



The Scottish Parliament
Pàrlamaid na h-Alba

Official Report

DEVOLUTION (FURTHER POWERS) COMMITTEE

Thursday 18 December 2014

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DEVOLUTION (FURTHER POWERS) COMMITTEE
7th Meeting 2014, Session 4

CONVENER

*Bruce Crawford (Stirling) (SNP)

DEPUTY CONVENER

*Lewis Macdonald (North East Scotland) (Lab)

COMMITTEE MEMBERS

*Linda Fabiani (East Kilbride) (SNP)
*Rob Gibson (Caithness, Sutherland and Ross) (SNP)
*Alex Johnstone (North East Scotland) (Con)
*Alison Johnstone (Lothian) (Green)
*Stewart Maxwell (West Scotland) (SNP)
*Mark McDonald (Aberdeen Donside) (SNP)
*Stuart McMillan (West Scotland) (SNP)
Tavish Scott (Shetland Islands) (LD)
*Drew Smith (Glasgow) (Lab)

*attended

THE FOLLOWING ALSO PARTICIPATED:

Gordon Blair (Society of Local Authority Lawyers and Administrators in Scotland)
Chris Highcock (Electoral Management Board for Scotland)
Ian Milton (Scottish Assessors Association)
Mary Pitcaithly (Electoral Management Board for Scotland)

CLERK TO THE COMMITTEE

Stephen Imrie

LOCATION

The Mary Fairfax Somerville Room (CR2)

Scottish Parliament

Devolution (Further Powers) Committee

Thursday 18 December 2014

[The Convener opened the meeting at 10:32]

Electoral Management of the Scottish Independence Referendum

The Convener (Bruce Crawford): Good morning, and welcome to the seventh meeting of the Devolution (Further Powers) Committee. If members could switch off their mobile phones, that would be most useful.

I welcome our witnesses: Mary Pitcaithly, the chief counting officer for the Scottish independence referendum and convener of the Electoral Management Board for Scotland; Ian Milton, a Grampian assessor and electoral registration officer, chair of the Scottish Assessors Association's electoral registration committee and member of the Electoral Management Board for Scotland; Gordon Blair, the chief legal officer in West Lothian Council, chair of the Society of Local Authority Lawyers and Administrators in Scotland's elections working group and adviser to the Electoral Management Board for Scotland; and Chris Highcock, the senior deputy returning officer in the City of Edinburgh Council and secretary to the Electoral Management Board for Scotland.

I do not intend that we will necessarily direct questions to any particular member of the panel, although members are free to do so if they wish. Any member of the panel can answer a question but they need not answer any question that they feel has already been dealt with.

We have about an hour for business this morning. I understand that Mary Pitcaithly would like to make an opening statement.

Mary Pitcaithly (Electoral Management Board for Scotland): I want to thank you for the opportunity to come along today with representatives from the EMB and to reflect with you on the experience of the referendum, before it goes to the back of our minds.

I want to make three points that I hope will frame our discussions this morning. First, we talk about the scale of the event in September and, quite frankly, it was huge in every aspect. Secondly, it went well. Thirdly, it went well because of the planning, professionalism and hard work of the many dedicated people across

Scotland who work in election teams and support us to do the job that we were given. I also want to acknowledge the committee's contribution. Your scrutiny of the referendum legislation was vital in shaping the rules and approach. In particular, we welcome the long lead-in period, which allowed us to do the planning that is extremely important.

The referendum was the biggest ever electoral event in Scotland in terms of turnout, electorate, the number of postal voters, media interest, public engagement in the debate and the gravity of the question that was being asked of us.

The event went well and it is satisfying for us to be able to look back on the months of planning, preparation and work with stakeholders and know that we achieved the objective that we set out to achieve, which was that voters would have confidence in the result. That is not just my assessment; we have the Electoral Commission report and we have spoken to representatives of the campaign groups and the political parties, the press, international observers, and Scotland's voters, most of whom have commented on how well the referendum was run.

We did not rush the event. Because the legislation was passed early, we had time to develop and implement structures and controls to ensure that we would have the highest standards for this electoral event. That was really important.

For us, it was an example of a referendum that was made in Scotland and delivered by our unique institutions, with the Electoral Management Board for Scotland having an important role. As chief counting officer, my position as convener of the EMB meant that I could call on the support, expertise and professional resources of the entire board. Our project management approach is already being promoted across the United Kingdom as a case study and model of best practice in how to plan, manage and deliver major electoral events with a clear objective, principles and appropriate controls. Of course, although that is important for Scotland, we are not complacent and we are already learning the lessons of 2014 so that we continue to improve our performance in future.

Finally, although we faced many challenges in delivering the referendum—I am sure that we will return to the issues around turnout and the extension of the franchise to 16 and 17-year-olds—with extensive planning and the engagement of all the professionals in the 32 council election teams, the Scottish Government, the Electoral Commission and Police Scotland, we were able through consensus, guidance and a handful of directions to craft a framework that ensured that polling and counting went smoothly across the country.

The Convener: Thank you for that opening statement, Mary. It is probably appropriate at this stage on behalf of the committee and, I am sure, the whole Parliament to thank you as the chief counting officer for Scotland and the electoral officials who were involved in the process across Scotland for the organisation of the referendum, your hard work and professionalism. I know that long hours were certainly part of the job. It took huge commitment to deliver what has been widely recognised as a remarkably successful and well-organised referendum, during which the people of Scotland immersed themselves in democracy.

We have enabled ourselves through Governments, the Parliament, this committee and yourselves to show something pretty significant in terms of how democratic societies can work. The rest of the world can learn from that model, and I am grateful to you for that.

In your opening statement, you mentioned the need for time to develop structures and controls and to learn lessons. I have a question about one of the areas in which we might need to start using some of those lessons quite quickly—the proposed section 30 order that has been discussed between the two Governments about 16 and 17-year-olds. All things being equal and in an ideal world, when does that section 30 order need to be in place? When does this Parliament need to put in place legislation to ensure that we develop the controls and structures that you talked about to enable 16 and 17-year-olds to take part in the referendum—sorry, that was a slip of the tongue—in the Scottish Parliament election in 2016?

Mary Pitcaithly: We are fortunate in that we know the date of the Scottish Parliament election. That is really helpful, because all our planning can be done within a set period. The answer to your question is as soon as possible and certainly not later than the spring of 2015. There are a variety of reasons for that, on which my colleagues can expand.

There are two aspects to successfully extending the franchise, the first of which is getting young people on the register so that they can vote. My colleague Ian Milton can expand on what the timescales would be for electoral registration officers.

The other aspect, of course, is the young people wanting to be on the register and then wanting to go and use their votes. The issues around that concern voter education. We used whatever resources were available to us—Education Scotland, our own education teams within the councils, community education and Young Scot—to reach out to young people and engage with them. That was remarkably successful but, come 2016, there will be a whole new group of 16 and 17-year-olds, so we will have to redouble those

efforts. However, we have cracked it. We know what works, so we can revisit some of those approaches. Your predecessor committee worked closely with the Scottish Government and agencies on that, but we did quite a lot in the councils and we can keep that moving and re-engage with that cohort of 16 and 17-year-olds in the registration period to get them on board.

It is probably best if I leave Ian Milton to pick up the specifics of registration.

Ian Milton (Scottish Assessors Association): The Scottish Independence Referendum (Franchise) Act 2013 received royal assent in August 2013 for the canvass, which commenced on 1 October 2013. That did not adhere to the six-month rule that Gould set down, but electoral registration officers had been in discussion with the Scottish Government for a considerable period before then so they knew where they were going. Ideally, if you were going to follow the six-month rule, the legislation for the 2016 election would need to be in place by 1 February 2015 because the canvass will start on 1 August 2015.

The Convener: That is interesting. The Electoral Commission's report, which came out at the beginning of this week, talked about all legislation needing to be commenced six months before the canvass but did Gould not say that the legislation had to be in place six months before the event?

Ian Milton: Well, the event is the canvass.

The Convener: I am pretty sure that Gould was specific that the six-month rule was about the election date and the Electoral Commission has gone further. I might be wrong and I stand to be corrected.

Mary Pitcaithly: No, I think that you are quite right, convener. I think that Gould said that, six months before the event, everything should be in place—not only the legislation but, hopefully, all the regulations that flow from it. Ian Milton's point is simply that, for him, the event is not polling day but the canvass, which is when we capture the voters. Therefore, ideally, we would want the full six months for that as well.

Ian Milton: In planning for the canvass, we need to know what questions we are asking and who we are asking them of. In advance of the canvass being launched, we need to get our forms designed and printed, ensure that all our contracts are in place and, if we are going to use automated or electronic response services, ensure that they are in place. Therefore, as far as the canvass is concerned, the event starts in the autumn.

Some EROs might start on 1 August and others might start on 1 September or thereabouts, but that is when the canvass starts and that is when

the documentation will arrive on people's doorsteps.

The Convener: We have an interesting challenge because you say that the canvass for the 2016 election will be in August 2015. Is that right?

Ian Milton: Yes.

The Convener: Therefore, if the legislation must be in place six months before that, we are talking about February.

Ian Milton: Yes, 1 February.

The Convener: Not only does the section 30 order need to be passed at Westminster, but we have to get the legislation through the Scottish Parliament by February.

Ian Milton: In an ideal world.

The Convener: That is interesting.

Mary Pitcaithly: That would be ideal. We want to stick to the Gould principles on the matter but, if we know that something is coming and we are absolutely clear that it will be approved, that makes a big difference. The Gould experience back in 2007 concerned legislation about which we could have no certainty because it was changing significantly right up until three months or so before polling day.

The Convener: Okay. We now know that we do not have the ideal world, so the next question that needs to be asked is: in what timescale is it doable?

10:45

Ian Milton: We need to look at the experience that we had, and we demonstrated that we could ensure that 16 and 17-year-olds were enfranchised although the legislation was not in place until August. I suppose that anything better than that is an improvement and a step in the right direction.

The Convener: Okay. You can handle August, which is quite an important message in terms of how we take this forward.

Ian Milton: What is most important is that there is very close working, as there was for the referendum, between officials like me, policy makers and the Scottish Government. We had a referendum focus group that involved people like me and Scottish Government officials and which met informally, which worked extremely well. That meant that when the legislation was enacted, we were all up and running.

In an ideal world, we would want the legislation to come first, but as we have acknowledged—

The Convener: I guess that you will begin discussing with Scottish Government officials some time next week how things will be put together now.

Mary Pitcaithly: Not on Thursday, but perhaps on another day next week.

The Convener: I am sure that it will happen.

Ian Milton: The approach has already been made.

The Convener: Okay.

Lewis Macdonald (North East Scotland) (Lab): That is very helpful. I echo the convener's opening remarks, as I am sure we all would, on the conduct and success of the operation, and acknowledge the scale of it, too.

Clearly, there are a number of important areas in which lessons can be learned. Mary Pitcaithly mentioned in her opening statement joint working with the Electoral Commission and Police Scotland, which are clearly important partners. I noted in Ian Milton's report a number of queries about some of the working relationships, particularly around things that the Electoral Commission notified to voters that were perhaps not as helpful as he felt that they might have been. In addition, without going into individual cases, there is the question whether Police Scotland took attempted electoral fraud as seriously as it ought to have done.

I am interested in your comments on those broad areas in terms of working with other agencies.

Mary Pitcaithly: I can pick up on the second point regarding the police. Our experience of dealing with the police service generally, and with senior officers who worked directly with us, was one of the best experiences that I have had of partnership working. We had very clear lines of communication and access to the most senior officers if we had specific concerns. We planned the whole approach from very early on and had regular meetings. I was still meeting Jim Baird—the chief superintendent with whom we were working—right up until polling day; in fact, he was at the count. There was a long lead-in period for us to get to know each other and to understand what the important issues were.

I have no doubt that such officers have absolute clarity around the importance of pursuing potential cases of electoral fraud. Obviously, they have to work closely with the Crown Office and Procurator Fiscal Service. I know that evidence gathering for a number of cases is still going on. It looked as though there were cases on the day, and people might be a wee bit frustrated about what has happened to them. My understanding is that they might still be trundling through the system.

However, they were certainly taken up with the degree of interest that I would have expected.

Ian Milton: Perhaps I should contextualise my report, which was written not as a piece of evidence for this committee, but as an overview to inform a number of sources, including the Electoral Commission and academic organisations that were interested in the referendum. It was also written to record the position as far as electoral registration officers across Scotland were concerned.

The report has been used in a variety of fora. I apologise for talking at times about “R-11”, “E-6” and such things, but they are just electoral administrators’ terms. When you have been among electoral administrators as much as I have, perhaps you start to use such terms, which is possibly regrettable.

At times, the report is possibly a touch frank, in the sense that it highlights specific incidents. However, I point people to the opening paragraph, which states that the referendum

“was the most successful electoral event”

ever

“in the experience of”

electoral registration officers and the committee. Nevertheless, we need to pick up on pinchpoints where we can improve and that is what the report set out to do. It should not be seen as a critical report; it is more a case of looking at where we go from here.

Lewis Macdonald: Absolutely, and hence the contextualisation of my question in recognising the fantastic success of the operation as a whole but pursuing those particular points.

The principle that you outlined in relation to the 16 and 17-year-old franchise was one of “No surprises and we can do it”, if that is an accurate summary of what you said. When it comes to the Electoral Commission advertising or promoting opportunities for voters, presumably that is also about using the experience of the referendum in order to better inform how it lets the public know how to proceed. Is that your point, in essence?

Ian Milton: Absolutely. We work extremely closely with the Edinburgh office and the London office of the Electoral Commission, so we have very good lines of communication.

Mary Pitcaithly: It is a very good point that we had so many first-time voters—and they were not all 16 or 17-year-olds, by any manner of means; we also had people who perhaps had not voted for a long time. One of the lessons learned is that we need to go into a lot more detail than perhaps we had anticipated. By “we”, I mean all of us—the media as well. We have spoken to the media

about this. We need to explain exactly what should happen in a polling station and what the voters can expect. We could have demystified the whole issue of pencils, for example, which bedevilled us right up to polling day.

At the other end of the process, there is the count. In all honesty, in my entire life as a returning officer, no one has ever been interested in the count other than people like those of us who are here today. This time, the level of interest in the minutiae of what happens in the count was great—it was fabulous—but there were so many people that we could not sit down and explain it to at the time.

We all issued booklets that were available at the count so that people who were there had an explanation, but to people who were watching the count on television it must still have seemed a bit mysterious. One of the lessons for us from that is to take a wee bit more time to explain what happens—what the various stages are, why we verify as well as count, and what it is all about.

Linda Fabiani (East Kilbride) (SNP): I have a wee comment on that. We need to extend that awareness raising to include how someone registers if they are missed out, because locally we certainly came across some confusion about that.

I want to ask Ian Milton a bit more about the register of young voters, because in the SAA submission there is—explicitly and implicitly—the view that it could have been done better and that perhaps there were complications. Is it possible to rationalise some of the process for the different registers—the confidential young voters register and the other one? Also, how do you do that while ensuring that you are not creating potential vulnerabilities for those who will be 15 at the time of registration as attainers?

Ian Milton: That is a fascinating point. In democracy, we always have a tension between privacy and transparency, which is illustrated with great clarity in the case of young voters. There is no magic solution. It is complicated because electoral law is complicated. It is not an administrative issue—we rationalised as much as we could, but it is nevertheless complicated.

For example, an application that is received by an electoral registration officer before 1 December 2015 in the canvass next autumn will allow an under-18 to be registered, provided that they will be 18 by 30 November 2016. They will be shown on the electoral register as an attainer, and their name and the date of their eighteenth birthday will be shown. If the application is received on 1 December 2015, we can show the individual as an attainer, along with the date of their eighteenth

birthday, as long as their eighteenth birthday is on or before 30 November 2017.

That is where the issue arises. As electoral law currently stands, it is not a case of saying, "If your date of birth is before that date, you will be an attainer on the electoral register," because it depends on when the electoral registration officer receives the application. That is in the Representation of the People Act 1983, which is the fundamental piece of legislation that drives electoral law across the United Kingdom. The question is whether that can be rationalised.

Linda Fabiani: Can what was put in place for 16 and 17-year-olds under the Scottish Independence Referendum (Franchise) Act 2013 be rationalised, bearing in mind the issue to do with 15-year-olds?

Ian Milton: It is rationalised, to a certain extent. We capture data for 16 and 17-year-olds for our existing registers, and in essence we will capture data for 14-year-olds as well as 15-year-olds for the same reason.

We need to bear in mind that this will be an on-going process, because if 16 and 17-year-olds are enfranchised for the Scottish parliamentary election they will also be enfranchised for by-elections. It will have to become business as usual on the electoral administration and registration front. That is where the challenge lies.

An issue is that the young voters register was confidential, which meant that the two designated organisations had access to it through the polling list, whereas the permitted participants did not have access. That gets us into issues to do with transparency.

The Convener: Folks, I do not want to stop the discussion, but we are going into the issue quite deeply and we have a range of areas to cover, which we might not get through. I will allow a couple of supplementaries.

Mark McDonald (Aberdeen Donside) (SNP): I will be brief, convener. It is about what Mary Pitcaithly said about doing more to inform voters about the process. In 2007, when the single transferable vote was first used in council elections, I remember that council officials were in place at polling stations to guide folk through the process and explain what was happening. There were added complications that day, of course, because people were using multiple voting systems on the same day, whereas the referendum was a binary ballot.

However, as Mary Pitcaithly said, in the referendum a large number of people voted who had never cast a vote in their lives, in any kind of ballot. With hindsight, would it have been a good move to have had people at desks in polling

stations? You said that there were no delays, but certainly when I went round polling stations in my constituency, staff told me that having to issue ballot papers as well as offer guidance and advice to people who required help was quite onerous.

Mary Pitcaithly: There was a fine balance in that regard. If we think about all the different kinds of ballot paper that we might have, we can see that the referendum ballot paper was the simplest. It was nice and simple and straightforward. We would normally expect a presiding officer and a polling clerk to be able to deal with that.

However, we recognised early on that we had to plan for a very large turnout. Because of that, we restricted the number of people who could use each polling station. We asked counting officers to ensure that potentially no more than 800 electors would use a station on the day, to try to prevent queues.

We were successful in preventing queues; the only queues that I saw happened before 7 o'clock in the morning and were not the result of slow responses from staff. That was fine. I had no complaints about queueing during the day, but I recognise that some stations were busy and I certainly recognise that POs and clerks did not get much of a break on the day—they worked pretty much full on.

11:00

For that reason, most counting officers employed additional staff. They were not necessarily called information officers, but they were there to provide additional capacity and let somebody have a sandwich for lunch or a comfort break, for example. They were also there to help people. If somebody came in and was utterly confused or just wanted to ask a lot of questions, they could take them off to one side. I certainly saw that working quite well as I went round polling stations.

I know that, with the late surge in applications for people to register, the limit of 800 was breached in polling stations, because there were more than 800 on their particular lists. The response from the counting officer at that stage could only be to put in more staff, and that tended to happen.

I do not know whether Chris Highcock wants to say anything about the experience in Edinburgh, for example.

Chris Highcock (Electoral Management Board for Scotland): One of the key things that we did was train all polling staff. In our submission, we include the polling station handbook that was given to all polling staff. That went through in detail the process that a voter would engage in when

they went into a polling place. All staff were aware that a lot more people than usual would be voting. In the face-to-face training that we gave to all our polling staff, that was certainly a particular challenge that we wanted them to pick up on.

We also looked at the matter in the round. We were not the only ones who communicated with the voters. The Electoral Commission material that explained the process went to every household in the country.

However, the polling clerk and the presiding officer certainly have a key role in guiding people through the voting process. We recognise that and build on it.

Mark McDonald: In the next three years, we will have three elections, in each of which different ballot papers and different electoral systems will be used. Would having something in place at polling stations be advisable, given the high turnout that we saw and given that we hope that many of the people who voted for the first time in the referendum will continue to vote but they will vote in different ways?

Mary Pitcaithly: Having three people in a quiet polling station that not that many voters are assigned to and in which the turnout may not be at the same level that there was in September could be seen to be a potential waste of public money. Even if the fees and charges order allowed for that, there could be criticism of three people sitting all day in a polling station with maybe no more than a couple of hundred voters assigned to it.

It should be left as a matter of horses for courses. There should be a very close look at the likely turnout in an area, the previous experience, whether the community is one in which there might be lots of young people voting for the first time, and whether it is thought that two staff can cope. There should be flexibility in looking at matters closer to the time. Edinburgh put in additional staff right up until a day or two before polling day.

Stuart McMillan (West Scotland) (SNP): Obviously, 16 and 17-year-olds went on to the register for the first time, but how did you manage to get information to those who were doing apprenticeships and were not in education to get them registered? I raised that point when we went through the legislation.

Ian Milton: The Scottish Independence Referendum (Franchise) Act 2013 required electoral registration officers to issue a young voter registration form to every household in Scotland as part of the canvass. That was the principal data capture method. Obviously, we also used the education authorities. To deal with the apprentices, we also dealt with the Scottish Youth Parliament and other fora to try to get the message across. We worked with further and

tertiary education establishments—not only universities but colleges—and we got the message out as strongly as possible. The Electoral Commission did a lot of work on that as well.

We feel confident that we managed to capture as many people as we possibly could. We also worked with care providers to deal with looked-after children, for example. That raises all sorts of issues but, in my assessment, that was a success as well.

Gordon Blair (Society of Local Authority Lawyers and Administrators in Scotland): We have a duty to encourage participation, which technically, I suppose, applies to elections but which we applied to the referendum. We will certainly apply it in 2016.

My council, West Lothian Council, was not alone in its approach by any means. It had awareness-raising sessions with West Lothian College for younger voters and particularly for the 16 and 17-year-old employees of the council. It is the biggest employer in the area.

There were specific measures to target 16 and 17-year-olds in our area, and other councils would have been doing the same. On a more general point, depending on resources—of course, resources are not the same everywhere—pupils in secondary 4 and 5 were targeted for awareness raising not just by our ERO colleagues about getting registered but about the voting process. We can improve on that, but it is resource intensive and that is a problem in the current climate. However, we hope, as I am sure other councils do, to repeat that effort in 2016 to capture the new 16 and 17-year-old voters.

Mary Pitcaithly: The media did a great job as well. We had great support from the media, which were looking for us to do interviews. My quid pro quo was always that the message that I wanted the media to get out was about such things as avoiding queueing by turning up at a certain time, and making young voters aware of the deadline for voting, so there was a bit of a trade-off in using the media's ability to reach out to people whom we might not have been able to get to.

Alison Johnstone (Lothian) (Green): I congratulate you all on your contribution to the most successful electoral event ever. I am also pleased to note, Mr Milton, that we are not expected to understand all the jargon in your report. I was reading it and wondering whether I should know what R-11 is.

My questions are for Mr Milton. Your report notes:

"Deadlines for registration and for absent vote applications immediately prior to the referendum were too late and inconsistent."

You are obviously concerned about the impact that that might have on future elections. I note that you also say that policy makers might be loth to interfere and change that in any way. Could you comment further on what we might do and on the problems that those aspects of the referendum presented?

Ian Milton: The deadlines for registration and for absent vote applications are considered by administrators to be fairly cast iron, as they are well embedded in legislation. The deadline for registering to vote is 12 days before the electoral event at midnight, whereas the deadline for making an absent vote application is 11 days before the electoral event at 5 pm. It did not apply in the referendum particularly, but in electoral law the deadline for making an application for a proxy vote is normally midnight on day 6, and for an emergency proxy it is 5 pm on the day. There is a midnight deadline and a 5 pm deadline, and it depends on what event you are working towards.

Ideally, all the time deadlines would be brought to noon, so that any forms that were being delivered could be handed in to offices that are manned, and people who are handing in forms could be assured that the forms have been received in time, rather than their popping a form through a letterbox at 11.59 at night and wondering whether it is going to be accepted. That is one time issue. There is also the question of the deadlines being too close to the election, which is a real challenge.

The Political and Constitutional Reform Committee of the House of Commons recently published a voter engagement report, its fourth report, which stated that it wants deadlines to be brought closer to the electoral event in order to increase engagement. The Electoral Commission commented along similar lines in its report on the referendum, saying that the deadline should be brought closer to the electoral event, but that creates huge difficulties for administrators, especially now that we are in a different registration framework from the one that we had for the referendum. Now, we are in the individual electoral registration framework, which is a completely new filter for electoral registration, and it means that each application not only has to be received by the ERO but has to be verified through a process that can take up to five days.

Mary Pitcaithly: We kept offices open until midnight, and returning officers were giving as much support to EROs as possible by, for example, seconding staff where appropriate and helping at call centres. However, having a specific time would make such a difference—it would ease voters' concern about whether their application was valid. Indeed, an awful lot of time the following day was spent dealing with people who were

phoning up to ask, "Did you get my application?" That same day was the very last day that people could apply for an absent or postal vote, and we were dealing with that, too.

The two dates are too close together, but at least the second date has a 5 o'clock deadline, so at that time we could close the door and say "If it's not in, it's not in." However, unlike the day before, no time was specified, so we had to assume that the deadline was midnight. That is not good for the voter. In addition, some people always leave things until the last minute. By changing the time, not many voters would have been lost—they would have just got the application in at 5 minutes to noon rather than at 5 minutes to midnight. It would be a huge improvement if we used times within the normal working day.

Chris Highcock: It is worth noting that the law commissions of England and Scotland are considering the entire set of electoral legislation. We have been appealing for consistency in the timetable and making sure that that is reviewed.

To be positive about the situation, we deal with the timetable. Knowing what the dates are is key in order to communicate them clearly and to ensure that people can work within them.

Alison Johnstone: You have answered that clearly. It does not seem to be beyond the wit of man to address the issue sensibly. If deadlines are to be brought closer to electoral events, we will have to look at resourcing and capacity.

Your report says:

"In some areas third parties claiming to promote engagement submitted volumes of applications on deadline on behalf of electors."

What was going on there?

Ian Milton: A number of organisations are interested in political engagement. Whether they have a political agenda is not for me to question. In a way, any engagement activity is to be welcomed. In the referendum, there was massive engagement, which was absolutely fantastic. However, some organisations might decide to have a registration drive and go around doorsteps with a form—it may have been the form that my office issues from my website, or they may have downloaded it from the Electoral Commission website and photocopied it—and invite people to register to vote. As long as the forms are properly completed, assigned and returned to us by the deadline, they are valid applications to register to vote. The problem was that every such form that I received in my office was for somebody who was already registered to vote. However, because it was a fresh application, it had to be processed. We had to reference it and work out the address because, for example, they may have given the tenement flat number but not its location.

Administrative time was spent working out to which property record the application referred only to find that the person was registered. That tied up a resource.

One office received about 500 applications just before midnight on day 12. Each of those applications had to be considered to establish whether a registration was in place. If there was no registration in place, it had to be established whether the application was valid. If it was valid, it had to be added to the register.

The Convener: Rob Gibson and Lewis Macdonald will ask supplementaries. After that I must move on and get to cost issues, because that matters to the witnesses.

Rob Gibson (Caithness, Sutherland and Ross) (SNP): We have explored the particularly burdensome nature of registration hearings and appeals.

You mentioned that we are in a new system. It looks to me as though, if there is any query about an application for a postal vote, the person has a deadline of 12 days in which to reply. That makes it unlikely that you would be able to handle things in the case of late applications, whether the deadline was at midnight or at noon the following day. Could you comment on that?

11:15

Ian Milton: Yes. If an application is received in time but there are issues that must be clarified—for example, if the correspondence address for the ballot paper is not clear—we follow that up and get to the bottom of it, and the application will not be treated as void. However, that all takes a significant amount of time.

Hearings take place in situations in which the ERO has concerns about a registration application. Those concerns might, for instance, involve the veracity of an application. When we receive perhaps several thousand applications 12 days before an election, and we find that we are unhappy with a number of those, we will hold a hearing. That all takes time. One or two hearings are quite easy to deal with, but moving into double figures causes difficulty because there is only a short time between the registration deadline of day 12 and the determination deadline of day 6. Getting the applicant to acknowledge receipt of the hearing notice and say when they will be available for the hearing all takes time and resources. Normally, that is not a major issue, but the level of engagement in the referendum and, I think, the desire of some people who were not resident in Scotland but who felt that they were Scottish to participate in the referendum led to a number of what I considered to be fraudulent applications that required hearings.

Rob Gibson: Will the fact that the letters give the applicant 12 days to respond with the information that is required to confirm their identity in order to get a postal vote impact on the process? How can that possibly work? People have lots of issues to deal with—work issues, distance issues and issues about getting to offices. There are many ways in which the ordinary voter might be put off taking part in the process. Is it likely that people will be put off registering because of the complexity that is now present in the system?

Ian Milton: In relation to individual acts of registration, I am not familiar with which letter you are referring to.

Rob Gibson: It is a letter that I happen to have been sent that says that my identity could not be verified.

Linda Fabiani: Oh, dear.

The Convener: Can I get you to confirm that you are, in fact, Rob Gibson?

Rob Gibson: The language is threatening. I understand that the wording will have been developed by the Electoral Commission, but the timing of the process, as set out in the letter, is difficult. There is an on-going issue in relation to the next event.

Ian Milton: This is a slightly different issue, but it is a key point. If the convener will allow me, I will talk a little about individual electoral registration, which was rolled out in Scotland on 19 September this year, with EROs having to write to every elector from 1 October. The vast majority of electors received a letter from the electoral registration officer telling them that they had been confirmed, that they were either on the open register or not on the open register and that they need take no further action.

The Convener: If you do not mind my saying so, the issue is a post-referendum one. However, we could pick up on some of the issues with you in writing, as they are obviously quite important.

Mary Pitcaithly: They are very important.

The Convener: I recognise the significance of them, and I would like to have an exchange about them.

Mary Pitcaithly: We would be happy to do that.

Lewis Macdonald: One area around registration that might be affected by individual electoral registration, and which was a concern in the referendum, is that of university students returning to their city of study immediately before the vote and discovering that they have ceased to be registered, even if they have not actually moved their term-time address. Is the issue being

dealt with? What can be done to deal with it for future elections?

Ian Milton: We were very aware that the timing of the referendum did not fit in with the university timetable. A report that I prepared for the EMB informed a lot of administrators on where we were going with that. It was a unique situation because the referendum was taking place on 18 September, which coincided with most freshers weeks. A lot of work was done with National Union of Students Scotland and with the universities and a lot of messaging was done through the Electoral Commission. I am pleased to say that the feedback has been positive. It indicates that those who were entitled to participate did and those who were not did not. In that regard, I think that the approach was a success.

Going forward, the issue with individual electoral registration is a different one. There is no timing issue with regard to the Scottish parliamentary elections, but there is an issue about how we will register students in the future. We are working on that with the NUS and academic registrars.

Stewart Maxwell (West Scotland) (SNP): I will turn to a different matter, which is dealt with in the final paragraphs of Mr Milton's submission. It has been estimated that there was £700,000 of additional costs to prepare and run the referendum. Can you explain to us in a little detail how you came to that figure? My understanding is that those are costs that were reasonably incurred that are additional to those that were expected to be incurred. Can you take us through how you came to that figure?

Ian Milton: Certainly. It is within the budget of electoral registration officers to maintain their registers all year round and they do so. Our resources will usually cover a normal electoral event such as a Scottish parliamentary election or a UK parliamentary election, so we do not normally need any additional funds.

However, the referendum was so unique that it demanded huge additional resources to be put into it in a reactive manner. Although we could plan for the event and for high levels of engagement, we could not forecast how many phone calls and emails we would receive or how many people would change their voting preferences by opting for an absent vote before saying that they would vote in person and then perhaps change their mind back again. There were all those different aspects, which were almost unique due to the level of engagement that we experienced.

In my own office, an electoral event will pass with my staff working almost no additional hours, because we are organised to deal with it. In my office this time, we worked more than 2,700

additional hours to deal with the huge volume of interest. Many of the contacts were just phone calls or emails from people asking, "Am I on the register?" or, "I have got my absent vote—what do I do now?" Many of the queries flowed between registration and the counting officer, but given that the voter has made the call, we are not going to pass them on to another office. We deal with the issue.

The Convener: Can Mary Pitcaithly expand on the issue from her perspective?

Mary Pitcaithly: Yes. We put additional staff into polling stations when the registration numbers increased significantly. We also had to do additional work on polling day. For example, the number of emergency proxy applications was way beyond anything that we have ever experienced, so that process went on throughout the day. Those are the sorts of things that we had not necessarily been able to anticipate.

Counting officers are currently preparing their claims for expenses. The information will feed through and we will be able to give a full explanation for any additional costs over and above what was allowed for. If you are looking for a flavour of it, those are the kinds of things that happened—the issue was the scale and levels of engagement as much as anything else.

Stewart Maxwell: I understand the point about the additional hours—that situation is quite clear and you can count them—but it was anticipated that turnout would be very high and a lot of new people were expected to come on to the register. Many of these things were anticipated. I presume that there was preparation and that additional resources were expected to be spent in advance of the referendum. I assume that, in effect, the resources would have been available for what was anticipated. Are you saying that the costs are over and above that?

Mary Pitcaithly: Not for EROs, no.

Ian Milton: Although the financial memorandum for SIRA—the Scottish Independence Referendum Act 2013—stated that the Government would meet electoral registration officers' fees and expenses, the fees and charges order did not make any allocation to electoral registration officers. That is the issue.

Stewart Maxwell: Are there on-going discussions with the Government on that?

Mary Pitcaithly: Yes. We are not anticipating any problem; we are just highlighting that these sorts of things add to the overall cost of the event. That is something that we are discussing.

Stewart Maxwell: So the matter is under discussion and you expect it to come to a successful resolution.

Mary Pitcaithly: Absolutely.

Gordon Blair: The key issue is that there was a last-minute surge in registration before the deadline and an equivalent surge in postal voting applications. That is what the EROs had to deal with.

Everybody knew that there would be a high turnout. You can plan for that, but the late surge was the problem. That registration information had to be translated to EROs' contractors—so that they could print postal packs and so forth—and, in turn, to the registers on the day. That late surge was the key issue.

Going forward, the issue for us is: what will be the level of interest in the election in May next year and in the 2016 Scottish Parliament election? To what extent will we experience anything similar to the referendum? That is what we have to build into our planning for the future. We are trying to estimate turnout and surges. You will be a better person than me if you get that correct.

Stewart Maxwell: I was not even going to try to estimate the turnout.

I know that we are moving to individual registration and maybe I am wrong about this but, given the number of people on the register because of the referendum, has a lot of the work been done? Are we over the hump? Is it the case that anything that happens in May 2015 or May 2016 will be less of a problem, even if the turnout is higher than expected?

Ian Milton: Mary Pitcaithly talked about emergency proxies. The legal rules for emergency proxies for the referendum were quite different from those for any other electoral event, and that led to a huge volume of emergency proxies and a huge number that were not valid. That took an awful lot of work to deal with and that will not be repeated in 2015 or 2016, unless the rules are changed. The existing rules on emergency proxies for UK and Scottish parliamentary elections are more business as usual. We will not have that problem to deal with.

The Convener: I do not mean to keep interrupting you, but I want to let Alex Johnstone in with his question before we get to the end of this session.

Alex Johnstone (North East Scotland) (Con): We have heard about the high turnout and high demand. Looking down the list, I see some very impressive turnout figures, but I notice that in Dundee the turnout was under 80 per cent and in Glasgow it was 75 per cent. Is there any reason why those two cities were at the lower end of the turnout figures?

Mary Pitcaithly: I suppose that they started from a lower base. I would imagine that those

cities' turnout figures generally would be at the lower end. There is no complacency, and those cities would certainly like to get closer to the Scottish average, but an average is just that and it will include figures for areas that normally have high turnouts—some had over 90 per cent—and other areas where the turnout could be in the 30 per cent range. To get to 75 or 80 per cent can be really good performance. It depends where you start from.

Alex Johnstone: I explored the reason for low turnouts when low turnouts were the norm, and one explanation that I received a few years ago was that there was a problem with, let us say, dead wood on the registers: people who had registered in more than one electoral district and people whose names were left on the register after they had moved on. Do the lower figures expose a problem that continues to exist in those cities?

Ian Milton: The rules around what is called dead wooding are that when a household does not make a canvass return for one year, the entry for the electors in that household is carried forward into the following year unless evidence to the contrary is available to the electoral registration officer. That policy is in law and is practised consistently by EROs across Scotland. We are very consistent about our approach to dead wooding.

Alex Johnstone: Would it be reasonable to suggest that a city such as Dundee, which has a high student population, or a city such as Glasgow, which might have a more mobile or transient population in certain areas, would have a higher proportion of that type of registration?

Ian Milton: All the cities suffer from a transient population. For example, Aberdeen city and Edinburgh city—

Alex Johnstone: Aberdeen's turnout was over 80 per cent, but that was also relatively low.

Ian Milton: Yes, and that is normal. However, that is not down to a dead-wooding situation; it is just due to the make-up of the electorate in that city. It is not due to the register being inflated—that is not the issue. It is more that the people who live in the cities do not seem to engage to the same extent as those who live outside the cities.

Alex Johnstone: So the figures are consistent with a historical pattern.

Mary Pitcaithly: Yes.

Alex Johnstone: Thank you.

The Convener: I know that members have further questions, but we do not have time to go into more detail. However, there is one question that needs to be asked because we are here to look at the Smith commission's proposals, so we

must ensure that we reflect that in the four minutes that we have left. What implications does the Smith report have for the Electoral Management Board? It would be useful for us to hear about that.

Mary Pitcaithly: We have no concerns about what is listed in the Smith commission's proposals, including that for the EMB. We have not had time to look at it in any detail, but I think that the Smith report must be read alongside the Electoral Commission's report, which talks about the benefits of the EMB having a stronger statutory footing. However, I am not a power-mad egomaniac who desperately wants power of direction over all my colleagues. As you would see from the referendum, I used the powers of direction very scarily—[*Laughter.*]

Alex Johnstone: That is a great Freudian slip.

Mary Pitcaithly: I mean to say "sparingly"—brilliant.

It is not that we want powers that we can use all over the place, but powers of direction are important where we are trying to get consistency. It would therefore be useful to read the Smith commission's report alongside the Electoral Commission's report.

The Convener: I was particularly interested in what was said on page 12 of the Smith report about the statutory basis, so your comments are helpful. However, if the EMB could submit to us any further consideration of the Smith commission's proposals, it would be gratefully received.

I thank the witnesses very much. This has been a tight session but we have got a fair bit of information from it. If members have further questions, they can give them to the clerk and we will follow them up in writing.

The committee's next meeting will be on Thursday 8 January, when we will take evidence from representatives of the Electoral Commission on its report.

Finally, I wish members and everybody present today a very happy festive break, and I look forward to seeing you all in the new year.

Meeting closed at 11:33.

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