this and would hope to make representations about it.

Bob Doris: My next question is about voter understanding of both elections being on the same date. I offer a slight apology to the panel because, during the presentation, I had a wry smile on my face when I heard that a booklet will appear through people's doors in April and that that will deal with understanding the elections. That is not a criticism of the commission, because you must deal with the challenges that are put in front of you by the UK Government. You will put a booklet through people's doors and a television broadcast with some birds has yet to be established. Will we cut it at all in terms of comprehension of what people are voting for in the AV referendum and, by

contrast, the Scottish Parliament responsibilities? Will we even get close to it?

John McCormick: We are doing our best. If you have a spare minute, I recommend that you look at the Electoral Commission websites for the reports that we did on the questions that were suggested for the Welsh referendum this week and for the AV referendum in May. Those were taken out and user-tested with focus groups and people from the Plain English Campaign before being finalised. The reports have some of the most interesting stuff that I have read in the Electoral Commission, because they describe voters' misunderstandings of concepts that we take for granted. For example, in the focus groups in Wales there was a deep misunderstanding of the meaning of the word devolution. Terms that we take for granted were then taken out of the question, so that the resulting question in the Welsh referendum this week is quite different from the one that was proposed.

That is the kind of background research that has informed the booklets. The referendum involves difficult concepts, and we know from previous elections that some people find it difficult to understand the two ballot papers in the Scottish election. We have done our best and we hope that people will look at the booklet that will go into every household that has voters in it. We can do no more than give the information in the clearest form possible. We hope that the campaign will help people to understand that there is both a Scottish Parliament election and a referendum and what to do in each of them. We have done our best graphically and in the level of language for the booklet, and we hope to make it attractive to people. That is as much as we can do.

11:00

Andy O'Neill: Birds aside, this is not just about a television ad, a radio ad and a booklet; it is about giving people information when they need it. The key thing is to get the booklet, understand the question and understand how to fill in the ballot paper. However, people will be filling in the papers on their kitchen table, so the pack on the postal vote has a making-your-mark-proofed set of instructions explaining how to fill in the ballot paper and how to put the ballot paper into the A, and the A into the B, and all the rest of it.

When people are in the polling booth and they look up, they will see a user-friendly poster. It will not contain legalese about how to fill in the paper; instead, it will contain a graphical representation. There will not just be a TV ad; there will be a complete picture, including, for example, FAQs. Poll clerks and presiding officers across Scotland must be able to give the same answers—and the right answers—on how to fill in ballot papers.

When all those different things are mashed together, I hope that they will ensure that we can deliver a successful election.

Chris Highcock: We have to look beyond the referendum, because the normal public awareness campaign associated with Scottish parliamentary elections will be going on at the same time. Electoral registration officers will be ensuring that people have their name on the electoral register and returning officers will be promoting participation, ensuring that people get out and vote. Also, we would hope that the campaigns on the referendum and the campaigns by the parliamentary candidates and their agents will ensure that people know that the elections are on and know how to participate.

Bob Doris: The booklet will be fighting with dozens of other leaflets and election literature that will be appearing at the same time.

You have been talking about the process of the accurate completion of a ballot paper, but that is a very different matter from people's comprehension of why they are voting. Is there a balance to be struck? The more you focus on the AV referendum, the less attention the Scottish parliamentary elections will get. When the booklets go through doors in England, they will not have to talk about a parliamentary election but will be able to focus on the AV referendum. Does the Electoral Commission, or the electoral management board, have to bear it in mind that giving too much information on the AV referendum might take away from a far more important election—the Scottish parliamentary election?

John McCormick: Right from the beginning, the commission established that the elections to the Scottish Parliament and to the assemblies in Northern Ireland and Wales were the primary elections. When people here receive the booklet, the first information and instructions that they read will be about the Scottish Parliament election. Because it is a one-off, the referendum is secondary in the booklet. For the same reason, the count for the referendum will come second, after the count for the parliamentary and assembly elections.

From previous research and reports, we know that people have become more confident, through experience, in understanding the voting for the Scottish Parliament. However, space will have to be devoted to explaining how people will register their vote in the referendum, because it is a unique event.

As my colleagues have said, the booklet is one permanent thing that people will refer to at home. We cannot instruct them to read it, but it is part of wider campaigns that will take place at both local and national levels. As well as relying on the

campaigners, the agents and the candidates, we will be relying on the broadcasters, the journalists and all the usual outlets to help us to get the message across that there are two events. What we are doing is rooted in a lot of experience, gained over the past few elections, of what makes an impact.

Bob Doris: I thank the commission and the management board for their hard work on these issues, but I have my doubts. It is ironic that the UK Government is now treating the electorate as an afterthought—the very thing that you all wanted to avoid. However, thank you for your hard work.

John Wilson (Central Scotland) (SNP): I will not make the same comments as Bob Doris, but I wanted to follow up on the booklet and ask when it will go out in relation to when the postal ballot papers will go out. I am looking at the timetable that Andy O'Neill presented. The first phase, when people are to look out for the booklet, is from 1 to 15 April and there will be a follow-up phase from 25 April to 5 May. Can you confirm when you expect ballot papers to start going out? The booklet will be important in describing how to vote, so receiving it will be more important for those who have applied for and wish to use a postal vote rather than go to the polling station, where other information will be available if the voter has not received a booklet.

Andy O'Neill: Postal votes will go out from 18 April. The presentation referred to the first phase and to the booklets going out between 1 and 15 April, but they will actually go out in the first half of that two-week period. The contract is constructed with Royal Mail so that although we give them two weeks to complete everything, the target is to do it in the first week. In theory, everyone will have the booklet in their household before they receive their postal vote.

John Wilson: Like everything else, that sounds good in theory, but the issue is whether it is delivered in practice. My concern is that I know people who, when they get their postal ballot papers, fill them in straight away and send them off. The issue is whether they have the booklet in front of them before they complete their ballot papers.

Andy O'Neill: I mentioned earlier that we will do a booklet audit, whereby we will carry out checks in various parts of the country to ensure that the booklet has gone out.

John Wilson: A number of colleagues have raised the issue of some of the vagaries around the postal ballot process and how you do the verification. Can you remind me and the rest of the committee how the information is gathered in the first place with regard to the verification of requested postal ballots?

Chris Highcock: When someone applies for a postal ballot, they fill in a postal vote application form, which has their elector details on it, a box in which they give a sample of their signature and a set of boxes in which they fill out their date of birth. The postal ballot application form is scanned electronically and held by the electoral registration officer. When the postal vote statement accompanying the ballot comes back, it is scanned electronically and the signature on the statement is compared with the signature on the application form.

Computer programmes check the two signatures and the dates of birth to ensure that they match. If they do not match, the application is thrown up and we look at it by eye and check it physically, because sometimes the computer will throw one up when it is obvious that it is the right signature.

Nothing is rejected without a depute returning officer or returning officer looking at the two signatures to ensure that we are satisfied that there is a problem. That is how the system works. It is an electronic process, which is based on the signature recognition software that banks use to check signatures on cheques.

John Wilson: Thank you for that explanation. The issue was raised of the deterioration of someone's signature over time or due to an illness. Given that the postal ballot application process has been in place for some time now and that the information that is required—date of birth and signature—may have been logged in a computer for a considerable period, will any attempts be made to follow the matter up and get voters to update their signature? They should not update their date of birth, right enough, but they should update their signature to ensure that you have an accurate reflection of what it looks like.

Chris Highcock: The electoral registration officers will undertake an additional sweep and refresh their records of signatures. I am not sure what the exact situation is, but I think that they are required by law to refresh their application forms every five years. I hope that such a process will take account of the deterioration of the signatures of the elderly or those who have certain diseases.

John Wilson: It was indicated that 3 to 4 per cent of postal ballot papers are rejected for the various reasons that have been outlined by the panel. Would the panel like to speculate on how many of those rejected ballot papers could be down to electoral fraud?

John McCormick: We are not aware of any electoral fraud in Scotland. We could not answer that question and we would not speculate on it either.

John Wilson: That is fine.

The Convener: I will follow on from John Wilson's original question and raise an issue that Alasdair Morgan mentioned previously. The group of people who we are probably discussing value their vote very much. Do not those people have the right to know that their vote has not been cast? Should not they be aware of either the mistake that they made or the possible need to update their signature? It occurs to me that, as we put the voter first and make that political point, people who value their vote should be aware that their vote has not been cast for a particular reason, in order to put right the mistake. We should raise the issue with them and, we hope, ensure that in the future they are more careful with their vote or update their signature.

Andy O'Neill: You make a valid point; I agree with you.

We have made recommendations about refreshing AVI checks after electoral events. Currently, we have to revise them every five years. Some electoral registration officers throughout the UK, when they have an instance of people using a signature that they think has deteriorated or when someone has simply put the wrong date of birth, write to the people concerned to ask for a new AVI. There is a question about the funding of that because it involves a not inconsiderable amount of money, especially in the current financial situation. That issue has been put to Government, but I am not aware that there has been any response, as yet.

Sue Bruce: I am not aware of a response, either. The practicalities of the matter need to be thought out in detail. We have somewhere in the region of 320,000 voters, 25 per cent of whom could be postal voters, so there is a sizeable job to be done. Your point is right, convener—we should try to get the information back to voters so that if there is a persistent issue with their not filling in forms correctly they get the opportunity to correct it. That is something that we should continue to look at.

Alasdair Morgan: I want to check something. If you come across a case in which the dates are in the wrong place, is there anything in law to prevent you from getting in touch with the elector to tell them that they have filled in the form wrongly and ask them to give you the correct form? Are you allowed to do that?

Andy O'Neill: I do not know the answer. I would have to read the legislation and get back to you—I can send you the answer.

Alasdair Morgan: At that stage, the secrecy of the ballot is not impaired because the envelope has not been opened. It is simply the AVI form that is being looked at. I realise that there are logistical issues, but if a returning officer were willing to

contact a voter, could he do that? If you find out that he could, will you suggest to the returning officers that, within the constraints of their operation, they do that?

Chris Highcock: We can check the legislation, but the volumes that we deal with, in large cities in particular, might make it difficult to achieve. We also have to consider the purpose of the legislation, which is about protecting the integrity of the vote and preventing fraud.

Alasdair Morgan: If the volumes of rejections are so high that getting back to people constitutes a problem, that is a problem itself. Is that not right?

John McCormick: The point that Mr Morgan makes underlines the fact that the important thing is that people can cast their vote with the trust and confidence that it will be registered. We should do anything we can in that line. It is an interesting point. We will check it out and come back to Mr Morgan.

Andy O'Neill: On putting the voter first, it is a good idea. It is easier to achieve on 20 April than it is if the envelope is handed in to the polling place on the day of the election, but that is an obvious thing to say.

Chris Highcock: The situation is black and white in terms of the law, but there is a degree of discretion. In preparation for the Westminster elections last year and the European elections the year before, the electoral management board issued guidance on the adjudication of postal vote statements. One point related to what happened if people transpose the date and month in the date of birth. We said that such a form would be allowable if it is obvious that, for example, someone was born on 7 June rather than 6 July, or vice versa. If we could work out that the date of birth was right and the numbers were just back to front, we would not reject it on that basis. Therefore, we have exercised a degree of latitude.

Mary Mulligan (Linlithgow) (Lab): I have a brief question. I think that it was Ms Bruce who referred to the need to increase the numbers of polling and counting staff if we are to address the issues that have arisen. Is there any indication that there would be challenges in recruiting additional numbers, or do you see that as being fairly easy to achieve?

11:15

Sue Bruce: We have been taking steps to spread the word that we are recruiting. As a council, we would go to our own staff first, but if we are asking staff to stop doing what they do in their day jobs to come and be count staff and work all night, they will not be available for work the next day. We have to have due regard for

business continuity for other council services. At least if we use our own staff, there is a degree of dependency in that I can require my directors to release staff, for example, to contribute to the process.

In addition, we are in contact with other public sector partners, saying that there is an opportunity for people to contribute to the democratic process by serving as election staff, for which they will get paid the appropriate rate. It is then up to that organisation to determine whether it will give people time off the next day or let people take a flexi day, a holiday or whatever. We are also talking to some of the bigger private corporations in Edinburgh, particularly in the finance sector, to see whether they are willing. Apart from the practicalities, we are having a conversation about civic duty. We are asking big businesses whether they would like to exercise more corporate social responsibility by enabling their staff to volunteer to come and to do a short paid job.

We are taking a belt-and-braces approach this time because I do not want to find myself at Ingliston at 4 o'clock in the morning without enough staff. That is the wrong place to be. That is why I started talking about the risk of an overnight count. Because of the increased number of activities and the more detailed legislation, there is less room for manoeuvre and the number of risks that we are managing is significantly higher than it was, say, 10 years ago. We are going to err on the side of caution to try and get the right number of staff.

Mary Mulligan: That is helpful. Are all returning officers using the same practice and going through that process at the moment?

Sue Bruce: Yes. Each returning officer will be responsible and accountable for their own project plan for delivery of the election. Most returning officers will be using a similar series of steps and drawing on council staff first, then bank staff and other public agency staff to try to get a degree of consistency. In the training in the run-up to the election, we make sure that we mix experienced election staff—whether they be presiding officers and polling clerks or people in the count teams—with new people, so that there is some security in the teams that we set up. We give people enough opportunities to express any concerns that they might have because we do not want last-minute cold feet and people not to turn up. We demonstrate that there is a support network for election staff as well.

Patricia Ferguson (Glasgow Maryhill) (Lab): Ms Bruce earlier outlined the steps and the hurdles that she and her staff will face on polling day, polling night and the next day. Have you had any feedback from other returning officers about whether they are going to be able to meet the

challenge of the various timelines? I am particularly thinking of island communities, where the ballot is normally counted pretty late anyway, without the added complication of the AV referendum.

Sue Bruce: The challenges for places such as the Highlands and Islands are much more significant than they are for the urban constituencies. We can get the ballot boxes back within a reasonable time after the polls close. The debate has to be continued. Some returning officers are still working on the fine details of the precise timing of their activities. The thing that pins us all down is the requirement to start the referendum count by 4 pm on the Friday. That is where the difficulty lies, especially for someone who has the boxes coming in late and who cannot do concurrent checking of ballot boxes. I do not know whether Andy O'Neill has had alternative discussions.

John McCormick: The Electoral Commission's priority from the outset has been the importance of the Scottish Parliament elections. We did a widespread consultation across the UK and throughout Scotland about the timing of the beginning of the referendum count. The order was based on that consultation—according to the law, there has to be an order to form the legal basis for the referendum—and it says that the count should begin at 4 o'clock. That is based on the advice that we received that the expectation is that most people, if not everyone, will have completed the Scottish Parliament process by 4 o'clock. If there is an issue with the count in a particular area, the returning officer can comply with the order to begin the referendum count by applying one, two or a table of people to begin that count while completing the Scottish Parliament process. That is based on the best evidence that we got from experienced returning officers across the country, which was that most people expect to have completed the Scottish Parliament process by 4 o'clock.

However, if local circumstances arise that mean that the count has to be stopped, they can just begin counting the referendum in another part.

Andy O'Neill: The key was to give enough time for all the returning officers to complete the Scottish Parliament election before the second stage for the referendum starts at 4 pm. The agreement with Mary Pitcaithly, the regional counting officer, was that 4 pm gives enough time.

You asked about Shetland, Orkney and the Western Isles. In 2007, fog meant that the Western Isles had to suspend the count before it was started because the ballots could not get out of Castlebay. Because the people in such places know that they are remote and rural, and there are lots of islands to cover, they plan accordingly.

Shetland works closely with the local police to ensure that things get done. So, although these places are a long way away, they can generally do the count overnight.

Sue Bruce: On that, and linked to the question on staffing, most of us will probably bring in fresh teams to do the referendum count with a separate string of deputy returning officer staff. If something unforeseen happens and there is an overrun, we can still start at 4 pm. That will clearly have an implication for the number of staff that will have to be available.

We are also thinking that the people who have worked through the night will not be the best people to do the referendum count anyway. We would need a set of fresh people to do that.

Patricia Ferguson: That is helpful. I was hoping that you were going to tell me that the timeline for the AV referendum had been set following that kind of discussion and consultation. Thank you.

The Convener: On behalf of the committee, I thank you for your attendance this morning, and for your evidence and presentation. We all wish you a successful election. Lots of planning has been done and I hope that it pays off. Thank you for your time.

11:22

Meeting suspended.

11:25

On resuming—

Subordinate Legislation

Antisocial Behaviour Notices (Houses Used for Holiday Purposes) (Scotland) Order 2011 (Draft)

The Convener: Agenda item 4 is to take evidence on the draft Antisocial Behaviour Notices (Houses Used for Holiday Purposes) (Scotland) Order 2011. I welcome the witnesses who are with us this morning. Alex Neil, the Minister for Housing and Communities, is accompanied by Peter Reid, senior policy officer in housing markets and supply in the Scottish Government, and Colin Brown, senior principal legal officer in the Scottish Government. Does the minister want to make opening remarks?

Alex Neil (Minister for Housing and Communities): Yes please, convener. Thank you for the opportunity to speak to the committee about the draft order.

Through the work of Mr Stanley Player in lodging his public petition, and the work of others, the Government has been made well aware of concerns about persistent antisocial behaviour associated with party flats that are let out for events such as stag parties and hen parties. We therefore welcomed the suggestion from Sarah Boyack, Shirley-Anne Somerville, the City of Edinburgh Council and others to clarify and improve the application of antisocial behaviour notices in relation to short-term lets, thereby allowing local authorities to take action against landlords of holiday flats that have a series of antisocial tenants. Officials from the Scottish Government and the City of Edinburgh Council have worked together to improve the legislation so that it can better meet the needs of our communities.

The order creates an additional set of criteria under which a local authority can issue an antisocial behaviour notice. The property must have been used for holiday purposes on at least two occasions and antisocial behaviour must have been engaged in by a user or visitor during at least two of those occasions.

The antisocial behaviour notice can set out actions that the landlord must take to prevent future antisocial behaviour. Those actions could include: first, limits on the number of people who can be in the property at any one time; secondly, requiring some form of on-site supervision, or at least a person to whom complaints can be directed and who is able effectively to address

them; and, thirdly, requiring improvements to the security of the premises.

If the landlord fails to comply with the antisocial behaviour notice, various remedies are available to the local authority. First, it may apply to a sheriff for an order so that no rent is payable. Secondly, it may apply to a sheriff for a management control order for the premises. Thirdly, it may take such steps as it considers necessary to deal with antisocial behaviour, with the landlord being liable for any expenses incurred. Finally, failure to comply is an offence, with a fine of up to level 5 on the current scale, which is £5,000. Although we expect that that will allow the local authority to tackle persistent antisocial behaviour from party flats, we do not expect it to impose a burden on the vast majority of reputable owners of tourist accommodation that is not associated with antisocial behaviour.

I welcome any questions from the committee and I will move the motion later.

Alex Johnstone (North East Scotland) (Con): My question may seem like a trivial one, but it still interests me. What is the likely timescale for having this series of actions carried out? The reason I ask is to establish whether such notices can be used to deal with a specific problem or whether we are talking about accommodation that has a record of being a problem, so we cannot deal with a specific case through the measures outlined in the order.

11:30

Alex Neil: If it was only a one-off case of antisocial behaviour, it would be dealt with under the normal antisocial behaviour laws. The order applies where there is a record of antisocial behaviour emanating from one—or more than one—flat.

The problem is that if the antisocial behaviour is committed by a visitor who is in Edinburgh only for a weekend stay, it is often difficult for the police to identify the culprit and take the necessary action to deal with them before they leave the city.

The pattern has been that a few flats in certain areas, particularly—although not exclusively—in Edinburgh, are consistently being reported to the police and the local authority because of on-going antisocial behaviour. It takes place almost every weekend in some cases, and sometimes for longer periods, but it is caused by different people who are visiting. Those flats are let out for the specific purpose of partying, which gets a bit excessive.

Jim Tolson: It sounds like an interesting and—one hopes—worthwhile change in the legislation, but I worry about how we deal with the potential

consequences and the excuses that one will hear from some tenants as to why there has been antisocial behaviour.

I am thinking in particular of an instance in which an issue is raised with a tenant and they claim that a third party—what you or I, or any other party-goer, might call a gatecrasher—has caused the antisocial behaviour. How do we deal with situations like that, where it is difficult to find out who is responsible? Is it right that we charge the landlord in that case when they have had no control over the third party coming in to their property?

Alex Neil: In a sense, the situation will be no different from the general application of antisocial behaviour legislation. The local authority and/or the police always have to investigate to establish who the culprit is, and take appropriate action.

Sometimes it is not always clear who the culprit is, and it can therefore be more difficult to take action. That is the case at present, and there will no doubt be instances under this order in which it might be difficult to pin-point exactly who the culprits are. The point is that if the landlord continually allows that to happen, he becomes the culprit under this legislation. He will be dealt with, as it is his responsibility to ensure that his flat is not consistently used for antisocial behaviour.

Sarah Boyack (Edinburgh Central) (Lab): I thank the convener for letting me contribute to the discussion.

I am really pleased that we have got to this point. The current position means that my constituents' lives are disrupted on a regular basis—as the minister said, such antisocial behaviour is a weekly occurrence for people who have the misfortune to live anywhere near one of these party flats.

The current system does not enable effective action to be taken. It has become a football that is passed between the antisocial behaviour team, the noise team and the police, none of whom have the powers to tackle the issue properly. I very strongly welcome the order.

The City of Edinburgh Council has made it clear to me that it does not have the power to act. From discussions with the council and the minister, it seems to me that the order potentially fills the gap in legislation. It is proportionate, as it should kick in only where there are demonstrable problems. The threshold of two reported instances is fair—they have to be reported, so action cannot be taken only on someone's say-so.

There are several flats in my constituency alone to which the order could make a real difference for residents in those areas. The landlords rent out their flats and earn a huge amount of money. They

spend some money putting a lot of beds in the flats, so we could be talking about 15 or 20 people, who are all drunk and there for three days.

That is massively disruptive not only within the flat, but in the vicinity, so I am pleased at the detail in the order in that regard. On-street disturbance is significant, and the vandalism that is caused to people's cars and stairwells makes it a very expensive problem for local residents who have to clear up the mess afterwards.

I also welcome the fact that the powers that are given to the council will give it a choice about how to proceed. It can prevent the flat from being used or it can require supervision, and it can force the landlord to be liable for expenses.

The provisions will begin to concentrate the minds of landlords, because there will be a financial consequence. At present, their habit is to charge high deposits, but that only lines their pockets more, because the people who create problems go off and do not get their deposits back.

On the internet, you can find a large number of people who have reported unhappiness about the situation. Even this week, several constituents have got in touch with me about party-flat problems. The problem has been going on for several years and is on-going. I hope that, if the order is approved by Parliament, it will send out a strong message to managers of party flats that the days of irresponsible lets are over. That should provide some respite for constituents who have weekly experienced distress, costly repairs and disruption to their lives.

The order is proportionate and will target the right people, although I hope that the Scottish Government will keep the operation of the measure under review. The Government has done a good job, in consultation with the City of Edinburgh Council. If the committee agrees to recommend approval of the order, which I hope it will, the challenge will be in implementation.

The Convener: I am sure that the minister welcomes those remarks, but I did not hear a question in there, so we may have pre-empted the debate. I hope that that will reduce the time that we spend on it.

As there are no further questions, we move to agenda item 5, which is consideration of motion S3M-7287.

Motion moved,

That the Local Government and Communities Committee recommends that the Antisocial Behaviour Notices (Houses Used for Holiday Purposes) (Scotland) Order 2011 be approved.—[*Alex Neil.*]

Motion agreed to.

Housing Support Grant (Scotland) Order 2011 (Draft)

The Convener: Agenda item 6 is evidence on the draft Housing Support Grant (Scotland) Order 2011. We have a change in the witnesses. The minister has been joined by Jamie Hamilton, a policy officer on social housing with the Scottish Government, and Bruce Teubes, an assistant economist with the Scottish Government.

Minister, do you wish to make any opening remarks?

Alex Neil: Yes, please.

The draft order sets out the amount of grant that is payable in the financial year 2011-12. In practical terms, the purpose of the order is to provide grant to any local authority that would not be able to balance its housing revenue account without substantially increasing rents. Only Shetland Islands Council, because of its very high housing debt, continues to qualify for grant. In 2011-12, it will receive just under £1 million, payable in 12 equal monthly instalments.

I stated to the committee last year that it was appropriate to look again at the role of the grant and the assumptions and considerations that underpin the methodology for its payment. I note that committee members have raised questions about the grant's continued role in the context of the prudential borrowing regime that was introduced in 2004-05 and about the circumstances of Shetland Islands Council's housing debt.

My aim has been to strike a balance between protecting the interests of tenants, those in housing need and the taxpayer. The proposed grant level should not cause rents to rise unsustainably. The changes to the calculation assumptions should protect taxpayers by minimising perverse incentives for housing revenue accounts not to be managed prudentially. The changes should also assist Shetland Islands Council to bring its HRA into balance so that the council can take full part in the opportunities that the Government has launched to build local authority housing.

My officials and I have had constructive discussions with the Convention of Scottish Local Authorities and Shetland Islands Council over the past year. The proposed grant level for 2011-12 reflects figures provided by the council. Moving beyond 2011-12, discussions are already under way at official level to examine appropriate levels of payment to enable Shetland Islands Council to bring its HRA into balance. We will also engage with the UK Government.

More widely, following initial soundings from councils via COSLA, it may be appropriate to

consult in more detail regarding removing the provisions for housing support grant given the onus that is now on local authorities to balance their housing revenue accounts under the freedoms provided by the prudential borrowing regime.

Mary Mulligan: On what basis are you consulting the UK Government on the order?

Alex Neil: I am consulting it for several reasons. As I said to the committee last year and as my predecessor Stewart Maxwell said the previous year, it is clear that the remaining grant is a bit of an anachronism. I think that we all agree—Shetland Islands Council, the Scottish Government and the UK Treasury—that the grant needs to be addressed with a view, eventually, to bringing it to an end. However, that has to be done in a managed way. That is the first reason for talking to the UK Treasury. The second reason, of course, is that it is the Treasury's money. It is not part of our consolidated block; it is part of annually managed expenditure from the Treasury, which therefore has a direct interest in it. Thirdly, because of the abolition of housing revenue accounts south of the border, the context within which we are operating, in terms of the overall Treasury approach to housing finance, changes.

For all those reasons, we are in simultaneous discussions with Shetland Islands Council, COSLA and the UK Government about the medium-term future of the grant.

Mary Mulligan: Do you have a view on how long we could reasonably expect the grant to continue before Shetland can manage its housing revenue alone?

Alex Neil: Over the past three years, the cabinet secretary and I have said that we would like the grant to be phased out by the end of the next parliamentary session—around the middle of this decade. I do not want to be more precise than that because it depends on the successful outcome of our discussions with the UK Treasury, Shetland Islands Council and COSLA. However, we are all aiming for that kind of timetable.

The Convener: There being no further questions for the minister, we move to agenda item 7, which is consideration of a motion to approve the draft Housing Support Grant (Scotland) Order 2011. I invite Alex Neil, the Minister for Housing and Communities, to move motion S3M-7859.

Motion moved,

That the Local Government and Communities Committee recommends that the Housing Support Grant (Scotland) Order 2011 be approved.—[*Alex Neil.*]

Motion agreed to.

**Non-Domestic Rates (Levying) (Scotland)
Amendment Regulations 2011 (SSI
2011/74)**

**Non-Domestic Rates (Valuation of Utilities)
(Scotland) Amendment Order 2011 (SSI
2011/75)**

11:43

The Convener: Agenda item 8 is consideration of two Scottish statutory instruments that are subject to the negative procedure. Members have received electronic copies of the instruments. No concerns have been raised and no motions to annul have been lodged. Do members agree that we do not wish to make any recommendations to Parliament in relation to the instruments?

Members *indicated agreement.*

Annual Report

11:44

The Convener: Agenda item 9 is consideration of our annual report on the committee's activities during the parliamentary year from 9 May 2010 to 22 March 2011. It is set out in the standard format that is used for committee annual reports. I presume that members have read and considered the report. Are there any comments before we approve the final version?

Jim Tolson: This might have been picked up by the clerk, but there is a small typo at the top of page 3 where it refers to "18 January 201". There was something else, but I cannot find it now because I did not highlight it. The report is perfectly fine otherwise.

The Convener: Does everyone agree?

Members *indicated agreement.*

The Convener: We move to agenda item 10, which we previously agreed to consider in private.

11:45

Meeting continued in private until 12:08.

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