



OFFICIAL REPORT
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Standards, Procedures and Public Appointments Committee

Thursday 8 May 2025

Session 6



The Scottish Parliament
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Thursday 8 May 2025

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STANDARDS, PROCEDURES AND PUBLIC APPOINTMENTS COMMITTEE
7th Meeting 2025, Session 6

CONVENER

*Martin Whitfield (South Scotland) (Lab)

DEPUTY CONVENER

Ruth Maguire (Cunninghame South) (SNP)

COMMITTEE MEMBERS

*Emma Roddick (Highlands and Islands) (SNP)

*Sue Webber (Lothian) (Con)

*Annie Wells (Glasgow) (Con)

*attended

THE FOLLOWING ALSO PARTICIPATED:

Jenny Brochie (Information Commissioner's Office)

Malcolm Burr (Electoral Management Board for Scotland)

Rona Mackay (Strathkelvin and Bearsden) (SNP) (Committee Substitute)

Sarah Mackie (Electoral Commission)

Robert Nicol (Scottish Assessors Association)

Graham Simpson (Central Scotland) (Con)

Peter Stanyon (Association of Electoral Administrators)

CLERK TO THE COMMITTEE

Catherine Fergusson

LOCATION

The David Livingstone Room (CR6)

Scottish Parliament

Standards, Procedures and Public Appointments Committee

Thursday 8 May 2025

[The Convener opened the meeting at 09:00]

Decision on Taking Business in Private

The Convener (Martin Whitfield): Good morning. I welcome everyone to the seventh meeting in 2025 of the Standards, Procedures and Public Appointments Committee. I have received apologies from Ruth Maguire, and I welcome Rona Mackay as her substitute.

Our first agenda item is a decision on taking business in private. Item 3 is consideration of the evidence that we are about to hear from two panels on a member's bill. Item 4 is consideration of correspondence that we have received from another committee. Is the committee happy to take those items in private?

Members *indicated agreement.*

Scottish Parliament

(Recall and Removal of Members) Bill: Stage 1

09:00

The Convener: Our second agenda item is the committee's first oral evidence session on the Scottish Parliament (Recall and Removal of Members) Bill. I welcome Malcolm Burr, convener of the Electoral Management Board for Scotland, Robert Nicol, chair of the election registration committee of the Scottish Assessors Association, and Peter Stanyon, chief executive of the Association of Electoral Administrators. I also welcome Graham Simpson MSP, who is the member in charge of the bill. Good morning, all.

I will move straight to questions to allow committee members to explore the bill. If Mr Simpson has any questions, I will bring him in at appropriate moments to seek clarification. I say to our witnesses that you should not feel that you have to answer all the questions, but please feel free to make any contribution that you want to make.

I will kick off with a question on the general principles of the bill that seeks your views on recall mechanisms. The evidence that we have received included differing views on whether it should simply be a matter of policy that a recall provision should exist and on alternatives to the bill's proposals on what should happen when people feel that members of Parliament whom they have elected should not continue to represent them. My opening question is this: are there alternative processes that we should perhaps consider?

I do not know whether anyone wants to kick off on that. If not, I will pick on Malcolm Burr.

Malcolm Burr (Electoral Management Board for Scotland): Thank you, convener, and I again thank the committee for the invitation to attend this morning. Whether there should be a recall provision is, indeed, a matter of policy, and the EMB rightly does not take a view on that. All that we would do is point to the useful evidence from other jurisdictions, not all of which are in the United Kingdom. The EMB is largely concerned about how the process—if there is to be one—should be administered rather than about the point of recall.

We will, no doubt, move on to discuss constituency and regional matters, and perhaps the differences that are inherent in that process, if there is to be recall.

The Convener: Peter Stanyon, are there alternatives that we should have on the horizon rather than the recall that is proposed?

Peter Stanyon (Association of Electoral Administrators): Thank you for giving us the opportunity to speak to the committee. I echo Malcolm Burr's comments.

On the process itself, the policy decision route mirrors what is in place for Westminster elections and MPs. The only thing that we would say is that we need to keep matters as simple as possible, for two reasons. First, the electorate needs to understand the challenge that has been made and what the offence or the wrongdoing might have been on the part of the individual concerned. Secondly, the process must be made clear so that it is simple to administer and does not create a big burden on local authorities and the Scottish Parliament.

On alternative systems, I commend the policy memorandum that Mr Simpson and his colleagues wrote, which makes it very clear that recall does not generally take place in many democracies—it is almost a side issue. However, it is really positive that we are considering these issues. If we are to adopt the recall route, it needs to be as simple, clear and easy to administer as possible for both the electorate and the administrators.

The Convener: Thank you, Peter. Robert Nicol, may I come to you?

Robert Nicol (Scottish Assessors Association): I do not think that I can add anything to what Malcolm Burr and Peter Stanyon have said. The issue is how we can administer whatever Parliament decides to adopt and how we can ensure that it is reasonable and practical.

The Convener: Excellent. Thank you.

My next question will cut to the heart of that issue, as it is about the costs associated with a recall petition. We can see the figures in the financial memorandum that has been lodged with the bill, but, in Scotland, an elected representative holds a mandate for one of two types of geographic locations—either a constituency in the relatively well-known and straightforward first-past-the-post election system or a region in the regional system. We then also have the complexity of the administration of a petition and, potentially, of subsequent events. Do the groups that you represent have any concerns about or comments on the financial position and the associated costs?

Malcolm Burr: The proportionality of costs must be a factor. For local authorities and returning or petition officers, the costs will presumably be met. However, those costs are potentially quite extreme—in the case of a full regional poll, they might be in excess of £1 million. The costs of administering such a poll in my Highlands and Islands region, which we have never had to consider until now, would be significant—although they would, of course, be necessary for a general

election. It is legitimate to consider the costs and, indeed, the disruption to local authorities that will undertake the bulk of those duties on behalf of returning and petition officers.

The Convener: When we have a general election or a Scotland-wide election, such as the Holyrood election that is coming next year, it happens because it is required. Is your note about proportionality in respect of the fact that, when we talk about recalling members from a list representing a region, the cost could be exercised across a very large geographic region, such as your Highlands and Islands example?

Malcolm Burr: Yes, that is correct. Of course, two processes could be inherent in that, which we will perhaps debate later this morning.

The Convener: Peter Stanyon, do you want to add anything to that?

Peter Stanyon: Not much. I do not have experience of directly administering Scottish elections, but for much of my career I worked in London, so I understand the difference between constituency and list members in that context. I was a constituency returning officer, too, so I also understand the challenges across much smaller constituencies.

The big challenge will be the geography. In many respects, smaller, more compact areas are probably easier to administer than wider ones. That is a fact. I echo Malcolm Burr's comments on proportionality. I looked at the figures for the costs of the Westminster recall petitions, and I suggest that, in Scotland, you would indeed be knocking on the door of £1 million. The question is whether that would represent value for money in relation to what we are trying to achieve or whether another mechanism would be a better means of resolving that particular issue.

The Convener: That is helpful. Robert Nicol, we have talked about the end result—the yes-or-no result at a regional level—but what about the cost implications for local authorities in the run-up to that? Do you have any comments to make on that?

Robert Nicol: Electoral registration is a 365-days-a-year process, but there is no doubt that it intensifies around electoral events. Much of our registration process relies on electoral management systems and suchlike operating effectively and efficiently for those events. Those systems would require some tweaking or updating to enable them to cope with potential new requirements—in particular, because regional petitions could cover vast areas and require several electoral registration officers.

For example, according to the new boundary proposals, some areas would have four or even

five electoral registration officers. During the running of a petition, if weekend or evening work were made available, electoral registration officers would also tend to staff their offices so that people were available to answer queries that might come in. Four or five staff members might have to cover at different times.

We need to be aware that day-to-day operations continue, too, and that by-elections and so on can also take place. I am sure that we all hope that recall petitions will be few and far between, but, if we open up the opportunity for them to be lodged, it is certainly more likely that electoral events will happen concurrently. There would definitely be some additional cost elements, of which some would be relatively marginal, but it would be wrong for us not to be aware of them.

The Convener: I am sure that we will get to the point of considering how a number of local authority areas might come together and interact. Do you see costs and registration being a particular challenge if a number of local authority areas, and various people, were to be responsible for a petition and its next steps, if the proposals were to go that far?

Robert Nicol: Each ERO is appointed by a local authority, whereas petition officers might cover different areas, because they serve constituencies. Across Scotland, we have good working relationships with our direct returning officers, but, because a regional petition would have wider aspects, we would need to build up relationships quite quickly. Nothing about the process is insurmountable, because it is, in effect, what we do, although we would be doing it with different people.

The Convener: That is very helpful.

Rona Mackay (Strathkelvin and Bearsden) (SNP) (Committee Substitute): Good morning. I want to ask about some of the practicalities that are involved in the proposal, such as timescales and so on.

Unless the petition is ended early, under the bill's provisions, a recall petition must be open for signing for four weeks. Could it prove problematic to find signing places that are available for that length of time, and are you confident that the staff could be found to undertake the workload during that time?

Malcolm Burr: To state the obvious, it depends on what else is going on at the time. I am sure that, ordinarily, staff could be found. The delivery of other services would inevitably be disrupted, but that in itself would not be a problem.

Perhaps I am anticipating a question, but we would urge that consideration be given to ending the signing period once the threshold is met. If the

10 per cent threshold is met early, there would seem to be very little point in continuing with a signing period, given that it is a process with a level to be reached rather than an invitation to everybody to express their view. Ending the period early would assist with staff numbers.

Rona Mackay: That was one of my questions, so it is helpful that you have said that.

Peter Stanyon: In our blueprint for electoral reform, which we published following the recent UK Parliament election, we made that exact point. We cannot see a great deal of point in continuing once the 10 per cent threshold has been reached, although Mr Simpson puts forward a very good argument on that issue in the bill's policy memorandum.

Based on what has been shown in the petition processes that have taken place so far, we need to understand that the actual signing centres are not polling stations. They will not be the traditional polling stations that individuals regularly go to.

A constituency has about 10 such centres in total. That has lots of positives, because we will end up with venues that are accessible and that have staff who are well trained in accessibility and so on. However, if someone's regular venue is not available, they may have a significant journey to get to their signing centre, especially if they have not had an opportunity to make absent voting arrangements because of the timescales.

It is a balancing act. That also adds a bit of weight to the argument that the signing period should not continue once the 10 per cent threshold has been reached. That would be easy to calculate, because it is literally a question of checking the figures on the electoral register. That would help to bring down the staffing costs for venues, which would mean that the costs would not be in the region that has been quoted.

09:15

Rona Mackay: I presume that local authorities would be heavily involved in that side of it. They would make signing places available and guide people to them.

Peter Stanyon: Yes.

Rona Mackay: As no one else wants to comment on that aspect, I will move on to my next question. Does the timeframe that is proposed in the bill between the date on which a petition officer receives the recall notice and the date on which those who are eligible can start signing the petition seem straightforward to you?

Peter Stanyon: Compared with the Westminster situation, the proposal in the bill is more positive, because it gives more flexibility as

to when the petition signing period can commence. From experience of the two-week period for Westminster, we know that it is a huge exercise to get that up and running before the hard deadline. I am sure that a little flexibility would help Malcolm Burr and his colleagues to make the necessary preparations, which may be more difficult in some areas than in others. The proposed timing is a positive step forward from what is in Westminster's Recall of MPs Act 2015.

Rona Mackay: What are your views on signing by proxy versus signing in person? Is proxy signing generally acceptable? Given the nature of a recall petition, it is different from a normal election. Should people have to sign in person?

Malcolm Burr: I do not have a particular view, in principle, on that. However, given that proxy votes are acceptable for elections, it is, logically, hard to see why they should not be acceptable for other elements of the electoral process.

Robert Nicol: Permanent proxy voting is available only on limited grounds to do with disability, service and so on. Election-specific proxy voting is different and requires an application around the time of the election. If proxy signing was to be opened up beyond those who have personal long-term proxies, that would need a wee bit of fleshing out and work would need to be done on it, because the bill is silent on that.

Rona Mackay: Are the proposed rules on people who wish to sign by post clear? More widely, are the rules clear enough for people to understand? At first glance, they seem quite complicated. Could they be simplified to help the members of the public concerned to understand them?

Robert Nicol: Postal votes are different from proxy votes in that a person can have a long-term postal vote without having to give any particular reason for it. The bill is silent on whether there would be a further deadline in the process or whether there would be a freeze when the petition register was made up and people who had absent votes at that time would be able to sign in that way. In the lead-up to an election, there is usually a spike in applications for postal votes, because people know that they will not be available on the particular day. However, if a petition was available for signing for a period of time, a spike might not appear in the same way as it does for a day-long event.

The other aspect also relates to elections. The receipt of a poll card is often the trigger for someone to say, "I'm not registered," especially if their partner or someone else in the household has received a card but they have not. Alternatively, they might say, "I thought I had a postal vote but the poll card says I don't."

A notice of poll can sometimes be a trigger for someone to take action. We would, therefore, need to see exactly what the intentions are as to whether anything could change on the register beyond that point in terms of the preferred method of voting.

Peter Stanyon: One of the key elements for which we would always argue is having as much consistency in the process as there is for any other poll that takes place. In respect of both proxy and postal voting, we take on board Robert Nicol's comments with regard to timescales. There is inevitably a lag with postal votes, because you have to print them and get them out to the individual. By that time, the poll is open and there could be a spike, depending on how the timescales are framed. As things stand, there will not be a spike, because there is a cut-off point for the register. There would, therefore, automatically be a slight difference from the process for elections.

It is all about communication—I have used that word quite a lot in my evidence sessions with various committees. It is about ensuring, first, that we understand why the petition is taking place and what the process is, and, secondly, what a postal, proxy or in-person voter needs and what they are actually doing. That is the biggest element, rather than the process, because the process should be straightforward.

Rona Mackay: Absolutely—I was coming to that. With respect, you guys deal with the process, so you know about it, but it is different for the public. I would assume that, if the bill is passed, there would be a straightforward public awareness exercise so that people will know exactly what the situation is.

I come to my last question. Is anything in the bill a red flag to you? Do you see anything that you think should not be there or that will be problematic? Does anything stand out to you at the minute?

Malcolm Burr: Is that in respect of the signing process or the bill in general?

Rona Mackay: In general, as you read the bill, do you see anything and think, "Oh, that could be difficult for us to manage?"

Malcolm Burr: I think that the double threshold for a regional vacancy is worthy of further debate.

Rona Mackay: That is interesting. I will leave that to my colleagues.

The Convener: I will come back on a couple of points. The petition itself is simply about going in and saying, "As an individual, I'm putting my name here for the recall." In the—thankfully relatively limited—examples of recall petitions in the United Kingdom, have there been any challenges with

regard to delivery? Have people wanted to indicate, “No—I don’t recall to take place”?

At the moment, you walk through the door of wherever the petition is being signed and everyone knows which way you are voting. Have you had any administrative challenges in that regard or experiences as to how that plays out in real time? I ask Peter Stanyon to respond first.

Peter Stanyon: Not to my knowledge. At the end of the day, the 10 per cent threshold gives that flexibility. If somebody does not agree with the recall process, they will not attend that process. The only case in which the yes vote was not achieved was in North Antrim—the vote was around 7 per cent, I think, in that particular case.

Experience has shown that the process has been relatively straightforward. To go back to Malcolm Burr’s earlier points, the 10 per cent threshold has been achieved in the first two weeks where we did not have the resignation of the MP, which happened in one particular case. There has not been anything that would be a major red flag to say that people do not agree with the actual process. The process is there for a reason, and the barriers are quite high to actually get to a poll.

The Convener: In the North Antrim example, one thing that was pointed out was the relatively small number of locations in which the petition could be signed in some areas in comparison with others. Is it important that the bill contains clarification and certainty on that point, potentially giving a minimum and maximum number of places in which to sign the petition? I accept that those are not polling stations, but would that be an important step in giving a level of credence to the petition system? It would also avoid having people who object pointing out that something like the North Antrim scenario has occurred.

Peter Stanyon: The provision in the 2015 act was contested with regard to the figures going in. I think that it is a good guide, but, when it comes to the delivery of the actual process, it has to be recognised that the petition officer is the one who knows—they are the person who makes a judgment call on this—whether the number of signing locations should be two, five or 10 in a particular case. In Peterborough, there were 10 sites—that poll fell immediately on the back of the North Antrim petition. Is 10 too many, or too few? It is an arbitrary figure.

The Convener: I suppose that the purpose of my question is to find out whether that individual needs support, in primary legislation, to make those decisions. In some areas, one could see there being conflicting views on such decisions. Perhaps having very open, strong guidance—even just on a minimum number of sites—would

reinforce and support those decisions without opening the petition officer up to criticism.

Peter Stanyon: From a personal perspective, I would say that the only provision that is needed is that the decision of the petition officer is final. One would expect them to take on board input from various stakeholders, but, ultimately, we are putting the responsibility on that individual to administer the petition process in accordance with the law. Unless the number of sites was specified as being 10 in every constituency, which I think would be unhelpful, it would need to be the case that, once the decision was made by the petition officer, that would be the decision of that individual—

The Convener: And that individual would stand by it.

Peter Stanyon: Yes. It could be challenged outside, but, at the end of the day, it must be their decision.

The Convener: That would be sufficient. That is fine. Does Robert or Malcolm have any comments on that?

Malcolm Burr: I have very little to add. I think that the maximum number of 10, which is set out in the bill, is helpful to petition officers, who might otherwise be expected to have signing places almost everywhere in their constituency or region. It is a very helpful guide.

The Convener: Excellent.

My other question is on whether it would be useful to have clarification in the bill of the opening times for signing a petition—for example, a statement that people can sign a petition between 9 am and 7.30 pm. Again, it might be useful to give support to those who are administering the petition and to provide clarity and understanding that can be pointed to. Would that be helpful or, again, should that be a decision for the petition officer? Perhaps Peter Stanyon can start.

Peter Stanyon: It is a strange one, because, in every other case, every hour of a poll or a process is defined in legislation. That approach has its positives and negatives, but, at the end of the day, the timings need to be reasonable; the petition should not be open for 15 hours every single day. I think that it would add a degree of clarity to ensure that the processes are in the legislation. There will be counter-arguments to that, but it seems slightly strange that the timings are not to be specified anywhere in law, whereas other aspects are.

Malcolm Burr: I agree with Peter Stanyon. As we all know, elections are very highly regulated, and that includes the hours of polling, so recalls are an anomaly. On the other hand, we would generally want to give the petition officer sufficient discretion, perhaps in consultation with the

Electoral Management Board, so that guidance could be developed to ensure that the process is as accessible as is reasonably possible. I am thinking, for example, of island constituencies, where transport can be difficult. One would not want the signing office to be closed just at the times when people were most likely to be in their island capital. However, those are very nuanced situations.

There should be some provision for adding signatures in the evening and possibly at weekends—or, in the case of the Western Isles, on Saturday.

The Convener: Thank you for that.

Annie Wells (Glasgow) (Con): Good morning to the witnesses. You have answered adequately one of the questions that I was going to ask. It was about whether, if the threshold is met, we should just close the poll. I have had a response to that one.

Let us turn to the matter of eligibility to sign the petition. As we know, the electoral register changes constantly. Do you believe that there are any challenges around the provision in the bill on the petition register with regard to what version of the electoral register is used at the time of signing the petition? I ask Malcolm Burr to answer first, if he does not mind.

Malcolm Burr: I am fairly agnostic on that point, I must say. One could argue that it should—logically; this is not practical—be the electoral register as it was at the time when the person was elected, as those are the people who elected that person. Obviously, though, I think that the most reasonable approach would be to use the electoral register that is in use at the time of the petition.

As I said, this is not an exercise in pure democracy, whereby everyone is invited to express a view, if they wish, in order to reach a particular threshold. It is not a general election. To be honest, I would suggest whatever is most convenient for the electoral registration officer.

09:30

Annie Wells: Does anyone have anything else to add? I am on the same track as Malcolm Burr on that point.

Robert Nicol: I am grateful to Malcolm Burr for considering us. Every election is run at a particular point, and it is up to legislators to decide when that practical point should be.

My only comment is that if by-elections are happening at the same time, you might find that someone who makes an application during the petition period and becomes eligible to vote in the by-election is not eligible to sign the petition.

Addressing that would just involve messaging and ensuring that the electoral management system infrastructure can cope with that. Nothing is insurmountable about it in any way.

Peter Stanyon: I have nothing to add. It goes back to the good old days in electoral registration, when there was a fixed register and that was it. My only point is that using the existing register provides certainty. Having said that we want as much electoral convergence as possible, the reality is that we are talking about a four-week signing period, which will be difficult to deal with.

One big factor to consider—God forbid that this would happen—is that registers cannot be stuffed. If a constituency or region is contentious, it would not be possible for someone to be bussed in, as that would cause massive issues for Robert Nicol and his colleagues as they look at applications.

Therefore, using the existing register is nice and simple. It means that there is a cut-off, as used to be the case, and that is it, and we just work on that basis. As Malcolm Burr said, the word “agnostic” is probably best one for me to use on that point.

Annie Wells: Perfect. I am content with those answers.

The Convener: For clarification, you are all content that, once it has been identified that 10 per cent has been reached, the petition should just be closed. I am dreading the next question, because I know what it will open up.

Should where you sign the petition be geographically limited? If we were to think in regional area terms, why could I not travel to Dumfries and sign the petition there, other than because of the fact that the office there would have no record of my registration?

Sue Webber (Lothian) (Con): Would that be because you are in the same region?

The Convener: Yes. It might be a policy decision—I am happy for you to say so if it is—but would that be reasonable? Would it be practical? In order for the administration to be straightforward, should the signing of the petition be restricted to the geographical area where you are registered?

Malcolm Burr: It is, indeed, a matter of policy, but, given the very short period, I am thinking about the practicalities of having electors move beyond their registered constituency and across the region. I am not convinced that that could easily work in the available time. It could, A, increase the risk and, B, give rise to perhaps unnecessary questions.

The Convener: If we put aside the point on policy, which I accept will be indicated by the Scottish Parliament in one way or another, would

providing for the petition to be signed in the area in which you are registered to vote—in essence, linking it to your constituency or local authority area—make the administration of it far more straightforward?

Malcolm Burr: Indeed, it would. Earlier, Robert Nicol referred to the need to work quickly with new registration officers and EROs, because the period is very short.

Robert Nicol: I am straying away from my area slightly, but the ERO would give the petition officer the register and say, “Go and do with it as you will.” I shudder to think how big the poll card equivalent would be, in relation to the regional lists in particular. I feel for the postmen having to deliver all those. There are certainly practical aspects to the issue.

Peter Stanyon: From personal experience, I ran a weekend voting pilot way back in 1999. We had 12 individual areas, and it was the registers for those areas that physically allowed it to happen. As things stand, it is a far easier administrative process to restrict it geographically to the constituency. That said—and this is where I get shot by my colleagues, because this is a new provision—the automation of processes in polling stations in general is now being looked at. Pilots on using electronic registers in polling stations ran in Wales a couple of years ago. There are risks to that, but it would permit region-wide voting with one name, wherever you were in that region. It would be a very brave move to go that far at this stage, but we might want to consider it for the future. At the moment, paper and pencil works very well.

The Convener: From an administrative point of view, the mechanics suggest limiting it, but—I do not want to use the word “automation”—electronification of electoral registration may make it easier. Would it be reviewed at that stage?

Peter Stanyon: Forgive my terminology—other companies are available—but it is because we live in an Amazon culture, whereby we expect an immediate response, that I ask, why would I not be able to vote somewhere else in the area?

We are in a hiatus between two systems, so it is something that the Parliament could consider for future elections, because it is beginning to work elsewhere in the UK in certain elections.

The Convener: It is more a high-level electoral voting facilitation question, rather than one in respect of the bill that is before us.

Peter Stanyon: Absolutely.

The Convener: So, the answer in relation to the bill is that there is a geographical restriction because that is the register that people are on for the petition. That is helpful.

Graham Simpson (Central Scotland) (Con): If I vote in a normal general election or council election, I am told where I have to vote, and it is one place. If we have a recall petition in Scotland, should that be the same? This is the opposite question to the one that the convener asked, but should the elector be restricted to a specific place?

Peter Stanyon: In my opinion, that would be the simplest way of doing it. I am just trying to work it through in my mind, because we could be talking about 10 separate areas. In all honesty, I am not quite sure how it worked in the Westminster recall petition, because there were 10 signing centres. I am not sure that I can answer the question, but it would mirror whatever happened in those constituencies. Do others have views on that?

Malcolm Burr: I have nothing to add to that. It would certainly give clarity in what is a relatively unfamiliar process for voters, who may think, “Well, there is no polling station, so where do I go to do this?” There is an attractiveness to having a card that says, “You are in this area and if you want to exercise this right, here is where you do it.”

The Convener: As you discussed, is there a danger in relation to the availability of places in which to sign, from an accessibility and support point of view? We protect our polling stations for good reason, because we know where they are and what they are. With the signing petition, an address could suddenly become unavailable and 11,000 people could turn up on Monday morning at 9 am, because that is when the place opens. Is that an issue from an administrative or practical perspective?

I am happy for you to consider that and come back with an answer. Is there a balance in relation to doing what Graham Simpson proposes and absolutely restricting the areas where petitions can be signed by telling people that that is the only place that they can sign it?

Peter Stanyon: In many respects, this mirrors what happens in polling stations now, albeit on a slightly larger scale. If a polling venue becomes unavailable the evening before or during polling day—in fact, yesterday, I was told a story about one becoming unavailable on local elections polling day in my local authority area—contingency arrangements need to be in place to be able to react to that.

There will be various ways of doing that, depending on where the venue is and its proximity to other venues. Can you double up, for example? The reality is that any returning officer or petition officer needs to keep the poll going, regardless of whatever happens. Outside those venues, the answer will probably be to have lots of cars with open boots. The reality is that you need to

manage risk and have contingency arrangements in place.

Sue Webber: This is the section of discussion that we have been anticipating will be a little bit lengthy, and I am sure that all members will want to contribute. My question will be quite open, to allow you to expand as much as you can.

Clearly, much of the concern is around the mechanism of the regional poll process that is provided for in the bill and the practical concerns or challenges that we need to be cognisant of. There is a lot to consider in that. Convener, you mentioned the specific challenges that a large region would face, but, being an Edinburgh-based Lothian girl, I contest that some of the cities might have different challenges that are equally challenging.

Peter Stanyon: Based on my understanding of the process, having a 10 per cent threshold in three constituencies of a region makes inordinate sense in order for the vote itself to be viable. As we mentioned, one of the bill's positives is that a slightly longer lead-in period is in place for that part of the process if need be.

Facing the challenge is just about co-ordination, so that the regional petition officer is able to ensure that each of the individual constituencies is doing the same thing at the same time in an agreed fashion. That involves communication—there is that word again—and co-ordination. It is an administrative challenge, but, once you know what you have to face, it can be delivered on in the same way as when a regional poll takes place at the same time as a general election.

Although the timescale of that process is longer than it is at Westminster, getting it all in place, albeit with a maximum 10 signing centres in each area, is doable. However, it is an awful lot of pressure to ensure that, when it comes to pressing the button and starting off, everything has been put in place in the run-up.

Sue Webber: With complexity comes cost and all sorts of resource pressures.

Peter Stanyon: That can be the case. With resourcing, it is more about the bodies on the ground and the availability of premises, as we have talked about. Putting those arrangements in place at the outset will be very labour intensive, but, once you are up and running and beyond the start of the actual poll, it effectively runs itself, as most polls do.

Robert Nicol: From a registration side, as I alluded to, EROs and ROs certainly have good working relationships. Yesterday, I met RO representatives ahead of the Scottish Parliament elections—we do so a year in advance, so that we put in place what we can early on.

The bill's regional element means that I would potentially be talking to a different petition officer or returning officer from the one I would speak to normally, but we are all experienced and used to the processes, so the challenge is in building those new relationships. Those officers would send out notice of the petition, so the issue is how they would interact with the printers and suchlike. The process might be slightly different and involve a number of data files being sent to them. It is not insurmountable. Given his experience of actually dealing with such a process, Malcolm Burr might be able to elaborate on it.

09:45

Malcolm Burr: This brings us to the issue of the second regional poll. If the bill is enacted, a regional recall petition would be a significant administrative event with a significant cost. Running a subsequent poll across up to 11 constituencies and staffing polling places with all the associated logistics would be a major additional event and a major additional cost.

If I can speak to our submission, we think that there would be a challenge in communicating to voters exactly what was going on.

Sue Webber: That is what I was thinking about. There are things that we are aware of in this bubble, but the rest of the world is not on the same page.

Malcolm Burr: Quite. Ten per cent of voters might already have said, "We want this MSP to be recalled," and they might think, "My job is done. That threshold has been reached." A subsequent poll on a regional basis between that person and one other candidate could be difficult to explain to people and would, arguably, be seen as a vote on the same issue. That is liable to cause an element of confusion and give rise to negative comments about the cost and the process.

I appreciate that what is suggested in the EMB submission as an alternative does not give a regional recalled MSP the same rights as a constituency recalled MSP, but those are considerations of voter confusion, cost and administrative work. There is also the question whether the Scotland Act 1998 envisages a regional by-election or poll of any kind. Those factors need to be borne in mind.

Sue Webber: That draws us back to your earlier comment about the proportionality of costs.

Malcolm Burr: Yes. We ask the committee to bear those in mind. I understand, of course, the wish for constituency and regional MSPs to be treated consistently.

Sue Webber: But we are not elected in the same way, are we?

Malcolm Burr: Indeed.

Sue Webber: No, because I am elected on a party vote.

Malcolm Burr: The purpose of the regional list is different from that of a constituency election.

Sue Webber: You spoke about confusion among voters. Would that regional poll process be clear enough for voters? We all know that different election mechanisms can come along and be confusing. If the process is not clear, how could it be improved?

Malcolm Burr: It would take a great deal of very focused information and publicity about what would actually happen. Having a recall petition is understood—it happens for Westminster. It is in the media and in the electoral public's knowledge that you can recall your MP. Recalling your MSP is not a huge leap—the process is the same—but if there is then a subsequent poll between that recalled MSP and someone else, it will take a lot of focused activity to ensure that voters understand what is going on. They are liable to say, "We've done that, and this person has been recalled, so what are we voting again for?" I know that that would happen, and it could happen in a constituency.

Sue Webber: Quite a lot of awareness and comms are needed.

Malcolm Burr: Yes, and in a short time. Inevitably, a lot of that communication would have to be focused on the list, what the process is all about, why there is that particular choice between candidates and why people cannot vote for any other party or representative. It would be a lot for the electorate to cope with in that period.

Sue Webber: I understand.

Emma Roddick (Highlands and Islands) (SNP): At the moment, the process for filling a vacancy on the regional list is very different. Both the party and the person who was next on the list would have to produce a certificate to say that they were happy that that person was the candidate. Is it clear whether the bill as drafted completely circumvents the need for a nominating officer certificate? Could we be in a position in which a region-wide ballot is held and the recalled MSP supported but the party does not produce a certificate and that person is not re-elected?

Malcolm Burr: Provision would have to be made such that, if the person were successful in the poll, the party would be required to produce that certificate. Otherwise, the electorate's views would be disregarded.

Emma Roddick: That would circumvent the whole party list system.

Malcolm Burr: In that scenario, the electorate would be given a clear choice between someone who had been recalled and someone else from the same party. If they made that positive choice, it would be damaging to the process were that person then not to be returned to the Parliament.

Peter Stanyon: I cannot disagree with that. The electorate's wishes are paramount and a positive choice would have been made—albeit that there are nuances in how the system works.

The Convener: Is there a challenge in introducing the petition and in the subsequent regional poll such that the number of electoral methods that are being used in Scotland gets to a point at which fewer people than are sitting in this room understand them all? You have set out the need for strong communication based on a system that is as simple to understand as possible. From an administrative point of view—I recognise the evidence that you have given about the cost, but let us put that to one side—is it a step too far to bring yet another electoral system into Scotland?

Malcolm Burr: It is an additional element for the voter to contend with in a system that already has first past the post, the means by which we elect this Parliament and the single transferable vote, which is used for local government. There is a risk of electoral confusion, although that does not mean that the bill should not go ahead.

I go back to my point about how the process is communicated. It will be complex. A lot of people would struggle to work out exactly what was going on the second time around. That cannot be explained without going into a great deal of detail about the regional list, its purpose, how the list is selected and why there is a second round rather than simply a straight replacement. In the case of a recalled constituency MSP, I acknowledge the lack of consistency in what I am saying, but there are other factors that need to be weighed heavily.

The Convener: The reality is that, with the deep hope that the situation will happen infrequently, the exercise has to start every time that the situation occurs.

I want to go back to the challenges with regard to registration. A lot of the evidence that has been submitted relates to the challenges that occur if another local by-election is being held at the council level. Do we need to bring together the systems in respect of whether a person is or is not on that register, to take account of that challenge? I accept that that situation is administratively challenging, but is it one that, if the right level of clarification were to be given about the cut-off dates, could be made to work administratively?

Robert Nicol: Thank you for that question—it leads nicely to something that arose in my mind as the discussion was going on. It is easy to think

that, if we communicate properly, the electorate will understand. That is fine when it is in relation to fixed Parliaments and there is a lead-in period for that education. If we were in the position of having a recall, the timing of it would not be of our choosing. Once we are on that conveyor belt, we are on it, and we do not know what other electoral events—Scottish or UK-wide—will be happening at or about the same time. It is easy to say that we can make the messaging clear, but we do not know the circumstances in which we will need to do the messaging or how they will confuse or dilute the messaging. That could impact not only on the recall petition process but on the other electoral processes that are happening at the same time.

That is something to bear in mind—elections happen all the time at various levels. Once the Presiding Officer has done their part, we are on a conveyor belt.

On the registration side of things, the bill is clear that you must be on the register at a particular point in time. That is how elections run: if you are on the register at a particular point, there you go. However, there is not necessarily much notice for the elector to make sure that they are on the register in the lead-up to such an election. The bill's approach mirrors the UK provision, which has worked in other aspects.

The Convener: I will probe that with you. We are talking about what I hope are hypotheticals. If a young person turns 16 when council elections are looming, they may trot along and vote in that election. Then, potentially, they might be told, "By the way, you can't take part in this other election because you turned 16 two days too late for registration." The registration teams face such problems all the time. Is it simply an administrative process, or is there something that should concern us, such as that that might cause a feeling of disenfranchisement?

Robert Nicol: I would need to double-check the bill in relation to the instance that you describe, but I think that, as long as the young person had turned 16 by the end of the signing period, they would be permitted to vote in that election.

For some electors, registration is event led, unfortunately. That is why we get spikes in registration in the lead-up to elections. Although I said that we are on a conveyor belt when it comes to recall petitions, the reasons for a recall petition are things that may be telegraphed well in advance. People would be aware that a member had allegedly been naughty, for want of a better word. That should be a prompt to the elector; whether that flows through is another matter.

My basic point is that every election has a cut-off point that is believed to be appropriate for it. If

that is the cut-off point for this one, that is what we will work with.

The Convener: That is helpful.

My final question is for Peter, and it is about the interaction between parties and petitions. Political parties, for various reasons, will throw the kitchen sink at some recall petitions. Do you have any administrative concerns about the relationship between the work that parties do to seek a particular outcome and that of parties that are seeking an alternative outcome? Is there anything that we should consider from the experiences with previous petitions? How does that experience feed into the relationship between the parties and the petitions officer?

Peter Stanyon: We need to be clear about what is acceptable and unacceptable behaviour, and that is difficult to define. As you are aware, at the moment there is a Speaker's conference on the intimidation of candidates and elected representatives. I would hazard a guess that it is almost impossible to define what is acceptable and what is unacceptable. The position that the petition officers will be in is that they will simply refer anything that they feel crosses a line to the relevant authorities to investigate.

10:00

Administratively, when you look at the experience in the local elections in England—was that last week or the week before? I cannot remember; it seems have disappeared into the ether—you see that there were lots of instances of returning officers having a difficult time in dealing with the behaviour, perceived behaviour and interaction of parties. That has nothing to do with the actual process. The process for Malcolm Burr and his colleagues is to deliver an election or a petition in accordance with the law. As long as the provisions are very clear with regard to what is right and what is wrong, as much as that is possible, it will then come down to the grey areas where all that they can do is refer the matter to the relevant authorities to be dealt with.

The Convener: Those provisions should apply to the petition process, the subsequent regional poll and/or a by-election. That is probably easier with regard to constituency by-elections, but the point should be made specifically in relation to regional polls and behaviour during the petition period.

Peter Stanyon: Yes. We must be clear that a petition is not an election. I go back to the points that were made earlier: we talk about comms as being one thing, but they cannot be one thing, because there will be different messages for different parts of the demographic. That is way above my ability—it is for communications experts

to define that. From a practical perspective, that involves things such as ensuring that the polling station and petition officer staff are aware of what can and cannot be said by them when advising individuals on the process.

The Convener: I think that I am pushing at the point that the petition is not an electoral event but that, for the purposes of the behaviour of those who—

Peter Stanyon: Yes, I am sorry—I was going to come to that. I was sort of flowering on about something that was said earlier—my apologies. The crucial bit is that the petition is not an election but an electoral event that should be governed to the same standards and expectations as any other electoral event. Whether it is a community by-election, an election or a petition, it should be governed by the same expectations and understanding of what is appropriate behaviour and process, and that should apply consistently across the board. Equally, the sanctions that would apply should be at the same level for petitions as for elections.

Malcolm Burr: I have nothing to add to that. That is a good explanation. It is not an election; it is an electoral event, and it would be viewed as such.

Robert Nicol: I have nothing to add.

Graham Simpson: Do you accept that, if we are to have a recall process, it needs to apply to constituency members and to regional members? The new thing in that regard is regional members, and I have obviously had to wrestle with that question. If you accept that we need to have something that applies to all MSPs, would you also accept that any process that applies to regional members has to be fair to those regional members in that it should be as closely aligned as possible to the process that applies to constituency members?

Malcolm Burr: We obviously look for consistency and equity in these processes, and I agree in principle that, if constituency MSPs can be recalled on matters that are related to conduct or whatever, that should also apply to regional MSPs. I have stated the EMB's view that there are legitimate grounds for the subsequent processes being different, which I accept would not be treating recalled constituency MSPs and recalled regional MSPs consistently, but there is a difference between constituency and regional MSPs in the sense that the regional list is there to ensure proportionality of the Parliament vis-à-vis the election.

I have referred to the Welsh Standards of Conduct Committee, which also talks about a single-stage process. As I said, I accept the point about there being a lack of consistency, but there

are other factors, including the cost, the potential confusion of the electorate and the administrative and financial burden, to which I referred earlier.

The regional MSPs are elected to reflect proportionality, and, except with independent MSPs, that can be addressed by other means.

Peter Stanyon: I cannot disagree with anything that Malcolm Burr has said.

I tend to see myself as a quite simple person, and many people have told me the same. There are 129 MSPs, and to the electorate and the public it actually makes no difference whether they are regional or constituency MSPs, because, ultimately, they are elected to the body in one form or another.

However, different forms of election take place within the same polling station. We must accept that it is more complicated—financially and administratively—to run a petition or election for a region than it is to do so for a constituency, so there is a justification for the EMB's arguments that we should make it a slightly simpler process.

To answer Mr Simpson's first question, yes, all MSPs should be treated as equally as is possible within the system.

Graham Simpson: I will point out to Mr Burr that I appeared before the equivalent committee of the Senedd and we addressed and discussed this issue. Next year, Wales is moving to a system that is based entirely on lists, which is awful. I think that it is a terrible system, but we are stuck with it here. I do not know why Wales is doing that, but it is. That will allow Wales to have a bespoke recall system. The challenge in Scotland is that we have two different systems, so we need some element of fairness. I just wanted to make that point.

I have a final question. Would you make any improvements to my proposals?

Peter Stanyon: Other than what has been said on petitions, our stated position as an organisation is that, if a decision has been made by the courts or the Parliament—directly in relation to the House of Commons, for example—it should go straight to a ballot. We do not see the need for recall, because a decision has been made by a reputable body.

However, petitions are now seen as a softer means of recall. The only thing that we would say is that you should make the system as simple as possible. The feedback from the respective stakeholders is that we should simplify that process. If we can get to one ballot that does the lot across both constituencies and regions, it will be far easier to explain to the electorate and to administer.

Malcolm Burr: I will come back to the committee if there are any points that we have missed in our submission, other than the point that we have just discussed.

The bill picks up improvements from elsewhere. For example, the four-week period and the maximum number of signing places are helpful for the good administration of elections. However, if there are any subsequent points, I will come back. Otherwise, our views are simply as per our submission.

Robert Nicol: The only area that would need to be addressed, through regulations made in secondary legislation, is clarity around proxy and postal voting. At the moment, permanent proxies are in place only for particular reasons. If we are looking to open that up, that would need to be considered carefully.

The Convener: Thank you for giving evidence to the committee. I will suspend the meeting for a short while to allow for a change of panel members.

10:09

Meeting suspended.

10:14

On resuming—

The Convener: I welcome to the meeting our second panel for today's evidence taking. We are joined by Sarah Mackie, head of the Electoral Commission in Scotland, and Jenny Brothie, acting head of Scottish affairs at the Information Commissioner's Office. Good morning to both of you. Graham Simpson, as the sponsoring MSP of the bill in question, is still with us, so I welcome him a second time.

If it is all right with the panel, I will move straight to questions. In the first instance, I want to look at time periods and the fact that the bill proposes a period of four weeks for the petition process rather than the six weeks that occurs in other places, particularly at Westminster, and which people are becoming used to. Is there a good reason to curtail the period to four weeks, or is it outweighed by the fact that having similar electoral periods might help people's understanding?

Sarah, would you like to kick off?

Sarah Mackie (Electoral Commission): There have been, I think, six recall petitions under the Westminster legislation since it was introduced, in 2015, and we have reported on all of them. When reporting, we gather data from returning officers—or, in this case, petition officers—of the daily totals of signatures, and the evidence is that most reach the threshold within two weeks. The six-week

period is actually very challenging for petition officers, so we welcome the fact that the bill has acted on our recommendation to reduce that period to four weeks.

If the bill were to be enacted, we would want to continue to report and gather that data. There might be a conversation later about how we gather that evidence and whether, at a later stage, there might need to be inserted into the bill a requirement on petition officers to provide us with that evidence. We certainly welcome the four weeks proposal at this time, given the challenges of finding signing stations for a six-week period.

The Convener: That is excellent. Jenny, do you have any comments in response to that question?

Jenny Brothie (Information Commissioner's Office): No, it is not something that we would necessarily have a view on.

The Convener: I appreciate that.

Let me just push at this issue. The four-week period makes sense, and I think that the reality is that, in all but one of the examples of the UK-wide petition examples that we can look at, the threshold was reached very early on. Should a petition close at that stage? Is there any value in its running on?

Sarah Mackie: That would be a question for Parliament, but it is something that could be considered. There is a difficulty with that, though, and it relates to a further recommendation that we have made, which is to consider whether you would want to give signers the option to, in effect, sign against the petition. With an election, when somebody arrives at a polling place, you do not know which way they are going to vote; however, with a recall petition, when someone comes to a signing station, you will, as a result of the UK legislation and the provisions in the bill, know by the simple act of their turning up which way they are going. If you were to add in the option that people could sign for or against a petition—I totally recognise that the details would need to be worked out—you might need to give people more time and clarity on how much time they had.

The Convener: In your submission, you commented not on the identification question, but on the simple fact that, when someone goes to sign a petition, you know which way they are going to go. That is the proposal that sits with us in this bill, and it is, consequently, why the 10 per cent provision has been included.

Looking at the tight time period, is there any point in extending it beyond the point at which the 10 per cent threshold is reached?

Sarah Mackie: If we are going on the proposals in the bill—

The Convener: Yes, just on that proposal—I will come back to the other proposals. Is there any value in the petition continuing to stay open for another two or three weeks when you know what the outcome will be?

Sarah Mackie: You would need to balance the impact on the petition officer and the impact of trying to hold community spaces open and taking them away from the public for three weeks for those purposes.

The Convener: Under the proposal in the bill, the question in the petition is, in essence, a finite one and, when the 10 per cent threshold is reached, there will be a recall. Should we simply rely on that finite question and, when it is answered, say, “There will be a recall,” or have you seen from previous examples any value in a petition staying open, given the constraint that people can say only, “Yes”?

Sarah Mackie: If the threshold is 10 per cent, once it was reached, it would be difficult to hold the petition open.

The Convener: That is fine.

I ask the question because of comments that I have noted both in your submission and in others about the use of postal votes. The simple challenge is that someone might return their postal vote when the petition has already been closed; however, we know what the postal vote will say, because of the question that has been asked. Is there an issue that we should be considering with regard to postal votes and closing the petition early, or could we say that the petition should stay open for the four weeks, because, at the end of it, people would know the proportion of the electorate who voted for the recall, compared with the whole? Is there value in having that information?

Sarah Mackie: That is the point that I was thinking about—postal voters who might send their vote in later. If you have reached the 10 per cent, you have reached the 10 per cent, but there is an issue with regard to voters sending their vote in after something has been closed and feeling that they have not had their voice heard.

I think that we would need to keep this under review. We were able to carry out some public opinion research on the Peterborough recall election, I think, because it was running in parallel with local government elections. However, that sort of research was very difficult for us to do in the Rutherglen and Hamilton West example. If there were an opportunity to support public opinion research to find out how people felt about this, that would be very useful. It is really important to note, though, that we have had only six recall petitions in the UK, one of which was discontinued, so there is a lot more evidence to gather to inform how we do things.

The Convener: In that case, would it better if some of the requirements sat in secondary legislation rather than primary legislation, so that, as more information became available and as we understood things better, it could be amended more easily?

Sarah Mackie: We would agree with that.

The Convener: Going back to the roundabout—or the cul-de-sac—that we drifted into on the yes/no question on the petition, I note from the current proposal and the examples that we have from the UK that someone simply goes in and indicates that they want a recall. Is there any value in expanding that to give voters the opportunity to put their view forward? Do you see any complexities in that respect? What do you see as the consequences of its being just a yes or no question?

Sarah Mackie: I will be up front with you and say that it would complicate the process. What it would do is require some secrecy provisions to be put back into the process. I have observed two recall processes in the UK, and at one of them—not the one in Scotland—I was at a signing station in an area that was very loyal to the MP who was subject to the recall petition. As I was going in to observe, I heard somebody outside the station say, “It’s outrageous that you’re going in to sign against this person.” After all, the very fact that you are walking into that place signifies which way you are voting. Having the option to sign against the petition removes such issues.

Obviously, we would need to have further discussions about what would happen to the votes of those who had signed against the petition if there was a 10 per cent threshold. That would need to be further considered.

What happens with the—

The Convener: The votes of the 60 per cent of people who go the other way.

Sarah Mackie: Do the votes of those who sign against the petition take away from the ones of those who have signed it?

The Convener: Your concern is about the integrity and importance of the concept that our ballot is secret.

Sarah Mackie: Yes, very much so.

The Convener: At the moment, the nature of the petition would immediately defeat the possibility that it could be secret. There are examples of the petition process being seen subjectively as the same as other elections, in which supporters frequently urge people, even at the last minute, to choose a way to vote.

Does the commission have to offset that? Would there be value in using postal voting for the

petition, which would retain the secrecy of whether someone had actually voted on it? I deeply hope that we are speaking about this being an issue only in a very small number of areas. Given the reality of the environment that we have, would postal voting be a satisfactory safeguard that would allow people to indicate a view on a petition without having to walk into a sports hall, library or whatever?

Sarah Mackie: Our view is that people should be given a choice of ways to exercise their view on politics. Many people need support to go into a polling station or signing station, but we would not want to remove that option from them.

The Convener: I suppose that I am talking not about removing the option but about allowing someone to exercise a vote in a way that will potentially make them feel more comfortable. Can we be assured that the existence of postal voting in itself offsets the risk of what you described having witnessed?

Sarah Mackie: I think that just 21 per cent of the Scottish electorate vote by post, with most still preferring to vote in person. Therefore, I would not be comfortable in saying that post or proxy voting offers sufficient assurance.

The Convener: My follow-up question is on the fact that we have heard the petition described as an electoral event rather than an election. Should we give strong credence to the risk that, if you turn up at a venue, others will be able to identify the view that you will express?

Sarah Mackie: Yes, that is the case.

The Convener: That is fine—it is why I asked the question.

Rona Mackay: Good morning. I want to ask you a question about the regional recalls process. What is your view on the additional requirement that the threshold would need to be met in at least three constituencies, and what sort of practical implications would that have?

Sarah Mackie: At the moment, the best comparator that I can give for that is a regional count for a Scottish Parliament election. In that, you have the regional returning officer, who is effectively responsible for returning the regional count and co-ordinating the constituency returning officers. That is quite straightforward, because each of the constituency returning officers count the constituency votes and communicate that information to the regional returning officer, and the regional votes are then communicated.

10:30

We can work with the member and others to clarify this, but, as I understand it, the bill says that

the regional returning officer would become the petition officer. There is nothing in the bill to provide clarity on how the regional returning officers would work with the constituency petition officers. Under the Westminster legislation, when there is a recall, each day, the returning officers return all the signed sheets to a central place in the constituency, where they are tallied for security—so that they know how many signatures have come in that day. That process is more complicated for a region. For example, I am imagining the process with regard to the Highlands and Islands. Obviously, Orkney and Shetland would not return their papers to Inverness each day, so would they count them locally? Will the secondary legislation spell out how the process would work? That would be really helpful. It would probably have to devolve responsibility to each of the constituency returning officers.

The bill says that the petition officer for the region, who is the regional returning officer, would designate the signing stations in the constituencies. However, taking the example of the Highlands and Islands again, would the RRO from Inverness have any clue about which signing stations were appropriate for Shetland? I think that the details of that can be worked out.

Rona Mackay: We need clarification of all of that. I am also interested to know how the figure of three was reached. I know that you will not know that, but perhaps the member can enlighten us later.

You have outlined some of the practical considerations that might arise, which was interesting. Jenny Brotchie, I do not think that that is an area for you but I do not want to leave you out.

Jenny Brotchie: I will not wade in on this one. *[Laughter.]*

The Convener: For clarification, with regard to the petition, the information is the simple number of people who have signed that day. Yes, there will be a collation of the hard data, for other purposes, but the feedback is not the same as for an election, in which a count has to take place. For a petition, it is simply one person to count and a second person to certify the number on the list. That is helpful to know.

I will turn to Emma Roddick to lead on the next area, which the committee has had an interesting discussion about.

Emma Roddick: Sarah, can you go into more detail on the concerns that you raise in your written submission with regard to regional polls?

Sarah Mackie: Yes. I brought that up issue earlier, but we need more clarity. We have met the member in charge of the bill, and we are happy to

work with him and his team to ensure that there is real clarity on how polls would work in the regions, because the process would be more protracted. This is a decision for the Parliament rather than for us, but there would be a four-week signing period, and there would then be an opportunity for the member to decide whether to stand again. If they did stand again, a poll would have to be held, which would be almost like a mini-referendum, and that could take quite a long time.

We also need to look at another issue. I think that the bill says that, if the matter arose within six months of a Scottish Parliament election, as is reflected in the Scotland Act 1998, this committee or the Presiding Officer would not be able to issue a notice of recall. You might need to think back a couple of stages in that regard, because a recall process could start but then be dragged out, so the electorate could be at a certain stage of the process and then suddenly be told, "Actually, we're now within six months of the election, so we're not going to do this."

Emma Roddick: That is interesting. Thank you. We had some discussion with the previous panel of witnesses comparing what happens currently with vacancies on a regional list with what would happen in the case of a recall. Normally, a written statement would be needed from the candidate to say that they wished to take up the seat, along with the party's certificate of nomination. Malcolm Burr suggested that the way to simplify that process would be to require by provision that a party must produce that certificate if a recalled MSP was supported in a regional poll. What is your view on that?

Sarah Mackie: I am sorry, but I am not sure that I understand the question. Will you repeat it?

Emma Roddick: Of course. It is unclear at the moment whether a party could still refuse to give a certificate of party candidate nomination to a recalled regional MSP if they were supported in a regional poll. Malcolm Burr suggested that the party should be required to do that.

Sarah Mackie: The party might not want to do that.

The Convener: Just to help—or to try to help but, no doubt, to muddy the waters—I note that, with regard to the vehicle by which an individual moves from being on a list to being an MSP, one of the requirements is that the political party under which their name appears on the list certifies that. That does not happen post-election but is one of the conditions of their coming in. Emma Roddick is referencing the challenge whereby the way that the bill would operate would potentially circumvent that process without removing the need for the party to provide the certification. The previous panel of witnesses suggested that the party should

be forced to do it. The challenge that you have just raised, Sarah, is what would happen if the party does not want to do that. That is the element that we are looking at.

Sarah Mackie: Yes. As everybody will be aware, legislation on a similar theme is going through the Senedd. A different approach is being taken because Wales is moving to a one-list system, so the Senedd is considering a provision whereby, when somebody is recalled, the position will just go to the next person on the party list. In Scotland, at previous European Parliament elections, we have had examples of the party having fallen out with the next person on the party list and wanting to skip them. The legal advice was that the party was entitled to skip that person, but it was a protracted process.

Emma Roddick: We can see that, in the case of somebody being recalled, it is very likely that there would be questions about whether they have fallen out with certain people or whether the party really wants them to be a representative. Given that the electorate would have made what Malcolm Burr called a "positive choice", it seems that requiring the party to certify the person is the right way to go, but would that bring the party's rights into question?

Sarah Mackie: Consultation with the parties is probably needed on that. However, my experience of working on elections over 18 years is that you always have to expect the unexpected, and there should be provisions in the law to allow for different approaches. I say "different approaches", but the point is that there is an issue with requiring a party to designate a candidate where—

Emma Roddick: They might not be a member of the party.

Sarah Mackie: Yes. The detail of that process would need to be worked out.

Emma Roddick: Essentially, it would be really difficult to design a recall system that worked for both first past the post and a proportional representation system at the same time. Given that that is the voting system that we have in Scotland, is there some other way of doing it? We keep talking about parity between regional and constituency MSPs, but the fact is that we are here for different reasons, so should the recall look different for the two kinds of MSP?

Sarah Mackie: I am going to push that back on to the Parliament.

Emma Roddick: Fair enough.

Sarah Mackie: It is a matter for the Parliament, but you can look at what Wales is doing. Obviously, the Westminster system is based solely on constituencies. I totally appreciate that the bill has been framed to create that parity of

opportunity as, almost, a comeback for regional and constituency members and to level the playing field in those terms. However, the Parliament designed the voting system, so it must deal with the matter.

Emma Roddick: Finally, from an education perspective, I wonder how easy it would be for people to understand what they were looking at in a regional poll. In a constituency recall election, the recalled MSP could well be standing as an independent or for a different party from their original party. However, with a regional ballot, where the choice would be between that candidate and somebody else who was unnamed, it would all become very party specific. Do you think that people would understand that, if a Conservative regional member was involved, they would not be voting against the Conservatives but would be voting for that person or for someone else?

Sarah Mackie: I think that it would be difficult but not unmanageable. This would need to be funded, but there is probably a strong role for the commission to user test the materials that would be used with members of the public. They could include, say, the notice of the petition or the additional poll that would come from the petition officer, the explanation that would be on the signing sheet and so on. There is a risk that people would think, “We’ve just voted to recall them—why are you asking us whether we’re still sure?” There would, therefore, be a role for us in user testing the language and ensuring that it is as clear as possible.

I am reminded of the additional challenge with recall petitions in general, which is that, once the process has commenced, it is very difficult to put out any information about registering to vote. To be fair, the timetable for recall petitions is so short that the registration deadline has normally pretty much passed once the recall notice has gone out, but a difficulty is in how to communicate with the public without being perceived to be turning out the electorate. If you are turning them out, you are doing so for a specific outcome.

It would all come down to the official materials that were issued to electors. We would be keen to have a role in testing those with the public and ensuring that they are as clear as possible. We are probably the best people for that role, but we would need to be resourced for that.

Emma Roddick: Thank you.

The Convener: Another issue is expenditure by political parties in relation to the petition, which is, of course, not an election. What are the commission’s thoughts on deadlines and timelines in that respect? How do we tie that into reporting? What are the potential risks that we have to look at?

Sarah Mackie: The bill contains no details of what will be in the regulations. I think that it has been indicated that that will be added at a later stage. I can talk about our experience with regard to the Recall of MPs Act 2015 for the UK Parliament, which I think sets a limit of £10,000 for campaigner spending. We would need to think about how that would work in a region. How would we extrapolate £10,000 across a region? If it had 10 constituencies, would we allow £100,000? That would need to be looked at.

10:45

At the moment, campaigners can register with the petition officer and they must return their expenditure within a certain time after the petition closes—I cannot remember what the time limit is—to the petition officer, who then publishes it on their website. We have a duty to report on Westminster recall petitions, and we would welcome a duty to report being added to the bill, as we publish such information anyway.

There is a bit of tension, because the Westminster legislation is based on how elections work, but the bill transposes that legislation for the new recall concept. It would follow the practice that returns are made to the returning officer or petition officer, but would campaigners not be better making the returns to us? At the moment, those returns and the spending that is set out in them are not scrutinised. We do not have the powers to do that. The matter could be considered and discussed at stage 2.

The Convener: Therefore, it is not insurmountable in the sense of it being such a big challenge that we should not go there.

Sarah Mackie: The important things to consider would be transparency and the enforceability of any rules, but those can be worked through.

The Convener: That is helpful. Graham, do you have any questions for Sarah Mackie before we move on?

Graham Simpson: I have only one. Emma Roddick has explored a really interesting area, which I am keen to consider further. Sarah, is it your understanding that, under the Westminster legislation, which I am largely mirroring, if voters say in the initial vote that the member should be recalled, the member ceases to be a member of the House of Commons? Is that correct?

Sarah Mackie: Yes.

Graham Simpson: That would be the same here, which plays into Emma Roddick’s very good questions about the power of the parties. I will reflect and come back to the committee on that.

Sue Webber: My questions are about the mechanisms for removing an MSP and they are all for Jenny Brotchie, so Sarah Mackie can sit back and put her feet up for a bit.

The bill provides that there should be a process for removing an MSP if they fail to physically attend the Parliament for 180 days. This committee would be involved in taking a view on whether such an absence should be classed as a valid reason for removal. Does that process raise data protection and privacy issues that the committee should be mindful of?

Jenny Brotchie: That is an area that we looked at. Under article 36(4) of the UK general data protection regulation, there is a requirement to consult on legislative proposals that involve the processing of personal data. The member in charge of the bill came with colleagues and consulted us at an early stage, and we provided some advice. In such a circumstance, when you are looking at whether there is a valid reason for an absence, it is very likely that you will—*[Interruption.]*

Sue Webber: I am very sorry. Can you say that again?

Jenny Brotchie: Sorry. Do I need to be a bit closer to the microphone?

Sue Webber: No, it is not you. Annie Wells coughed as you were speaking.

Jenny Brotchie: In circumstances in which you are looking at whether there is a valid reason for a member having been absent for 180 days and sensitive personal data is received, held and processed, it is likely that the absence will be for a health-related reason or will relate to a family member's health condition. In those circumstances, the committee or whoever receives that information will have to comply with data protection law. They will have to think about whether the process is lawful, fair and transparent and whether the individuals can exercise their rights in relation to that.

Critically, they will also have to consider how to comply with the data minimisation principle—that is, to ensure that only what is strictly necessary, adequate and relevant is processed in relation to the purpose of the bill. You will want to think about how much information the committee needs and who needs to receive it—whether that is one person or the Scottish Parliamentary Corporate Body—and to confirm that the reason for having the information is valid before it is passed on to the committee. Perhaps every member of the committee will need to know all the reasons, but you must think about that. It may be contextual or considered on a case-by-case basis, but the data minimisation principle is important.

Sue Webber: You mentioned ways to protect the individual, including mechanisms that would use the corporate body. I will read out my next question from our briefing because, when it comes to data, I would rather not trip myself up. Would there be any possible concerns regarding data protection and privacy issues if the process involved reporting to the Parliament in every instance in which the committee considered the absence of a member, including those in which the MSP's absence was judged to be valid?

Jenny Brotchie: That is something for the Parliament to consider, but I would ask what exactly needs to be reported to the Parliament. What is necessary and proportionate in terms of the information that needs to be reported? Does Parliament need to know only that a verified, valid reason has been provided or does it need to go into the detail of the MSP's circumstances?

Sue Webber: Maybe we can discuss that at another time. What do we have to do now in relation to reporting to the Parliament? I am just throwing that question out there.

The Convener: We can discuss that later.

Sue Webber: Data is key to a lot of the issues, but we hear that it is also a big concern for many people. Are there any similar processes or mechanisms elsewhere that have got round the problem or that it may benefit us to be aware of?

Jenny Brotchie: It is an interesting question. I am not aware of how other Parliaments handle it, but you may want to look elsewhere to see how it is handled in other Parliaments, what the risks associated with their approaches are and how those risks to rights and freedoms have been mitigated.

Your guiding principle has to be what it is strictly necessary to process to achieve your purpose. Your purpose is presumably that you want to make sure that MSPs who have been absent without a valid reason can be considered for removal. If there is a valid reason—for example, there is a health condition or they are caring for an individual in their family—you must ask whether there is a need for all members of the Parliament to understand that or whether they need only to be assured that someone has been informed of the reason and has confirmed that it is valid.

Sue Webber: You mentioned that members of the Parliament have to understand that there is a valid reason, but it is equally important that members of the public understand that.

Jenny Brotchie: Yes.

Sue Webber: That is all my questions, convener.

The Convener: On the understanding that I neither agree nor disagree with the proposal, there is a tension between the information that this committee may want to have in order to reach a decision and how the data needs to be obtained and handled and how long it is preserved for. A challenge exists in the fact that, in the real world, additional information will, no doubt, be available through social media and the opinions and views of people who allegedly have other information that is not being put forward. This committee—along with a number of others—spends a huge amount of time balancing those two aspects.

Then there is the challenge of the existence of things that become disclosable subsequently. Notwithstanding whether I agree or disagree with the proposal, a decision that this committee reaches on such a point would at some stage invariably have to go to the chamber for validation, because we are subservient to the chamber in that regard. The amount of information that then becomes available in respect of that challenges all strong efforts to retain data on the smallest number of people and for the shortest period of time.

I am asking you the impossible question, and you know that it is coming. How do we reconcile the tensions? In reality, information will get out there that could be particularly harmful to an individual MSP but that has been handled as well as it possibly can be under GDPR. Is there a danger that, in achieving that, we defeat the purpose of what we are trying to do? On paper, that is relatively straightforward: it is whether there is an explanation for why someone has not been in attendance.

Discuss. [Laughter.]

Jenny Brotchie: I go back to my original point. When you are looking at what is necessary and proportionate, you first need to ask what the purpose is, what the aim is and what it is that you are trying to solve, and you need to think of the most privacy-friendly way of ensuring that you achieve all of that. You are asking what it is actually necessary to disclose.

Secondly, what is disclosed to the convener of the committee or to the Scottish Parliamentary Corporate Body might be different from what is disclosed to the wider chamber and to the public. The bars are set at different heights. You need to think about that.

The third thing that you need to think about—and this is where the balancing comes in—is the impact on the rights and freedoms of individuals. You have to consider the MSP but, if what might be disclosed relates to third parties or family members, you also have to consider the impact on

them. In each case, you have to think about the circumstances.

You always have to think about fairness and what is within reasonable expectation. You need think about whether some of an elected member's expectations, which may be reasonable, about what might be made public about them are different from the expectations of a family member or another third party. You then have to ask whether it is fair to disclose something when it relates to a third party.

I strongly encourage you to think about what is necessary. Who can have access to that confidential information? Can a system be put in place that assures MSPs that that information does not have to be disclosed and disseminated to the wider public?

The Convener: I have a follow-up question that I am going to push you on. What is in the public domain might or might not be the same as what we hold in private, but it could become part of the discussion that takes place in the chamber, which is a meeting in public. Do we need to be concerned about that? I am comparing that with the data that we might process, hold and be aware of, which we would deal with under a system that has been thought through. What is the challenge around those two points?

Jenny Brotchie: Again, you have to approach it on a case-by-case basis and do that balancing test in each case. You are thinking, "What am I trying to achieve here? What do I need to achieve?" If it is about setting the record straight and there is a pressing public interest in doing that, you have to ask, "What data is it necessary to disclose, and what are the impacts on rights and freedoms?"

The Convener: I am sorry, but I am going to rudely cut across you. What the bill is asking us to decide is whether there is a reason for someone not having been present for 180 days. In a sense, it is not about putting the record straight. If other information comes out, the bill does not say that we need to put the record straight. We can sit within that remit of just saying, "This is our view."

Jenny Brotchie: Yes—perhaps I misunderstood your question to begin with. You are trying to solve a different problem, and you need to think strictly about the information that you need to do that.

The policy memorandum that sits alongside the bill suggests that the member's views should be taken into account and that they should be able to represent themselves. You can explore some of those impacts with the member and get their views; you can also get views from third parties.

It is really about asking what is the minimum that needs to be processed and what needs to be disclosed. I would query whether it is strictly necessary to disclose the full details, but that is obviously a decision for the Parliament.

11:00

The Convener: Therefore, we should have confidence in human rights legislation, under which this is a balancing act. It is about the minimum amount of information that needs to be held, accessed and viewed for us to come to a conclusion.

You might say that this is a policy decision, but should we have a test, and should that be on the balance of probability or should it be beyond reasonable doubt? Whoever makes the decision, at what level do you think the balance should be set?

Jenny Brotchie: It goes back to the data protection principles. I mentioned that you have to be lawful, fair and transparent. Lawfulness means that you need to have a valid, lawful basis under data protection law. In this case, the policy memorandum suggests that that would be the public interest task that is set out in standing orders. I understand that there will be a standing order that will set out in more detail what that will look like, and we are happy to engage on that, if that would be helpful. We recommend that you go into some of the detail on that with the Scottish Parliament data protection officer, who also provides independent advice.

There is a necessity requirement for a public interest task, and the balancing test that I mentioned previously would need to come in here. You need to be able to demonstrate that you are meeting that necessity component and that it is fair and within the reasonable expectation of the individual—not just the MSP but any third party. You also need to think about whether it impacts on those individuals unjustly—you need to look at that risk.

Again, it will not be a blanket approach—it will be case by case. You will have to look at the data minimisation principle and what is adequate, relevant and necessary for the purpose.

The Convener: It will be case by case, but it will be sitting on a transparent process of what we have to do in terms of data protection and other things. That is helpful.

Does Graham Simpson have any questions on this point?

Graham Simpson: Yes, I have a couple of questions.

Do you think that this committee is the right way to go in dealing with these issues?

Jenny Brotchie: It is not for us to say which committee or which body should do that. That is very much a decision for the Parliament. You need to think about whether the committee is the right place or whether such issues should go to the Scottish Parliamentary Corporate Body, which would then report to the committee. You need to have a structure and a process in place. I understand that that will be fleshed out in the standing orders, and I am happy to provide advice on that.

Graham Simpson: Okay. You have been looking at my proposals, but have you also had a chance to look at how councils handle these issues? The spark that made me come up with my proposals was that councillors can be removed if they do not attend without good reason for six months. That has happened in a number of cases. Have you had a chance to look at how councils deal with these issues?

Jenny Brotchie: I do not have any particular knowledge of how councils deal with that, but, certainly, if you are thinking about what the risks are and what models are available, we would definitely encourage you to look at councils and the learning there. If they have been operating on that basis, you should look at what data is processed and disclosed, what impact that has had on individuals, what mitigations and safeguards councils have in place, and whether you can take something from that learning and apply it to your situation.

The Convener: I thank the witnesses for an interesting session. As always, I ask you to feel free to contact the committee if something comes to mind after the meeting. I will reciprocate and say that we might well come back to you. Thank you for your attendance today.

I now move the committee into private session.

11:04

Meeting continued in private until 11:26.

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