



The Scottish Parliament
Pàrlamaid na h-Alba

Official Report

REFERENDUM (SCOTLAND) BILL COMMITTEE

Thursday 21 November 2013

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REFERENDUM (SCOTLAND) BILL COMMITTEE
23rd Meeting 2013, Session 4

CONVENER

*Bruce Crawford (Stirling) (SNP)

DEPUTY CONVENER

*Lewis Macdonald (North East Scotland) (Lab)

COMMITTEE MEMBERS

*Annabelle Ewing (Mid Scotland and Fife) (SNP)
*Linda Fabiani (East Kilbride) (SNP)
*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)
*Drew Smith (Glasgow) (Lab)

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:

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 21 November 2013

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

Decision on Taking Business in Private

The Convener (Bruce Crawford): Good morning, colleagues, and welcome to the Referendum (Scotland) Bill Committee's 23rd meeting in 2013. As usual, I ask everyone to ensure that their mobile phones are switched off. We have received no apologies for today's meeting, so we shall proceed to the business.

Agenda item 1 is a decision on taking business in private. We will have to agree a report on the instrument that we are about to consider. Are members content that we consider the draft report in private at future meetings?

Members *indicated agreement.*

Subordinate Legislation

Register of Young Voters (Anonymous Entries) (Scotland) Order 2013 [Draft]

10:01

The Convener: Agenda item 2 is an oral evidence session on the Register of Young Voters (Anonymous Entries) (Scotland) Order 2013, which is an affirmative instrument that has been laid under the Scottish Independence Referendum (Franchise) Act 2013.

As is normal with such instruments, the committee will first have the opportunity to take evidence from the minister in charge, who on this occasion is the Deputy First Minister, and her officials, before we then debate the motion to approve the instrument.

I welcome our panel of witnesses: the Deputy First Minister, Nicola Sturgeon; Helen Clifford, who is the Scottish Independence Referendum Bill team leader; and Gillian Cross, who is an elections policy adviser to the Scottish Government. I understand that the Deputy First Minister will make some brief opening remarks.

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

The draft Register of Young Voters (Anonymous Entries) (Scotland) Order 2013 has two aims. First, it extends the list of orders or interdicts that can be used as evidence for anonymous registration in the register of young voters to replicate changes that the United Kingdom Government has made in respect of its registers. Secondly, it allows chief social workers to delegate the responsibility for attesting applications for anonymous registration in the register of young voters.

The requirements for anonymous registration are contained in the Representation of the People Act 1983 and in the Representation of the People (Scotland) Regulations 2001 as amended by the Representation of the People (Scotland) (Amendment) Regulations 2007. In order to be registered anonymously, the safety of the applicant or someone in the applicant's household must be at risk. Any application must be accompanied by evidence in the form either of a listed court order or interdict or of an attestation by a qualified officer.

The Scottish Independence Referendum (Franchise) Act 2013 applies those provisions to the register of young voters for the referendum with no significant modifications. However, the committee will recall that, following concerns

raised during consideration of the franchise act, I committed to replicating the UK Government's planned changes to the rules surrounding anonymous registration in its register. The draft order before us achieves that.

The UK Government's planned changes are contained in draft regulations that are currently before the UK Parliament. The UK regulations extend and update the list of orders and interdicts that can be used as evidence of entitlement to register anonymously so as to reflect better the orders that can be issued by the courts, particularly Scottish courts.

In addition, Scotland's Commissioner for Children and Young People expressed concerns about the practical application of the process of attestation. In developing the referendum legislation, the Government has been careful to listen closely to the concerns of stakeholders and, where appropriate, to act on those concerns. Following correspondence that I had with the children's commissioner, officials spoke to electoral registration officers, who confirmed that the process of attestation could sometimes be difficult to use, especially given the requirement for a particular level of seniority of the police officer or social worker attesting the application.

In order to ensure that any vulnerable young person who is eligible to register anonymously is able to do so and to streamline the process, the draft order will allow chief social workers to delegate the responsibility for attesting applications for anonymous registration in the register of young voters. EROs agree that this is a sensible and pragmatic way forward. We have also discussed the practicalities of the proposals with the Association of Directors of Social Work, which is content that the proposals are workable. Officials are working with ADSW to update the guidance available to chief social workers.

In short, I believe that the proposals contained in the draft order respond to the concerns that have been raised and are workable and practical. On that basis, I am happy to answer any questions that members might have.

The Convener: I understand that Stewart Maxwell would like to ask a question.

Stewart Maxwell (West Scotland) (SNP): Good morning, Deputy First Minister. Back on 14 March, I asked Ken Macdonald from the Information Commissioner's Office and Scotland's Commissioner for Children and Young People, Tam Baillie, whether vulnerable young people might be faced with the difficulty of wanting to register but the danger—which I think is not too strong a word—that their entry in the register would not be anonymised.

I have read your letter to the Commissioner for Children and Young People. Do you believe that this change in the process will allow young people easily to get through the attestation process and remain anonymous? In particular, bearing in mind the difficulties and issues of mobility faced by vulnerable young people, does the process effectively answer the commissioner's concerns in this area?

Nicola Sturgeon: I believe that it does. Obviously, I will not speak for the commissioner, but I believe that the proposals in the draft order address those concerns.

When we had further discussions on the back of the concerns that Tam Baillie expressed, we found that there was a general concern that the current procedures are overly cumbersome, given the level of seniority of social worker that has to be involved in the attestation process. By extending the range of orders that can be used as evidence and, more crucially in respect of the register of young voters, allowing the chief social worker to delegate responsibility to the social worker who perhaps knows best what is going on in the life of a young person, the order will substantially address those concerns and create the conditions in which young people who are at risk and want to exercise the right to vote but to do so anonymously have a process that is not overly cumbersome and enables them to do so.

Stewart Maxwell: Have you had a response from the commissioner?

Nicola Sturgeon: I have had correspondence with the commissioner. I last wrote to him on 9 October with a detailed explanation of our proposal. I think that the letter was copied to the committee. I have not yet received a reply to that letter, which is why I am reluctant to speak for the commissioner and say what his view would be. However, I believe, based on the correspondence that we have had, that the proposals go as far as it is reasonable to go in addressing the legitimate concerns that were raised.

Lewis Macdonald (North East Scotland) (Lab): Thank you for the presentation, Deputy First Minister.

I suppose that the delegation of the power to provide an attestation is based essentially on the question whether it is possible to obtain that attestation readily. I think that you said that there was a risk that the process might be a little cumbersome in respect of the level of seniority that was previously required.

Can you indicate what sort of numbers that you anticipate might be involved here? Existing anonymised registration should provide some global idea of how the system impacts on voters over 18. It would probably be a bit of an

extrapolation to suggest what the number might be for voters under 18, but nonetheless it might be helpful to have a ballpark figure and a sense of whether there is a particular issue in particular authorities with obtaining attestation at a senior level.

Nicola Sturgeon: Given the numbers of anonymous entries that currently exist in the local government register, which is fewer than 100, I would not anticipate that we would be dealing with large numbers of anonymous entries in the register of young voters.

That said, I would draw a parallel to the discussion that we have had over the past few months about children of service personnel. It might be a very small number of people but if we are serious—as the Government is—about ensuring that everybody who is eligible to vote in the referendum gets the chance to exercise that right, it is nevertheless important, and we need to be confident that the procedures that are in place are appropriate and proportionate.

Concerns have been articulated at this committee and raised by the commissioner. In the spirit of trying to listen to and address those concerns, we have had wider discussions. The feedback was that the current procedures would be seen as perhaps overly cumbersome and not proportionate. The order addresses that concern.

I do not think that it would be possible nor, for that reason, sensible for me to put numbers on how many we might be talking about. However, I could sit here with reasonable confidence and say that we would be looking at small numbers of people. Even if it is only one or two, though, it is important that there are procedures in place that allow them to exercise their right to vote.

Lewis Macdonald: Would it be fair to conclude that the point of delegating authority is to streamline the operation rather than to deal with any numbers issue?

Nicola Sturgeon: Absolutely. Let me summarise the concern. A senior social worker or police officer might for understandable reasons not be intimately aware of the particular circumstances behind an application for anonymous registration. Therefore, the ability to delegate the matter to the social worker who is dealing with the young person in question streamlines the process and, I suggest, makes it more likely that individual circumstances will be treated appropriately. For both reasons, I think that the procedure is sensible.

Rob Gibson (Caithness, Sutherland and Ross) (SNP): How are you going to make people aware of this provision once the order is passed?

Nicola Sturgeon: We are working and will continue to work with the Association of Directors of Social Work on updating its guidance to chief social workers on their role in the attestation process. We are also working with EROs to develop guidance on registering vulnerable young people. That guidance and the guidance on the young voter registration form make it clear that anyone with any concerns for their safety should discuss the matter with the ERO in the first instance. The ERO guidance on registering vulnerable young people also indicates that officers should proactively engage with key individuals to explain the different registration options that are available to them.

We will be taking all those appropriate steps to ensure the right level of awareness.

Annabel Goldie (West Scotland) (Con): You said earlier that you expect the chief social worker to authorise another social worker to deal with the situation, but I note that the draft order refers to “any person”, which I presume could extend to a carer or someone else who knows the young person.

Nicola Sturgeon: The drafting was deliberate. The intention is to involve the appropriate person—who could be the headteacher of a school or another official in the council, for example—and the guidance that we will prepare for chief social workers will obviously be important in ensuring that they properly understand the procedures, how best to use them and the appropriate circumstances in which they would be used. However, the intention is that the person who understands the child's circumstances will be best placed to carry out the attesting.

Tavish Scott (Shetland Islands) (LD): I want to pick up a small point on the financial effects from the policy note dated 31 October that was circulated to the committee. I entirely appreciate that, in light of the Deputy First Minister's answer to Lewis Macdonald's questions, this order is all very logical but, with my Public Audit Committee hat on and given my pedantic nature, I wonder whether it would be possible if not today then at some point to define what “significant” means in the phrase “significant financial effects”.

I realise that Government always has to give some account of any significant financial effect of proposed legislation or regulation—and rightly so—but in this context is the Government operating to some de minimis level or is it a matter of making a financial assessment of a particular proposal?

Nicola Sturgeon: A financial assessment is made. No amounts have been set down, but I am happy to write to the committee after the meeting and set out to the best of our ability the process for

making that assessment. However, as Tavish Scott has rightly pointed out and as I made clear in my answer to Lewis Macdonald, the numbers involved are likely to be small and it is therefore likely that there will not be much of a financial impact. Nevertheless, I am happy to provide whatever information we can on the process of assessing what is and what is not significant.

Stuart McMillan (West Scotland) (SNP): Following on from Annabel Goldie's question about social workers, I note your reference to the appropriate person and your comment in your response to Tavish Scott that you do not expect the numbers involved to be large. However, given the diverse range of individuals who might be covered, will this measure be workable and fully effective?

Nicola Sturgeon: I think that it will be workable. Obviously, in making our assessment about its workability, we have taken care to have discussions with the right people, such as EROs and ADSW, and both groups are satisfied that the proposition is workable. Indeed, EROs have described it as sensible and pragmatic and, as I have said on a couple of occasions this morning, we are going to update the guidance for chief social workers.

Given that, I am perfectly satisfied that this is a workable and effective change to procedure that will meet the stated objective of ensuring that, even if we are talking about a small number of people, any young person at risk who wants to exercise their eligibility and right to vote is able to do so. That principle has run through all our discussions on the franchise and the referendum arrangements. We want to ensure that everyone with the right to vote in this referendum does not face any avoidable barriers to doing so.

10:15

Annabel Goldie: On a very tiny technical point, is there a qualifying age for the "any person" mentioned in the order?

Nicola Sturgeon: No. We might want to cover the issue in the guidance that is being updated, but the intention is for the appropriate person to have a professional relationship with the child.

Annabel Goldie: With respect, I do not think that that is what the regulation says. What if a 14-year-old sibling came along and said, "It's okay—I'll say that your registration has to be anonymous so that you can get your vote"?

Nicola Sturgeon: The key point is that the chief social worker is the person who has to delegate responsibility and who is responsible for making the judgment as to whether the person to whom responsibility is being delegated is appropriate.

The order provides that the chief social worker's authorisation will be attached to the application for anonymous registration along with the attestation, which means that the EROs can be satisfied that the person as authorised has attested the application without the need for them to make further inquiries.

It is not the case that, as in your example, a sibling will be able to come along and say, "I judge myself able to attest this application"; the chief social worker has to say that the person is appropriate to have the responsibility delegated to them.

Thank you for pointing out that technical issue.

Annabel Goldie: I just wanted your presence here to feel justified. [*Laughter.*]

Nicola Sturgeon: I am, as ever, grateful to you.

Lewis Macdonald: In the same spirit of ensuring complete certainty, I see that there is no explicit link to the Children and Young People (Scotland) Bill, which is being debated in Parliament this afternoon. Given that the bill makes provision for a young person to have a named person, is there some implicit link between it and the provisions in this order?

Nicola Sturgeon: As I am not the minister responsible for that bill, I stand to be corrected if I give the wrong answer, but I do not think that there is an implicit or explicit link between the order and the bill. The order changes procedure for very specific purposes—in this case, for voting in this referendum. After all, we do not have the power to make the same change for other elections.

The Convener: Now that we have exhausted members' questions, we will move to the debate on the order on which the committee has just taken evidence.

I invite the Deputy First Minister to speak to and move her motion inviting the committee to recommend approval of the instrument.

Nicola Sturgeon: I believe that the draft order achieves the practical aims that we have been discussing of ensuring consistency as far as possible between the register of young voters and the local government register for the referendum and ensuring that any vulnerable young person who should be able to register anonymously can do so. I therefore hope that the committee feels able to support it.

I move,

That the Referendum (Scotland) Bill Committee recommends that the Register of Young Voters (Anonymous Entries) (Scotland) Order 2013 [draft] be approved.

Motion agreed to.

The Convener: I thank the Deputy First Minister and her officials for their attendance. Our next meeting is scheduled for 5 December, at which we will consider a draft report on the instrument that we have just considered. I also point out that no further meetings of the committee have been scheduled.

With that, I formally close the meeting.

Meeting closed at 10:18.

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