



OFFICIAL REPORT
AITHISG OIFIGEIL

Standards, Procedures and Public Appointments Committee

Thursday 19 November 2020

Session 5



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Pàrlamaid na h-Alba

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Thursday 19 November 2020

CONTENTS

	Col.
SCOTTISH GENERAL ELECTION (CORONAVIRUS) BILL: STAGE 1	1

STANDARDS, PROCEDURES AND PUBLIC APPOINTMENTS COMMITTEE
21st Meeting 2020, Session 5

CONVENER

*Bill Kidd (Glasgow Anniesland) (SNP)

DEPUTY CONVENER

*Patrick Harvie (Glasgow) (Green)

COMMITTEE MEMBERS

*Neil Findlay (Lothian) (Lab)

*Jamie Halcro Johnston (Highlands and Islands) (Con)

*Gil Paterson (Clydebank and Milngavie) (SNP)

*John Scott (Ayr) (Con)

*Maureen Watt (Aberdeen South and North Kincardine) (SNP)

*attended

THE FOLLOWING ALSO PARTICIPATED:

Dame Susan Bruce (Electoral Commission)

Malcolm Burr (Electoral Management Board for Scotland)

Graeme Dey (Minister for Parliamentary Business and Veterans)

Iain Hockenhull (Scottish Government)

Andy Hunter (Association of Electoral Administrators)

Ailsa Irvine (Electoral Commission)

David McGill (Scottish Parliament)

Andy O'Neill (Electoral Commission)

Pete Wildman (Scottish Assessors Association)

Huw Williams (Scottish Parliament)

CLERK TO THE COMMITTEE

Katy Orr

LOCATION

The Sir Alexander Fleming Room (CR3)

Scottish Parliament

Standards, Procedures and Public Appointments Committee

Thursday 19 November 2020

[The Convener opened the meeting at 08:30]

Scottish General Election (Coronavirus) Bill: Stage 1

The Convener (Bill Kidd): Good morning, and welcome to the 21st meeting in 2020 of the Standards, Procedures and Public Appointments Committee. Our first item today is for the committee to look at the Scottish General Election (Coronavirus) Bill. I welcome our first panel of witnesses, who are joining us remotely. They are Andy Hunter from the Association of Electoral Administrators, Scotland and Northern Ireland branch; Malcolm Burr from the Electoral Management Board for Scotland; and Pete Wildman from the electoral registration committee of the Scottish Assessors Association.

I am afraid that we are quite limited for time today as we have four panels so, rather than having opening statements, we will just move straight to questions, if that is all right. I see the witnesses nodding—thank you. The first question is from Patrick Harvie.

Patrick Harvie (Glasgow) (Green): Good morning to our witnesses. You will be aware of the estimates of the likely uptake of postal voting that have been produced, partly as a result of opinion polling, although that was done some time ago and, as we know, public attitudes towards the pandemic and likely behaviour changes may be in flux. What do you think of the estimates of the likely percentage uptake as being somewhere in the region of the high 30s or low 40s? Is that an accurate judgment or do we need to prepare for a higher level of postal voting?

Pete Wildman (Scottish Assessors Association): It is hard to predict what the public will do. I agree that things are in a state of flux. The public's attitudes to postal voting and the pandemic are changing. At this stage, we are not seeing a significant increase; there is a slight increase in postal vote requests, but it is slight. Equally, we are a long way out from the election and the public's mind might not yet have turned to it. In previous elections, the vast majority of applications have come in just ahead of the deadline, so we are not really going to know until we get close to the election what the actual numbers will be.

We have to plan based on the information that we have, which is the information that the Electoral Commission has provided, and use that as the best estimate that we have at this point in time. We will work on that to ensure that we can deal with those volumes.

Patrick Harvie: Is it appropriate to plan on the basis of that estimate rather than on the basis of the possibility that it might be an underestimate? For example, in the recent election in the US, where there is a substantial Covid denial movement that does not exist in the same way here, we saw high levels of postal voting in some communities.

Pete Wildman: We have to keep the issue under review as we move forward. If further surveys are done, that will assist planning as well.

Patrick Harvie: Does any of the other witnesses want to contribute?

Malcolm Burr (Electoral Management Board for Scotland): Yes, and thank you for the invitation to appear at the committee.

As Mr Wildman said, it is difficult to estimate. The evidence from the by-elections, limited though it is, is that postal voting has not increased significantly.

As always, the messaging that is given, particularly from the new year, about the option of postal voting will be important. However, the Electoral Management Board certainly intends, by way of directions agreed with the electoral registration officers, to set a fairly high level of capacity for postal voting in anticipation and in recognition of what is a very volatile situation.

Patrick Harvie: If that level was reached by early demand increasing more than you anticipate, would the only response be simply to move the deadline even further forward and tell everybody else that they were too late?

Malcolm Burr: That could happen. We will closely follow every communication about the possibility of postal voting. We cannot encourage one method over another, but we can bring it to people's attention. We will monitor what effect that has and will adjust accordingly if we see an increase.

Patrick Harvie: Does the final witness want to add anything?

Andy Hunter (Association of Electoral Administrators): I do not think that there is anything to add to those points. As Malcolm Burr said, we will keep an eye on numbers and continue to plan how to deal with that as information on the estimates comes to light.

Neil Findlay (Lothian) (Lab): I asked this question of the bill team when they were here. We

cannot tolerate a situation in which we adjust the cut-off date because the capacity to deal with postal voting is not there. The capacity must be there. The more money you invest in setting up the system to cope with postal voting, the more ability you will have to cope with what comes. Maximising the take-up of postal votes rests on a budget decision.

Malcolm Burr: This is not only about the number of postal voting applications; it is also about when those applications arrive. You are right that the resources must be there. We intend to provide for 40 per cent of the electorate to vote by post. It is critical that those applications are spread over the longest possible time. To be realistic, if a large volume of applications came in late, that could overwhelm the system. That is why the polling done by the Electoral Commission is important, and we will encourage the commission to carry out more polling at the right time. The messaging should be consistent.

People are getting used to doing things differently. It is reasonable to expect that any increase in applications for postal votes will come more systematically than in previous elections. We intend to make provision for, and insist on the resourcing for, 40 per cent of the electorate to vote by post.

Neil Findlay: I think that 40 per cent will be an underestimate once the political parties get involved in aggressively marketing postal votes. If I am wrong, I will take that, but I place on record now that I think that your estimate of 40 per cent will have to be revised.

The Convener: Is there the capacity to do that?

Malcolm Burr: It is possible that we may have to revise that figure. It is based on polling that has been done. We will also look at evidence from by-elections. Additional polling of the electorate will be essential in the new year to make our estimates as good as they can be.

John Scott (Ayr) (Con): If the capacity for postal voting is around 40 per cent, what happens if 50 per cent of voters apply to vote by post? Where do we go from there?

Malcolm Burr: That will be worked out with the electoral registration officers. We are working on an estimated capacity of around 40 per cent of the electorate. We will build in as much capacity as we can between now and then, based on the evidence that we have.

We all know that we are working in a volatile situation. We will try to take appropriate polling information and will also look at the evidence from elections that have taken place. Admittedly, they were local government by-elections, and turnout for those is traditionally not terribly high, and that

has been maintained. We have not seen a significant increase in postal vote applications for those by-elections, but we are not basing our estimates on that.

The Convener: Jamie Halcro Johnston has questions on issues of sufficient time.

Jamie Halcro Johnston (Highlands and Islands) (Con): Quite a lot of the issues that I was going to cover have been covered already, and I share some of my colleagues' concerns. You are using a figure of 40 per cent at the moment, but have you done modelling for higher than 40 per cent? If it was 42 per cent or 45 per cent, what impact might that have through delays, depending on when the applications come in?

Pete Wildman: It is very much about when the applications come in. With a steady flow of applications, it is a lot easier to manage the process and scale up. The last few days will probably be the key point. We can scale up and train so far, and it is important that we have enough staff to supervise. We are looking to take on extra people and increase our capacity, working on that 40 per cent model. We could do a bit more, but it is very much about when and how the applications come in. As Malcolm Burr said, we will keep things under review.

Jamie Halcro Johnston: I appreciate that, and I appreciate that other witnesses might want to come in on that. However, we are trying to look at the provisions that will be set out in the bill and get an idea of what is likely to happen. There is a feeling that there will be an increase in the number of postal votes. No one is particularly focused on the election at the moment, but they will be when it is only a few months away.

What will happen if, for example, in the final two months before the election, there is a push by the political parties and a response from the public, and the figure goes up to 42 or 45 per cent? How will that be accommodated? If it cannot be accommodated within the election's existing timescales, how will that be reported to ministers and Parliament and what would be suggested? Would there need to be a delay and, if so, what delay would be likely?

The Convener: Andy Hunter, would you like to come in on that from the point of view of electoral administrators?

Andy Hunter: Obviously, this is a highly pressured time for the teams. If the percentage was to go way beyond what was predicted, up to 50 per cent or the high 50s, it would be extremely difficult to get enough time for the teams to deal with that properly.

If we reach a peak point and only so many people have been trained and there are only so

many supervisors, we could add resources and throw more bodies at it, but that must be controlled and managed. That is the difficulty with expanding our capacity at the last minute. It would also be a problem if there was a spike, or a low level and then a peak. We need to pre-empt that possibility as best we can by early promotion. If the parties are going to promote postal voting, the earlier that that is done so that there is a curve rather than a spike, the better we will be able to cope at that late stage.

Jamie Halcro Johnston: The Scottish ministers have the power to make regulations to move the postal voter deadline closer to polling day. Do you support that? Under what circumstances might that be required?

The Convener: I am not quite sure who wants to come in on that, because the picture disappeared. Malcolm Burr, do you want to come in?

08:45

Malcolm Burr: Yes—I want to address Mr Halcro Johnston's first point.

I reassure the committee that the Electoral Management Board will, in anticipation of whatever increase we see from the research and our own experience, work with Government to put in place the capacity to allow for a reasonable estimate of the volume of postal vote applications—whatever that is—to be put through.

As has been said many times, there is also a question of timing. If there is a late surge in applications following a late change in coronavirus conditions, for example, that could undoubtedly be a problem. However, we are monitoring the situation weekly with Electoral Commission colleagues. With their access to public information and an appropriate communications campaign, in an atmosphere in which the public is used to doing things differently, we will have in place the directions that will allow applications to be processed

Pete Wildman would be best placed to deal with the second question, which was on moving the date.

Pete Wildman: We asked that the date in the bill, which is 6 April—21 days before the election—should allow for sufficient contingency based on the figure of 40 per cent, so that we could handle a situation in which up to 50 per cent of the electorate applied for a postal vote in the last two weeks. That would give us time to process the applications before the files have to go to the printers, and to get the ballot papers out.

Were you to move that date closer to the election, you would reduce that contingency and

there would be a risk that postal vote packs may not be dispatched in time for electors to return them, which is not a situation that any of us would want to be in. The date of 6 April is there to allow for contingency in the system or a large spike at the end.

Patrick Harvie: I would like clarification on something that Andy Hunter and a couple of other witnesses mentioned. It appears that the capacity constraint relates to the time and staffing capacity that are needed to undertake the registration process for postal voting, not to the procurement of the postal voting packs.

Earlier in the discussion, before the bill was introduced, there was more of a sense that there might be a limit on how many postal voting packs could be procured. Is it now the case that the figure could go beyond 40 per cent as long as the registration process works? The registration process is where the ceiling comes from—is that correct? Perhaps Andy Hunter can answer that.

Andy Hunter: Yes, I would say so. There is capacity to print many more packs—the printers can cope with that. It is getting the information to the printers to enable them to print the packs that could potentially be a problem if there was a spike at the end.

Patrick Harvie: Thank you—I see that the other witnesses are nodding. That is fine.

The Convener: We will move on to the subject of an all-postal vote election, starting with questions from Maureen Watt.

Maureen Watt (Aberdeen South and North Kincardine) (SNP): Before I move on to that subject, I want to say that I am quite surprised to hear—given that postal voting is such an important issue—that the witnesses have not looked at the postal voting figures in recent by-elections.

There was recently a by-election in the Kincorth, Nigg and Cove ward in my constituency. I checked the figures last night—there were roughly 2,000 postal ballots, and 1,400 people voted at the polling station. By my calculation, postal voting accounted for nearly 60 per cent—58 per cent—of the total. My figures might be out by a bit, so please do not quote me on them—they are not the exact figures. The turnout was 27 per cent, which is quite normal for a by-election. I think, therefore, that we are heading for a situation in which there are many more people voting by post than your comments would seem to suggest.

On the subject of all-postal ballots, you said that you reckon that that would not be deliverable until 2021. Is that correct?

The Convener: I do not know which of the witnesses said that; perhaps Pete Wildman can answer.

Maureen Watt: Is it the view of the panel?

Pete Wildman: An exercise needs to be undertaken to get people to return an absent vote application form with their signature and date of birth. At the moment, we have in place those signatures and dates of birth for about 17 or 18 per cent of the electorate. We would have to communicate with the remainder, which is about 3.4 million people, and get them to return forms. It depends on how quickly the public engage with that process. At this point, it would take more than six months to deliver that.

Malcolm Burr: Pete Wildman has made all the points. It would certainly necessitate a delay of a minimum of six months, for the reasons that have been given.

Maureen Watt: Are you basing your idea of a delay on your current capacity? Have you had any consultation with the Society of Local Authority Chief Executives and Senior Managers or the Convention of Scottish Local Authorities about increasing your capacity? People have been moved into completely different jobs during the pandemic. By how much would you have to increase your capacity to meet, for example, the possibility of 60 per cent postal voting?

Malcolm Burr: That is the reason for saying six months. We are looking at increasing capacity significantly for the reasonably anticipated increase in ordinary postal vote applications, if I can put it that way, without an all-postal vote.

However, it is not all about capacity. It is also about publicity, administration, and assisting voters who are not used to voting by post to do that effectively—to make a proper application, and then to be taken through that voting process, which is quite different if someone is not used to it. It is not simply about raising capacity. That is why the Electoral Management Board has estimated that a minimum of six months would be required. However, I should add that that would still be in 2021, potentially. That is our estimate. It is not just about increasing the capacity for processing; a lot of education and support for people would also have to be taken into account.

Maureen Watt: The date of November 2021 has been mentioned. If an all-postal ballot was called for November 2021, would you support it, after having been duly consulted?

Malcolm Burr: An all-postal election is very much a measure of last resort. I think that there are issues about the robustness of the register, about which I am sure the Electoral Commission, as regulator, will talk about, and there are the issues that I have talked about. Inevitably, there is potential for the disenfranchisement of a percentage of the electorate. It is not the way that things are normally done. However, if it has to be

done, of course, it is right. The Electoral Management Board has been clear from the start that there needs to be legislative provision for it to happen if it is required.

November would be the absolute earliest time. I have said that six months is a minimum. That depends on the decision that is made, which is for others to determine. It is right that the provision is there, but I think that it is unlikely to be used, and it is certainly not the best option.

Maureen Watt: Do you have any concerns about fraud in an all-postal election, and can any steps be taken to mitigate that?

Malcolm Burr: That takes us back to the reason for needing six months. We wish to conduct the vote properly and on the same basis as every other postal vote, and that will minimise the possibility of fraud. We have been fortunate to have had very few instances even of investigation of electoral fraud in Scotland. I do not have concerns about conducting an all-postal election on the same basis as we process other postal votes.

Maureen Watt: Have you had any discussions with Royal Mail in relation to possible postal delays, perhaps due to further lockdowns?

Malcolm Burr: Yes, we have. That is always a concern. We have discussions with Royal Mail before and after each electoral event, and it would have to commit the necessary resource to making the process work.

The Convener: Four members wish to ask some short questions to follow on from that.

Gil Paterson (Clydebank and Milngavie) (SNP): Are you saying that, in theory, if the Government or the Parliament decided to have an all-postal ballot in May, you could use the six months starting from now, or six months-ish, and deliver that, or are you are saying that we need to wait six months before we can even consider it? I am not clear on that.

The Convener: Pete Wildman, you can respond to that: you were animated just now.

Pete Wildman: To deliver six months from now is not feasible. We are at a low base for the number of electors who are registered for a postal vote. The question of how quickly something could be delivered will very much depend on what level of postal vote registration we have reached by May next year. If we get to May and we are at 50 or 60 per cent of the electorate with a postal vote, an all-postal election year would be a possibility, but if it remained at the current level, that would be challenging.

John Scott: Under section 5, an all-postal vote would be entirely at the discretion of Scottish

ministers, after consulting with the Presiding Officer. Would you agree with me that section 5 needs to be strengthened? Should the Electoral Commission recommend that such a vote be conducted, should it be a matter not just of consulting the Presiding Officer but of securing the consent of the Presiding Officer? Should that be something that MSPs vote on, or should it be decided under the affirmative procedure? At the moment, it appears to be entirely at the discretion of the Scottish ministers, which seems odd to me.

Malcolm Burr: Those are largely political matters, but I am pleased to see that that consultation is to be carried out with the Electoral Commission, as regulator, with the Electoral Management Board representing practitioners. That is advice that Scottish ministers should and indeed do wish to take.

The Convener: You might wish to bring up that point again later, John.

Neil Findlay: One issue that has been brought up with me is the enfranchisement or disenfranchisement of service personnel. Given the timescale for the turnaround of ballots and the disruption to postal services in some far-flung places, there is concern that the turnaround time is not long enough for service personnel. Could you consider that and perhaps extend it?

Pete Wildman: Service personnel are entitled to register for an absent vote now, and I would encourage them to do so to ensure that they are registered as a service elector and to get their absent vote application in. That means that, if they apply for a postal vote, it will be in the first issue of postal votes, which gives them the maximum possible time to complete and return their ballot ahead of the election.

Neil Findlay: That is not the point that I was making.

Given the nature of postal services, how do we ensure that service personnel, if they apply at any point, are enfranchised if there are issues with postal services overseas? If they apply now, it is fine, but if they apply later it may not be.

09:00

Pete Wildman: One of the reasons for bringing the application date forward is to maximise the time for papers to be issued and for postal vote packs to be sent out.

Jamie Halcro Johnston: I echo and agree with John Scott's point and share his concerns.

I will ask a more practical question. Obviously, if we are talking about an all-postal ballot, that will likely be because there is another spike in the virus or we are in a situation in which we did not

want to find ourselves with the virus. How are your staff who are processing the postal applications impacted by restrictions? What pressure do restrictions put on them and are they able to go into work to process the applications? I take it that that is all being considered in your modelling on timescales.

Pete Wildman: At the moment, electoral registration officers are operating a blended model, with the vast majority of staff working from home and a few in the office opening and processing—*[Inaudible.]* We will keep that model going forward and will increase the number of people who are working in the office to open and scan the mail. Some EROs will use remote scanning services to do that.

We would operate on a contingency where we have people working both at home and in the office, which will mitigate the risk of the impact from Covid. If an issue were to arise and staff had to self-isolate, operations could still continue from home. We are looking at that model.

The Convener: There are a couple more elements to go through with this panel of witnesses. We are not doing badly for time, but I will keep an eye on that.

Gil Paterson: The bill does not provide certainty about multiple-day polling. Is that a cause for concern? At what point must a decision be taken on that to allow you to arrange suitable polling places, staffing and so on?

Malcolm Burr: The decision should be taken as early as possible, but it is recognised that we are in a situation that changes week by week. Those decisions should not be taken any earlier than they have to be. However, when they are taken, that must be done quickly.

It is good that our board has a good working relationship with the civil service and ministers and they have shown themselves willing to accommodate the advice that has been given by practitioners and regulators. Multiple-day polling is not in the bill—which would provide the most certain position, but we are not in a certain environment just now—but I am confident in and content with what is in the bill at present, provided that decisions are taken when they are needed. Certainty is important in elections, and there are lots of administrative processes—concerning poll cards, communication to voters, booking venues, staffing and so on—and all those matters are essential for electoral administrators. We would look for a commitment that, when decisions are required, they are taken quickly on advice.

Gil Paterson: If it transpires that polling needs to take place on multiple days, there are two aspects: what the public does and the

administrative aspects, which would be of concern to you.

Would it be beneficial for multiple-day polling to take place on consecutive days, if it is required? If polling days are not consecutive, would that present difficulties for you, as it would for the public?

Malcolm Burr: Consecutive days are greatly to be preferred. We must remember that we are running by-elections in a safe environment at present. Polling places will be safe. They will be regulated environments. I would argue that, perhaps even in a level 4 area, a polling place will be a significantly safer environment than, say, a supermarket. We need to remember that there is no bar to physical voting provided that polling stations are appropriately run. Referring back to our earlier discussion about postal voting, I note that we will have an estimate of how many voters are likely to be using polling stations.

I think that using consecutive days is essential. At the moment, the board is not envisaging using a greater number of days than two. It is simply to spread out the numbers. However, much will depend on the uptake of postal voting.

I am sorry that that was a long answer, but I hope that it is helpful.

The Convener: Andy Hunter, will you give a view from the administrators' side?

Andy Hunter: As Malcolm Burr said, it is always good to have a fixed point and an early decision so that we can plan and prepare. It is key that the matter is consulted on so that we know that, when it happens, we can move quickly to the options. Depending on when it happens, there will be various impacts. As Malcolm said, poll cards could already have gone out with information about when the polls will be open. Things such as that will impact on how we would deal with a change to the number of days.

We need to be able to move quickly once a decision has been made, putting the right steps in place rapidly to make it easier for the administrators to ensure that they deliver what is required.

Gil Paterson: That is useful. I am sure that the public would be confused if there were split days, so that makes sense. It is good that the approach would not cause you a problem.

Ministers would have the power to specify that only certain categories of electors may vote on specific days or at specific times. It seems likely that that would create an administrative challenge, because it would be difficult to ensure that people were clear about when they could vote. Do you have any concerns about that provision and what

it would mean in practice for your people? How could you manage it?

Andy Hunter: To have a non-consistent approach whereby only certain categories of people could vote on specific days would not necessarily be a good idea. If we have a nice, clear message that says when polling will be open from and until, it makes it easier for voters and saves confusion. There could be difficulties if people turned up in the wrong slot. How would the staff deal with that? The approach would make everything way more complicated, which could negate any benefits that it would bring.

Gil Paterson: I am confused about one aspect. A pattern develops on voting day whereby working people vote in the morning before they go to work, mums take their kids to school and then vote, pensioners come out between about 10.30 and 4.30, and workers come out again as they finish work. There is a rhythm to the population voting. If we put in a definition that said, for example, that only people of a certain age could vote at a certain time, that could upset the apple cart rather than helping with the situation, in my view. Will you comment on that?

Andy Hunter: I think that you are right. The public make their own patterns, and the patterns develop. They will probably be slightly different with the environment that we live in now, compared with the patterns in previous elections. People are working from home much more, which will impact on how they vote. As you said, workers normally vote before or after work, but they might now be able to vote during the day if they are local to the polling place. The patterns might change, and it is not necessarily a good idea to try to preempt them by fixing times for voting, for example by age.

The Convener: I think that we can move on to consider additional challenges such as delaying the vote and parameters for decision making around delaying the vote.

John Scott: First, I will finish off where Gil Paterson was a moment ago. Given the difficulties of holding the election over two days, to be clear about it, is it still your preference to hold an election on one day, or is your preference for two days?

Malcolm Burr: The preference would always be for one day.

John Scott: Turning to my own questions, in administrative terms, what key factors would influence whether the poll could go ahead; what are the key points in time for making those assessments; and what would be the costs of delaying a poll and who would cover them?

The Convener: Pete Wildman?

Pete Wildman: Those are probably more questions for Malcolm Burr than for me; he is probably better placed to answer those.

Malcolm Burr: I refer to my earlier remarks about polling being possible even in a level 4 lockdown, because it is a highly regulated environment. Although people will of course be welcomed when they come to vote, they will not be encouraged to linger and therefore they will not be there for the 15 minutes or more that would trigger contact tracing. However, although polling may be possible during a level 4 lockdown, the board of course appreciates that it may not be desirable, because there will inevitably be some discouragement to vote for people. Although voting could absolutely be regarded as an essential activity, some people may feel that it is not.

There may be concerns about turnout and if those changes come late in the day—for example, after the last date of application for postal voting—we appreciate that a decision may reasonably be taken to postpone the election for such time as can reasonably be anticipated in this volatile situation. The last thing that anybody here wants is to have any questions over the legitimacy of the poll.

Although it is a national election, we all know that restrictions can be different in different parts of the country, which also has to be taken into account. Delaying the poll in some areas but not in others would not support a consistent national contest, and results being available in some areas but not in others would give rise to difficulties. That is not a route down which we should go.

John Scott: Absolutely—point taken.

What plans are in place in the event that a key figure—such as a deputy returning officer—has to self-isolate on the day of or close to a poll?

Malcolm Burr: We have robust deputising arrangements for both the returning officer and the depute. Depute returning officers would be assisted by their election officers or managers or equivalent staff. We will make provision for that.

John Scott: Are you facing any challenges around securing polling stations that are suitable in terms of space for social distancing and the need for good ventilation and so on? Are you confident that enough polling and count staff will be available to allow for the smooth running of the poll? What contingency plans do you have around that?

Malcolm Burr: Those are very important questions, because I am sure that not all polling places will be suitable. There have been several by-elections across Scotland in urban and rural areas, as well as island areas, and so far, finding

suitable venues has not been an issue. Returning officers are making contingency plans and are looking at venues on the basis of the current regulations.

09:15

On staffing issues, much depends on the local situation. In the by-elections that we have had so far, we have had at least one additional member of staff to guide voters through the public health-related element of the process and to explain why things are slightly different and a bit more regimented. We would look to have at least one additional member of staff at each polling place or polling station. There have been no difficulties in recruiting staff, whether an area is in level 3, level 2 or level 1. However, we will make contingency provision for that, probably from the local authority staff who support the elections in any case.

I hope that I answered all your points. I may have missed something out.

John Scott: You are fine, thank you. The bill is unclear on whether and in what circumstances the convener of the EMB and others would be consulted and what the consultation requirements will involve. Would the views of the respondents be weighted and would your views be made public? What are your expectations in that regard?

Malcolm Burr: I would have no personal objection to my advice being known and made public. It would be based on open, objective criteria along the lines that I have already mentioned. That is a matter for ministers and the Parliament in their consideration of the bill.

John Scott: The bill is unclear on the circumstances in which you would be consulted. Do you have any views on that? In which circumstances would you expect to be consulted?

Malcolm Burr: The bill currently provides for the Electoral Management Board and the convener to be consulted on the all-postal vote, the additional days and on postponing the election. I would expect the Electoral Management Board, representing practitioners, to be consulted on those matters, and that provision appears to be in the bill.

John Scott: Okay, thank you.

Jamie Halcro Johnston: I have two quick questions. There have been some by-elections that have been postponed, some of which were in rural areas. I know that that is a decision for the local authorities, but Malcolm Burr suggested that polling stations would still be able to operate in level 4, and yet even in areas that have low figures of coronavirus cases, councils have made the decision not to run elections. Why would two-day polling be important, particularly in those areas?

Why are some councils not going ahead with by-elections or are suspending them?

Malcolm Burr: Those are questions for individual returning officers, who make their assessments locally. They consult the board. I have been encouraging returning officers to go ahead with by-elections, wherever they consider it safe and appropriate to do so. Most of the scheduled by-elections have gone ahead. Those have taken place in a variety of settings: urban, rural and island. We have conducted a review after each of those by-elections. The board meets tomorrow and will consider a further report on the conduct of by-elections, including electoral issues and so on. No concerns about public health grounds have been raised in relation to any of the by-elections. My advice to returning officers is to proceed with scheduled by-elections wherever possible.

Jamie Halcro Johnston: A connected issue that we have not talked about is the count. What concerns or issues do you see in relation to that, given the considerable sharing of ballot papers during the counting process, the necessary close inspection of ballots and so on?

Malcolm Burr: That is an important point. The count in any kind of coronavirus-regulated environment will take longer: more space will be required and there will be more ground to cover. There are circumstances in which, for example, doubtful ballot papers have to be shown to the candidates and agents: that will have to take place in a more regulated and distant environment.

The process is more cumbersome, so it will take longer. We will require greater numbers of staff, because if we cannot group large numbers of count staff around a table—as is not possible to do at the moment—then the numbers of supervisors have to be increased, as well as, perhaps, the number of deputy returning officers on the night. The process will be the same, just slower and more complicated.

Jamie Halcro Johnston: A seat obviously cannot be called until all the ballots are in. In the worst-case scenario of a delay in the count for whatever reason, is there a timescale around how long the count needs to take, or is it open until officers are able to count the ballots?

Malcolm Burr: We have to be practical. The job of the returning officer is to count the votes forthwith i.e. as soon as possible, and we will continue to do that. No result can be declared until all ballots are accounted for and counted, and every effort will be made to ensure that that process is done as quickly as possible.

The Convener: Andy Hunter, do you have anything to add in relation to electoral administrators?

Andy Hunter: As Malcolm has said, the process just has to be spread out and changed slightly to accommodate the various rules and the time that it will take. Most returning officers and staff could make contingency plans and do what they can to ensure the count is done as quickly as possible.

The Convener: No member wants to ask anything to sum up, so I thank our witnesses Andy Hunter, Malcolm Burr and Pete Wildman for turning up this morning and for their helpful answers.

We move on to our second panel. Our witnesses, from the Electoral Commission, are Dame Susan Bruce, Ailsa Irvine and Andy O'Neill. Unfortunately, due to time constraints, we do not have time for statements, so I now invite questions from members.

Neil Findlay: There is uncertainty and speculation that the election might be delayed and, although the bill does not propose a delay to the election, it notes that it is a distinct possibility. Do you support a decision on the poll being taken closer to polling day, or earlier?

Dame Susan Bruce (Electoral Commission): The Electoral Commission's view is that it would be beneficial that any decisions about the arrangements for the election be made as early as possible.

We have just been hearing from colleagues from the EMB and others about the complexities of making arrangements for the election. The Commission's view is that, to give certainty, it would be helpful if the principles of any decisions that can be made are set out as early as possible.

Neil Findlay: The last thing that we want is American-style delay and controversy around the poll. We have had our controversies in the past here. Nobody knows how things will pan out over the next while, but if we were in a situation in which we could not ensure that votes were counted in the normal way and in the normal timescale, and counts in some parts of the country were delayed while others were finished, would there be concerns about the overall integrity of the poll and the result?

Dame Susan Bruce: Under any circumstances, returning officers in particular would want to ensure that they could demonstrate the security of ballots during the process, both in the run-up to and during the poll. The elector would also want to see that measures are in place to ensure that the holding of ballots during the process is secure. The shorter the process, the better. Any delays that are incurred between the poll and the count would require demonstrable integrity regarding the security of ballots.

Neil Findlay: We only need to look back to the independence referendum and the wild conspiracy theorists who said that ballot papers were chucked under desks and all sorts to support their claim that one side or another was being disadvantaged. Have any additional measures been put in place to ensure that, if there is a delay, the absolute veracity of the poll is protected?

Dame Susan Bruce: There is existing practice that is adopted by ROs. For example, in the European elections, in which the count is separate in time to the election itself, ROs have measures in place for the secure storage of ballots. Each RO will have to make their own decision regarding their circumstances, including the buildings that they use, the security of the buildings and how the security measures can be demonstrated. You said that there were plenty of rumours during the course of the referendum, and I think that they were all successfully rebutted by the demonstration of the integrity of the process. ROs are quite well attuned to that.

The Convener: Would any of the other witnesses like to add anything?

Ailsa Irvine (Electoral Commission): Just to add to Susan Bruce's point, the important thing will be to make sure that we communicate clearly at an early stage what decisions are taken. Helping voters to understand what will happen, when it will happen and what to expect, and managing those expectations in advance, will help to build confidence.

In the previous part of the session, Malcolm Burr talked about counts taking longer due to the need for social distancing. If it takes time to declare results, getting that information out there early, and helping voters to understand and expect that, will help to show that there is nothing funny going on, and that we are running the election properly and making sure that things are done in accordance with the rules.

The Convener: Thank you. Andy O'Neill, do you have anything to add?

We cannot hear him. His microphone is still muted; that is the problem.

Andy O'Neill (Electoral Commission): I am sorry, convener, but I have been having issues with the IT, so I have just arrived, as it were. I do not know what the question was, so I will pass on that one.

09:30

The Convener: No problem. We will come back to you on another matter. John Scott is next.

John Scott: Thank you, convener. The bill provides the Presiding Officer with the power to

delay the election, if required. In such circumstances, the Electoral Commission must be consulted. Do you support the arrangement for that contingency, and can you indicate the scenarios in which you might support a delay and the factors that you would take into consideration?

Dame Susan Bruce: The Electoral Commission welcomes the provision in the bill that it should be consulted. That reflects the environment in Scotland, where there is an open and transparent dialogue and where we try to give our best advice to Government—to ministers—to create the best legislation to support the elections. The commission has been monitoring the impact of Covid on elections globally; we have a researcher who has been involved in international organisations and international discussions. It has been possible for most elections to continue, with measures to help to make them safe.

While the pandemic is still with us, it is an unknown quantity, and it is sensible to have a provision for the delay of the election. On the face of it, if measures are taken to make polling places, count arrangements and so on safe, it could very well be possible to run the democratic process while keeping people safe. A postponement would be a measure of last resort in many ways. You heard from colleagues on the electoral administration side earlier that an all-out postal vote would be the kind of thing that would trigger consideration of a delay, given the complexity of delivering that. The bill's provision for a delay is the last-resort fallback position, in a sense. We welcome the fact that the Electoral Commission would be consulted on that. However, given everything that we have seen and heard about the possibility of making a safe election happen, if I were asked to make a judgment now, I would err on the side of saying that we should aim to proceed, but with safety measures in place.

John Scott: With regard to section 5 of the bill, on the power to provide for an all-postal vote, do you agree that, although the wording is currently that Scottish ministers "must consult" the Electoral Commission, it would be better if the bill stated that the Electoral Commission "should recommend" the course of action? Would that put a further safeguard in place, given the enormity of moving the whole electoral system in Scotland to an all-postal ballot? Do you agree that there are those who are of that view? I am one of them.

Dame Susan Bruce: It is an interesting question. Ministers have decisions to make about their preference for how the election will be run. The Electoral Commission would state concerns about the possibility of delivering an all-postal ballot, unless there was sufficient time, and it would be a position of last resort. Apart from the issues of administering such a process, there is

also the risk of excluding people from an all-postal ballot—people who have never done it before and who are reluctant, people who have language or literacy issues, and people who are reluctant to declare themselves openly, so there are a number of reasons why an all-postal ballot might disadvantage people who are furthest away from casting their vote in the first place.

From the point of view of social inclusion and maximising participation, the present model, in which there is a mix of in-person voting and postal ballots, would—[*Inaudible*.]—more opportunities for people to participate. My colleague Ailsa Irvine might have further comments on that.

Ailsa Irvine: I agree with Sue Bruce's point. Voter choice is a really important element of the electoral process. We understand that postal voting is a popular option—18 per cent of the electorate in Scotland chooses to vote by post already—and our research indicates that up to 20 per cent of people could choose to apply to vote by post if the election took place now, against the backdrop of the pandemic.

We saw from the same research that the majority of people think that voting at a polling station is reasonably safe. The most popular option for casting one's vote if an election took place now would be voting in person at a polling station. Limiting that choice would have an impact on voters and would be a significant change to how elections in Scotland are run.

To build on Sue's point, there is a potential to disenfranchise people. We want to keep the integrity safeguard, which is really important: getting people to provide their signature and date of birth, which can then be checked against their signed postal vote. The number of electors from whom we would need to get those details before we could send them a postal ballot pack would be around 3.4 million, and there is the potential for some to be disenfranchised as part of that process.

Then there is the potential for people to become confused and make errors when they return their postal ballot pack. When postal vote identifiers were first introduced, around 4 per cent of returned postal votes were rejected, because they were not completed correctly. There is a risk there of more people being disenfranchised.

There would be issues around people not being able to take part or cast their vote in the way that they had intended, and public confidence issues would emerge from that as well.

John Scott: That was very clear.

If the poll is delayed once the short campaign has begun, what would the implications be? Would the short campaign be longer or would

campaigning need to stop and resume closer to a rearranged poll date? If we start and then have to stop, how would all that play out?

Andy O'Neill: It would depend on when the postponement occurred. The short campaign would start around 25 March. We have had conversations with Scottish Government officials, and our understanding is that amendments to the Scottish Parliament (Elections etc) Order 2015, which are going through the Scottish Parliament at the moment, will introduce a provision to allow for an increase of the spending limit for candidates of up to 50 per cent. It would depend on whether the election was postponed for a week, two weeks or whatever. Our understanding is that the candidature of the candidates continues, so if the postponement was for six months, there would be a substantially longer short campaign. A 50 per cent increase might be enough for that.

There is also an issue around party spending limits. If a party has candidates standing everywhere—you will know this—there is a spending limit of about £1.5 million. We have been having conversations with Scottish Government officials on the basis that a sliding scale of increases might be needed. Those conversations are on-going and we are happy to continue working with the Scottish Government on that issue, in case the eventuality occurs and it has to legislate.

John Scott: I have a bit of a bee in my bonnet about MSPs remaining MSPs until the day before the election, while also being candidates, and the practicalities of coping with that, given the anxiety that is out there among the population at the moment. That will only be worse if the situation is on-going in such an intense way during April and May.

Constituents will not really want to differentiate between whether you are a candidate or whether you are an MSP; they just want solutions to their problems, and to have a coherent response in that regard. How does the need to accommodate constituents play out in the mind of the Electoral Commission? If we will still be MSPs—we might also be candidates—our job is to represent people. There is almost a conflict between the two roles.

Andy O'Neill: That is probably a question best asked of your next panel—I believe that David McGill and Huw Williams will be on it.

In a sense, to us, MSPs are candidates during the long campaign from 6 January every year leading up to an election. We regulate what you spend, not what you say. Therefore, that aspect really does not have anything to do with us. We do not regulate candidates anyway, because that is a police matter rather than one for the Electoral

Commission. We are the party regulator. It is best that you ask the next panel of witnesses that question.

John Scott: Thank you for that. Forgive my naivety. I certainly intend to ask the next panel of witnesses that question, too. I just wondered whether you had a view on it.

The Convener: We are quite likely to ask that question of every panel of witnesses.

We now go to Gil Paterson.

Gil Paterson: Do you support the proposal to allow for polling on additional days if required? Could you outline what you would take into account when making a decision in that regard?

The Convener: Would anyone care to take on that question?

Dame Susan Bruce: It is key to take into account the views of returning officers on their estimation of the time needed to ensure that a present vote could be taken safely through the polling places.

You have heard from Malcolm Burr in the previous session that returning officers are reviewing their polling schemes and will be assessing the polling places that are available to them, which includes spacing, timing and all the rest of it, so it is key to take into account the estimation of returning officers on the capacity that they have in their polling places to take the electorate through their votes in the time available.

There is another aspect to take into account. In the event that additional days of polling were required, I very much support Malcolm Burr's view that the preference would be for polling on consecutive days rather than on non-consecutive days.

An ancillary issue to take into account—this is probably for debate in another committee—is that schools are often used as polling places. Given the disruption that there has been to education already as a result of the pandemic, a side issue would be consideration of using schools for more days than is necessary.

Gil Paterson: If a decision was made to spread voting, particularly if that was over a period of more than two days, would that be a fundamental barrier to the public?

The Convener: Andy?

Andy O'Neill: I think that Sue Bruce was about to speak, and I can speak after her.

Dame Susan Bruce: Part of the desire for providing information as early as possible is to get clarity. Polling over non-consecutive days would potentially be more confusing for members of the

public, particularly given that publicity and awareness raising about the election usually takes place in the long run-up to the event itself and any published material would need to reflect the decisions about the actuality of the days of voting.

Again, there is the question of the integrity—the security—of the ballots, if the poll was split over non-consecutive days. That would introduce another risk into the system. Ballots already cast would need to be kept somewhere secure while the non-consecutive days were lined up.

09:45

Andy O'Neill: When the Covid pandemic hit, we developed—along with parties, administrators and returning officers across Great Britain—some objectives for a successful election in the context of the health crisis. An objective that we strongly believe in is that there should be clarity on matters as soon as possible. We believe that voters need clarity because they are entitled to know when polling day is so that they can get information that is good for them and can vote with confidence. Parties and candidates need to know when polling day is. EROs and ROs, in particular, need to know when it is so that they can book polling places. Across Scotland, there are about 3,000 polling places, within which there are polling stations. They also need to book the staff, and if there is to be more than one polling day, they might need more than the 100 per cent of staff they normally have on a polling day. Therefore, clarity is really important to us.

The Electoral Commission has the role of a national public awareness body, and we produce household booklets and stakeholder materials. The booklet for the Scottish Parliament election will go out earlier because of the moving of the postal vote deadline into March. We need to know the days of poll by then. As I said, administrators need to know about polling places. Therefore, we believe that we need to include that information in the bill, otherwise we will not be able to administer the election, or to prepare for it.

We know that the ROs can do the modelling to develop an answer on whether we need one day, two days or whatever. Obviously, I support Sue Bruce's view that it would be better to have polling on consecutive days. ROs can do the modelling, look at their polling schemes, see whether they can provide physically distanced polling stations within the polling places, factor in their assumptions about the increase in postal voting and consider the use or non-use of schools. They can also look at the length of time for voter throughput, on which lessons have come in from some of the by-elections. We think that the throughput is slightly slower than it would be on a normal polling day. People are being asked to

sanitise their hands as they go in, they have masks on, everyone is socially distanced and things are cleaned.

I know that, at one of the by-elections, only individual voters or family groups were allowed into the polling station at any one time. In a busy polling station, that can lead to a queue developing. If all that is looked at, we can get an answer on whether we need one day, two days or whatever. We are doing a report on the lessons from the by-elections—we will send the committee a copy towards the end of the month once we have produced that.

One thing that is coming back from the deputy returning officers is that everything is taking slightly longer to administer, because people are not always in the office but are working from home, and some of the people they are trying to contact about polling place venues are not there or are harder to contact. Our view is that we need to do that work now. As the bill is currently framed, we would not have certainty until the end of January or early February. We would like the returning officers to do the work, come up with an answer and give some advice to the Scottish Government, which could then lodge an amendment, probably at stage 3.

The Convener: Thank you.

Patrick Harvie: Good morning. In discussing the possibility of all-postal voting, Ailsa Irvine mentioned the research that the commission has done. I would like to ask about postal voting more generally, and what that research tells us.

I suggest that research that was conducted right before the second wave, when the United Kingdom Government was telling everyone to eat out to help out and was saying that we should all be getting back into the office, might not tell us very much about what people's attitudes are now, and it might tell us less still about what people's attitudes will be in the spring as regards the likely uptake of postal voting.

We do not know what situation we will be in by spring. Vaccines might be being rolled out and everyone might be feeling a lot more confident, optimistic and upbeat about the prospects in the first few months of next year or the vaccine roll-out might be given to a special advisor's brother-in-law's start-up company and it will all go wrong and we will have a third wave.

Therefore, surely the most serious thing that we can say is that we simply do not know what the likely uptake and demand for postal voting will be, and we cannot assume that that high figure of 30 per cent can be relied on.

Ailsa Irvine: It is a challenge to accurately predict what level of postal voting we will deal with.

Using the research, we have tried to give a predictor about human behaviour; we know that it cannot be taken as an accurate figure for what will happen on polling day.

To clarify on the timing, we initially carried out the research in August and have just carried it out again. We are in the process of finalising the analysis and will publish it later this month. However, a sneak preview shows that it tells exactly the same story as it did in August, so we have not seen a shift in public opinion during that period. However, as you said, that is not to say that things will not change again. They might well change as we move forward.

Likewise, from the dialogue that we have had with electoral registration officers and the data that we have received from them, we have not yet seen any increase in postal votes in the by-elections that have taken place in Scotland. We have seen a high turnout for postal voters, but no increase in the number of people voting by post.

That all underlines the uncertainty and the importance of electoral registration officers working to build capacity in their systems so that they can respond to and deal with whatever level of applications they get.

As well as ensuring that there is capacity to deal with whatever happens, public awareness and helping voters to understand the process for casting a vote at an early stage are also important. We have started providing local authorities with resources, which they can use from now, to help them to be clear to voters that a polling station is a safe place to vote and that there are other options for casting a vote, and that if people want a postal vote they should apply early. It is about doing as much as we can to spread out the peak of applications and encourage people to register to vote early, while recognising that people are deadline driven and that no matter how much activity we try to do this far from the election, there will be a limit to how effective it can be. It is about trying a combination of all those things: spreading out the flow of applications, building the capacity and best understanding the picture.

Patrick Harvie: That is helpful, and it is particularly helpful to know that there is a follow-up to that research coming. I hope that we might be able to see the output of it before we get to the stage 3 process on this bill. I see some heads nodding.

Some of what came up when we spoke with the last panel of witnesses, and also what Ailsa said, suggested that the registration process is the problem and trying to get people to register early would be helpful. I got the impression from the previous witnesses that the administrators would, understandably, say that it is not their position to

tell people that they should register for a postal vote because it is a matter of free choice.

I imagine that the Electoral Commission will also want to give people neutral information rather than proactively encouraging registration for a postal vote. If it is sensible to encourage early registration for postal votes to smooth that process, whose job is it to be proactive and actively encourage people to register for a postal vote if that is the way that the system will work more smoothly?

Ailsa Irvine: The important thing from our perspective is ensuring that voters understand the options so that they can plan for whatever method is best for them. Therefore, if people want to vote in person at a polling station they should go ahead and do that. However, if people want to vote by post—particularly in this context—because they do not want or feel able to vote in person, it is important that they know what to do and get that information early. It is not about preferring one type of voting over another, but about recognising that voters have different needs and ensuring that we raise that with different groups of electors.

We are thinking about whether we can target messages at voters who are clinically more vulnerable to Covid so that they understand what they need to do to vote by post and can put arrangements in place early.

That is about channelling messages to the correct groups and providing the information that they need. We see ourselves as having a role in that, with our public awareness function, to make sure that we are raising awareness of the options and providing voters with the information that they need. There is also clearly a role for returning officers, EROs and local authorities, and candidates and parties will want to make sure that their voters also understand how they need to engage in the process, so that role is shared collectively across the electoral community.

Patrick Harvie: The demand might be lower than we fear at the moment, but part of the information that people need is that they might not be able to get a postal vote if they register too late, because if there is a limit and if there is a risk that that limit will be reached, people might be turned away for a postal vote when they genuinely need one.

Ailsa Irvine: The important thing is to build that capacity so that no one is turned away. We would be concerned if someone was not able to cast their vote in the way that they intended and it could not be processed. That is why we are taking action now to start reaching out to voters to get them to think about applying for a vote early so that we can get that postal pack turned around and sent to them as quickly as possible. It is about

the timing and phasing of activity, but it would be a concern if applications could not be processed and people could not cast their vote, which is why the capacity element is critical.

Andy O'Neill: The principle of the bill, which we support, is in-person voting plus lots of postal voting, which we expect. We need to remember that 77 per cent of people feel that polling places are safe and 54 per cent told us in our research that they want to vote in person, and our job is to ensure that they understand all the options available. We give them the options and encourage them to use them. If people want a postal vote, they should apply early.

We understand the problem of the spike and that is why the Scottish Government and others have been working with the EROs to build capacity, and we, as part of our national campaign, will do our usual television, booklets and digital stuff about how to register and how to vote on the day. We are also producing resources and working with lots of stakeholders to understand the various ways of voting, including understanding apps and voting. We are working with COSLA and local authority resettlement officers, the Scottish Refugee Council, the Parliament, Education Scotland, black and minority ethnic groups and disability groups, so we are seeking to get the message out.

To go back to the earlier point about days of poll, part of the issue is having all the right information in those resources. They are being finalised now, which is why we are big on clarity.

Neil Findlay: One of the ways that we could help encourage people to take up the option to vote and be as inclusive as possible is by providing a freepost address for electoral registration and postal voting. Do you support that option?

The Convener: Would anyone care to take that on board? Andy O'Neill?

Neil Findlay: Does that mean no or does that mean that you do not know?

Dame Susan Bruce: That is not something that we have discussed, but a freepost address might encourage people to participate when they might not otherwise have done if they had to put a stamp on. The question is, who would fund that? That is the nuts and bolts of the issue, but the principle is inclusive.

Neil Findlay: I am surprised that there are no more comments on that from the witnesses, given that you are the people who are involved in that key element of our democracy. I am surprised that you do not have a view.

The Convener: I think that Andy O'Neill wants to say something.

Andy O'Neill: At the end of the day, it will be for EROs and ROs to decide. The issue would be with funding what you are talking about.

Neil Findlay: That is the second person that has said that.

Andy O'Neill: Elections are funded by a mechanism known as a fees and charges order. If you provided returning officers and EROs with resources to provide freepost addresses, they would be able to do it; otherwise, I suspect that they would say that they do not have the resources to do it.

The Convener: Is that all right for now Neil?

Neil Findlay: That is fine.

10:00

Maureen Watt: Ailsa Irvine, you have said for a number of years that the Electoral Commission is not in favour of all-postal ballots. You have said that that could effectively disenfranchise up to 1.5 million electors.

Are there any steps that can be taken to mitigate the risk of disenfranchising all those people?

Ailsa Irvine: If we were to find ourselves holding an all-postal ballot, we would undertake a public awareness campaign to encourage people to do what they have to do to get themselves on to the postal voting register so that they can vote.

We would also work closely with local authorities and with ROs and EROs to ensure that the information provided to electors is as clear and concise as possible so that they understand how to complete their postal ballot pack. That should reduce the risk of people completing it wrongly and having it rejected before it reaches the count.

There is activity that could be undertaken to mitigate the risk. There is a law of diminishing returns when we try to contact electors and ask them to do something. We saw that when we made the transition to the individual electoral registration system and households were required to reply. A rump of people just did not respond to every round of reminders that the EROs sent.

However much action we take in mitigation, there will still be a rump of people who would be effectively unable to vote, or to vote as they intended, if there was an all-postal ballot. If that was retained as a contingency measure and was used as a backstop, we would do everything that we could to make sure that it worked effectively.

Maureen Watt: Section 5 of the bill is about an all-postal election but ministers have said that they do not intend to use it. If circumstances change so that all-postal voting is more or less made

inevitable, the bill says that ministers must consult the Presiding Officer, the Electoral Commission, the convener of the EMB, and the chief medical officer.

It is unclear how you will be consulted, how the views of the Electoral Commission and others will be weighted, and whether those views will be made public. What are your expectations about that?

Ailsa Irvine: Transparency is important. We would make our views available, regardless of the process that was in place.

Any decision that is fundamental to the running of an election should be taken with the broadest possible range of input. We have seen that in the bill development process, which involved the whole electoral community and people from across the political spectrum coming together to give their views. Any decision that is as significant as this one should be taken in a similarly consultative way and the views that underpin it should be made clear and transparent so that the public can have confidence in the rationale behind the decision and in those who have reached it.

The Convener: We will move on to questions about elements of the Gould principle.

Jamie Halcro Johnston: I want to come back on that last point. People have made points about disenfranchisement, exclusion and confusion. Given those points, do you think that the power to call an all-postal ballot should be solely in the hands of ministers, even after consultation with other groups? What is your position on further safeguards? Perhaps the Presiding Officer could give consent and Parliament could vote on it.

The Convener: Does anyone want to answer that, regarding the Gould principles?

Ailsa Irvine: I think the—[Inaudible.]

The Convener: Because we have lost connection to Ailsa Irvine, we will go to Andy O'Neill first and come back to Ailsa later.

Andy O'Neill: With regard to postponement for an all-postal ballot, as the bill is currently drafted, the Presiding Officer can postpone for up to six months. That is written in the context of a very extreme situation occurring. Ministerial statutory instruments can be made to develop an all-postal ballot but, if you were going to do that, I would envisage a debate taking place, because other things would be occurring; for instance, as we referred to earlier, spending limits might need to be changed. It depends when you do it, but I would expect a parliamentary debate, which would cover all those things and would seem more transparent to us.

Jamie Halcro Johnston: When we were speaking earlier to the Electoral Management Board for Scotland and the EROs, they suggested that, for the technical delivery of an all-postal ballot, a six-month delay would be a minimum. You have talked about disenfranchisement and exclusion on the basis of people who might not know how to vote by post or who might not be comfortable doing so; therefore, there will also be a big education job to do. If we have an all-postal ballot, what is the minimum delay that would be required for the information and educational sides, to make sure that that disenfranchisement does not happen? Would six months be a suitable period? Would it need to be longer?

Andy O'Neill: [*Inaudible.*]*—*colleagues will support me—no doubt—or disagree. The more time that you have, the more robust the absent voter register for an all-postal ballot will be. That is also true for public awareness campaigns: the longer the time, the better the campaign. Obviously, there would be a funding question around that, because the Parliament would need to fund us to do that.

Our key concern is that six months seems awfully ambitious to get 3.4 million absent voter identifiers from applicants that they would have to write from a standing start some time in the first quarter of next year. We see that as a real challenge. The policy memorandum refers to the fact that something like 16 to 30-odd per cent of the electorate might not get their applications for AVIs in on time. In addition to that, a number of those postal voters will not return the AVI correctly. In the most recent election in Scotland, 11,000 people did not respond correctly with the AVI, so their votes did not get counted. To build on that, a lot of people have never used a postal vote before. Therefore, we think that more people—although they have been given the AVI and the postal ballot pack—will not return it correctly or the AVI will be incorrect and, therefore, they will not get into the vote. We can put in mitigating public awareness campaigns to ameliorate some of that but, inevitably, there will be more people whose vote is not counted. Also, some people do not trust postal voting, so they will not apply.

We have always supported a range of options. We recognise that a pandemic exists and, in certain circumstances, you might go down the all-postal route, but we would much prefer it if people—and this is the principle of the bill—can vote in person, as the majority of people want to do, and those who feel, for whatever reason, that a postal vote or proxy vote suits them, can use that mechanism.

The Convener: John Scott can have a question, but we have only five minutes left with

this panel, John, so please make this short and sweet.

John Scott: You mentioned the use of statutory instruments by ministers, Andy. Would you agree that, were such an apocalyptic scenario to occur, an affirmative instrument should be used, rather than any other kind of instrument?

The Convener: Apocalypse now, Andy, or what?

Andy O'Neill: I do not think that we have ever—[*Inaudible.*]*—*but I suspect that, in the circumstances, you would finish up having a parliamentary debate. We would want our advice, which would be sought, to be aired publicly. We would certainly take the view that there should be maximum transparency. You might finish up in a situation where things need to move very quickly, however.

Jamie Halcro Johnston: I had a number of questions about other things, but I will try to bring them into one.

First, can you tell us about any concerns that you have with the Gould principle and any particular need for flexibility around that, given the circumstances that we are likely to or could find ourselves in?

Do you support the provision in the bill that would allow for a more practical approach to Parliament needing to sit within seven days of the poll? Are there any other issues around that?

It is vital to have observers at election counts and throughout the process of polling, as we have seen across the pond. What plans are being put in place to ensure that observers can be involved in the election, and safely so?

Ailsa Irvine: On the Gould principle, you have heard us talking many times previously about the importance of having rules in place six months before they need to be complied with. We are now looking at a bill that we expect to be in place by the end of the year, which is only four months before polling day, essentially. However, we recognise that the circumstances of the pandemic mean that we need to be more flexible than would ordinarily be the case. We welcome the fact that the Scottish Government has brought people together to consider solutions for the bill and for changing conduct to ensure that the election can be run safely.

That said, the Gould principle is there for a reason. There are risks that increase the closer we get to a poll, if we make changes. That is why we are saying that we would like as much as possible to be decided and ended with the passing of the bill, so that there is clarity by the end of the year, four months out, and so that everybody involved in the poll can get on and plan within those

parameters, recognising that, the closer we get to the poll and the more changes we make, the greater the risks to implementing them successfully and the greater the risks of voter confusion because of conflicting messages or messages that may be correct at one point but then need to change. All those things, taken together, can lead to an undermining of public confidence in the process.

We recognise that there is a need for more flexibility, and that is why we are happy to be involved in these conversations now, recognising that the risks have not gone away.

On the point about observers to the process, it is important that we still have oversight of and transparency in the processes, and that observers are still able to attend, whether they are party agents appointed to scrutinise the process on behalf of the candidates or accredited observers under the Electoral Commission's statutory scheme.

We recognise that there will be practical challenges. There might need to be limits to numbers and distancing requirements in place. We are working with returning officers to provide them with as much guidance and support as possible to set up their processes in such a way that there is that transparency and level of access. That is a critical part of the process, and we would not want it to be lost.

Jamie Halcro Johnston: The other question in there was about the provision in the bill to allow the first meeting in the new parliamentary session to be

"as soon as reasonably practicable after the poll",

rather than within seven days of it. The witnesses might not have any particular position on that, but if there is anything useful that they can add, I would be interested to hear it.

The Convener: We do not have much time, but on you go, Andy.

Andy O'Neill: That does not really have any impact on us. For us, it is about the length of time of the count, and we all recognise that counts will take longer than previously. The provisions to change the time to

"as soon as reasonably practicable"

seem sensible.

The Convener: I apologise for the fact that we had to rush a wee bit at the end there, but I thank Dame Susan Bruce, Ailsa Irvine and Andy O'Neill for some terrific information in response to our questions. Thank you all very much, and we will see you again soon.

10:15

Meeting suspended.

10:21

On resuming—

The Convener: I welcome our third panel of witnesses: David McGill, chief executive of the Scottish Parliament, and Huw Williams, who runs the chief executive's office. Thank you for joining us.

We will not have opening statements, because of time limitations. Jamie Halcro Johnston will open the questioning.

Jamie Halcro Johnston: Good morning. What are the financial implications of not having a dissolution period, particularly as regards additional costs? Are the costs that are included in the financial memorandum accurate? How would the costs differ if there were a delay to the poll of, for example, six months?

David McGill (Scottish Parliament): The costs that are set out in the financial memorandum are accurate. We were lucky enough to be involved in contributing to the figures that are in there.

As you suggest, the main costs for the Scottish Parliamentary Corporate Body lie in the fact that, under the bill, dissolution will not start until 24 hours before the election. That equates to an extra six weeks or so of salary costs for those members who, in normal circumstances, would have stood down at the end of March 2021, but who will now not do so until 5 May 2021. There are 27 members who are in that category, and we have calculated that six weeks' salary for 27 members comes to around £265,000, including pension and national insurance contributions. There are other costs over and above that. For members' staff who might stay on during that period, we have calculated a maximum figure, which, again, is based on an additional six weeks' salary for the requisite number of staff. It might be that some of those staff move on before that period; the figure that we have provided is a maximum.

Over and above the salary costs, there will be a slight increase in the cost of resettlement grants, on the basis that resettlement grants will now be payable on 5 May. That takes us into a new financial year and the costs will be uplifted for 2021-22, as will the salary costs. We do not yet know what the increase will be, but it will be small.

There might be some additional costs in relation to members' local offices that we cannot quantify yet, as leases might or might not be extended to cover the extra period. We are starting a programme of work with members to see what their intentions are for their local offices, so that we can gather those financial costs as well.

Jamie Halcro Johnston: What consultation has there been with MSPs? How might a delay to the election impact costs?

David McGill: As far as I am aware, there has been no consultation with MSPs since the bill was introduced. The political parties were all involved in the policy development before the bill was introduced, but we have not yet gone out to members to talk about their intentions for the election period.

We do not foresee any additional costs if the election were delayed, because the costs that would be incurred are costs that would be incurred anyway—if we have an election, we have 129 members and their staff in place. A delay to the election would not increase the costs.

Jamie Halcro Johnston: Could that impact on resettlement costs, for example, in six months' time?

David McGill: Yes. Resettlement costs are based on years of service. Because the bill limits the ability to delay the election to six months, we would not kick into an extra year, but there would be a marginal increase, because it is a factor of salaries and we would be on to whatever uplift the corporate body puts on salaries for 2021-22. There would therefore be a marginal increase in resettlement costs.

Jamie Halcro Johnston: I had a question on the code of conduct, but I think that it will be covered by Patrick Harvie.

Gil Paterson: I have a question that relates to the point that was just discussed. If the parliamentary session was extended by six months, what would be the status of an MSP during that period?

David McGill: Their status would be as an MSP. MSP status continues until the Parliament is dissolved. Even if the election is delayed, dissolution will not take place until 24 hours before that election.

Gil Paterson: Would that be the same for the six-month period?

David McGill: Yes. The bill has a mechanism whereby dissolution follows the date of the election.

Gil Paterson: I have an interest. Does what you have said include folk who had already decided to retire—unless they leave the Parliament?

David McGill: Exactly. A member can stand down at any point, if he or she wishes. If a member does not do that, they will retain the status of MSP until the Parliament is dissolved.

The Convener: That is helpful; thank you very much. I thank Gil Paterson for bringing that up.

Patrick Harvie: Good morning. The corporate body normally issues guidance to MSPs and staff about parliamentary procedures and resources in the context of an election. What is being considered? What factors do you have in mind for updating or revising that guidance, particularly in light of the proposal to do away, in effect, with a dissolution period of any length?

David McGill: The changes that the bill will bring about have significant implications for the guidance that we normally issue. In the run-up to an election, the corporate body normally issues guidance around October. It was all set to do that this time, but we were aware that the bill was coming down the tracks, so we delayed until we could see what the implications of the bill were.

I am hopeful that the corporate body will sign off guidance at its meeting a week today, and get that out to members as soon as possible thereafter. However, we have to consider a number of issues that relate to the implications for the retention of MSP status right up to the date of the election. The guidance will cover such issues as the ability of the Parliament to meet during that time, and what we do on the parliamentary side of things.

The overall approach that the corporate body is considering is one in which we mirror, as far as possible, a normal dissolution period. That gives us cover in terms of the level playing field that the corporate body usually likes to have for an election period.

In a normal dissolution period, as parliamentary officials, we say, in effect, "We can't support you, because you're no longer an MSP." The situation that the corporate body wants to replicate would amount to our saying, "Notwithstanding the fact that you are still an MSP, we can't support you." That is because the corporate body does not want public money to be used to give any candidate at an election an advantage over other candidates.

The guidance will cover all sorts of issues that are normally covered—the building being closed to members, members packing up their offices at what would have been the date of dissolution, and so on.

A further conversation needs to be had with the Parliamentary Bureau on the parliamentary business side of things. It has an interest in what happens to parliamentary questions and motions, bills that fall at dissolution, and whether committees can meet during what would be a period of recess rather than a period of dissolution. Our hope is that the bureau will take a similar stance, whereby, to all intents and purposes, the period in question will be treated as a period of dissolution, and that none of the things that could happen because MSPs are retaining their status should happen.

Patrick Harvie: This might not be the case, but if we were still in a position in which there was a weekly revision to the levels of restrictions under the emergency coronavirus legislation, and that required to be scrutinised during what would normally be a dissolution period but which, in that case, would be a recess, do you anticipate that parliamentary business would be conducted, either in committee or in some other way, to undertake that scrutiny?

10:30

David McGill: In those circumstances, we would anticipate that, because it is obviously valid that the Government is held to account during that period. The process would be similar to what happened in summer recess this year; we had a period of recess, but we had planned recalls to allow the Parliament to hold the Government to account. I think that the Parliamentary Bureau would want to look at that approach carefully for this period of recess, notwithstanding that it is also a period of election campaigning.

Patrick Harvie: In a normal dissolution period, MSPs—whether or not they are standing for re-election—are not expected to take on new constituency casework. Their offices can complete casework, but they cannot take on new casework.

If we are in a situation in which changes to the levels of restrictions are still being implemented week on week, or there are other alterations to the restrictions, that in itself will generate casework, some of which will be urgent and important to people's quality of life and their ability to go about their business.

What approach will be taken to new casework? How will people be expected to understand whatever restrictions exist on their sitting MSPs, who could potentially be making decisions week on week during that period? How will they be able to get a decent service from their MSP in relation to those issues?

David McGill: The corporate body will look at that on Thursday, when it will—we hope—finalise the guidance. Again, the corporate body's instinct is that we should replicate what normally happens in a dissolution period, which is that the Parliament's resources cannot be used to support members in taking on new casework. There is nothing to prevent members from taking on new casework, and other candidates in the election can do so, but members should do that as candidates and not as MSPs.

I think that the corporate body will take the view, in recognising the situation that we are in as a country, that members can take on casework but that Scottish Parliament information centre resources, for example, cannot be used by

someone who is a candidate in the election simply by virtue of the fact that they happen to be an MSP. Other candidates will not have access to those parliamentary resources to help them with such casework.

Patrick Harvie: I move to my final question in this area, although I suspect that other members may want to come in on it as well. There is a question of consequences. Whatever the set of rules may be and whatever the expectation is on members, there could potentially, for those who are returned after the election, be a process under the code of conduct.

It might be up to this committee's successor to judge whether a member, while being both a candidate and a member, had contravened the rules. However, as far as I can see, there would be no such consequences for a member who also broke the rules during that period but was not returned to Parliament. How will that be dealt with?

David McGill: That is an admitted weakness in the system. When we were looking at the issue of sanctions, there were four main options. The first option was to include something in the bill, but that was felt to be disproportionate as it would create illegality. In addition, there are a lot of grey areas, and it might be difficult to enforce all that.

At the other extreme, we could do nothing, in recognition of the fact that members remain members up until the day before the election. There were two options within that: one was for the matter to be addressed in guidance, but the weakness in that option is that it would lack any teeth at all. Taking everything into account, therefore, we thought that it was best that the corporate body should issue a policy statement and, in doing so, invoke the terms of the code of conduct and the role that this committee would clearly have in the whole process.

Nevertheless, there is a weakness where somebody who is an MSP candidate is not returned, as there would be no sanction when investigations take place after the election. Some may feel that a person who has fallen foul of the rules on using parliamentary or public resources to try to gain an electoral advantage clearly did not gain an advantage because they were not returned, and that may be seen as enough of a sanction in itself. It is not something that we can legislate for in every case and make sure that every case can be treated in the same way. We probably just have to accept that.

The Convener: Thank you. We are very short on time—

Gil Paterson: Convener, can I get in first?

The Convener: I am not finished yet, thank you. We are short on time, so I will take John Scott, Neil Findlay, and Gil Paterson.

John Scott: I just want to affirm what Patrick Harvie said so elegantly. I have concerns about being a candidate and an MSP at the same time, whenever the election is. With the levels of anxiety in the community, constituents will not readily accept being told that, although we are still MSPs, we are not able to take up their cases. Patrick Harvie spoke of consequences, and they might be electoral. If a sitting MSP refuses to take up someone's case, the constituent might very well say that they are not going to vote for that MSP. There is a whole area of concern in there. I hear what you say about taking up issues as a candidate in the same way as has been done in the past, but how this is to be dealt with needs a great deal of thought. I am not certain that what you have said thus far is sufficient.

David McGill: I entirely accept that there are a range of views, but that is what the corporate body is grappling with here. The corporate body has to make a final decision, so I cannot say what its final position is, but it is being guided by the underlying principle that nothing should be done during an election campaign that could be seen to prejudice the outcome of that election. The corporate body's starting point is that the use of parliamentary resources has the ability to give one candidate an advantage over another candidate. That is what the corporate body is looking to finalise next Thursday when it looks at the draft guidance.

Neil Findlay: If I have picked you up right, the candidate who is seeking to return would be subject to sanction if they abused their position. A candidate like me, who is not seeking to return, would not be subject to any sanction. Is that correct?

David McGill: This committee does not have the ability to sanction former members, and by the time an investigation took place, somebody in your position would be a former member.

Neil Findlay: I experienced that in local government: someone ended up going to prison, but they had lost their seat, so there was no consequence for their ability to stand again for election or anything like that. That is a big issue.

I presume, then, that I could say, "I am not standing, but I have got a computer with loads of access to loads of people and I can send the information saying I want you to vote for this candidate, that candidate or the next candidate." I could do that in letters using parliamentary stamps. I could keep my allowance and spend it at the last minute, and nothing would happen.

The Convener: You have given the game away, Neil. *[Laughter.]*

Neil Findlay: I have given my tactics away. However, that is what could happen.

The other point that I would like to raise is about dissolution happening 24 hours before the election. I presume that that gives the Government a lot of power to make announcements and statements in Parliament that could have a significant impact on the election.

David McGill: Yes. The Government is obviously covered by purdah arrangements before an election period. One of the things that we have been looking at, especially if the election is to be delayed for a significant period of time, is that, if the Government starts to move into other areas, whether they are Covid related or not, the Parliament should mirror that. If the Government is freed from purdah restrictions, the Parliament needs to be able to scrutinise the Government and hold it to account for what it is doing during that longer period of time.

Gil Paterson: I have a similar question on the possible six-month extension and the short campaign period. If there is an extension for six months, the status of an MSP will be the same for that time and we can deal with cases and do everything that is normal but the restrictions that you are suggesting might come into play a month before the election. Have I got that right?

David McGill: Yes, that is it exactly. As I said, the bill allows for the election to be delayed by up to six months. Therefore, in any longer period—three to six months—we would expect some form of normal parliamentary business to continue, because the country needs its Parliament during that period.

Regardless of when the election takes place, we would still expect the campaign period to be the six-week period before the election. That would be a period of parliamentary recess, and the official dissolution of Parliament would be 24 hours before the election, whenever that takes place.

Gil Paterson: That is clear—thank you.

The Convener: I move to Jamie Halcro Johnston. Please be quick.

Jamie Halcro Johnston: I will be very quick. I have two questions. First, have there been any changes, discussions or concerns relating to the purdah timescales and what would be allowed during purdah?

Secondly, do you have any concerns, or have there been any discussions about concerns, about how MSPs who are candidates might be exposed by still being subject to the code of conduct until the day before the election? For example, what if they do not respond to a piece of correspondence because they consider that it is about a campaign issue but the individual considers that they have

sent their request to an MSP? Have there been concerns about that?

David McGill: I am not aware of any concerns, but members are probably coming to this pretty fresh—the bill was introduced only on Monday. We have been considering those issues, and we will make clear in guidance that the code of conduct continues to apply during the extended period before the election.

On the question about purdah, I have not had any discussions with Government on purdah restrictions relating to the circumstances that we are in in the run-up to the election.

The Convener: Does John Scott want to say something quickly on question 32, which you were allocated?

John Scott: The bill gives the Presiding Officer the power to fix a new date for the poll if he

“considers it necessary or appropriate for any reason to do so”

and the Parliament cannot meet to consider legislation to delay the poll because of Covid-19. Do you have any concerns about the generality of that power? Should it be tightened up?

Huw Williams (Scottish Parliament): We are quite comfortable with what is in the bill. If there is a delay to the election, the issue would first of all be considered through legislation.

John Scott: For the avoidance of doubt, will you confirm that that would be through primary legislation and not through secondary legislation?

David McGill: Our understanding is that, if the Parliament is recalled to consider an extension to the election, an adjustment to this legislation would be needed through primary legislation.

Maureen Watt: I will roll together all my questions. Clearly, there is uncertainty about when the first meeting of the new Parliament will be. What are your plans in that regard?

Swearing in is a big thing in the life of a new MSP. We have not had members of the public in Parliament for months. Are you making contingency plans for family members to be able to witness the ceremony? Do you envisage that social distancing will still be in place? It is awful that we must consider this, but do you envisage that the first meeting of the Parliament, the election of a new Presiding Officer and all the rest of it will be in the chamber, or do you envisage that the proceedings will be hybrid?

David McGill: I will take those questions in turn. First, we welcome the flexibility in the bill for the date of the first meeting of the Parliament to be a bit later than the statutory seven days, which is the current position. So much needs to be done in that

period—we need to register and induct members. If we are still in the current circumstances, we will also have the additional burden, which we have not had before, of inducting new members in virtual and hybrid ways of working, remote voting and all of that. We will try to keep that period as tight as we can, so that the Parliament can get up and running, but it is good that we have that bit of flexibility on when the Parliament first meets.

On oath taking and your final question about social distancing, the Scottish Parliamentary Corporate Body has expressed a concern about the impact of new members coming in and beginning their careers as MSPs post-election in the circumstances in which we currently find ourselves. The corporate body's view is that it is one thing for all of you, four years into a parliamentary session, to move to remote ways of working, but it is very concerned about new members coming in and having to familiarise themselves with the building and colleagues and get to know how the place works either remotely or in a hybrid way. Therefore, its preference is very much for those early days to be as physical as they can be, in the building. Therefore, we are working on all sorts of contingency plans.

10:45

The corporate body has also recognised the family element to oath taking, and it wants us to see what we can do to preserve as much of that as possible. Therefore, our planning is about how we can do that, spread over a longer period of time, for example. The corporate body's push is very much for us to exhaust every way that we can to have as much physical activity in the building in the days after the election as possible. However, obviously, we need to have contingency plans in case we are unable to do that.

Patrick Harvie: Some of these decisions have an impact not just on MSPs but on MSPs' staff. Can you assure us that you either have consulted or will consult MSPs' staff or their union representatives?

Huw Williams: Yes, we recognise that totally. There will be guidance for members who are standing down. Our human resources office will also contact each of those members individually to discuss staff issues, because we recognise that it is a difficult period. We will also be—

Patrick Harvie: [*Inaudible*.]—the staff directly?

Huw Williams: We are contacting the members but, yes, certainly, we can look to work on helping staff as well.

The Convener: Thank you, David McGill and Huw Williams. I have no doubt that we will catch up with you later on.

In a moment, we will bring in our fourth and final panel of witnesses. We will be joined by the Minister for Parliamentary Business and Veterans and his officials Colin Brown and Iain Hockenhull.

Thanks to everyone for keeping to time. We have extra work to do after the meeting. It is important that we are following the guidelines and ensuring that tables and chairs are cleaned between each set of witnesses. Everyone has handled that well. In particular, keeping to time while we are online is quite something, because it is not an easy thing to do, but everyone kept to time with their questions and answers.

Jamie Halcro Johnston: May I make a request? There might be some areas that we have not covered in our questions because of the time constraints. Perhaps the clerks can contact today's witnesses to put the questions that have not been covered. That might be helpful.

The Convener: That is very sensible—thanks, Jamie. The clerks are still speaking to you, so that must be okay.

As I said, we are about to be joined by our fourth panel of witnesses. We will be able to ask key questions and some follow-up questions. Members have some ideas on where they will go with these questions, so I am happy with that.

Thank you to our fourth panel of witnesses this morning. Through speaking to our earlier guests, we have developed a few of the issues that we will discuss with you. We are joined by the Minister for Parliamentary Business and Veterans, Graeme Dey MSP, and his officials Colin Brown and Iain Hockenhull. I will not ask for an opening statement, so we will move straight to questions. The first question is from Patrick Harvie.

Patrick Harvie: Many of my questions to the previous panels were focused on postal voting, so that is where I will start with you.

You will be aware of the research that was commissioned back in August that suggested what the level of increased uptake for postal voting might be. We have been told that there is an update to that research coming imminently, but we will not really know, even once we have seen that update, what the demand will be, especially once political parties get active in campaigning and encouraging people to register for postal votes. In addition, we do not know what the coronavirus conditions will be come spring.

What is the approach of the Government, in introducing the bill, to that uncertainty? What is your view on how proactive the political landscape in general ought to be in encouraging early registration for postal votes, up to—and perhaps beyond—the current projected increased uptake?

The Minister for Parliamentary Business and Veterans (Graeme Dey): That is a good question. It is best to look at elements of the bill as bits of a jigsaw. The postal vote element is part of that, as is polling day itself. The question is how, between the two approaches, we ensure that the election is conducted safely and appropriately.

There is a plan to launch a public awareness campaign around the turn of the year, in conjunction with the Electoral Commission. It would be used to raise awareness of the availability of postal votes and perhaps to advise people that they might want to think about it at that point, as we want to ensure that we do not have a deluge of postal vote applications closer to the day of the planned poll—we would obviously want to smooth that out. It is clear that political parties also have a role in raising awareness. I think that, in general, there will be an all-round increased understanding of postal voting as an option.

We will have the capacity, with the additional resources that we have put in, to grow the postal vote as it exists now, at just under 18 per cent, to 40 per cent and perhaps beyond in advance of polling day. However, I recognise that there are sectors of society and individuals who have a concern about postal votes—in some instances because they are misguided, or perhaps purely out of ignorance. We have been in conversation with the Electoral Commission about running a further postal vote awareness campaign on how the system behind the postal vote works and the security measures that are built in. We have a plan to tackle the issue, and to get to a point at which the postal vote is substantial relative to an in-person polling day.

Patrick Harvie: Let us imagine that we are past the turn of the year and you have begun your proactive publicity campaign on postal voting. By late January or early February, the uptake of new registrations for postal votes seems to be on a steeper curve than was anticipated, and we might be looking towards a postal voting element of 50-plus per cent. At that point, would you begin to think about how you should plan for that extra capacity, and how you might plan to get up beyond 50 per cent and further? Alternatively, would you say, “Let’s bring forward the deadline for registrations so that we don’t get to that higher level of uptake”? In the latter case, a significant number of people would be told later on that they were too late and could not register for a postal vote.

Graeme Dey: To offer a degree of perspective, I highlight that the turnout in the previous Scottish Parliament election was circa 55 per cent, so we should bear that in mind. The existing additional resources that we have provided would take us to

somewhere approaching 50 per cent—between 40 and 50 per cent.

If we were in the territory where it was clear that more people than we had anticipated were looking to sign up for a postal vote, there would have to be a very early conversation with the EROs and the EMB. We are in the business of facilitating people to be able to vote, so there would have to be a positive response to that. It is about encouraging people to feel that they are able to vote. There is a degree of uncertainty, and our work is about contingency planning. I reassure the committee that we are trying to make it as easy as possible for people to participate in the election.

Patrick Harvie: I am tempted to see whether other members want to come in on the issue at this point. However, I will end by expressing my continued concern about the need to avoid a situation in which people anticipate that they will be able to cast a postal vote but are not able to do so. We must avoid that situation. A person's circumstances might change—for example, they might be required to self-isolate at a late stage and still expect to be able to register for a postal vote, but then be told that they have missed the deadline.

Graeme Dey: If an individual was caught in such a scenario, there would be the capacity for them to get an emergency proxy vote.

Patrick Harvie: Do you anticipate there being any capacity limits in that regard?

Graeme Dey: I am not aware of substantial limits. We are building in contingencies. We will not get absolutely everything nailed down but, as Mr Harvie knows, considerable work is being done in conjunction with the other political parties to get the system right. There has been a collaborative approach with the electoral professionals, which, I suspect, you will have heard about earlier this morning. We are trying to nail down as much as we can, and we will take cognisance of the committee's stage 1 report, too.

Patrick Harvie: I appreciate the opportunity that there has been for advance cross-party discussions on the issue. The level of self-isolation might be much lower in the spring, if we are in a good place by then, but it might still be substantial. You anticipate no difficulty with accommodating the current level of self-isolation, for example, in relation to late registrations for an emergency proxy vote.

Graeme Dey: We do not. One measure that we are looking at is writing to the 169,000 people who were on the shielding list to explain the option of postal voting. Some—or many—of those people might already be on the postal vote list, but that is another step that we are looking to take in order to tackle the issues to which you have alluded.

Patrick Harvie: I expect that other members will want to come in.

Neil Findlay: A turnout of 55 per cent is absolutely dismal. We must do all that we can to increase turnout. Does the minister agree with our proposal to provide a freepost address for electoral registration?

Iain Hockenhull (Scottish Government): We had discussions about that with electoral registration officers this week. Apparently, it is possible to request a freepost address when someone makes an application. I do not think that that happens automatically, but people can ask for that and it will be given. That is my understanding.

Neil Findlay: With respect, that is not what I asked. Do you support the proposal that there be a freepost address for electoral registration? The electoral registration officers in the previous session said that that would be a more inclusive approach. I think that it would be far more inclusive—it would open up the opportunity for more people to take part in the election so that we increase turnout from 55 per cent.

Graeme Dey: I am not sure that providing a freepost address will make the difference between somebody choosing to vote and not choosing to vote, but I am happy to take the proposal away and think it through.

Neil Findlay: The issue is cost.

Graeme Dey: There would be a cost involved, but there is a cost involved in all the measures that we take.

Neil Findlay: It would be greatly appreciated if you could take the proposal away and come back to us.

Graeme Dey: I am happy to do so.

Gil Paterson: My question is about proxy voting. My experience is that a large number of people who use a postal ballot would not automatically use a proxy vote. I hope that we will not be in a situation in which a lot more people need to self-isolate, but I think that that would exacerbate the problem. My experience suggests that the natural consequence of people using a postal ballot is that they tend to wait until the last minute to post their vote.

If I am right, and a lot more people are self-isolating but we truncate the system by cutting the time that is available for them to register because of an influx of votes, my fear is that that would be counter to what we are trying to achieve.

I would ask the Government and everyone involved to guard against that and not to truncate the system, but to give people as much time as possible. I understand the complexities involved in making a postal ballot secure. People are worried

about that and we have to ensure that the ballot and the systems that people will have to go through are secure. Nevertheless, I plead that we do not truncate the system.

11:00

Graeme Dey: Going back to the early stages of looking at the process, I would not have wanted, in an ideal world, to bring forward the deadline for registration. However, we are guided by the electoral professionals, and there are two aspects in that regard. One is the need to get registration carried out as early as possible in the year so that there is not an upsurge closer to the time. The other is that the professionals who deliver registration are absolutely clear that they need the measure in place to allow them to cope with demand, even with the considerable additional resource that is being provided. I recognise that it seems counter-intuitive to say that we are encouraging people to vote by post but that the deadline for that has to come forward. However, that is the reality of the situation.

Gil Paterson: Is it not possible to do the unthinkable? In America, they use the date stamp on the vote. As long as it had been posted before election day, the vote can be counted, rather than having to be received by election day, as is presently required by our system.

Graeme Dey: I will bring in Iain Hockenhull, who has detailed knowledge about how the system works.

Iain Hockenhull: The first thing to say is that we are talking about the date for application for a postal vote. People do not have to submit their postal vote by the deadline that we are talking about; it is simply the date by which they have to ask for it. There is no change to the established processes for sending a postal vote.

I confess that I do not know the exact intricacies of when a postal vote has to arrive by in order to be counted, but I think that it is very close to polling day. I do not think that there has been any discussion of leeway, but I am not particularly well versed on the issue of the receipt and counting of postal votes. Perhaps Colin Brown is.

Gil Paterson: Both are linked, are they not?

Iain Hockenhull: Yes, but people would be applying for a postal vote earlier—by 6 April rather than by 20 April. The hope would be that they would apply by then but cast the vote at a later point, as they would cast it in any normal election.

Gil Paterson: I follow—okay.

Jamie Halcro Johnston: The Electoral Commission representative on an earlier panel raised concerns about the disadvantages of an all-

postal ballot, which include exclusion, confusion and potential disenfranchisement. Does the minister recognise and accept those concerns? Under what circumstances would the Government implement full postal voting, given those concerns?

Graeme Dey: A full postal ballot is a last resort; in the real world, it is an extremely unlikely scenario. I reiterate that we are trying to have an in-person election with a substantial postal vote input, with social distancing measures in place at the polling stations to conduct it safely. The power to have a full postal vote is because the bill is for contingency planning purposes. It is highly unlikely that we will find ourselves in a scenario in which we would deploy that power, but it is provided for just in case we need it.

Jamie Halcro Johnston: I have a concern that the bill puts a lot of responsibility in the hands of ministers to decide whether we are in a worst or last-case scenario. What consideration has been given to having more safeguards on that? Pressing that nuclear option could have a huge impact on the election and would suggest a very difficult time in terms of what would be happening in the country. Have safeguards been considered on holding an all-postal ballot such as a requirement for the Presiding Officer not just to be consulted but to consent to that approach, for it to be done on the advice of the Electoral Commission or other bodies, and for Parliament to have to vote on the issue?

Graeme Dey: Is the question about what happens if ministers were to choose to use that power?

Jamie Halcro Johnston: That is correct.

Graeme Dey: There is a requirement to consult the chief medical officer, the Presiding Officer, the Electoral management Board for Scotland and the Electoral Commission. That is a fact. In reality, if I were to be making that decision, I would also want to consult with the parties in the way that we have done throughout this exercise.

The process that explains why the “nuclear option”, as you described it, would be pursued must be as transparent as possible. There is a separation between what is required and what would happen in practice. I am more than happy to give that undertaking. If the committee comes to the view, for example, that ministers should produce a statement of reasons to explain how the decision was arrived at, we would be happy to consider that.

Jamie Halcro Johnston: If we are required to stay on as MSPs and—again, this would be under the worst-case scenario—we have to consider legislation and make decisions, surely an all-postal vote would be the kind of thing that would require

parliamentary scrutiny and could require parliamentary decision making. You spoke about what would happen in practice—obviously, there would be consultation—but we are talking about legislation. Therefore, should the responsibility to make that decision not be with Parliament, or perhaps on the recommendation of ministers, rather than only ministers making the decision?

Graeme Dey: The approach that is proposed in the bill would afford us the ability to be fleet of foot and respond quickly to a situation; that is the thinking behind it. Again, I am happy to take a look at what the committee comes up with on the back of its deliberations. I do not want to say yes or no today, but I am more than happy to consider suggestions of that nature.

Maureen Watt: You were drafting the bill before there was a possibility of vaccines being available in the next few months, or prior to next May, so I understand that using all-postal ballots is the last resort and it has probably gone further down the list of possibilities.

Graeme Dey: Hopefully.

Maureen Watt: Yes, hopefully—we are all living in hope these days.

I will move on to polling day. I would have thought that we will still be practising social distancing measures, wearing masks and so on. Are you considering extending the time available for voting to two days, for example? Given the variations in weather in Scotland, we do not want long queues outside polling stations. Are you considering extending the time during which people can vote in person?

We know that some people now automatically vote by post, but the uptake of postal voting will not necessarily be huge, and we heard from the Electoral Commission that 1.5 million people could be disenfranchised if we moved to an all-postal vote. We cannot expect a lot more people necessarily to take up postal voting, so what are the contingencies for voting in person?

Graeme Dey: To follow up on what I said to Mr Findlay, we are in the business of encouraging participation. In relation to voting over more than one day, there is an option for that in the bill; that opportunity exists. However, at the same time, the electoral professionals are keen to have certainty on whether that will be in place; the public and the political parties share that view.

We currently have the electoral professionals—the EROs—doing a piece of modelling, area by area, which will feed in to give us a picture. That is based on what they anticipate would be a reasonable postal vote uptake; on the consequences of the measures they will have to take on the ground—how many polling places

there are and the through-flow; and on their experience of by-elections that have taken place. If the advice that we receive—we are seeking short-order advice—is that two days would be advisable, we will consider that ahead of the bill completing its passage.

I stress that, in my view, if we were to do something along those lines, the best approach would be to hold the election over two consecutive days. There is a power in the bill to run the election over a period of days. If it was for two days, the Thursday and Friday would be most likely, if that is where we needed to go. However, we will at all times be driven by the advice from the people whose job it is to deliver the election.

Maureen Watt: Is that not a further argument for having the voting at weekends—over a Saturday and Sunday—rather than during the week?

Graeme Dey: That argument is always advanced. However, as the committee may have heard today, there is also a view that, because of the nature of the pandemic, people's normal voting patterns on the day might be changed anyway.

We also have to take account of the fact that Saturdays and Sundays are religious days. Although that may not impact on many of us, it will impact on some people, and we have to take cognisance of that. As I keep saying, we are not in the business of putting people off voting, if we can avoid that.

I think that Maureen Watt's question concerns a wider picture about the days on which we conduct elections, but, in the context of this election, if we were to go to two days—although I do not want to set hares running—I think that the most likely scenario would be the Thursday, which is the established day for the poll, and the Friday.

The Convener: Thank you both very much. Neil Findlay is next.

Neil Findlay: I am fine just now. I might want to come in at the end.

The Convener: Okay; no problem.

Gil Paterson: Is Friday not also a religious day for quite a large community?

Graeme Dey: Indeed, and I was remiss not to acknowledge that. However, if the election was held over two days, the individuals who were caught by that would be able to vote on the Thursday.

Gil Paterson: That is a good point.

John Scott: I go back to Jamie Halcro Johnston's point about section 5 and the powers vested therein, which are apparently entirely at the discretion of the Scottish ministers. In truth, I think

that that gives too much power to the Scottish ministers—as you would expect a parliamentarian to say.

Will you consider that the Parliament should vote on the issue? We have the capacity to do so, in a hybrid meeting. Alternatively, as we are all still going to be MSPs, if the decision had to be taken before we stopped being MSPs, we could be recalled to have a debate and take such a decision. The Parliament should take that decision, rather than the Scottish ministers.

It could be argued—although I would not seek to do so—that if it were only the Scottish ministers who were taking that decision, it could be subject to legal challenge. I therefore suggest that the decision should perhaps be taken with the agreement of, rather than just after consultation with, the Presiding Officer—and maybe even at the request of the Electoral Commission, rather than just in consultation with it—to give wider transparency to that decision being taken by Scottish ministers.

Graeme Dey: Does your question relate purely to an all-postal ballot?

John Scott: Yes.

Graeme Dey: I will unpack that question, as it was quite detailed.

I recognise the point that, if the Parliament was coming back to vote on the decision to postpone the election, there might be an argument for it to vote on a proposal to have an all-postal ballot, however unlikely that may be. I recognise that argument, Mr Scott.

If we remain in a situation where the Government has to consult the Electoral Commission and the Presiding Officer, you will appreciate that the Government might have to contend with a range of views. The CMO, the Electoral Management Board, the Presiding Officer and the Electoral Commission might all have slightly different views but, somehow or other, ministers have to come to a decision. A compunction for ministers to follow the request of the Presiding Officer might conflict with a similar compunction to follow the request of the Electoral Commission.

11:15

As I said, from my perspective, in a situation like that, I would also want to engage with the political parties of this Parliament. To go back to the answer that I gave to Jamie Halcro Johnston, if the committee holds that view, I will look at it.

Gil Paterson: I will make a slight deviation; my question is with regard to the issue of the election being held on consecutive days. The bill talks

about allocating different times to people for voting. In my experience, there is a natural rhythm to an election and who votes when shows up in the ballot box. Workers come in the morning; women—not just, but mainly women—who are taking their children to school, vote during that period; older retired people come out in daylight hours between 10.30 am and 4.30 pm; more people vote when they are on their way to pick up their kids from school; and, in the evening, more workers vote. Although there are peaks and troughs, there is a natural rhythm to the election that spreads the vote throughout the day. How would the Government manage that? What definitions would be used? Would they be based on age or gender? Rather than the natural way, what method would be used to spread the load over the two days?

Graeme Dey: At the outset, a discussion was taking place—in that space that we were all in—about holding the election over additional days. At that time, the initial thought was simply to have a power to hold it over two days. The idea of extending that came at the request of one of the other political parties. However, if we end up in that space, we do not envisage dictating who or what group would turn up when. We are talking about simply extending the period of the election for people to make the choice over when they turn up, because to do otherwise would cause considerable confusion among the electorate and great confusion in the polling places for those who are running them. We would simply extend the opportunity to vote in person, with all that goes with that. If we were to do that, one of the reasons to do it as soon as possible is so that the returning officers can book premises. We would have to look at the security of the ballot boxes, because, at 10 pm on the Thursday, they would have to be sealed, taken away and stored safely somewhere. None of that is insurmountable, but that is the vision that we have of how it would work.

Gil Paterson: That is very clear, minister; thank you.

Jamie Halcro Johnston: I have two quick questions. Gil Paterson talked about proxy voting, and concerns have been raised about what might happen if there was an outbreak within an area or a specific local community; people might not be able to access the local polling station or there might be a general feeling that they do not want to go out because of the outbreak. It would be too late for them to get a postal vote and, given the circumstances and timescales, they would not be able to get a proxy. Can other ways of allowing them to vote be considered? Or does there have to be some acceptance that people will be disenfranchised in a situation like that?

Graeme Dey: In reality, on that kind of low scale, that is probably where we would be. Any returning officer has contingencies for a polling station, for example. The plan is for this to be a national election. We would not deploy an extension to the postal vote deadline for one small part of that national election. Let me bring in Iain Hockenhull to talk about the practicalities of how we would deal with something like that.

Iain Hockenhull: There is provision to obtain a proxy vote reasonably close to the election and there is provision already for emergency proxies. The conduct order for the Scottish Parliament election, which is currently before Parliament, has provision in relation to carers, who are getting emergency proxies as well.

Jamie Halcro Johnston: But that would still be a certain time before the election.

Iain Hockenhull: There would still be a certain limitation if we were very close to an election and there was a particularly severe outbreak.

Jamie Halcro Johnston: I recognise that you would not necessarily want to make another polling station available outwith that area, because you want to keep people restricted.

On the timetable that you are operating to, and the reporting back from EROs and the Electoral Management Board, will the circumstances that might trigger a delay to the election be made public? For example, are you looking to have the EROs report back in January on the postal voting response, and how does that influence you as you go along? How public will that be, so that we are aware of how things are developing?

Graeme Dey: Those conversations are taking place weekly. I spoke to the Electoral Commission last week, and we are very much proactively engaging with it, so we will hear if there are any concerns or anything that the Electoral Commission needs to help it with the election.

You have made me think about the engagement once the bill has completed its passage. I would be happy to commit to having some sort of formal engagement with this committee and to keep the committee updated to allow you to raise any issues that you have on behalf of the Parliament, and beyond that as well.

Jamie Halcro Johnston: That would be helpful. As MSPs, we are regularly asked what will happen with the election and how it will be impacted, and to some extent we need to be able to feed that information back to our constituents. To do that, we have to be aware of where you think things may be.

Graeme Dey: We have a duty to share that with the Parliament in the first instance. As Mr Harvie has acknowledged, from the outset we have been

very engaged with the Parliament, the parties, the Electoral Commission and so on, and I do not see that changing. In fact, the closer that we get to the election, the more important that becomes.

Neil Findlay: Dissolution this time is going to be the day before the election. Can you cover issues around purdah and when the Government might use recall?

Graeme Dey: Use recall in what way, Mr Findlay?

Neil Findlay: If something happened and we had to recall Parliament during the recess prior to dissolution.

Graeme Dey: Recall powers lie with the Presiding Officer—it is for the Presiding Officer to decide.

Neil Findlay: But it would normally be following an approach by the Government.

Graeme Dey: If there were emergency circumstances, yes, but in recesses during the pandemic there have been requests from Opposition parties for the Presiding Officer to recall Parliament. The power to recall Parliament lies with the Presiding Officer.

Purdah is purdah. We are in the same situation whether we go down this route or the standard run-up to the election. The same rules would apply. The Parliament is looking to re-set the provisions for MSPs and how they conduct themselves in that period, but essentially the same rules will apply.

Neil Findlay: Presumably if there was a recall, it would be because something major had happened. That would probably necessitate the Government making some announcements. Is there a conflict between purdah arrangements and the arrangements that we are going to put in this time for the election?

Graeme Dey: Again, the Presiding Officer would have to use his judgment on whether that contravened the purdah situation that you outline. The reality is that the Parliament would not be recalled for anything other than very significant issues, for which I am positive that Opposition parties would want it to be recalled as well. In such a scenario, we are not looking at anything that would be of the nature of an electoral gain. It would be a case of the parliamentarians of the country coming together to deal with an emergency situation.

The Convener: Maureen Watt will come in on the back of that.

Maureen Watt: We will be in what has been called an “election recess”. Committees, such as, for example, the COVID-19 Committee, could meet to deal with a matter of urgency. However, is

there a situation where there might be two tiers of MSPs, in so far as those who are retiring could continue their work, but those MSPs who have become candidates again are subject to different rules?

Graeme Dey: No. MSPs are MSPs. The whole purpose of it is to retain the MSP status for 129 members to allow them to participate in a decision to postpone the election. The scenario that you paint with regard to the COVID-19 Committee would, again, be quite unusual. Perhaps it would be necessary. I cannot see a scenario where most of the MSPs are working during that period. We have to be careful to ensure that there is not an advantage to individuals of being MSPs but also that there is not a disadvantage—an MSP whose time is spent engaged in committee work to the detriment of their opportunity to gain re-election, for example.

Maureen Watt: Therefore, there would not be an opportunity for MSPs to, for example, ask parliamentary questions or lodge motions.

Graeme Dey: That will be a matter for the Parliament. I know that people are working on that, but, as I understand it, the answer to that would be no.

The Convener: Finally, I will bring in Patrick Harvie.

Patrick Harvie: I have a bit of a process-y question. Once in a while, ministers, when presented with amendments at stages 2 or 3 that did not come up in a stage 1 inquiry, will use that as an argument to bat amendments back and say that the issue had not previously been raised. We are in a truncated process with the bill. The committee's call for evidence went out only a couple of days ago. The deadline has not passed yet, and I expect there to be submissions, some of which might raise issues that we have not been able to raise today. Will you give us an assurance that you will not rely on that argument, if there are issues raised in amendments that have not come up in discussion today, and that you will have an open mind on those issues, particularly if they have been suggested in public or other submissions that committee members have not yet had a chance to see?

Graeme Dey: That cuts both ways, Mr Harvie. Given that my door has been open since day 1 on that, I would be very disappointed if members who lodge amendments do not come to talk to me about them to get that early dialogue going. In that way, we can work through any unintended consequences and downsides to what members are thinking about.

You are right that we are in an expedited process, and in that situation we will all have to be fleet of foot. If the question is whether I would

deploy that defence to resist amendments, the answer is that I would not do it on that basis. However, it is really important that we think through the consequences of the bill, as it is drafted, but also of amendments, which are well intentioned and there for a reason but which, actually, would have far greater negative consequences than positive ones. It is about maintaining the approach that we have had to the bill, with everybody working towards getting it as right as we possibly can. I reiterate that my door is always open.

Patrick Harvie: I appreciate that, but there will be people who have expertise to bring to bear who have not yet had a chance to make a written submission. We should all have an open mind on anything that comes in over the next wee while to inform the discussion, even if it has not come up today.

Graeme Dey: We will obviously study the answers to the call for written evidence, and we will maintain a dialogue with whoever we need to.

The Convener: I thank everyone for their questions, and I thank the witnesses—the Minister for Parliamentary Business and Veterans and his team, Colin Brown and Iain Hockenhull.

We will now go into private session so that we can chitter alone in the cold in here. Thank you.

11:30

The meeting continued in private until 12:00.

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Published in Edinburgh by the Scottish Parliamentary Corporate Body, the Scottish Parliament, Edinburgh, EH99 1SP

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