



The Scottish Parliament
Pàrlamaid na h-Alba

Official Report

REFERENDUM (SCOTLAND) BILL COMMITTEE

Thursday 28 March 2013

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REFERENDUM (SCOTLAND) BILL COMMITTEE

8th Meeting 2013, 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)

COMMITTEE SUBSTITUTES

*Richard Baker (North East Scotland) (Lab)

*Alison Johnstone (Lothian) (Green)

*Bill Kidd (Glasgow Anniesland) (SNP)

*John Lamont (Ettrick, Roxburgh and Berwickshire) (Con)

*Willie Rennie (Mid Scotland and Fife) (LD)

*attended

THE FOLLOWING ALSO PARTICIPATED:

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

Stephen Sadler (Scottish Government)

Nicola Sturgeon (Deputy First Minister and Cabinet Secretary for Infrastructure, Investment and Cities)

CLERK TO THE COMMITTEE

Andrew Mylne

LOCATION

Committee Room 1

Scottish Parliament

Referendum (Scotland) Bill Committee

Thursday 28 March 2013

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

Decisions on Taking Business in Private

The Convener (Bruce Crawford): Good morning, colleagues, and welcome to the eighth meeting in 2013 of the Referendum (Scotland) Bill Committee.

Apologies have been received from Annabel Goldie. John Lamont is here today to represent the Conservative Party in our proceedings.

Under agenda item 1, I seek the committee's guidance on a couple of issues. The first decision concerns item 3 on today's agenda, which is a discussion on the oral evidence on the Scottish Independence Referendum Bill. As that will involve discussing names of prospective witnesses, it might be more appropriate to take it in private. Does the committee agree to do that?

Members *indicated agreement.*

The Convener: The second decision concerns the committee's next meeting, which is after the recess. The main item will be a review of the oral evidence on the Scottish Independence Referendum (Franchise) Bill. The aim is to give the clerks as good a steer as we can at that stage on how our report might look. It might also be appropriate to take those proceedings in private. Is the committee agreed?

Members *indicated agreement.*

The Convener: Thank you very much.

Scottish Independence Referendum (Franchise) Bill: Stage 1

10:01

The Convener: That takes us to agenda item 2. I give a warm welcome to Nicola Sturgeon, the Deputy First Minister. Government strategy and the constitution are also under her remit. She is supported by three Government officials: Steve Sadler—we have met Steve on a previous occasion—who is the head of the elections team; Helen Clifford, who is the bill team leader on the Scottish Independence Referendum (Franchise) Bill; and Colin Brown, who is from the Scottish Government legal directorate.

Before we get into the proceedings, I remind members that the deadline for written evidence has now passed. All the submissions that have been received so far have been circulated, including some stuff that has been put in front of members today. The Subordinate Legislation Committee and the Finance Committee have undertaken scrutiny of the bill and produced their own results, which have been circulated to us.

This item is a chance for the Deputy First Minister to respond not only to members' questions, but to any issues that might have been raised in evidence prior to today's proceedings. I invite the Deputy First Minister to make a short opening statement, after which we will move to questions.

The Deputy First Minister and Cabinet Secretary for Infrastructure, Investment and Cities (Nicola Sturgeon): Thank you, convener.

In October last year, we announced our intention to introduce legislation to ensure that all 16 and 17-year-olds resident in Scotland could register for a vote in the referendum.

Electoral registration officers told us that, because of the timing of the canvass to compile the register for the referendum, they would need to have the power to collect details of eligible young people by the summer of this year. Given that the main Scottish Independence Referendum Bill will not complete its parliamentary passage until November, we need to introduce the Scottish Independence Referendum (Franchise) Bill to establish the franchise for the referendum.

The bill sets out who will be entitled to vote in the referendum and, in particular, puts in place arrangements to enable all 16 and 17-year-olds to register to vote. The timetable that the committee has agreed and published will mean—subject, of course, to the agreement of Parliament—that the provisions in the bill are in place by the summer.

That will enable EROs to start compiling the register for the referendum—including all those who will be 16 and 17 by the date of the referendum—in the autumn of this year.

We have worked closely with registration officers to ensure that the process of registering young voters is as straightforward and accessible as possible. I am grateful to them for the help that they are giving us. A young voter registration form will be distributed to all households in Scotland at the same time as the standard canvass form. Co-ordinating with the existing process in that way rather than trying to run a separate registration process will ensure that the whole process is as simple as possible for the voter while keeping administrative costs to a minimum.

The arrangements put in place by the bill and the main Scottish Independence Referendum Bill on access to the register are intended to strike a balance between, on the one hand, putting young voters on an equal footing with other voters and, on the other hand, the need to ensure that their data is treated sensibly and responsibly. We have followed the existing registration process as far as possible while making some necessary modifications—for example, restricting access to the full register. The measures that we propose in order to address any child protection concerns have been welcomed by child protection groups.

Young people obviously take on a range of important rights and responsibilities at 16, and we believe that they should have the opportunity to have their say on the future of the country of which they are part. Therefore, it is right that 16 and 17-year-olds should have the opportunity to vote in the referendum on whether Scotland should be an independent country.

With the important exception of lowering the voting age, the franchise for the referendum will be the same as that for elections to the Scottish Parliament and local elections. Eligibility to vote in the referendum will, following the precedent of the 1997 referendum, be based on residency.

I briefly mention the interest that there has been in the position of service personnel. There has been some inaccurate reporting of the situation and we have been criticised for not making special arrangements to allow service personnel to vote. I want to make it very clear that there is no need to make special arrangements. The arrangements that are in place for the referendum will be the same as the arrangements that are already in place to allow service personnel to vote in elections to this Parliament. Service personnel who have lived in Scotland but are currently serving overseas or elsewhere in the United Kingdom will have the opportunity to register for and vote in the referendum, and EROs will be responsible for determining applications from

service voters to register to vote, as they do for all voters.

The position for convicted prisoners who are detained in custody has also provoked recent comment. The Government does not believe that prisoners should be able to vote in the referendum, and the bill makes provision to that effect.

The bill gives us the opportunity to ensure that 16 and 17-year-olds are able to play their part in deciding the future of our country on 18 September next year. In developing the proposals for consideration by the Parliament, we have sought to place young voters on an equal footing with other electors. We need to engage young people in the democratic process and ensure that they have access to the same information before they cast their votes in the referendum; we must also take sensible precautions to ensure that, in giving young people the vote, we provide them with proper and adequate protection. I hope that the committee agrees that the bill strikes the right balance in that regard, and I look forward to answering questions on the matter.

The Convener: Thank you, Deputy First Minister. An issue that has been exercising the committee, to which I do not think that you referred, is individual registration and the UK position.

Stuart McMillan (West Scotland) (SNP): As the convener said, an issue that has come up is the introduction, through Westminster legislation, of individual electoral registration and its implications for Scotland, given the timing of the referendum. In correspondence to the committee, you said that discussions with the Cabinet Office were taking place. Can you give the committee an update on the discussions? Has agreement been reached?

Nicola Sturgeon: I can update you. As I said to the committee, my officials have been in regular discussion with Cabinet Office officials about the interaction between the referendum and the UK Government's planned introduction of individual electoral registration. We have made it clear—to be fair, the UK Government has also made it clear—that we want to ensure that the timescales of the two processes are compatible and that we minimise any adverse impact on the referendum, electors or electoral registration officers.

Following our confirmation last week of the referendum date, the Cabinet Office confirmed on Tuesday that the transition to IER in Scotland will not start until after the referendum—it will begin on or around 1 October 2014, to avoid unhelpful interaction with the referendum. That is a helpful development, which I hope gives the committee the assurance that you are looking for.

Stuart McMillan: That is helpful. Let me clarify. Are you saying that there will be no adverse implications for the referendum?

Nicola Sturgeon: That is the case. Of course, we will continue to discuss detailed implementation plans with the Cabinet Office. Scottish Government and UK Government officials met EROs on Tuesday to discuss the matter and we will continue to ensure that there is no unhelpful interaction. The confirmation from the Cabinet Office that the process of individual electoral registration will not begin in Scotland until after the referendum gives us a helpful assurance that there will not be such interaction.

Stuart McMillan: Thank you; that is helpful.

The Convener: Will the mechanism that is used in the UK be subordinate legislation, or will primary legislation be required?

Nicola Sturgeon: As I understand it—I am just checking with my officials—subordinate legislation will be used in the UK to bring the process into being.

The Convener: That is a more flexible way of dealing with the matter.

James Kelly (Rutherglen) (Lab): I have a few questions about voter registration. First, we have heard evidence that there can be inconsistent start dates for the autumn canvass that you spoke about in your opening remarks, with some areas starting on 1 October and others starting on 1 December. To get the register updated and as accurate as possible, it would make good sense for local authorities to have a consistent early start date. What procedures are in place in the legislation to ensure that there will be a consistent early start date?

Nicola Sturgeon: When the process is started is a decision for EROs. They have not yet all decided exactly when the process will start, but it will be on or around 1 October in all parts of Scotland. If the committee's view is that EROs should be starting as early and as consistently as possible, we can feed that to them in our discussions. Clearly, it is in everyone's interest for the register that will be used in the referendum to be as up to date as possible. As well as the annual canvass there is the rolling registration process that allows people, including young voters, to add their names to the register up to 11 days before the poll. If the committee wants to see certainty, clarity and consistency on the start date, we will certainly feed that view to EROs.

James Kelly: Would you do that in the guidelines rather than in the legislation?

Nicola Sturgeon: As far as possible—this comment will apply to much of what we discuss today—we want the provisions that we put in place

through the bill to mirror the normal voter registration process. We are not trying to create a different parallel system; we have to make specific changes to allow for the extension of the franchise to 16 and 17-year-olds with the separate form to take account of the specific issues around that. As far as possible, we want the process to mirror the process that is already in place and that applies to the start date of the canvass, too. A specific start date for the canvass is not covered in the legislation.

James Kelly: Do you accept that a consistent start date would be helpful to the process and that you would not want there to be a variety of start dates covering a two-month period?

Nicola Sturgeon: Generally, we would want to see a consistent start date but that is likely to happen anyway. I am not sure that it makes a huge amount of difference whether every part of the country starts on 1 October, as opposed to a few days—or even a few weeks—on either side. The point about a generally consistent start date is important, not just for the referendum but to have that system in place more generally in order that people get on the register.

To return to my earlier point, the annual canvass—although it is very important and the central part of the annual voter registration process—is not the only way in which people can get on the register. We have had the rolling registration process for some time.

James Kelly: I will move on, but I reiterate my view—the committee will come to its view—that a start date that is as consistent and early as possible will be helpful to the process of having an accurate register.

The Convener: Are you moving on to a different area? I have a supplementary question on that issue.

James Kelly: I have a different question on voter registration. We want to ensure that we get as many 16 and 17-year-olds registered as possible. The submission from the National Union of Students refers to extending the powers of the Society of Local Authority Lawyers and Administrators in Scotland with regard to covering the referendum and registering 16 and 17-year-olds. Has the Government considered doing that?

Nicola Sturgeon: We will consider all the evidence that was submitted in the early part of the legislative process, as we would do with any bill. A lot of helpful evidence has been given to the committee orally and in writing. The short answer is that we will consider all that evidence, including that proposal from the NUS.

10:15

However, my strong view is that the process and arrangements that we are putting in place through the bill are sufficient to ensure that as many 16 and 17-year-olds as possible who are eligible to vote are on the register and able to take part in the referendum; indeed, I want them all to be on the register. What we are putting in place in the bill will enable that to happen, not least because it dovetails so closely with the normal annual canvass process.

I believe that we are taking the right approach, but we will consider any suggestions that have been made. As the bill goes through the parliamentary process, there will be opportunities for the committee and individual members to suggest further improvements that we could make.

James Kelly: So you have not ruled out extending the powers at this stage.

Nicola Sturgeon: I have neither ruled it out nor ruled it in. All I am saying is that we have not yet reached the end of stage 1. As with every bill, we look at all the evidence that has been put forward and decide whether to take forward any specific suggestions. I am not saying that we are going to do that; we are still in the process of giving things due consideration. After all, if people go to the time and effort of submitting evidence, it is only fair that the Government gives their suggestions due consideration.

Nevertheless, I have laid before the committee a bill that I believe puts in place arrangements to enable all 16 and 17-year-olds to register to vote and to take part in the referendum if they so wish. I hope that all of them do. When we first said that we wanted 16 and 17-year-olds to vote, one of the early concerns was that we might have a process—the so-called attainer proposal—that did not allow all of them to do so. We listened to those concerns and have come up with an alternative arrangement that allows all 16 and 17-year-olds to be registered to vote, and I think that that is the right way to proceed.

The Convener: On a very technical point that relates to James Kelly's comments on the start of the canvass in October, I note that section 13 prevents anyone from being registered on the young persons' register before 1 December 2013. I assume that that date was in the bill before we knew the final date of the referendum.

Nicola Sturgeon: I will let Steve Sadler answer that technical question.

Stephen Sadler (Scottish Government): You are correct, convener. That 1 December date was set out before we knew the date of the referendum and indeed before our subsequent discussions with EROs in which they said that they were

looking to start around 1 October. We intend to amend that date.

The Convener: That is very helpful. I believe that Patricia Ferguson wants to ask about participation.

Patricia Ferguson (Glasgow Maryhill and Springburn) (Lab): My question is about young people more generally, convener.

In their evidence to the committee, Scottish Youth Parliament members showed particular interest in the nature of the actual registration form, expressing concern that the young voter registration form says something like, "You can register if you are going to be 16 at the time of the referendum". They felt that specifying the applicable dates would clarify things and make it easier to encourage as many young people as possible to be very clear about their opportunities to ensure that they did not find themselves accidentally disenfranchised or, indeed, that they did not register only to find that they were not eligible to vote. For example, it was suggested that if the bill specified two dates—1 December 1997 and 18 September 1998—young people could be confident that if they registered they would be able to vote. Has the Government considered that—or, indeed, would it do so?

Nicola Sturgeon: The form is being tested at the moment, and we will know the outcome of that testing process by the time we get to stage 2. If it emerges that the form as laid out in schedule 2 is not clear enough and does not avoid the kind of confusion that Patricia Ferguson has signalled might potentially arise, we will consider amending it. As I have said, the appropriate opportunity will arise once the testing process has been completed.

We will of course listen to and consider everyone's evidence, but the Scottish Youth Parliament is to be congratulated on its campaign to secure the vote for 16 and 17-year-olds.

Patricia Ferguson: Indeed—and the committee found its evidence particularly compelling.

Section 9(3) refers to publication of the register being allowed in limited circumstances, but does not yet—or perhaps will not—detail those circumstances or to whom the register might be disclosed. Can the Deputy First Minister clarify that provision?

Nicola Sturgeon: We are very clear on that issue. If the bill needs to be amended to clarify the position, we will consider doing that. Allowing 16 and 17-year-olds to vote while ensuring that we protect their personal data is one of the central balances that we have to strike in the bill. We are very clear that only electoral registration officers and their staff will have access to the register of

young voters. An individual can ask an ERO to see a particular entry, but access to the register of young voters will be restricted to EROs. We will probably discuss that later, so I will not go into great detail. There will also be restrictions on access to the merged list that will go beyond the normal restrictions on access to an electoral register. That is our intention, so I am happy to consider whether we need to make minor amendments to the bill to make the position absolutely clear.

Linda Fabiani (East Kilbride) (SNP): My question is on the same issue. Throughout this process, I have been consistent about child protection. I have been heartened that people feel that there has been really good dialogue with the Government and that fair solutions have been reached. However, we can always look for improvement.

We have had a letter from Donald Urquhart of the Scottish child protection committee chairs forum. While he welcomes the work that has been done—as does everyone else in the field—he makes additional points that he thinks are worth looking at. For example, he says that

“it would be helpful to have additional guidance on the form that clarifies the process for a young person to register using another contact address, when they are living away from home”.

He also feels that general clarity is needed

“about the processes that will ensure local authorities, social workers and other support staff are informed about the child protection provisions, the implications and their role in ensuring that young people can vote safely.”

We need reassurance that the dialogue, which has been excellent, continues and that concerns expressed by people such as Mr Urquhart will be taken on board.

Nicola Sturgeon: I am happy to give that assurance. The issues that have been raised are legitimate and very helpful, although I think that they apply more to guidance about the process than to the legislation itself. However, I am happy to assure the committee that we will reflect on those points as we consider the guidance. It is in the interests of us all to get as many 16 and 17-year-olds as possible registered to vote so that they can exercise their democratic right. There will be many people who are important in ensuring that young people understand their entitlement to register and take up that opportunity.

The Convener: Would you like to raise any other child protection issues, Linda?

Linda Fabiani: We have heard from Scotland's Commissioner for Children and Young People and from various other people. There is a general satisfaction that child protection issues, particularly relating to those who are younger when they

register, have been considered well. That should be on the record. I welcome the Deputy First Minister's commitment that the dialogue will continue.

Nicola Sturgeon: As I have said, I am happy to give that commitment.

On Patricia Ferguson's point, section 9(3) is a cross-reference to the Scottish Independence Referendum Bill, which will deal with access to the register. That bill has now been published, and members will see that we are very clear about the restriction on access to the register of young voters.

John Lamont (Ettrick, Roxburgh and Berwickshire) (Con): Good morning, Deputy First Minister. My point is connected to the two previous questions. Section 7(2)(c) provides for the non-disclosure of a young person's address, but schedule 2, which details the canvass form, does not specifically provide for that non-disclosure. In light of the discussion that we have just had, do you intend to amend that form so that the non-disclosure is more clearly marked?

Nicola Sturgeon: As I have just said to Patricia Ferguson, the form is being tested at the moment and it is important that it goes through that process. We will look very carefully at what comes back from that process, as we did when the Electoral Commission tested the question. We will have good time then to make any necessary amendments to the form before we get to stage 2.

The Convener: I know that Annabelle Ewing is particularly interested in issues to do with the armed forces. Does she want to pick up on those now?

Annabelle Ewing (Mid Scotland and Fife) (SNP): Yes. Thanks, convener.

Good morning, Deputy First Minister. At last week's meeting, on 21 March, I raised with the Electoral Commission the issue that I want to raise now. I cited a statement by the Advocate General, Lord Wallace of Tankerness, that was made during the section 30 order debate in the House of Lords on 16 January 2013. For ease of reference, I will read that statement out again. He said:

“Members of the armed forces will be able to vote in the referendum if they are on the register in Scotland either as a result of an address in Scotland or a qualifying address showing a connection to Scotland, such as service accommodation in Scotland; an address in Scotland where they would be living if they were not in the services; or an address in Scotland where they have lived in the past.”—*[Official Report, House of Lords, 16 January 2013; Vol 742, c 754.]*

Can the Deputy First Minister clarify the position? I know that she briefly referred to the matter in her opening statement, but will she amplify the exact

position, as I know that it has been the subject of press coverage and controversy?

Nicola Sturgeon: I am happy to do that. I do not have the evidence from Lord Wallace in front of me, but the excerpt that Annabelle Ewing read out certainly sounds very similar to what I am about to say to the committee.

There has been some very inaccurate reporting on the matter. I have seen reports that suggest that some servicemen will be barred from taking part in the referendum. I stress that, with the exception of 16 and 17-year-olds, the franchise for the referendum is the same as that for Scottish Parliament and local government elections. Therefore, any serviceman or servicewoman who is eligible to vote and is on the register to vote in a Scottish Parliament or local government election will be able to vote in the referendum.

There are three ways in which somebody in the armed forces can register to vote. First, they can register in the same way that anybody else can, as an ordinary voter. They can register in the same way as civilians by responding to the annual canvass or by rolling registration. If the address at which they are registered is in Scotland, they will be eligible to vote in the referendum. Around two thirds of those in the armed forces who register do so through that ordinary process.

Secondly, somebody in the armed forces can register as a service voter—around a third of those who are registered are registered in that way. They do that by making a service declaration, which is valid for five years. They can register using a UK address, irrespective of where they might be posted in the five-year period. The declaration can register them at the address at which they or their spouse or civil partner are currently living; where they would have been living if they were not in the armed forces; or, if they cannot say where they would be living if they were not in the armed forces, at their last address before they took up their post. Those who register in that way will be eligible to vote in the referendum if their service declaration is made using an address in Scotland.

The third way in which armed forces personnel can register to vote is as an overseas voter. Those who do that would not be able to vote in the referendum because overseas voters are not able generally to vote in the referendum, but that accounts for around 1 per cent of all armed forces personnel who are registered.

To summarise, if somebody in the armed forces is eligible to vote in elections for the Scottish Parliament, they will be eligible to vote in the referendum. That is, with the exception of 16 and 17-year-olds, the same as for everybody else.

Annabelle Ewing: A related issue is the arrangements that are in place to ensure that service personnel are aware of the registration options. I presume that arrangements are already in place and that they will continue to operate with respect to the referendum vote.

Nicola Sturgeon: Absolutely. Because we are mirroring the situation that normally applies for elections, obviously the processes that are normally used will apply. The Electoral Commission will clearly have to factor that into its own planning. It has the responsibility of raising awareness of the referendum, registration and rights to vote, so it will be part of its duties to ensure that that includes the particular situation of service personnel.

The Convener: Another issue that the Deputy First Minister raised concerns prisoners, which Patrick Harvie wants to ask about.

10:30

Patrick Harvie (Glasgow) (Green): Good morning. The Deputy First Minister's response to some of the written evidence that we have received on prisoners voting makes the case that there is no legal obligation under the European convention on human rights to give prisoners the right to vote in a referendum, even if there is a question mark over the future of the blanket ban on prisoners voting in elections.

The Deputy First Minister might be right about the legal aspect, but I hope that there is willingness at least to discuss the political choice, which the Government is free to make. Simply saying that there is no legal requirement does not mean that prisoners cannot vote.

Does the Deputy First Minister acknowledge that an argument can at least be made that prisoners voting could be seen as part of a rehabilitation process, that there is a moral case in favour of it and that, even if an argument can be made for maintaining a degree of a ban on prisoners voting, that should be for the courts to decide on? A blanket mechanism should not be used; the courts should be allowed to treat differently someone who is serving many years in prison for a serious offence from someone who happens to be, as a result of a much more minor offence, in prison for a few days or weeks at the time of the referendum. Is there at least willingness to debate the issues and acknowledge that there is a case for change?

Nicola Sturgeon: I accept that Patrick Harvie is not questioning the legal position that the Scottish Government has presented, but it might be worth setting that out for the committee. The ECHR is clear—it says that the right to vote is about

"the free expression of the opinion of the people in the choice of the legislature."

That provision—article 3 of protocol 1 to the convention—and the case law that emanates from it make it clear that the provision does not apply to referendums. The committee has had evidence from Professor Tierney, for example, that backs that position.

As for Patrick Harvie's other point, an argument can be made for almost anything. I accept that the argument that he put forward can be made, but I disagree with it. The Government does not agree with that argument and has made it clear that we do not think that convicted prisoners who are serving prison sentences should be able to vote in the referendum.

We are in a parliamentary process, and Patrick Harvie—or any other member—absolutely has the right to challenge the position and to lodge an amendment for debate. If that happens, the Government will present its position and we will have the debate. Of course an argument can be put and, if that happens, a debate will be had and the Government will justify its position in the normal parliamentary process.

Patrick Harvie: You said that the Government does not agree with the alternative case that can be made. Why not? Why does the Government not agree that a court should decide, on the basis of the circumstances of an individual offence, whether the deprivation of the right to vote is a part of the punishment for that offence?

Nicola Sturgeon: You said that there is a question mark over whether prisoners will continue to be unable to vote in elections. The UK Government is considering that and what it chooses to do will be up to it. Right now, convicted prisoners who are serving prison sentences do not get to vote, and I do not consider that there is a good argument for changing the position for the referendum.

People who do not commit crimes and do not get sent to jail will have the right to vote. That is a pretty simple principle. I am not saying that it is beyond challenge or that no alternative argument can be made, but I am giving my view and the Government's view. We will debate that as we go through the parliamentary process.

Patrick Harvie: The Deputy First Minister simply says, "It's the Government's view." I am asking why the Government's view is that prisoners voting is a matter for a blanket approach rather than a court decision.

Nicola Sturgeon: That reflects the current position. If someone commits a crime that results in them being sent to jail, they forfeit their right to vote. I do not believe that a case has been made

for changing that principle for the referendum. That is my simple view.

The Convener: Stewart Maxwell has a supplementary question.

Stewart Maxwell (West Scotland) (SNP): I acknowledge Patrick Harvie's point that there should not be a blanket ban and that it should be up to the courts to decide. However, surely that is exactly what happens at the moment. The court decides, after someone is convicted, whether there should be a custodial sentence, which means that it is deciding whether they lose or keep the right to vote. If a court gave a judgment of a non-custodial sentence of some sort, it would be perfectly aware of the fact that that would mean that the person would retain the right to vote. Is that not the case, Deputy First Minister?

Nicola Sturgeon: Absolutely. If the bill remains as it is just now, a judge passing a custodial sentence on somebody in the run-up to the referendum will do so in the full knowledge of the implication that the person will not get the chance to vote in the referendum. That is one of the many things that people who sit in judgment of others will take into account in reaching their view about a sentence.

I repeat what I said to Patrick Harvie, which is that we are at the start of a parliamentary process. It is entirely right, proper and appropriate for him or for any other member of the Scottish Parliament to put forward the alternative view. I readily accept that there is a debate to be had on the issue. I am not saying that there are not arguments to be made on the other side. In the same way in which Patrick Harvie states his view, I am simply stating the Government's view—and Parliament will decide.

Tavish Scott (Shetland Islands) (LD): For clarification, are you objecting to the proposal on moral grounds rather than legal grounds?

Nicola Sturgeon: My objection is on the basis that the current situation is that people who commit crimes and are sent to jail do not get to vote. I do not believe that a good case has been made for changing that situation. If people want to vote in the referendum and to ensure that they do not lose the right to vote by being sent to jail, there seems to me to be a pretty simple way of ensuring that that is the case. I would not characterise my position as a moral or legal one—I think that the legal position is absolutely clear. I would characterise it as a practical view on my part and not anything else.

Tavish Scott: So you think that removing convicted prisoners' right to vote is a punishment that should be added to their sentence.

Nicola Sturgeon: We are not removing the right to vote. Convicted prisoners in jail do not have the right to vote, so I am not removing anything.

Tavish Scott: Yet you have the opportunity to give it to them.

Nicola Sturgeon: And Tavish Scott, like Patrick Harvie, has the opportunity to argue the case of convicted prisoners—

Tavish Scott: But we are here to test your and the Government's position, Deputy First Minister.

Nicola Sturgeon: With the greatest of respect, Tavish, if you let me answer, you will get the opportunity to test my view.

What I am saying is that you characterise what I am doing as removing a right. I am correcting you to say that I am not removing a right, because the right does not exist at the moment. I am simply clarifying in the bill that we do not intend to give convicted prisoners in jail a right that they do not currently have.

That is my view. I will defend and justify that view through the parliamentary process. If Tavish Scott, Patrick Harvie or any other member thinks, as they are perfectly entitled to, that that is the wrong view, then Parliament will have a debate and Parliament will decide.

Tavish Scott: I appreciate that you have lots of points to make on process, but I am interested in the Government's position, not the process. So—

Nicola Sturgeon: But I think that I have made that pretty clear. I am not sure what bit of it you do not understand.

Tavish Scott: Well, I will ask the questions that I want to ask, if that is all right.

The Convener: Can you ask your questions through the chair? On you go, Tavish.

Tavish Scott: I beg your pardon?

The Convener: I am just making sure that this discussion is done through the chair, so that it is not just a barney across the floor. On you go.

Nicola Sturgeon: It is not a barney.

Tavish Scott: I am just trying to ask some questions, convener.

The Convener: Let me rephrase that: just make sure that we do this through the chair. On you go.

Tavish Scott: Thank you.

In the circumstances that you have described, Deputy First Minister, would I be fair in assessing that the Government's policy is that you see no difference between someone who is serving a sentence under six months and someone who is serving a sentence in excess of six months?

Nicola Sturgeon: The Government's policy on the issue is that, if someone commits a crime and the judge sees fit to send them to jail, they should forfeit their right—well, they do not have the right to vote in those circumstances just now, and that should continue to be the case. In the bill, we are not taking away a right that any convicted prisoner has at the moment. As Stewart Maxwell rightly said, the voting right is something that a judge would presumably take account of in reaching a decision on a sentence.

The Government's position is clear and I think that the reasons for its position are clear. The process for challenging the Government's position is also clear. I accept that this is not necessarily a straightforward, simple issue for everyone, but we are in a parliamentary process in which people have the right to put forward their own view. If the arguments are good enough, I dare say that you will be able to persuade MSPs to support your position.

Tavish Scott: I will try again. Do you see any merit in the argument about short-term sentences as opposed to longer-term sentences?

Nicola Sturgeon: A lot of arguments draw a distinction between short sentences and long sentences, as the Scottish Government has done. For the purpose of drawing distinctions as regards the right to vote, we do not intend to give prisoners, whether they are sentenced for a short or long time, the right to vote. The argument has not been made for it and it is a right that they currently do not have, so the answer is no. If we thought that a distinction should be made in the context of voting in the referendum, we would have made that distinction in the bill; we have not done so.

Tavish Scott: Okay. I am sure that the Deputy First Minister has read the evidence from the Howard League for Penal Reform in Scotland in respect of other countries. I presume that she is aware that Denmark, Finland, Ireland and Sweden—to mention just a few countries—have no form of electoral ban for imprisoned offenders and I presume that she disagrees with that position.

Nicola Sturgeon: It probably does not take much to work out that I disagree with that position. If I agreed with it, I would have drafted the bill that we are currently discussing in a very different way.

I am trying to be as reasonable about this as possible. I respect the view that others are putting forward; I respect the position that other countries take; and I respect the fact that there is a difference of opinion and an argument to be had. I am simply putting forward my view and the view of the Government. I do not see what Tavish Scott finds so difficult to understand about that. I accept

that he does not agree with it, but I do not see what is difficult to understand about it.

Tavish Scott: With respect, I did not say that I agreed or disagreed with it; I am just trying to test the Government's position. I will stop at that.

Nicola Sturgeon: I was just taking that from your mood music.

The Convener: John Lamont wanted to get involved in this discussion as well.

John Lamont: I agree with the Government's position on preventing prisoners from voting.

Nicola Sturgeon: Well now then! *[Laughter.]*

Tavish Scott: That is all I need to know.

Nicola Sturgeon: That was a joke, Tavish.

John Lamont: You say that the legal position is clear. Has the Government taken legal advice about the possibility of a prisoner who is prevented from voting challenging the outcome of the referendum? If it has, can you make that advice available to us?

Nicola Sturgeon: I will not rehearse all the usual points about legal advice. I will say only that we have taken account of all the legal considerations and arguments in coming to the position in the bill. The legal position is clear, not just in terms of the wording of the particular clause in the European convention on human rights but in the case law that has resulted from that, which has made clear—over the period that the cases have been discussed—that it applies to elections to Parliaments and legislatures but not to referenda.

John Lamont: Lastly, section 3(3)(b) of the bill excludes from voting

“a person detained by virtue of a conditional pardon”.

Can the Deputy First Minister tell me the last person in Scotland who was detained under such a conditional pardon?

Nicola Sturgeon: No, I cannot. If the member can, I would be happy to hear who it was. Was it a Conservative MP by any chance? No. *[Laughter.]*

John Lamont: No. It might have been Oscar Slater.

The Convener: We will move on. I will come back to Patrick Harvie's question about participation, but first Rob Gibson wants to ask more generally about guidelines for debates and so on in schools.

Rob Gibson (Caithness, Sutherland and Ross) (SNP): We discussed the registration process, participation and voting with the EROs, the directors of education and the Electoral Commission. Will the materials that the Government produces for information about

registration, the process or the issues be made available for people to see at an early stage?

Nicola Sturgeon: The Electoral Commission will provide materials for raising awareness of the process of registration and the process of the referendum, so it is for the commission to discuss with you exactly what process it will go through. The Government will not be producing that information.

Rob Gibson: I presume that the Government will be producing material about the referendum. We had a discussion about balanced material being available in schools on that subject. Obviously people will have different points of view, but the Government has a role. I want to tease out whether the Government is providing material.

10:45

Nicola Sturgeon: The main publication that the Government will produce is the white paper, which will set out the case for Scotland being independent. As the Government, we will try to ensure that there is as wide an appreciation, knowledge and understanding of the white paper as possible among everybody who is entitled to vote in the referendum. Those on the other side of the campaign, who are arguing against independence, will want to ensure that the information that they put forward is disseminated as widely as possible.

The Electoral Commission will not be giving details on the case for or against independence; its information will be about the process of the referendum. It will be for campaigners on the respective sides of the debate to put forward their case. Speaking for the Government—I am not here to speak for the broader campaign of which I am part, but I am sure that this is the case for it, too—we will be doing our level best to ensure that that information is accessible to all potential voters, including those in the younger age group.

Rob Gibson: I have a point about material being made available to people in the younger age group in their native languages. You have mentioned that, convener, and I assume that the Deputy First Minister is agreeing that materials from the Government will be in a variety of languages and will be expressed at a level such that they can be understood by 16 and 17-year-olds.

Nicola Sturgeon: We will certainly take great care—in language provision and in the way in which we present the material—to make it as accessible as possible to everybody who has the right to vote in the referendum.

Tavish Scott: Responding to Mr Gibson, I think that the Deputy First Minister has said that the

Government will provide the white paper to everyone who is eligible to vote. If I have got that wrong—

Nicola Sturgeon: I did not say that. I said that we would be working hard to ensure that it is accessible to people. The form in which we will do that has not yet been decided. As I think the record will show, I did not say that we would—

Tavish Scott: I was not trying to say that you did—I was just trying to clarify what you did say.

Nicola Sturgeon: I hope that I have done that.

Tavish Scott: Are there any details of how the white paper will be made available, or will it just be through the normal publication of Government documents?

Nicola Sturgeon: It will certainly be available through the normal processes of Government publications being made available. We will consider whether there is more that we can do to make it as accessible as possible. Parliament will have the opportunity to know what we propose in due course. We have not made any final decisions about that.

Tavish Scott: I quite understand that. The point is that it will be a Government publication, as opposed to a campaign document from either side of the referendum debate. Could the Deputy First Minister clarify how that factors into the overall assessment that the Electoral Commission will have to make about publications being made available to people in respect of campaign material?

Nicola Sturgeon: I do not think that the Electoral Commission has the job of assessing whether the campaign on either side of the debate is balanced or whether people have adequate information. That is not part of the commission's role.

The Electoral Commission has said in its report on the question that it hoped that both sides would manage to come together—I am paraphrasing—and give a joint statement about the process that would follow either outcome. It is not the job of the Electoral Commission to assess the information that either side of the campaign puts forward.

Tavish Scott: That is a fair response, and I completely accept it, but the document will be provided by the Government—it is a Government white paper. By definition, it is a document that will make the case for independence, with the full power and money of the Government behind it, including how it is sent out and how it is used. Would that be fair to say?

Nicola Sturgeon: We have a responsibility to use taxpayers' money responsibly and appropriately. That will apply to the white paper as

it does to anything else that the Government publishes. We will balance that consideration with the view coming from both sides of the debate that people need to be as informed as possible. Not a day goes by when I do not get told by those on the other side of the debate that the Government needs to provide more information and more answers to various questions. We will certainly endeavour to do that.

The Convener: Can we get back to the bill itself now? Do you have any further questions at this point, Rob?

Rob Gibson: Not at this point.

The Convener: Patrick, you wanted to raise issues about participation—in relation to both registration and turnout, I think.

Patrick Harvie: Yes, on registration and turnout—and I hope that this be a slightly more consensual area of questioning than the previous one.

I would like to hope that we all want a high level of participation by 16 and 17-year-olds and young voters in general. On a few occasions, the Deputy First Minister has mentioned a desire for all of them to participate once they are registered.

The committee has heard evidence from smaller jurisdictions—Jersey, Guernsey and the Isle of Man—that have already reduced their voting age to 16. In response to that evidence and to other matters, has the Government looked at those or other jurisdictions to try to figure out what works in driving up turnout, particularly among young voters, given the newness of the process to them and the opportunity to engage with them through educational institutions in a proactive way that is not possible with older voters?

Nicola Sturgeon: The short answer is yes: we have looked at other jurisdictions. We have also looked at the limited experience in Scotland of extending the franchise to 16 and 17-year-olds for the pilot health board elections and Crofting Commission elections. I am not saying that those elections tell us very much, but we have looked at all that.

It is the Electoral Commission's role to raise awareness of the registration process and the referendum, and core to that exercise will be ensuring as wide an understanding and appreciation of the right among 16 and 17-year-olds as possible. Clearly, both sides of the campaign will have an obligation and an interest in getting young voters registered and keen to participate in the referendum. I am sure that both sides are already thinking carefully about how to do that—at least, I know that one is.

I am not at all complacent about the issues. None of us with experience of elections could be

complacent about turnout among any age group. However, my anecdotal experience from speaking to people about the referendum leads me to think that there will be a high turnout and that it will span all age groups. That should not mean that we take our foot off the pedal and do not work hard, but that is my strong impression based on the conversations that I have had.

Patrick Harvie: I would like to think that we all hope that that it is true—I certainly do. We have heard evidence that some really good, innovative and creative work has happened in some schools, but members with constituency and regional responsibility will know that other schools do not get particularly involved in mock elections or other such processes. Is there room in the bill to place a duty on local authorities to promote participation in the provision of education?

Nicola Sturgeon: I am certainly happy to give that consideration. However, the Electoral Commission will have a statutory responsibility to raise awareness and understanding of the voter registration process. To fulfil that statutory obligation, the commission will need to work with a range of organisations, including local authorities and schools, to ensure that they do what is required of them.

Patrick Harvie: We have heard, in relation to electoral activity, that some really good creative work happens in schools where headteachers choose to allow people in. Surely we would like a consistent approach to promoting participation in all schools.

Nicola Sturgeon: I agree, so I am happy to consider the proposal. I will come back to the committee in due course to tell you the outcome.

John Lamont: My question also relates to the participation and engagement of young people. I am conscious that many or all of them will still be at school doing studies and exams. What is the Government's view on ensuring that the referendum is not too much of a distraction and that a balance is struck to ensure that they can do their exams and work and not be distracted by the vote?

Nicola Sturgeon: It might be down to all of us to ensure that that is the case. I take the slightly different view that, actually, if young people are interested and engaged, it is good for their development and for how informed they are as citizens, which can only be good for their educational experience and outcomes. Perhaps I look at the issue more from a glass-half-full perspective.

Notwithstanding Patrick Harvie's point about consistency, it is ultimately for headteachers and education authorities to determine what happens in schools. From my experience in my

constituency, I know that schools engage young people on the issues very well, although I accept Patrick Harvie's point that that is not a universal or general statement. In some respects, right now, primary schools do that work even better than secondary schools, which is perhaps an issue that we have to think about.

I am quite optimistic that the right foundations are there to get the right balance and ensure that young people are engaged. I think that there will be a natural level of interest—I know that there is interest at the moment—and we have to ensure that the right steps are taken to capitalise on that. That is why the role of the Electoral Commission will be so important.

The Convener: Stuart McMillan wants to go back to an issue that was raised earlier.

Stuart McMillan: Deputy First Minister, you mentioned that the registration form is out for testing. I have raised an issue in the past in committee regarding the colour of the paper. I raised the issue for two reasons. First, when the form goes into a household, it is important to make it easy for 15-year-olds to fill out the correct form. Secondly, we need to consider people who have a visual impairment and people who are dyslexic. The word "accessibility" has been used a number of times today. Will you consider making the registration form a different colour to ensure that there is the widest possible accessible opportunity for 15-year-olds to register to vote?

Nicola Sturgeon: I am happy to consider that. The testing of the form will give us a lot of pointers about whether and how we could improve it, but we are happy to listen to comments outside that process as well. If there is a view that any particular aspect of the form could be improved, we will consider it. That includes changes to colour, if they would help people with visual impairments.

Stuart McMillan: Thank you.

John Lamont: Throughout this morning's discussion, I have been reminded of the important role of the Electoral Commission. Is the Government satisfied that the Electoral Commission has sufficient funding to allow it to do the job that we all expect it to do?

Nicola Sturgeon: Yes, and I believe—I will be corrected if I am wrong—that it has said in evidence that it is satisfied that the financial provisions that we are making for it are adequate as well.

The Convener: I have one final question. Steve Sadler might need to help, as it is on a technical issue. You have confirmed that an amendment will be lodged to deal with section 13 issues. Do you have any idea of any other amendments that you

might want to tell us about at this stage? That would let us begin to think about them.

Nicola Sturgeon: There are a few technical things, and I am happy to give the committee advance notice of them in order to get your views, if possible. I have given agreements to consider certain things today, but there is nothing particularly substantive that we are planning at this stage.

The Convener: In that case, I thank the Deputy First Minister and her team for giving evidence on the franchise bill today. We are grateful.

10:57

Meeting continued in private until 11:15.

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