



The Scottish Parliament
Pàrlamaid na h-Alba

Official Report

REFERENDUM (SCOTLAND) BILL COMMITTEE

Thursday 29 November 2012

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REFERENDUM (SCOTLAND) BILL COMMITTEE
6th Meeting 2012, Session 4

CONVENER

*Bruce Crawford (Stirling) (SNP)

DEPUTY CONVENER

*James Kelly (Rutherglen) (Lab)

COMMITTEE MEMBERS

*Annabelle Ewing (Mid Scotland and Fife) (SNP)

*Linda Fabiani (East Kilbride) (SNP)

*Patricia Ferguson (Glasgow Maryhill and Springburn) (Lab)

*Rob Gibson (Caithness, Sutherland and Ross) (SNP)

Annabel Goldie (West Scotland) (Con)

*Patrick Harvie (Glasgow) (Green)

Stewart Maxwell (West Scotland) (SNP)

*Stuart McMillan (West Scotland) (SNP)

*Tavish Scott (Shetland Islands) (LD)

*attended

THE FOLLOWING ALSO PARTICIPATED:

Bill Kidd (Glasgow Anniesland) (SNP) (Committee Substitute)

John Lamont (Ettrick, Roxburgh and Berwickshire) (Con) (Committee Substitute)

Claire Menzies Smith (Clerk)

CLERK TO THE COMMITTEE

Andrew Mylne

LOCATION

Committee Room 1

Scottish Parliament

Referendum (Scotland) Bill Committee

Thursday 29 November 2012

[The Convener opened the meeting at 10:00]

Proposed Government Bills

The Convener (Bruce Crawford): Welcome, colleagues, to the sixth meeting of the Referendum (Scotland) Bill Committee—I cannot believe that it is our sixth meeting already. I remind everyone to switch off their mobile phones.

Annabel Goldie has sent her apologies and we have John Lamont with us for the Conservatives. Stewart Maxwell has sent his apologies and I think that Bill Kidd will be here eventually for the Scottish National Party.

Agenda item 1 is consideration of whether to appoint an adviser to the committee in connection with our scrutiny of the bills that will come before us. As well as the material that the clerk has already sent to us, we have a note on what has happened at the House of Commons and House of Lords.

I was hoping that our friends from Stranraer would be coming through the door by now, but they are not here yet. *[Interruption.]* Let me explain to my colleagues. Some people are coming all the way from Stranraer this morning to sit in on our meeting—a pupil and a teacher. I was going to welcome them because they had come so far for not a lot of business. That explains why I am a bit hesitant about what is happening at the door. I apologise.

Tavish Scott (Shetland Islands) (LD): Convener, you might want to tell them that there are some other committees meeting this morning that have longer agendas than ours.

The Convener: They have probably gone to visit another committee.

Tavish Scott: Good.

The Convener: We have a note by the clerk—paper REF/S4/12/6/1—on the subject of whether we should have an adviser. In discussing that, we should probably focus first on the person specification that will apply for such an adviser if we decide to have one.

The clerk has helpfully included in paragraph 10 a description of the type of person that might be required: someone who has some expertise in electoral law and administration, expertise in electoral registration systems, and detailed

knowledge or hands-on, practical experience of the nitty-gritty things that—

Annabelle Ewing (Mid Scotland and Fife) (SNP): Is that paragraph 16?

The Convener: Yes, it is.

What do committee members think of the description of the type of person that we might require? The individual will need a considerable knowledge of what happens on the ground, to help us to deliver the legislation that will be required to put us in a fit and proper place.

Rob Gibson (Caithness, Sutherland and Ross) (SNP): I wonder whether the two different types of legislation will require two different sets of skills, or whether they overlap. We might need to discuss that, because it might be better to think about having more than one person so that we have specific advice on the particular areas. I would be happy to hear other members' views on that.

The Convener: Do other members have views?

Tavish Scott: In the absence of any other views, I will comment.

For me, the separation is between clear advice on the technical aspects and any political advice. We cannot have an adviser on the politics of the issue, or the process will fall apart. I am not wholly persuaded that it is necessary to have an adviser, but if the committee's judgment is that we need technical advice in respect of the requirements, that is fine. That is the basis on which an adviser should be appointed: I am perfectly happy with paragraphs 10 and 16, but I want to be clear that the advice will be on the technical aspects of the measure and nothing else.

Patrick Harvie (Glasgow) (Green): My view is similar. Given that we have not passed legislation to create a referendum before and that this is a new process, we are justified in seeking advice on the legal and technical aspects.

As I understand it, we will look at the two bills under roughly parallel timescales, so it seems to me that it would be complicated to have two different people advising us on the two different aspects of the process. I presume that the smaller bill will just be an accelerated version of part of what we were expecting to be in the main bill, so I think that we should look for one person. As Tavish Scott said, they should stay well clear of the politics and focus on the technical and legal aspects.

Bill Kidd (Glasgow Anniesland) (SNP): I do not think that we could find a total expert on the subject, because I do not think that anybody has ever done anything quite like this referendum. However, perhaps there is somebody. A bit of

research will be required to find someone with a background in this type of work. Would it be best to have someone who does not come from Scotland or the United Kingdom, as that might take out the political aspect? Perhaps that would widen the pool—which I imagine is relatively small—of people with specific relevant expertise.

If we are talking about someone who has a background in electoral law, it might prove problematic to ensure that everybody is happy with that person, in terms of where they see the person's political viewpoint.

The Convener: For what it is worth, I agree with Tavish Scott and Patrick Harvie that we need to keep this aspect out of the political arena. We need to be clear that we are bringing in someone to deal with the technical things and the arcane bits of law that are involved in electoral law. There are people in Scotland who do this work pretty regularly at elections, such as returning officers, and there are former returning officers. We have not long had the retirement of the former returning officer and convener of the Electoral Management Board for Scotland, for instance.

There are people out there who could do the job for us, and there might be a role for someone to be involved. We might need advice on the registration of 16 and 17-year-olds, mailshots and the nitty-gritty of things that will go on in the undergrowth of the legislation. I am not utterly sold on the idea of having an adviser, but I think that we might require advice on some aspects as we go through the process.

Perhaps I should draw members' attention to the budgetary constraints, having asked the clerks about that. Advisers are usually appointed on a fixed rate of about £150 per day and contracts are usually for a maximum of 15 working days. That is what the Scottish Parliamentary Corporate Body allows. If we chose to have more than one adviser, we would have a budgetary challenge. It would not be impossible to overcome it, but it would be a challenge. That should not prevent us from deciding to have more than one adviser, but we need to bear that in mind when we decide.

Linda Fabiani (East Kilbride) (SNP): I apologise for being a wee bit late. Am I right to say that, if we have an adviser, there is no retainer and we will pay only when they are used? We are as well to have the comfort of having someone so that, if we need to draw on their experience, we can do so.

The Convener: I ask the clerks to respond to the question about how advisers are employed, but we can use them as we require.

Claire Menzies Smith (Clerk): There is no retainer: advisers are paid for the work that they do.

Bill Kidd: I should have apologised, as Linda Fabiani did, for arriving a wee bit late.

My point is that it will be difficult to get all members of the committee to agree to somebody, so we should have a choice of people for members to discuss. If one person is proposed, we might find that we have problems because they are not acceptable to everybody. Instead, we should have a range.

The Convener: Yes, that is what the paper suggests.

James Kelly (Rutherglen) (Lab): There is some uncertainty as to how we should progress. Clearly, there is a recognition that we might need someone with expertise on electoral law and administration, but we are unsure whether we could attract someone with that expertise. Perhaps the best way forward would be to look for suitable candidates and then to assess whether any of the potential candidates would be of practical use as a committee adviser.

Annabelle Ewing: Linda Fabiani makes a fair point, because it would be useful to have someone's expertise to draw down if we deem that necessary as we go through the scrutiny process. My particular plea is that we have someone with hands-on practical experience. Otherwise, frankly, we could look up the books ourselves.

Stuart McMillan (West Scotland) (SNP): We have a clear choice between a practical person and an academic. Given the nature of what we are dealing with, I doubt that there will be a shortage of people applying to assist the committee. The difficult job for the committee will be to whittle down the applicants to a short list and then to decide on an individual or individuals. However, I think that we have to decide whether we have an academic or practical person. I would favour someone with practical knowledge and expertise.

The Convener: We have all come to the conclusion that we need an adviser with practical, technical experience who can help us through the nitty-gritty of the process.

Given some of the caveats, I suggest that we draw up a short list homing in on the right type of person but leave the decision on whether we appoint an adviser until we can ensure that we have the right person. That might be the best approach. Rather than just agree today that we will appoint an adviser, let us first ensure that we can get the right person, as there is no point in having an adviser for its own sake. If we approach it on that basis, perhaps we will come to the right conclusion. Is that agreed?

Members indicated agreement.

The Convener: Thank you very much.

The next point is that, given what I have just said, we will need to consider the next part of the process in private because we will be talking about individuals at that stage.

Before we conclude our business, I should mention that our next meeting is expected to be on 13 December. That meeting will include an agenda item on preliminary consideration of the work programme for the next phase of the committee's work.

Also, I have had a chat with the deputy convener, James Kelly, about asking the Parliamentary Bureau to provide the committee with time for a debate on our report before we pass the motion to approve the order. Normally when an order goes before Parliament, only the business managers would be involved. Therefore, I think that we should ask the business managers to give us a slot—it will probably be Wednesday next week—for a half-hour debate on the committee's own report.

For the debate, we can choose either to have a motion or not to have a motion, which is six or half a dozen because there will be a vote on the motion to approve the order in any case. I am content for us to have a debate on our report without a motion. Having a debate would allow everyone—well, maybe not everyone but more people—to contribute.

Patricia Ferguson (Glasgow Maryhill and Springburn) (Lab): Would that debate take place on the same day as the vote to pass the motion approving the order?

The Convener: Yes, I am suggesting that we request a debate for immediately before the motion on whether to approve the order.

Patrick Harvie: Why would we not simply have a debate on the motion to approve the order?

The Convener: I will let the clerk explain the procedural issue.

Andrew Mylne (Clerk): Under the standing orders, the rules governing the scrutiny of affirmative instruments provide for quite a constrained process in the chamber. The motion to approve the instrument must be lodged by the bureau and moved by one of the business managers on behalf of the bureau. The only other people who are allowed to speak are the minister in charge, which will be Nicola Sturgeon, and any member who wishes to speak against the motion—in the circumstances, we can probably reasonably assume that there will be no such member. Under the standing orders, no one else gets a right to speak and those two members only get three minutes each. Unless we start suspending standing orders, that is all that would be allowed. The suggestion is that we have an

additional debate to allow other members, including members of the committee, to contribute.

Patrick Harvie: That is fine, but I suggest that we ask for more than half an hour. A half-hour debate would allow only a small number of members to contribute, unless the Presiding Officer allowed them speeches of only two or three minutes each.

The Convener: We can ask for that but, from what I have heard, next week is a busy week. Do we wish to ask for a bit longer than half an hour? We can ask for longer than half an hour to allow others to contribute, and we will see what latitude we can get from the business managers. Are members content with that?

Members indicated agreement.

The Convener: Thank you very much. Our next meeting will be on 13 December.

Meeting closed at 10:15.

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