



The Scottish Parliament  
Pàrlamaid na h-Alba

## Official Report

# DEVOLUTION (FURTHER POWERS) COMMITTEE

Thursday 8 January 2015

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**Thursday 8 January 2015**

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**DEVOLUTION (FURTHER POWERS) COMMITTEE**

**1<sup>st</sup> Meeting 2015, 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:**

Richard Baker (North East Scotland) (Lab) (Committee Substitute)

John McCormick (Electoral Commission)

Andy O'Neill (Electoral Commission)

Alex Robertson (Electoral Commission)

**CLERK TO THE COMMITTEE**

Stephen Imrie

**LOCATION**

The Mary Fairfax Somerville Room (CR2)



## Scottish Parliament Devolution (Further Powers) Committee

Thursday 8 January 2015

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

### Interests

**The Convener (Bruce Crawford):** I formally open the meeting. I give a very warm welcome to everybody present and wish you a happy new year.

I remind everybody to switch off their mobile phones or at least make them inaudible.

We have received one apology: Drew Smith cannot manage to be at the meeting. However, Richard Baker is here. Are there any interests that you would like to declare, Richard?

**Richard Baker (North East Scotland) (Lab):** I simply draw members' attention to my entry in the register of members' interests. I am a member of the Unite union and a former director of Better Together.

## Electoral Commission Report— “Scottish Independence Referendum”

10:00

**The Convener:** I warmly welcome the three representatives from the Electoral Commission to the committee's first meeting of the new year. John McCormick is the electoral commissioner for Scotland; Alex Robertson is director of communications at the commission; and Andy O'Neill is the head of office in Scotland.

Does John McCormick want to make an opening statement? We will let him do that.

**John McCormick (Electoral Commission):** Thank you very much, convener. It is good to be here. I reciprocate the wish for a happy new year.

Everyone involved in the Electoral Commission felt privileged to be able to play a part in such a positive example of democratic participation. It is impossible for me to overstate that for an organisation whose aim is to put the voter first.

We welcome the opportunity to discuss our report on the conduct of the referendum and to record our thanks to the committee, the Parliament and the Government for the Scottish Independence Referendum Act 2013, which was a robust piece of legislation that was passed nine months before the referendum date. That is one of the reasons why we are able to report that the referendum was well run. The timing allowed the chief counting officer, the counting officers and the electoral registration officers to make necessary plans in good time, campaigners to be registered, and then engagement with the voter to take place. As we all know, that resulted in record levels of participation.

We learn lessons from every referendum and election. We have made 23 recommendations, which we hope will be heeded by those who plan referendums in the future.

Looking ahead, how 16 and 17-year-olds took part in the debate and then went to the polls is telling. Some 97 per cent of those whom we polled said that they planned to vote in future elections. A lot of work was done to provide first-time voters with the information that they needed about how to register and vote. I have no doubt that members will want to discuss that in relation to the proposals to extend the franchise to 16 and 17-year-olds for the 2016 Scottish parliamentary elections.

Finally, I would like to touch on an issue that we raised recently with the Smith commission, although it has not been explicitly included in any devolution package. The Electoral Commission is

committed to working with both Governments to deliver any further devolution of electoral powers to the Scottish Parliament, and we will work closely with the Electoral Management Board for Scotland as that work progresses. We believe that, as part of any changes in that area, there is a strong case for the statutory remit of the Electoral Management Board for Scotland to be extended to all parliamentary elections. That includes its convener having a power of direction at those elections.

It is also important that greater clarity is provided on the legal and financial basis of the Electoral Management Board for Scotland for the future.

When we recommended the establishment of the EMB in 2008, we said that, as it developed, it would impact on the commission's role and activities. We are very sensitive to that. As we said to the Smith commission, we are ready to discuss how our own regulatory role might change as a consequence of other developments.

I look forward to our discussion.

**The Convener:** Thank you for that opening statement.

It would be useful at this stage if I put on the record on behalf of the committee and the Parliament our recognition of the hard work, sheer professionalism and dedication of electoral professionals, particularly those from the Electoral Commission, as part of the referendum campaign. We helped to develop something that was pretty significant in respect of democratic participation not only for Scotland, but for wider society in general. We thank you for that input.

I will kick off with a question about one of your recommendations, which is on page 10 of your report. I want to get some things on record. It is recommended that there is consideration of

"the need to ensure legislation concerning the extension of the franchise is commenced six months prior to the beginning of the canvass".

Self-evidently, if we were to meet that requirement, we would need to pass the legislation next month. That is patently not going to happen; we do not even have a section 30 order yet, although we know from comment in the press that the United Kingdom Government intends to try to achieve that before dissolution.

Given that the canvass for the Scottish Parliament elections is due to commence in August 2015, what is the minimum practical timescale that electoral administrators would require for the legislation to be in place by the 2016 Scottish Parliament elections?

**John McCormick:** The commission's ideal position would be for legislation to be in place six months before it has an impact—six months before a canvass, a poll or a referendum, depending on what the legislation relates to. We stick to that as our ideal position because we saw, in the independence referendum, the benefits for participation and planning of passing legislation well ahead of when it will have an impact. In the case of the independence referendum, the legislation was passed nearly nine months before the referendum date.

We know that it is doable to have legislation in place six months beforehand, but we also know that it is not practical in certain circumstances. If it happens later than that, things can be put in place to ensure that the risks that late legislation might bring are mitigated.

The franchise act for 16 and 17-year-olds—the Scottish Independence Referendum Act 2013—was in place a couple of months before the canvass. The reason why it was so successful was the work that was done with the electoral registration officers, the Electoral Management Board and the Electoral Commission as the bill passed through Parliament. Everyone was aware of what was in the bill and its implications. People could make assumptions about what the outcome would be when the bill became law.

If legislation cannot meet the six-month deadline, it is essential for us that there is openness and transparency and that there is consultation as the bill passes through Parliament and is scrutinised, leading to strong legislation. With the legislation that we are discussing, we are well aware that it will not be possible to meet that deadline.

**The Convener:** If the legislation were to be passed by Parliament by the summer recess, would that give enough time, given that everyone knows what is coming and should be able to prepare now?

**John McCormick:** Yes. My colleagues are already in touch with the officers of the Parliament in relation to that potential timetable. Based on our experience of the previous franchise legislation, we believe that, if legislation is passed by the summer recess, that is doable. I do not know whether either of my colleagues would like to add to that.

**Andy O'Neill (Electoral Commission):** The important thing is that the legislation is clear well in advance of the canvass. We and the EROs are already involved in discussions with the Scottish Government on the potential of the franchise bill, which will be introduced in Parliament some time this year. That allows us to know what the legislation is likely to look like, so we and the

EROs can plan. We have to produce the guidance, and we would want to be able to do that as soon as the legislation is commenced, as we did for the 2013 act.

As John McCormick says, if we have the legislation by the summer recess, that will allow us to do that. If we go beyond the summer recess, we start endangering the ability to include 16 and 17-year-olds in the annual canvass, which would bring risks that we would be concerned about.

Delaying the canvass would create a problem at the other end: parties, candidates and agents need the final product—the electoral register—so that they can canvass. Political parties want the register well in advance so that they can put it into their software systems and use it as a tool to campaign with. Our concern is to ensure that clear legislation is in place before the summer recess—and, presumably, by stage 1, what the legislation looks like will be pretty clear. To achieve that, the best thing for us to do is to be involved, along with the electoral registration officers, in the development of the legislation with the Scottish Government.

**The Convener:** Okay. We can take comfort from the fact that, as long as we get it done by the summer recess, we have a good timescale.

I want to look at issue of having six months before the annual canvass, because it seems to me to be quite a significant comfort zone in terms of timescales.

We put in place a referendum that everyone praised, with legislation that was good and robust and provided a great platform to make sure that everything went forward. That happened nine months before the date of the referendum itself, but we are now talking about a process that has to be in place six months earlier, in comparison with the process followed with the 2013 act, which was in place nine months before September's referendum. Therefore, we would have to have something ready in February for the election next year—we are talking about more than a year, effectively. Do we really need that big a comfort zone? Should we be talking about that a bit more rather than just accepting that we need that length of time?

**John McCormick:** The commission developed its recommendation that there should be six months before a canvass or a poll based on the experience of other legislation that was not as timely as the 2013 act. For the Parliamentary Voting System and Constituencies Act 2011, which dealt with the referendum on the alternative voting system, we had only 11 weeks after royal assent, which caused a lot of problems for the people who planned the referendum. We have seen some of the problems that have been caused

by late legislation, and we know the benefits of early legislation.

However, as Andy O'Neill said, if the content of the bill is clear at stage 1, and if the Parliament agrees to it at stage 1, that is a great mitigating circumstance, as people can use that to plan and make assumptions. That goes a long way towards mitigating the risks. Because we know the benefits of the six-month period—we have seen them—we would hold that up as the gold standard, where that approach is possible. However, we know that, in real life, such an approach is not always possible, and there are circumstances in which the deadline cannot be met. Where it can be met, we hope that legislators and policy makers would try to aim to meet it—all other things being equal. If it is not possible, we can all work together, as Andy O'Neill said, to make things work. That is our job—to make things work. We are talking about the ideal situation.

**The Convener:** Okay. In my experience of these situations, if you give a longer timescale, all that happens is that people usually cram things in at the end anyway to make sure that it all works. I think that it is worth having a further discussion about whether that comfort zone is required, otherwise we may not get the level of efficiency being driven into systems that we require. That is my personal view.

**Lewis Macdonald (North East Scotland) (Lab):** To follow up on the convener's question, for clarity, did the nine-month period in relation to Scottish Independence Referendum Bill include the six-month period that you need?

**John McCormick:** Yes.

**Lewis Macdonald:** It was not an addition.

**John McCormick:** No, not at all.

**Lewis Macdonald:** That is very helpful.

Your initial central recommendations around the timetable and public information seem eminently sensible and to be based on a positive experience of the recent process and what you learned from it.

I was struck by a number of the other recommendations, which seem to be based on things that did not go wrong or did not happen. Would you like to explain your approach?

For example, recommendation 6 is on

"Issuing ballot papers to voters queuing at polling stations".

I can imagine why you might suggest that legislation might be required on that if there had been a problem, but the evidence that we have taken suggests that there were no such problems.

Recommendation 19 is on

“Prohibition on appointment of staff previously involved in campaigning”.

It would be useful to know whether that recommendation is based on experience of the recent referendum campaign.

Recommendation 21 is on

“the folding of ballot papers”.

I am not quite clear why that recommendation has been made. I accept that the recommendation does not require legislation, but it implies that there was an issue, which again appears not to be the case.

Finally, recommendation 22 is on

“the future of the Electoral Management Board for Scotland”.

Three of those four recommendations recommend statutory provision relating to things that, in the recent referendum, seemed to work pretty well. It would be useful to understand why there is that apparent disconnect between the evidence and the recommendations.

**John McCormick:** I will ask my colleagues to comment on the specifics of the first three recommendations that you mentioned, and I will come back to the Electoral Management Board recommendation, as the future of the Electoral Management Board—and electoral services in Scotland—is a very significant matter for us.

10:15

On the first recommendation that you referred to, which relates to issuing ballot papers to people in queues, we were pleased that the commission's previous recommendation on that was put into the Scottish Independence Referendum Act 2013.

As with a number of the 23 recommendations, with recommendation 6, we are trying to draw the attention of policy makers in other parts of the United Kingdom to what worked well here. We hope to use the referendum as an example. As we said in a press release, and as we have highlighted in every discussion on the issue, the referendum worked well and was well run, and people can learn lessons from it. The recommendations relate to things that we saw that worked well and to which we want to draw attention. We used recommendations to do that because we know that some people do not read every line that we write. Therefore, in the 23 recommendations, we wanted to highlight things that we felt were important and from which other people can learn.

In relation to the recommendations on the prohibition on staff and the folding of ballot papers,

perhaps Andy O'Neill or Alex Robertson wants to comment.

**Andy O'Neill:** The reason for recommendation 6, which relates to queues, is that, although that measure has been carried into legislation for the UK Parliament and will feed through into other elections, it is not there for referendum legislation, which is specific to individual referendums as they come along. That is just the way that it is done.

The recommendation on the prohibition on staff came from a number of comments that we received post event from returning officers and members of the public that, although the legislation is clear that people who have worked on a campaign are not allowed to serve as polling station staff, it is less clear in relation to those working on the count. Our suggestion is that it is made crystal clear that, if somebody has worked on a campaign, they should not work on the count.

We believe that the folding of ballot papers is a training issue for the staff of the returning officer and counting officers. The issue relates to the unique identifying number on the back of ballot papers. As members will know, when people are issued with a ballot paper, they fill it in, fold it and then, before they drop it into the box, the law requires them to show the UIN on the back to the presiding officer. That is what people are supposed to do. We have become aware that there is clearly a training issue, because people are not doing that. We are saying that staff need to be told to remind people to do that. I note Mr Macdonald's expression—well, you did ask, Mr Macdonald. [*Laughter.*]

**John McCormick:** It is the law, convener.

**Andy O'Neill:** Mr Macdonald also asked about the future of the EMB. We recommended the establishment of the EMB back in 2008, and the Scottish Parliament established it for Scottish local government elections. After the commencement of the powers in the Scotland Act 2012, the EMB may act in Scottish Parliament elections but, in UK Parliament and European Parliament elections, Mary Pitcaithly, the convener of the EMB, still will not have a power of direction. Basically, she works on the basis of the good grace of the returning officers and by consensus. Most of the time, that works, but she should have a power of direction so that, if necessary, she can co-ordinate and ensure consistency. Basically, that is why we are arguing that point.

**John McCormick:** When we recommended the establishment of the EMB in 2008, the Scottish Government and the UK Government of the time supported its establishment and putting it on a statutory basis. We think that, in the six or seven years that have passed since then, the EMB has certainly proven its worth. If anyone had any



doubts about putting it on a statutory basis, the referendum and the local elections in Scotland will have clarified the issue for them.

An important point about the infrastructure of the EMB is that, although it has been put on a statutory basis, it works on the basis of a lot of good will from local authorities, for whom the chief counting officer, the deputy chief counting officer, the registration officers and those who sit on the board work. It is done on a kind of grace and favour basis with some central Government support. As the board attracts powers of direction for all parliamentary elections—as we hope and as we recommended to the Smith commission—its infrastructure, financing and funding should be put on a statutory basis so that it can undertake continuing planning and strategic work. It is not possible for the EMB to do that at the moment, because it gets a lot of its support from local authorities. We would like that issue at least to be aired and discussed. We want the position of the EMB as an independent body that co-ordinates all electoral activities in Scotland to be underpinned.

**Andy O'Neill:** The issue is that the EMB does not have secure long-term funding: it is basically run on event-based funding and, because it is funded by two Governments, that depends on which Government is involved. Essentially, we are saying that that needs to be sorted out.

The legal status of the EMB needs to be clarified so that it can co-ordinate things such as the e-counting project for Scottish local government elections. At present, it is not really structured in a way that enables it to do that.

Since 2008, we have been saying that we will review our role with regard to guidance and suchlike as the EMB develops. The Smith commission has suggested that the point at which we become a creature of the Scottish Parliament, in a sense, would be a timely point at which that can be sorted out.

**The Convener:** I think that Linda Fabiani has a question on that area.

**Linda Fabiani (East Kilbride) (SNP):** I do. I am interested in what you have said, and I take it on board that you would be willing to look at your responsibilities should what we are discussing happen. I am interested in the potential impact on the Electoral Commission of any extension of the EMB's role and in how you would see the arrangement working. Would there be any crossover of functions or would you take that as an opportunity to streamline the whole arrangement?

**John McCormick:** The approach would be more the latter. For example, the Electoral Commission provides guidance to returning officers for elections, and we recommended that

during the referendum such guidance should come from the person with the power of direction—the EMB's convener. We advised Mary Pitcaithly and her team on the guidance, but we thought that it was important that it was seen to come from the EMB's convener, to whom the returning officers—or the counting officers, in the case of the referendum—are accountable.

In the same way, we feel strongly that one of the lessons from the referendum is that there should be a separation of powers. The act that set up the Electoral Commission gave the commission, on a UK basis, the duty of running referendums that the Westminster Parliament wants to run. As the committee's convener will recall, we recommended strongly in this Parliament that there should be a separation between the running and the regulation of the referendum. We are aware that, if the EMB is put on a statutory basis, we, in conjunction with the EMB, should clarify who is responsible for what so that the regulatory and delivery mechanisms are clear and we can each be accountable to the Parliament as appropriate.

**Andy O'Neill:** The key is to ensure that we operate in a complementary way in running elections, rather than duplicating functions. At present, the EMB co-ordinates operational matters. We provide guidance—one could argue that the EMB should do that—and run the national public awareness campaign. We have a regulatory role in relation to performance standards for returning officers and electoral registration officers. We also play a regulatory role, which the EMB does not, in party registrations and the regulation of candidates, parties and campaigning.

There are complementary roles that fit together, so there is a need for two organisations. However, we do not want to duplicate functions in any way, and we want to start a discussion about that.

**Linda Fabiani:** Would you see your organisation's role being reduced or enhanced, or would it stay the same?

**John McCormick:** I think that "streamlined" is a good word to use. I would not like to make a prediction, but we are not in the business of expansion and increased investment. The establishment of the EMB gives us an opportunity to ensure that public money is being well spent, so I do not see that as a question of enhancement.

I see this as a great opportunity to put the EMB—a uniquely Scottish organisation—on a statutory footing. It is encouraging that a number of local authorities throughout the UK are looking at the EMB enviously as something from which they might learn. The process is about clarifying accountability, so it would involve streamlining rather than enhancement.

**Alex Robertson (Electoral Commission):** Absolutely. It is perhaps worth remembering that the role of the Electoral Commission, the EMB and the chief counting officer in the referendum in Scotland was very different from our role in the UK-wide referendum in May 2011. We had time to clarify that and work with Mary Pitcaithly and everyone else to get things right. That worked extremely well and we embraced the process.

The separation was clear from the outset, and in practice we did not encounter any real issues. As we look to the future, the issue is how we get that clarity in the longer term and not just event by event.

**John McCormick:** Heads of agreement on our respective responsibilities were drawn up between the EMB and the Electoral Commission at the outset of the process, and we worked closely together.

**Andy O'Neill:** Guidance could be produced by the EMB or by us. In Northern Ireland, the chief electoral officer produces his own guidance, because there is in effect only one returning officer there.

Mary Pitcaithly, the EMB's convener, would probably argue that she is not set up and funded to do the guidance function—I am putting words into her mouth. That is why we have to sort everything out before we consider passing over the function, which is why we have always said that we will assess our role as things develop. We have got to a point at which developments are about to occur.

**Linda Fabiani:** Although things are up for discussion, the basic recommendation of the Smith commission means that the Electoral Commission would report to the Parliament in Scotland as well as the UK Parliament. How would that impact on the commission?

**John McCormick:** We think that that is appropriate, and we will welcome whatever mechanism the Parliament decides on in relation to our accountability. We are very supportive of a transparent mechanism that shows that we are accountable, through the Scottish Parliament, to voters in Scotland.

**Stewart Maxwell (West Scotland) (SNP):** Will the panel talk generally about the impact that the introduction of individual electoral registration will have on the introduction of voting for 16 and 17-year-olds at roughly the same time?

**John McCormick:** I will make opening remarks before asking my colleagues to come in. The Electoral Commission strongly supports the introduction of individual electoral registration. The work to transfer people from the existing registers to the individual register has been going on in the

rest of the UK for some time but, as members know, it has been going on in Scotland only since the referendum, on the basis that one of our recommendations to the UK Government was that the change might confuse people.

Experience of the transition since 19 September last year has been encouraging, but we are some time away from making a recommendation to the UK Government on when the transition should be implemented. Over the coming months, we will consider the data that we have that relate to the introduction of IER and the stage that we are at before we make such a recommendation.

We believe strongly in IER because we think that it is the basis of a longer-term process of electoral modernisation. A key issue is that, for the first time, people will be able to register online. That one, headline advantage can underpin a lot of other advantages in strengthening the register.

We are in the business of getting people on the register. I noted from the committee's meeting before Christmas that a committee member had had a sad experience in the context of the transition—I could not avoid catching Mr Gibson's eye then.

**Rob Gibson (Caithness, Sutherland and Ross) (SNP):** I am still feeling sad.

**John McCormick:** We are in favour of enhancing the register and getting more people on it. We want more complete and more accurate registers, and we think that IER will contribute to that. If we had any doubt about that, we would not be so supportive of the move.

Alex Robertson will talk about the implications for 16 and 17-year-olds.

**Alex Robertson:** As John McCormick said, it will be possible to register online, which is obviously a big plus for 16 and 17-year-olds. The specific issue to do with how IER affects 16 and 17-year-olds concerns the need for a national insurance number, which people get a few months before they turn 16. This goes back to what we said earlier. It is doable to think through and plan now how to ensure that everyone who is 15 and turning 16 gets on to the register at the right time and in the right way without encountering that problem, but it is a big issue that needs to be considered.

**Stewart Maxwell:** This is why I asked the question. The committee went to Fife and talked to pupils at Buckhaven high school and Kirkland high school. We split into groups during the afternoon, and I had two groups—I talked to between 40 and 50 pupils. I asked both groups whether they had registered themselves or whether someone in their family, such as a parent, had registered them.

Of those 40 or 50 individuals, only two registered themselves. Have you thought about individual registration particularly in relation to 16 and 17-year-olds, given the experience in the referendum, when the expectation was that a parent or somebody else in the household would do the registration?

10:30

**Alex Robertson:** The key feature of individual registration is, of course, that it is individual. There is no longer a form that someone else can fill in on a person's behalf. As you say, that is a particular issue for young people, who have perhaps relied on someone else to register them in the past.

The system has been live in Scotland since 19 September, and we and registration officers across Scotland have put in place guidance and planning about how we get round the issue and how we target people individually. Every registration officer should have a strategy for reaching people individually because, as you say, young people have previously relied on someone else to register them. That is an issue, which we identified early.

**Stewart Maxwell:** On the point that the success of the registration will involve expanding the register and more people coming on to it, I was somewhat surprised by comments in the House of Commons during questions to the Deputy Prime Minister, which seemed to suggest that the Electoral Commission thinks that

"as long as the electoral register does not deteriorate further, this is a measure of success."

What are your thoughts on that? I wonder why the commission would say such a thing.

**John McCormick:** Whose quote was that?

**Stewart Maxwell:** This is from the House of Commons:

"Remarkably, the Electoral Commission has said that as long as the electoral register does not deteriorate further, this is a measure of success."—[*Official Report, House of Commons*, 6 January 2015; Vol 590, c 142.]

**John McCormick:** Perhaps we should ask the Electoral Commission's director of communications to comment. [*Laughter.*]

**Alex Robertson:** I do not know the detail of the quote. Under the law, the transition to individual registration will end in December 2016. The only way that it can be brought forward to December 2015 is through an order being laid in Parliament down south. We will produce a report in June that says whether we think that that is a good idea, and we will set the bar for that very high. We have to be confident that, when the transition to individual registration ends, we have completeness and accuracy in the registers at a standard that we can

be comfortable with not just in general but in terms of specific areas and how particular groups are affected.

We are not complacent about that in any way. We of all people care so much about making the register complete and accurate, and the standard that we will set for saying whether the end of transition should be brought forward will be very high.

**Stewart Maxwell:** Are you distancing yourselves from the comments?

**Alex Robertson:** I do not know the context.

**The Convener:** Rob Gibson and Stuart McMillan have supplementary questions.

**Rob Gibson:** The exchange in the House of Commons raised other issues that are germane to the move to individual registration. The Minister for the Constitution, Sam Gyimah, said in response to Sadiq Khan's question:

"He also knows that nobody who was on the register in January 2014 will not be on the register come the 2015 election".—[*Official Report, House of Commons*, 6 January 2015; Vol 590, c 142-3.]

In that case, am I still on the register? More important, does that apply here, in the move between the household canvass and the individual canvass?

**John McCormick:** The important thing to stress at the outset is that a large percentage of people were transferred through Department for Work and Pensions data matching on to the existing register. As Alex Robertson said, each electoral registration officer now has to have an individual work plan and strategy for the area that they are responsible for to catch those who have not transferred thus far.

On Mr Maxwell's point about the quality or the deterioration of the register, in normal times, the register deteriorates by about 1 per cent per month. We fight that and the registration officers work to prevent it. We know where the sensitive areas are—they relate to those who are in rented accommodation rather than their own accommodation, those who are between 18 and 24 and those from different ethnic communities who have less interest in the register. A lot of work has to be done to target those people in the local registration areas to ensure that they are brought on to the register.

That deterioration of the register, which takes place anyway, is one of the sad things. I think that the fact that we try to get rid of it must be what is behind the quote.

**Stuart McMillan (West Scotland) (SNP):** In the past and in the run-up to the referendum, I raised the issue of getting young people on to the

register—particularly younger people who are disabled and younger people who are not in education but who are working, perhaps in apprenticeships. Under the new system, what activities do you recommend to us so that we can ensure that such individuals are captured and can get on to the register?

**John McCormick:** As you will see in the report, in the referendum the commission was involved in a lot of partnership working with organisations that cater for different populations. A lot of work was done in targeting 16 and 17-year-olds. Of course, most of them were caught in the education sector in one way or another, whether they were at school or in college. However, we were very much aware that that did not capture everyone, so a lot of work was done with Young Scot and, through it, with Skills Development Scotland, YouthLink Scotland, the Scottish Youth Parliament and a range of agencies, such as the Scottish agency that looks after children who are in care and transitioning to independent life. We also work with Shelter for those who are in an unstable situation. A lot of granular work was done to catch those who might fall through the net because they were not caught by one of the major campaigns.

It was gratifying that 74 per cent of 16 to 17-year-olds said that they were aware of our public information campaign to get young people on the register; they said that they had got information from it. We go from the general global national campaign on radio and television and in the press and booklets through to the granularity of working with people on the ground in each area who know the individual circumstances and who know the children in care, for example, or the people who are not at school or do not get to college. We caught a lot of people who were in apprenticeships through the further education colleges where they were doing some of their work. We build on those partnerships in the report, and we applaud all those who worked with us to make sure that we caught as many youngsters as we could.

**Stuart McMillan:** Mr Robertson mentioned the national insurance number. It has been a while since I received my national insurance number and things have changed a great deal since then. Is there an argument for registration forms to include something else as well as the NI number?

**Alex Robertson:** What should be done with 15-year-olds who are turning 16 and their national insurance numbers comes back to the need for detailed early planning to look at the best way of getting the 15-year-olds who do not have a national insurance number on to the register by the time they are 16. I do not know what the answer is at the moment, but the point reinforces the need for early conversations, looking at the

plans and working with registration officers as the legislation is being developed.

One of the beauties of the work that we did with the referendum was that it was not a campaign that we ran on our own; across civil society in Scotland, many people were interested in getting young people engaged in politics and in getting them on to the register. The sooner it is made clear at the national level what can be done practically to help to get people on to the register, the better, so that we can work with the national organisations that John McCormick mentioned and many more and do work at the local level. For example, registration officers can talk to local employers who have apprentices and show them what they can do, what they can tell the apprentices and how they can help.

**Stuart McMillan:** I have another question, convener.

**The Convener:** Is it on the same subject?

**Stuart McMillan:** It is on 16 and 17-year-olds.

**The Convener:** Okay—on you go, but I want to come to Alex Johnstone soon, because there are still supplementary questions to get through.

**Stuart McMillan:** Thank you. Should the local government elections in 2017 be included in the section 30 order, or will there be enough time to put a separate piece of legislation through after the order is passed?

**John McCormick:** That is certainly a matter for Westminster.

**Alex Robertson:** Yes.

**The Convener:** I hear that it is a matter for Westminster, and there are a lot of puzzled faces around the table.

**John McCormick:** I see the point, but I would like to reflect on it, if I may.

**Alex Robertson:** Yes.

**The Convener:** Am I right in thinking that Stewart Maxwell wants to follow that up with a question on disabled people?

**Stewart Maxwell:** Yes. I have a very quick question. I am sure that you have already thought of this, but in the move to individual electoral registration what will happen to adults of any age—not just 16 and 17-year-olds—who have disabilities? I am thinking of those who require support and assistance in their daily life, in particular adults with learning disabilities, and who have a right to be on the electoral register. At the moment, others, including family members, may well register for them.

**Alex Robertson:** In developing guidance and resources for electoral registration officers across

Great Britain, we looked at all the issues that would affect people in the move to individual registration, and at all the different barriers that people would encounter. Our guidance clearly asks registration officers to have in place strategies to target all those different issues. Alongside that, we have where possible produced resources centrally that we have given to registration officers to enable them to provide materials in alternative formats. Each case will be different, depending on the person's disability, but the guidance is comprehensive and the strategies that registration officers have in place should cover all the different groups.

**Stewart Maxwell:** To clarify the situation, let us take someone with a learning disability as an example. At the moment, a family member or somebody else can help them through the registration process. Will that continue?

**Alex Robertson:** Yes—that help will continue.

**Stewart Maxwell:** Somebody else will still be able to register the individual.

**Alex Robertson:** Somebody else will be able to help them, but I think that the individual himself or herself will have to register.

**John McCormick:** Registration will have to be done with the individual's knowledge. The benefit of individual electoral registration is that it gets rid of the situation in which the—to use an archaic phrase—head of the household registers on behalf of the other people in the household. Stewart Maxwell's point is germane; some people have needed help before, and there should be no barriers to people helping others to register individually. The materials that we have provided give advice to registration officers about what kind of help may be needed, and include the different templates that may be required for people who are blind, who have learning disabilities and so on. It is about managing things so that those people are supported through the process and are, with their full knowledge and consent, registered individually.

**The Convener:** Before I call Alex Johnstone to talk about issues to do with the counting procedure, I will allow Rob Gibson to ask another supplementary.

**Rob Gibson:** You mentioned the allocation of national insurance numbers to 16 and 17-year-olds. Those of us who are older already have such numbers. Are you satisfied that the national insurance number is an adequate identifier of individuals?

**Alex Robertson:** Yes. When the legislation was going through Parliament, there was a lot of debate about what the identifier should be for individual registration. We are satisfied that the

national insurance number is both something that people can readily get hold of and something that provides a reasonable degree of security that people are who they say they are.

**Rob Gibson:** I presented my national insurance number and could not be identified from it. I wonder whether other people have had the same problem in applying for a postal vote. I think that you should look at the matter more carefully.

**The Convener:** You can tell that Rob Gibson is still not happy about that. I do not expect you to respond to the question, because you cannot look at individual cases. I fully understand that. Nevertheless, Rob Gibson has made his point.

**Alex Johnstone (North East Scotland) (Con):** Confidence in the process, especially on polling day and at the count, was rightly very high. However, those of us who monitor items in the press and social media are aware that a number of people suggested that there were irregularities at the count, which appeared to me to be based on a misunderstanding of the process. Out of courtesy to those who made the suggestions, I ask whether there is any evidence to support any of the claims that were made.

**John McCormick:** As Mary Pitcaithly outlined at the committee's previous meeting, we and the Electoral Management Board worked closely in partnership with Police Scotland. We handed over to the police any allegations that were brought to us and they dealt with them. They are dealing with a number of allegations at the moment, but we have no update to give you on that because it is, properly, a matter for the police. Such suggestions affect people's confidence in the system, which is why we take the issue very seriously. We have to do something about it, and we will do something about it.

We are aware, as you will be—Mary Pitcaithly has underlined this in public statements to reassure people—that a large number of observers were at the 32 counts and at the national count, including people from both sides of the campaign and more than 200 accredited observers.

**Alex Johnstone:** I was at a count.

10:45

**John McCormick:** Many people were observing, although I will not go into who was there. At no count did anyone bring any irregularity to the attention of the counting officer, the staff or the police, who had an officer at every count in the country. No irregularities surfaced until after the declaration of the result. Those were, quite rightly, referred to the police, who are dealing with them.

**Alex Johnstone:** I want to give specific cases a wide berth, but the fact is that discussions about the count appeared to be taking place in certain areas. Is that simply a reflection of the very large number of people who were engaging in the process for the first time and who did not understand the process? Is that why your recommendations include a requirement to inform voters better on the count procedure?

**John McCormick:** Yes. That is quite important. We know from questions that were directed to us and to colleagues of mine in the Electoral Commission that people did not understand the count process. We must accept that most people do not attend, observe or know what goes on at counts. The normal stages of a count, including verification and putting the ballots into two piles, were misunderstood by some people. It is very clear that when my colleagues dealt with such questions on the telephone, once the callers understood what was happening, that was the end of the matter.

It is our responsibility to make sure that that misunderstanding does not happen again. We have made a specific recommendation, such that when someone asks what is happening at a count, we will be able to point to an animation, to video material or to a pack that briefs them on the different count stages. It is clear that a number of people misunderstood the normal count processes, which led them to think that something fishy was going on. We must do that as a priority, to ensure that people understand the processes.

**Andy O'Neill:** It is a really interesting issue. We have spent a lot of time and resource over the past few years explaining to people how to register to vote, how to fill in a ballot paper and suchlike. We have also spent time briefing and providing information to journalists, candidates and agents about what happens in counts. However, we have never consciously done that for the general public.

As far as I know, the referendum vote was the first time when there were cameras at all 32 count centres and people saw what was going on. Things were being thrown up on television during the count that resulted in social media comment. It was probably the first such huge and unique democratic event here since social media have existed.

From that, we and the counting and returning officers have seen the need to explain consciously and simply to the ordinary member of the public how a count works, so that they can be informed because—let us be honest—they do not understand it.

Everyone in our electoral world took a lot of calls after the count. Many people were simply confused, but once we explained the process they

were happy. Others were less happy, to be honest. However, from a bureaucratic point of view, we need to provide simple information on how a count works and get that out to people.

**Alex Johnstone:** It is obvious from the report's terms that you understand the issue. At the count that I attended, a person from both sides was at each table and the observation went extremely well. Are you confident that no action that you take is likely to make it more difficult for observers to ensure that the count is open and fair?

**John McCormick:** Yes. I am absolutely sure that openness and transparency are central to the count process. We are very clear that we must do more work on the generality of what goes on so that people who are coming to a count for the first time and people who are seeing aspects of it on social media might understand what is taking place. We take that responsibility pretty seriously.

There is sadness in the situation, too, because we know that people's perception of fraud is greatly affected by media reports; our research tells us that the vast majority of people who believe that there is fraudulent activity at elections or referendums say that it is because of stories in the media. I have looked at some of the social media material; it is very difficult to source, so we are not absolutely sure where the material comes from, where it relates to and whether it related to the referendum or some other activity. That is frustrating because we cannot deal with such matters specifically and they just become part of the generality. It affects people's confidence in the system, so we take it very seriously. We must and will do something about it.

**Alex Robertson:** I add that the key to confidence in any result is transparency on the part of the people who have a stake in the outcome. I thought that it was extremely powerful that campaigners and politicians who had cared passionately about the outcome came out and said that they had seen the process and that there was not a problem. Throughout the day, there were numerous opportunities for people to identify that something had gone wrong, because the process was incredibly transparent. If people who were there and who cared about the outcome just as much as the other side say that they saw the process and that people should have confidence in the result, that is a powerful way of fighting some of the stuff that came through afterwards.

**The Convener:** We have covered quite a wide area. Members have no more supplementaries, so we will move on to another subject.

**Rob Gibson:** On page 46 of your report, in relation to raising awareness of the referendum among 16 and 17-year-olds, you note that

"Some campaigners expressed frustration that there was not a consistent approach across councils in Scotland or even between schools within the same council area."

Will you expand on that?

**Andy O'Neill:** I am trying to read page 46 quickly.

One of the benefits of the legislation coming in early was that we could get involved in early discussions on political literacy for 16 and 17-year-olds with Education Scotland, the Association of Directors of Education in Scotland and the Society of Local Authority Chief Executives and Senior Managers. We all got together and started to consider what would be needed.

Political literacy education is, of course, provided by councils. There are 32 individual councils from which, I think, the committee has collected information. Councils took different approaches to political literacy in schools; it was down to whatever the councils wanted to do. It is our understanding that a lot of activity was undertaken. Some councils allowed both sides to go into schools at the same time, while others allowed them to go into schools separately. As we move forward—given that 16 and 17-year-olds will be on the register in the future—we will need to look at the issue again, work on it and learn the lessons from the past.

**Rob Gibson:** In order to avoid the accusation of centralisation, do you think that it would be appropriate to allow local authorities to decide for themselves what approach to take to awareness raising, or would a more uniform approach be more effective?

**John McCormick:** The comment in our report reflects the fact that some campaigners wanted consistency and a uniform approach, but we are very sensitive to the fact that education is a local government matter and that the professional people on the ground who lead the education service in each local authority area are the best people to make that judgment. We did everything that we could to work with the national bodies that advise the local authorities, the directors of education services and the like. As the list in our report shows, that resulted in activities being undertaken across the country. Some people saw that as inconsistency, while others saw it as matching the needs of individual communities. I do not think that we would want to go any further than that.

**Mark McDonald (Aberdeen Donside) (SNP):** The committee has received feedback from 16 and 17-year-olds to the effect that they became most engaged with the campaign during the final weeks, which was when the purdah rules that applied in schools became most restrictive. Should there be a relaxation of those rules or some

flexibility surrounding them, given that the point at which those individuals become most engaged is when the ability to provide them with information reduces?

**Alex Robertson:** What you say does not surprise me. People's level of engagement always goes up massively ahead of a poll. That is why, in addition to the general registration campaign, we ran a campaign that was aimed specifically at 16 and 17-year-olds right up to the 2 September registration deadline.

In relation to how the restrictions apply in schools, as John McCormick and Andy O'Neill said, we spent a lot of time very early on clarifying what role we could play and what role the education authorities could play in how that all works. We would be cautious about recommending a change in approach to the restrictions on what happens in schools. That is not an area that we felt that we should go into, other than to ensure that we co-ordinated ourselves closely with those who had a view on that.

**Mark McDonald:** I realise that you do not want to go too far on this matter, but building slightly on Rob Gibson's question, I wonder whether you think that there is a problem with local authorities taking very different approaches. Electors in different areas will be more or less engaged according to the visibility of campaigns, the number of hustings meetings and so on. The work in schools varied wildly among local authorities; first-time voters in some local authority areas were given much more access to information and more opportunities for debate in schools than was the case in other authorities or, indeed, in other schools in the same local authority area. Is there not an argument for uniformity of guidance and approach to ensure that first-time voters in one area are not at an advantage over those in other areas?

**John McCormick:** Materials that were produced with the national bodies are available to every 16 and 17-year-old, wherever they are, as are materials that are contained on our website. It is up to local elected representatives to consider the issue and to take it seriously.

I am also aware of feedback that we have received through our polling that 16 and 17-year-olds got information not only through their education establishment, whether it was a college or school. There was, as everyone around the table will know, a lot of local campaigning across the whole country to sensitise 16 and 17-year-olds to the issues in the referendum and to the process of taking part in it. People were not excluded if they were in a school that was doing less than a school in another local authority area.

Nevertheless, the referendum has certainly drawn attention to the special challenges of extending the franchise to 16 and 17-year-olds, getting information to them and getting them to participate. Encouragingly, the percentage turnout among 16 and 17-year-olds was very high, so I would not be surprised if, having seen our report, elected representatives are considering the implications for schools in their areas.

**Richard Baker:** In your letter to the convener, Mr McCormick, you refer to 42 registered campaigners, which were split evenly between the two sides. Obviously, there were clear rules governing their activity, including the need to act independently of each other and the broad campaigns. How effectively was that monitored? How did that part of the process work in general? Now that the process has ended, do you have any concerns about how it was governed or comments that might inform future events?

**John McCormick:** Andy O'Neill, who oversaw the rigorous monitoring process, will comment on that.

**Andy O'Neill:** We thought that the regulation of the 42 permitted participants went well—but we would say that, because we did it.

The interesting point is that we had the legislation early and therefore knew what was coming. Unlike other recent referendums, we were, with the independence referendum, in the unique situation of knowing who the yes and no sides were before the referendum in a legal sense even existed, and we were talking to Better Together and Yes Scotland almost before the legislation had gone to Parliament so that we could ensure that they understood the rules before the rules were actually there. We were looking for compliance through discussion, and we spent a lot of time actively monitoring the campaigning to ensure that those who were about to appear as campaigners were aware of the rules. We engaged with them and offered to have meetings with them—in fact, we met most of them—to ensure that they understood their legal responsibilities.

As for our highlights of the regulation, we thought that the early legislation was very good; the pre-poll reporting legislation worked well and should be considered for other referendums. The longer regulated period was very good and the early designation of yes and no to allow people, including ourselves, to engage formally with the sides worked very well.

However, that is only half the story as far as regulation of the campaigning is concerned. We have only just received the campaign returns from those who spent under £250,000, and the returns from those who spent over £250,000, which

include Yes Scotland and Better Together, will not be received until 18 March. We have to analyse those returns, so we will produce another spending report—we hope before the summer recess.

In short, we have not finally concluded our thoughts on regulation, but we think that it was well done. The legislation was an improvement, and there are a lot of lessons to learn for other referendums that might come along.

**Richard Baker:** The returns that you have still to receive might inform your views further.

**Andy O'Neill:** Yes.

**Richard Baker:** Thank you.

**The Convener:** Thank you very much, folks. We have had a very useful meeting. I thank John McCormick, Andy O'Neill and Alex Robertson for coming along.

Before we move into private session, I want to make everyone aware that the committee's next meeting will be on Thursday 15 January, when we will take evidence from representative civic society organisations on the Smith commission's recommendations. We will now move into private—I am sure that everyone around the table knows what that means.

11:00

*Meeting continued in private until 11:33.*



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