



The Scottish Parliament  
Pàrlamaid na h-Alba

## Official Report

# DEVOLUTION (FURTHER POWERS) COMMITTEE

Thursday 11 June 2015

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**Thursday 11 June 2015**

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**DEVOLUTION (FURTHER POWERS) COMMITTEE**  
**17<sup>th</sup> Meeting 2015, Session 4**

**CONVENER**

\*Bruce Crawford (Stirling) (SNP)

**DEPUTY CONVENER**

\*Duncan McNeil (Greenock and Inverclyde) (Lab)

**COMMITTEE MEMBERS**

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

\*attended

**THE FOLLOWING ALSO PARTICIPATED:**

Joe FitzPatrick (Minister for Parliamentary Business)

**CLERK TO THE COMMITTEE**

Stephen Imrie

**LOCATION**

The Mary Fairfax Somerville Room (CR2)



# Scottish Parliament

## Devolution (Further Powers) Committee

Thursday 11 June 2015

[The Convener opened the meeting at 09:30]

### Scottish Elections (Reduction of Voting Age) Bill: Stage 2

**The Convener (Bruce Crawford):** Welcome to the 17th meeting in 2015 of the Devolution (Further Powers) Committee.

Agenda item 1 is stage 2 of the Scottish Elections (Reduction of Voting Age) Bill. I welcome Joe FitzPatrick, the Minister for Parliamentary Business, and his officials: Colin Brown, senior principal legal officer; Helen Clifford, bill team leader; Willie Ferrie, parliamentary counsel; and Gillian Cross, elections policy adviser.

This morning, we are undertaking a slightly different process as far as my role as convener is concerned. My scripted marshalled list of amendments is on my iPad. It is a pilot scheme that is part of ensuring that the digital Parliament becomes a reality. I am either part of a pilot scheme or a guinea pig—I am not sure which. If things do not quite go to script, I shall turn to the paper copy. We will get under way.

*Section 1 agreed to.*

#### Section 2—Annual canvass

**The Convener:** The first group of amendments is on young person's information: protection of information and exemptions. Amendment 1, in the name of John Swinney, is grouped with amendments 5 to 13.

**The Minister for Parliamentary Business (Joe FitzPatrick):** Good morning. The amendments in this group arise from our on-going discussions with stakeholders.

As the committee is aware, the Government has worked closely with electoral administrators, the Electoral Commission and others to ensure that the bill's provisions are workable. The amendments in this group are technical amendments whose aim is to improve the provisions on the protection of information relating to those aged under 16.

Amendments 1 and 8 address an issue that was raised in evidence given by the Scottish Assessors Association and the Information Commissioner's Office on the pre-printing of voter information on

the annual household inquiry form. Pre-printing of information on the canvass form is standard practice and has been shown to improve registration rates. Amendment 8 makes it clear that one of the very limited ways in which a young person's information may be used is on a pre-populated canvass form. However, that will be subject to the restriction that is set out in amendment 1.

Amendment 1 provides that, where an electoral registration officer is pre-populating a canvass form with the details of anyone believed to be living in a particular household, the date of birth of anyone under the age of 16 must not be included. The amendment responds to the concerns raised by the Information Commissioner's Office and the Scottish Assessors Association about pre-population, and strengthens the protections on young voter's information.

Amendments 5, 7, 9 and 10 all relate to absent voter records and lists that are kept by electoral registration officers in relation to local government elections. Those are the postal voters list, the list of proxies, and the proxy postal voters list. Under normal procedures, EROs periodically circulate those lists to various persons, usually ahead of an election. The amendments put it beyond doubt that the information contained on the lists is included in the definition of "young person's information" that is set out in section 12, so that the information on the records and lists will be subject to the stringent protections that are set out in sections 12 and 13. The amendments have been developed following detailed discussion with electoral registration officers.

Amendments 6 and 11 are drafting amendments to provide consistency in the references to a young person in section 13.

Amendment 12 addresses an issue that was raised by the Electoral Commission during stage 1 around checking the permissibility of donations or loans. Political parties and candidates are required to check that donations over a certain value come from a permissible donor, as defined in section 54 of the Political Parties, Elections and Referendums Act 2000. Similarly, that act provides that any loans made to political parties must be by an authorised participant, who is defined as being a permissible donor within the meaning of section 54.

Section 54 of the 2000 act provides that, among other things, to be a permissible donor the individual must be on an electoral register in the United Kingdom, which includes being on a register as an attainer. Because of the bill's controls on the availability of information on those aged under 16, the Electoral Commission commented that a mechanism would need to be put in place to allow their permissibility as donors

or lenders to be checked, and the point was subsequently picked up in the committee's stage 1 report.

Section 13(5) of the bill already permits EROs to disclose a young person's information to that young person. Amendment 12 will require an ERO to do that if the individual requested the information for the purpose of verifying that they are a permissible donor under section 54(2)(a) of the 2000 act.

As a result of the bill, 16 and 17-year-olds will be able to appoint and act as proxy voters. As part of normal electoral practice, EROs need to be able to write to anyone appointed as a proxy to confirm that appointment. The proxy will also need to be supplied with the elector's name, address and electoral number as part of their proxy poll card. Amendment 13 adds a new subsection to section 13 to create a further exemption to the general prohibition on disclosing a young person's information, by allowing that information to be disclosed to a person appointed by them to vote as their proxy.

The amendments in this group are the result of our continued constructive engagement with stakeholders. Their aim is to ensure that the package of measures contained in the bill strikes an appropriate balance between the protection of sensitive information on young voters and the need for transparency, integrity and efficacy in the registration system. I believe that, with these amendments, the bill achieves that balance as far as possible, and I recommend them to the committee.

I move amendment 1.

**Alex Johnstone (North East Scotland) (Con):** I think that you have answered my question about amendment 13. On first reading it, I found myself thinking, "Why would that be necessary?" Are you suggesting that it is necessary so that it is possible to put that information in the paperwork issued to the proxy?

**Joe FitzPatrick:** Yes.

**Alex Johnstone:** Thank you.

**The Convener:** That is confirmed by the minister.

**Lewis Macdonald (North East Scotland) (Lab):** My first point is likewise on amendment 13. I was keen to understand how narrow or wide the range of circumstances are where a person whose details are protected because they are under 16 appoints a proxy to vote for them in an election. Does that simply relate to a person who attains the age of 16 within a number of weeks of the election date?

Amendment 12 inserts a new measure regarding the supply of a young person's information. It states that the electoral registration officer "must" supply that information. However, section 13(5) states:

"A young person's information may be disclosed to the person to whom it relates."

"May" does not have the same mandatory force as "must". Is there an explanation for that? Is there any significance in the difference between "may" and "must"?

**Joe FitzPatrick:** The difference between "may" and "must" is important. Previously, information could be produced, but now it must be produced at the request of the young person. This is about enabling young people to participate fully in the electoral process while ensuring that their details are entirely protected.

The provision set out in amendment 13 covers specific circumstances and would be implemented at the request of the young person.

**Lewis Macdonald:** My point on amendment 13 was more about what the application of the measure is likely to be, given that, at the point at which a young person's details are protected, they are under the age of 16 and clearly not in a position to vote in an election. Are we talking about the appointment of a proxy in relation to people who attain just prior to the election?

**Joe FitzPatrick:** Yes—sorry; I understand your question now. We are talking only about when the young person would be able to vote in an election that was coming up—that is, the few weeks before the election, when the fuller register is produced.

**Lewis Macdonald:** Thank you.

*Amendment 1 agreed to.*

*Section 2, as amended, agreed to.*

*Sections 3 and 4 agreed to.*

### **Section 5—Applications for registration**

**The Convener:** The next group is on applications for registration: statement where date of birth not required and use of online service by under 16s. Amendment 2, in the name of John Swinney, is grouped with amendment 3.

**Joe FitzPatrick:** Amendments 2 and 3 relate to individual applications for registration. Amendment 2 concerns the current requirement for an applicant to select the age group that applies to them if they do not know their date of birth. Under current rules, an individual in such circumstances would be asked to tick a box on their application form to say whether they were over 18 or under 18 in order to determine their eligibility to vote.

As the bill requires that applications from under-16s are handled differently from applications from those aged 16 and 17, the Electoral Commission and electoral registration officers have requested that a third age category be added to the application form. Amendment 2 therefore provides that, where a person cannot provide their date of birth, they should be asked whether they are under 16; 16 or 17; or 18 or over. That will allow an electoral registration officer to determine how to progress an application from a person if they are unable to supply their date of birth.

Amendment 3 is a minor amendment that removes the current disapplication of regulation 26(9) of the Representation of the People (Scotland) Regulations 2001 at section 5(2)(b) of the bill, which relates to applications to register that are submitted by those aged under 16. The regulation was initially disappplied in the bill because, at that point, the extent to which those aged under 16 would be able to use the individual electoral registration digital service to submit an application for registration was unclear. The digital service has been developed by the Cabinet Office to receive and verify applications for registration, in particular by allowing names, dates of birth and national insurance numbers to be checked against Government databases.

As most of those aged under 16 will not have a national insurance number, their details cannot be verified through the digital service. The bill as introduced would therefore prevent those people from using the online application system. However, the Scottish Government has since agreed with the Cabinet Office that 14 and 15-year-olds will be able to enter their details online through the digital service. Their details will then be passed to their electoral registration officer for verification and will be treated as an application for registration. The digital service will therefore act as a conduit for young voters' details, giving young voters access to the same online application system to which older voters have access.

Amendment 3 is required to ensure that what is provided by the 14 or 15-year-old online can be treated as an application to register. Scottish Government officials have been in regular contact with the Cabinet Office to ensure that the questions that those under 16 are asked when they use the online system, and the information that they are given, properly explain the general arrangements for the provision and use of that information.

Amendments 2 and 3 aim to streamline the registration process and ensure that the application forms and online systems work well for the voter and for electoral administrators.

I move amendment 2.

*Amendment 2 agreed to.*

*Amendment 3 moved—[Joe FitzPatrick]—and agreed to.*

*Section 5, as amended, agreed to.*

*Sections 6 to 11 agreed to.*

#### **After section 11**

**The Convener:** The next group is on indication in combined registers of attainment of age of 18. Amendment 4, in the name of John Swinney, is the only amendment in the group.

**Joe FitzPatrick:** Amendment 4 responds to an issue that was raised in stage 1 evidence by the Scottish Courts and Tribunals Service. As the committee is aware, existing legislation provides for the annual publication of electoral registers on or after 1 December each year. That legislation further provides that, as far as possible, the Westminster register and the local government register should be combined. Those combined registers are used by a range of groups and individuals, including political parties, the Electoral Commission and the Scottish Courts and Tribunals Service. Currently, 16 and 17-year-old attainers are included on the published registers, which show the date on which they attain the age of 18.

09:45

Under the proposals in the bill, as all 16 and 17-year-olds will be entitled to vote at Scottish Parliament and local government elections, the local government register and the combined register will contain the details of all 16 and 17-year-olds—that is, not just those who will turn 18 during the life of the register. That would mean that a group of 16-year-olds will appear on the combined register who are not old enough to be Westminster attainers but who will be eligible to be local government or Scottish Parliament electors. Without amendment 4, they would appear on the combined register without a date of attainment, and would therefore appear to be aged 18 or over. That could have implications for those who use the register and who need to know whether the individual has attained the age of 18. For example, the Scottish Courts and Tribunal Service needs that information to establish eligibility for jury service.

We have therefore agreed with electoral registration officers that the most practical way forward is for the combined register to include the dates of attainment of age 18 for all 16 and 17-year-olds. Amendment 4 achieves that. The Deputy First Minister indicated that planned approach during the stage 1 debate, and I believe

that it is a sensible solution to a potential area of confusion.

It is probably important to reiterate that no details of anyone under the age of 16 will be included on those published combined registers.

I move amendment 4.

*Amendment 4 agreed to.*

### **Section 12—Protection of information about persons aged under 16**

*Amendments 5 to 7 moved—[Joe FitzPatrick]—and agreed to.*

*Section 12, as amended, agreed to.*

### **Section 13—Exceptions from prohibition on disclosure**

*Amendments 8 to 13 moved—[Joe FitzPatrick]—and agreed to.*

*Section 13, as amended, agreed to.*

*Section 14 agreed to.*

#### **After section 14**

**The Convener:** The next group is on voting age for proxies at local government elections. Amendment 14, in the name of John Swinney, is the only amendment in the group.

**Joe FitzPatrick:** Under the proposals in amendment 14, the normal rules with regard to absent voting will apply to 16 and 17-year-olds as they apply to those aged 18 or over.

As the Deputy First Minister has previously made clear, most of the age-related arrangements in relation to normal electoral procedures—including absent voting—change automatically as a result of the lowering of the voting age in the bill. A few will be dealt with in the upcoming Scottish Parliament or local government elections orders. However, when the bill was reviewed ahead of stage 2, a reference in primary legislation to the local government proxy age being 18 was identified.

Amendment 14 therefore makes an adjustment to that legislation to ensure that a person can vote as a proxy in local government elections in Scotland from the age of 16. The equivalent adjustment for Scottish Parliament elections will be made in the Scottish Parliament elections order.

I move amendment 14.

*Amendment 14 agreed to.*

*Section 15 agreed to.*

#### **After section 15**

**The Convener:** We now come to the final group, on alterations in the register: persons aged under 18 prior to 1 December 2015. Amendment 15, in the name of John Swinney, is the only amendment in the group.

**Joe FitzPatrick:** The final amendment today is again the result of discussion with electoral administrators.

Section 13 of the Representation of the People Act 1983 requires the publication of a revised version of electoral registers on 1 December each year,

“or such later date as may be prescribed”.

EROs are also required to publish notices of alterations and additions to that register on the first day of every month, although not in the two months preceding the publication of the register—that is, they do not need to publish in October and November 2015.

EROs raised concerns with the Scottish Government that there was the potential for confusion about entitlement to vote to arise if a young voter was included in the list of alterations to the register in the period between the bill's coming into force and the publication of the new register on 1 December 2015. Although 16 and 17-year-olds will appear on the local government register as persons entitled to vote, they will not actually be able to do so until 5 May 2016.

Therefore, amendment 15 inserts a new section into the bill that provides that new young voters should appear on the register for the first time when the new annual register is published on 1 December. That will allow registration officers to set clear boundaries between the monthly alterations to the previous year's register and the new register that will be published on 1 December, which will mark the start of the new register year during which 16 and 17-year-olds will become eligible to vote.

I recommend that the committee supports the amendment.

I move amendment 15.

**Lewis Macdonald:** Does that mean that the names of 16 and 17-year-olds will ordinarily appear in the register as of the bill coming into force, or only as of 1 December?

**Joe FitzPatrick:** Only as of 1 December.

*Amendment 15 agreed to.*

*Sections 16 to 19 agreed to.*

*Long title agreed to.*

**The Convener:** That completes consideration of the bill at stage 2. The bill as amended will be available tomorrow morning. Stage 3 amendments



should be lodged with the legislation team by 4.30 pm on Monday.

I thank the Minister for Parliamentary Business and his officials for attending. We will have a short break to allow them to leave.

09:52

*Meeting suspended.*

09:53

*On resuming—*

## **BBC (Memorandum of Understanding)**

**The Convener:** Agenda item 2 concerns the UK Government's proposals on the BBC memorandum of understanding. I will give a short background explanation of where we are at on the item. It involves consideration of a draft memorandum of understanding—MOU—that sets out a procedure for scrutiny arrangements in relation to the BBC in order that the Scottish Parliament can be consulted during the BBC charter review, which is due to commence shortly.

The MOU arises out of the Smith commission's recommendation that the Scottish Parliament be consulted on matters pertaining to the BBC that impact on Scotland, notably the BBC charter review in the short term and the BBC's annual reports and accounts in the future. It is intended that the signatories to the MOU will be the Scottish Parliament, the Scottish Government, the Department for Culture, Media and Sport and the BBC.

I emphasise that the draft MOU deals solely with how the BBC will engage with and consult the Scottish Parliament and the Scottish Government in future. It does not deal in any respect with the subject matter of the BBC's programming or activities or whether broadcasting should be part of any proposal for the further devolution of powers, and that is not the focus of the discussion today.

On 8 June, the Cabinet Secretary for Culture, Europe and External Affairs wrote to us setting out the Scottish Government's views on the draft MOU and suggesting a number of amendments to it. There is a slight anomaly in the letter that the cabinet secretary sent to us, and I ask the clerk to explain that to us.

**Stephen Imrie (Clerk):** I am happy to do that, convener. If members have the letter from the Cabinet Secretary for Culture, Europe and External Affairs in front of them and they compare the tracked changes that the Scottish Government is suggesting, they will note that it is slightly different in how it has been marked up. Under

"Commitments:

1. Charter Review",

it is the third bullet point, which reads

"The Department will consult the Scottish Government on the draft Charter through the process of charter drafting"

that is the significant change and is the new bullet point that the Scottish Government suggests

should be inserted into the draft MOU. It is not the one that is indicated above that bullet point.

Also, under

"4. Next Charter",

there are some suggested changes from the Scottish Government.

**The Convener:** Is everyone clear? Okay.

We should also note that responses have been received from the Education and Culture Committee and the Public Audit Committee on the draft MOU. Does Stewart Maxwell want to make any comments at this point?

**Stewart Maxwell (West Scotland) (SNP):** The cabinet secretary wrote in the same terms to the Education and Culture Committee. We examined the draft memorandum of understanding and the letter from the Government on Tuesday of this week. We took the view, as outlined in our letter to this committee, that our primary aim is to ensure that, as this committee has said, the spirit and substance of the Smith commission should be the underlying principle in whatever is agreed between the two Governments in relation to the memorandum of understanding.

We took no view on whether the original draft or the amendments achieve that, but we noted the Scottish Government's view that the original did not. Our view is that whatever is agreed must meet the Smith commission guarantees.

**The Convener:** We have also had a response from the Public Audit Committee. I ask Stephen Imrie to discuss that, and then I will ask Tavish Scott and Stuart McMillan whether they want to say anything.

**Stephen Imrie:** I will give the committee a flavour of the comments of the Public Audit Committee, which looked at the MOU on Wednesday of this week. Mr Scott and Mr McMillan are members of that committee and they might wish to comment.

I refer members to two points of substance in the Public Audit Committee's letter to the committee. First, it suggests that, if the Secretary of State for Culture, Media and Sport or the Foreign Secretary, who have

"the power to give directions as to the information to be given in the report about the finance, administration and work of the BBC"

choose to exercise that power, there should be

"consultation with the Scottish Parliament before any such directions are made."

The second substantive point from the Public Audit Committee refers to the laying of annual reports and on which days that takes place. The

current draft of the MOU says that it should happen

"on the next available sitting day".

Usually, annual reports from the BBC are produced in July, when the Scottish Parliament is likely to be in recess, so the next available sitting day would be much later in the year, in September. There would therefore be a difference between when the annual report was laid here and when it was laid at Westminster.

The Public Audit Committee suggests that we propose to DCMS a change of wording to

"the next day on which the office of the Clerk is open",

that office being open through the summer recess. The annual report would therefore be laid here at the same time as at Westminster.

Those are the two suggested changes from the Public Audit Committee. We have not had any comment from the UK Department for Culture, Media and Sport on whether it is happy with those amendments or with Ms Hyslop's suggestions.

10:00

**The Convener:** Tavish, do you want to say anything or are you happy with that?

**Tavish Scott (Shetland Islands) (LD):** Stephen Imrie has given a very fair account. Colleagues will understand that the Public Audit Committee's interest is in the data being Scotland-specific, which will help the Parliament to do a more effective job in assessing the BBC's performance. That was our main point. We also made a couple of technical suggestions about how to improve the process, which Stephen Imrie outlined.

**Stuart McMillan (West Scotland) (SNP):** I have nothing to add.

**The Convener:** We have the Public Audit Committee's proposals, which have not yet been considered by DCMS or the Scottish Government because of the timescale that is involved, and the suggestions that have been made by the Scottish Government through the cabinet secretary, which, again, DCMS has not had the opportunity to consider. We are not yet at a point where we can move to agreement on the MOU, because we have still to pull in information from other sources. I suggest that we delay consideration of the MOU until we have obtained comments from both DCMS and the Scottish Government.

**Alex Johnstone:** Do we have an indication of a likely timescale for that?

**The Convener:** The clerks will find out. There may be on-going discussions between DCMS and the Scottish Government about these issues, because the Scottish Government will put its views

on where the MOU needs to be adjusted. I hope that we can get views in the next couple of weeks, before we get to the recess, but it really depends on the discussions that are taking place between those other parties coming to a conclusion first.

I thank members for their attendance at today's meeting. Our next meeting will be on 18 June, when the committee will consider its work programme in relation to the Scotland Bill. At our subsequent meeting on 25 June, the committee expects to hear from both the Deputy First Minister and the Secretary of State for Scotland on the Scotland Bill.

**Tavish Scott:** So 18 June is just a work programme discussion. It is not David Mundell.

**The Convener:** It is not David Mundell. They are both coming on 25 June.

**Tavish Scott:** Thank you.

*Meeting closed at 10:02.*



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