



The Scottish Parliament  
Pàrlamaid na h-Alba

## Official Report

# DEVOLUTION (FURTHER POWERS) COMMITTEE

Thursday 26 November 2015

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**Thursday 26 November 2015**

**CONTENTS**

	<b>Col.</b>
<b>SUBORDINATE LEGISLATION</b> .....	<b>1</b>
Scottish Parliament (Elections etc) Order 2015 [Draft].....	<b>1</b>

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**DEVOLUTION (FURTHER POWERS) COMMITTEE**

**29<sup>th</sup> Meeting 2015, Session 4**

**CONVENER**

\*Bruce Crawford (Stirling) (SNP)

**DEPUTY CONVENER**

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

**COMMITTEE MEMBERS**

\*Malcolm Chisholm (Edinburgh Northern and Leith) (Lab)

\*Linda Fabiani (East Kilbride) (SNP)

Rob Gibson (Caithness, Sutherland and Ross) (SNP)

\*Alex Johnstone (North East Scotland) (Con)

\*Alison Johnstone (Lothian) (Green)

\*Stewart Maxwell (West Scotland) (SNP)

\*Mark McDonald (Aberdeen Donside) (SNP)

\*Stuart McMillan (West Scotland) (SNP)

\*Tavish Scott (Shetland Islands) (LD)

\*attended

**THE FOLLOWING ALSO PARTICIPATED:**

Roddy Angus (Scottish Government)

Colin Brown (Scottish Government)

Joe FitzPatrick (Minister for Parliamentary Business)

Bill Kidd (Glasgow Anniesland) (SNP) (Committee Substitute)

**CLERK TO THE COMMITTEE**

Stephen Imrie

**LOCATION**

The Mary Fairfax Somerville Room (CR2)



# Scottish Parliament

## Devolution (Further Powers) Committee

*Thursday 26 November 2015*

*[The Convener opened the meeting at 10:30]*

### Subordinate Legislation

#### Scottish Parliament (Elections etc) Order 2015 [Draft]

**The Convener (Bruce Crawford):** Good morning and welcome to the 29th meeting in 2015 of the Devolution (Further Powers) Committee. I remind members to switch off their phones, or at least to set them to a mode that will not disturb the meeting. We have one substitution, as Rob Gibson has other committee business with the Rural Affairs, Climate Change and Environment Committee, so his place is being taken by Bill Kidd. Welcome, Bill.

Item 1 is subordinate legislation. I welcome the minister and his officials to the meeting to give us evidence on the draft Scottish Parliament (Elections etc) Order 2015. I understand that the Delegated Powers and Law Reform Committee has considered the order and has brought no issues to the attention of this committee. Our witnesses today are Joe FitzPatrick MSP, the Minister for Parliamentary Business; Colin Brown, the senior principal legal officer in the directorate for legal service; and Roddy Angus, the policy adviser for the directorate for strategy and constitution.

I invite the minister to make a short opening statement.

**The Minister for Parliamentary Business (Joe FitzPatrick):** I have a brief statement. Thank you for this opportunity to set out the Government's position on the order before the committee.

It is important to start by marking what is an historic occasion. This is the first time that the Scottish Parliament has had the opportunity to debate and vote on the rules of its own elections. It is also an historic occasion because the election in May will be the first time that 16 and 17-year-olds have been allowed to vote in a general election anywhere in the United Kingdom, and we should all be proud that that vote of confidence in our young people was supported unanimously across the chamber. I certainly hope that the UK Government will soon acknowledge the fact that those young adults bring so much vitality and energy to the election process and that it will now

also reduce the voting age not just for the European Union referendum but for UK and European elections.

The order sets out the rules for the conduct of Scottish Parliament elections. It is largely based on the equivalent order for the successfully run May 2011 elections. We have, however, made some amendments, most of which reflect wider electoral changes across the UK, such as a person being appointed to vote as a proxy needing to be registered to vote and allowing postal ballot packs to be issued earlier. We have also made a number of technical changes that reflect the lowering of the voting age and the transfer of responsibilities from the secretary of state to the Scottish ministers.

I would like to highlight a couple of significant improvements that we have made to the order. The first is the change in the definition of "personal expenses", so that a candidate's disability should no longer affect the amount that they can spend on campaigning. Some disabilities can result in candidates having to incur extra expenditure—if they need to use taxis or need sign language interpreters, for example. In future, any costs that are directly attributed to a candidate's disability will not count towards their election expense limits.

For the record, I want to recognise the work of the one in five campaign, which is a cross-party group campaigning to encourage empowerment and increase political participation among disabled people in Scotland. Without the input of the one in five campaign, I am not sure that we would have seen that improvement to the order.

Another change that will be close to many politicians' hearts—particularly yours, convener—is that we will now be allowed to use commonly used forenames and surnames on the ballot paper. I know that some MSPs would have liked us to go further to allow prefixes and suffixes, but the change that we are making brings the Scottish Parliament into line with the practices that are already in place for Scottish local government elections.

I hope that members agree that the order sets out sensible rules for the running of elections next May. I would obviously be happy to answer your questions.

**The Convener:** Because not everyone might understand your reference to me, I should explain for the record that my first name is Robert but I am known as Bruce. With the new order, I can now be known as Bruce on the ballot paper, so thank you, minister, for that important change.

You have made a number of changes. In the light of that, it would be useful to know what discussions you had with electoral administrators

in comparing the 2011 order with the 2015 order. Were all the issues that they raised resolved?

**Joe FitzPatrick:** The process has been consultative all the way through. We have discussed any changes that we have made with all the relevant stakeholders and have taken their comments on board, so we now have an order that has the support of all the stakeholders. As I said, with the exception of the specific technical changes, most of the changes relate to practices that were in place for the recent Westminster election—they are not unfamiliar changes to the electoral process.

**The Convener:** At our last evidence session on the subject, the Electoral Commission addressed a suggested change relating to the long period for donations, and I quizzed its representative about such matters potentially still being reserved. I wonder whether you can clear that up for me.

**Joe FitzPatrick:** There are issues relating to reserved matters. Donations to political parties are reserved, whereas donations to individuals are devolved. Therefore, although we could have made changes regarding individuals, we could not have made changes regarding political parties. Because we have always taken the view that the elections in Scotland should take place on a level playing field and that people should not be treated differently, it would have been difficult for us to make changes to some provisions given that we do not have the powers relating to all of them. The letter from the Electoral Commission confirms that.

I have read the Electoral Commission's suggestions relating to the long and short periods for donations. There was confusion among a very small number of candidates in 2011 but there has been no pressure from the political parties for us to make any change in relation to those periods. The Electoral Commission has updated the guidance that is available to candidates, and it is hoped that that will clarify where things stand, particularly for candidates who do not have a party machine to support them.

**The Convener:** I am glad that we have that on the record, minister, because there was a bit of confusion when I asked that question of the Electoral Commission. It was not as clear as you have just been.

**Tavish Scott (Shetland Islands) (LD):** In 2011, the Electoral Commission recommended that we move to a single regulated period, but, as the minister will be aware, the Government has not done that despite the evidence that the Electoral Commission has submitted. Is there a reason for that other than the lack of pressure from political parties?

**Joe FitzPatrick:** In terms of spending?

**Tavish Scott:** Yes, in terms of spending.

**Joe FitzPatrick:** The issue was raised with us by the Electoral Commission in its response to our informal consultation. However, before making such a significant change, we would have had to investigate the matter, consider the benefits, decide whether there was a problem and then consult not just on what the change would be but on the need for change. As I said to the convener, I hope that the improved guidance will deal with the problem that was perceived in 2011.

**Tavish Scott:** The matter was first raised in 2011—four years ago. That is quite a long time ago.

**Joe FitzPatrick:** It is, but the perceived problem related to only a small number of cases in that election and the powers to address it did not come to the Scottish Parliament until the summer of this year. That was when we were in a position to finalise the order.

**Tavish Scott:** Let us be clear. Is the Government, in principle, against moving to a single regulated period for donations?

**Joe FitzPatrick:** We would have to fully consult not just the political parties but others who are involved on whether having a single period for the aspects that are devolved and a different scheme for the aspects that are reserved might invite confusion in terms of donations.

**Tavish Scott:** It might, but it might not.

**Joe FitzPatrick:** Yes.

**Tavish Scott:** The Government has not made up its mind about the long period.

**Joe FitzPatrick:** There would need to be significant consultation on whether having a single regulated period would provide any clarity. We might want to look at the suggestion in parallel with the UK Government looking at the reserved aspects.

**Tavish Scott:** I understand that. It just strikes me as slightly odd that the Electoral Commission, which is obviously very well aware of the difference between devolved and reserved matters and has been involved in all those negotiations—as Andy O'Neill made clear in evidence two weeks ago—made that recommendation so clearly and did not pull back on it in giving evidence two weeks ago.

**Joe FitzPatrick:** To be fair, the letter that you have received from the Electoral Commission clarifies its position.

**Tavish Scott:** Well, I am not sure that it does, but thank you.

**Mark McDonald (Aberdeen Donside) (SNP):** I have a question on paragraph 54 in schedule 2, which states that returning officers

“shall not knowingly appoint or employ any person who has been employed by or on behalf of a candidate or a registered party in or about the election.”

I wonder how that might cover, or otherwise, members of staff at local authorities who are, for example, involved in the provision of support to elected members. Obviously, some of those elected members will stand in the parliamentary election. Has that been raised with you by local authorities in response to the order?

**Joe FitzPatrick:** The changes that we are bringing in have been welcomed by returning officers. In effect, returning officers already have that policy in place, and the measure supports their decision making in that process.

I ask Roddy Angus whether he wants to add anything on the specific point.

**Roddy Angus (Scottish Government):** The request initially came from returning officers—they asked for the change. It arose because of what we could call inappropriate reactions during the referendum campaign, which led to media coverage. As a follow-up to that, the returning officers requested that we put in the measure. The measure applies only if they “knowingly” appoint such a person, so there is still the risk that somebody could be appointed who has party affiliations. It is the “knowingly” bit that is important.

**Mark McDonald:** Generally speaking, the process is more or less being followed already and you are simply putting what already happens into the order.

**Roddy Angus:** That is correct.

**Stuart McMillan (West Scotland) (SNP):** I have a supplementary to Mark McDonald’s question. If, at the count, the returning officer is made aware that somebody who is taking part has a connection with a party, would the returning officer have the power to ask that person to desist from taking any further part in the count?

**Joe FitzPatrick:** The change will allow returning officers to clearly ask a question about party activity in the recruitment process. I guess that people will say in that process that they are not in that position.

**Colin Brown (Scottish Government):** I think that that is right: a question would have been asked. If that situation arose, it would be for the returning officer to decide how to deal with it. There is no history of any actual difficulty with employment at counts. It is a presentational issue that the returning officers felt should be

addressed, and it is being addressed as they asked us to.

**Stuart McMillan:** I am not aware of any particular issues either but, because it is a new provision, I thought that it was worth posing the question. I want to ensure that returning officers have the ability to remove someone, just in case.

**Colin Brown:** It would be the returning officer’s appointment so, in the legal sense, it would depend on how they appointed the person. I am sure that returning officers will appoint in a way that gives them the right to unappoint if they see the need.

**Joe FitzPatrick:** The change makes it clear that the returning officer has the right to make that exemption in choosing people.

**Alison Johnstone (Lothian) (Green):** The draft order includes a new provision that

“No person may publish before the close of the poll ... any statement relating to the way in which voters have voted in the poll ... based on information given by voters after they have voted”.

By “publish”, does that mean somebody putting something on Twitter or Facebook? What does it mean by “publish”? How are we going to ensure that people are aware that they should not do that, let alone monitor adherence to the new provision?

**Joe FitzPatrick:** Although that is a new provision for Scottish Parliament elections, it is already in place for Westminster elections. Obviously, there was a particularly well-known case in which there was a police inquiry into a suggested breach of the provision at the Westminster elections. Prior to the order, that would not have been a breach at a Scottish Parliament election, and publishing exit polls and so on would not have been a breach. The provision really just brings us up to date. It will be enforced by the police in the same way as it is for Westminster elections. It is not new.

**Alison Johnstone:** Are you going to raise awareness of the fact that that will be a breach, to ensure that nobody puts out a tweet? How will you go about monitoring whether such breaches are happening, and not just on Twitter?

**Joe FitzPatrick:** Ultimately, the monitoring of breaches of the law is primarily a matter for the police.

**Roddy Angus:** I am sure that the Electoral Commission will include something on the matter in its guidance for candidates and agents. I am sure that the people who are usually in a position to release that sort of information will be aware of the provision before the poll.

**Alison Johnstone:** I hope so. Thank you.

**Joe FitzPatrick:** The issues around the Westminster election have probably raised awareness of the matter.

**The Convener:** It is my understanding that, at most elections, the returning officer will speak to the agents of all the political parties beforehand with regard to the conduct of the polling agents or the counting agents, and I assume that the matter will form part of the brief at that time. Is that the expectation?

**Roddy Angus:** Yes.

**Malcolm Chisholm (Edinburgh Northern and Leith) (Lab):** I am just reading that provision. Its wording refers to:

“any statement ... based on information given by voters after they have voted”.

Are other circumstances on which people might base their statement already included? The most obvious example is postal vote counts and suchlike. Is the publication of statements in those circumstances already not allowed?

**Joe FitzPatrick:** Postal votes are caught by the provision because they are—

**Malcolm Chisholm:** It says:

“information given by voters after they have voted”.

Does that include postal voters?

**Joe FitzPatrick:** Yes.

**Malcolm Chisholm:** It sounds as if it refers to face-to-face polls, but it includes everything, does it?

**Joe FitzPatrick:** Yes. It catches postal voters.

**Malcolm Chisholm:** Okay.

**The Convener:** As there are no further questions, we move to agenda item 2. I ask the minister to move motion S4M-14803.

*Motion moved,*

That the Devolution (Further Powers) Committee recommends that the Scottish Parliament (Elections etc.) Order 2015 [draft] be approved.—[*Joe FitzPatrick.*]

*Motion agreed to.*

**The Convener:** I thank the minister for his attendance at the committee this morning.

10:47

*Meeting continued in private until 11:08.*



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