

Electoral Reform Consultation

December 2022

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Ministerial Foreword

George Adam MSP, Minister for Parliamentary Business



As Minister for Parliamentary Business, I welcome the opportunity to launch the Scottish Government's consultation on electoral reform. This consultation seeks to deliver on the joint undertaking between the Scottish Government and the Scottish Green Party set out in the Shared Policy Programme - to increase voter registration and promote active participation in elections by under-represented groups, including young people and foreign nationals.

Following on from our previous electoral reform consultation in 2017, which led to substantial changes in the law in 2020, this consultation represents another important step as we seek to modernise our elections. Proposals for change are set out for areas which we think need updated such as the law on intimidation of candidates; scheduling of elections; and the role of the Electoral Management Board for Scotland.

We led the way by lowering the voting age to 16 to give young people a voice. It is clear that young people have made full use of that voice. They have continued to vote as they move into their 20s, and - I hope - will remain engaged with voting for the rest of their lives. There have been calls from young people to give them the chance to stand for election in Scottish Parliament and Local Government elections. I acknowledge this will be seen as a controversial proposal by some but would welcome your thoughts on whether or not we should extend the right to stand for elected office to those who are aged 16 or 17. We also wish to further expand candidacy rights to people who have chosen to make their life in Scotland to give them the same rights as other citizens. We are keen to hear all views.

Everyone should have the right to vote independently and in secret, but we recognise that more must be done to break down barriers to voting where they exist within our society. With this in mind, we also want to hear your views on how these barriers can be removed and how legislation can best support this aim, including for people with sight loss.

I invite you to respond to the consultation. Your views will count. Thank you for taking the time to consider these proposals.

George Adam MSP
Minister for Parliamentary Business

Introduction

The Scottish Government remains fully committed to increasing participation in elections both in terms of voter turnout and encouraging people to stand for election. Democratic participation challenges the inequalities of power and influence that exist in society. The electoral system must support and empower the people of Scotland. Voting rights were extended to 16- and 17-year-olds for the Independence Referendum in 2014 and then to Scottish Parliament and Local Government elections from 2016. This consultation seeks views on increasing voter registration and active participation in elections by under-represented groups, including young people and foreign nationals as set out in the [2021-22 Programme for Government](#) and the [Scottish Government and Scottish Green Party Shared Policy Programme](#).

Since 2016, the Scottish Parliament has made a number of significant changes in relation to Scottish Parliament and Scottish Local Government elections (together referred to as “devolved Scottish elections” in this consultation). These followed on from public consultations in [2017](#) and [2018](#). Devolved elections have moved from a four to a five-year term. [Significant changes have been made](#) in relation to roles of the Electoral Commission, the Electoral Management Board for Scotland (the “EMB”), and Boundaries Scotland. And in 2021, legislation was passed to ensure that year’s Scottish Parliament election could be safely held in the context of the Covid-19 pandemic.

Nonetheless, the Scottish Government considers that there remains scope for further important improvements to electoral law. The consultation paper discusses whether there should be any change for those currently able to vote but not permitted to stand for election, such as 16- and 17-year-olds. It highlights a number of possible changes to assist candidates in Local Government elections. It also sets out proposals on how to increase voter registration and how to improve accessibility in elections, to ensure all people can vote independently and in secret.

In addition, the paper considers the small number of people resident in Scotland without voting rights, such as asylum seekers and people detained under some mental health legislation. It looks at options for rearranging scheduled elections in response to exceptional circumstances. It considers further changes in relation to the Electoral Commission, the EMB and Boundaries Scotland. And, finally, it addresses questions arising from the [UK Elections Act 2022](#).

Structure of the consultation paper

This consultation paper seeks views on whether changes to electoral law may be desirable. Chapter 1 focuses on those standing for election, Chapter 2 on aspects of the voting process, Chapter 3 on the scheduling of elections, Chapter 4 on campaigning and Chapter 5 on administration and governance of elections. The paper also summarises the action taken following the earlier electoral reform consultations.

Views on all aspects of the paper are welcome and encouraged, but in case it is helpful, it is suggested that Chapters 1 to 3 are of general interest, while

campaigners and electoral administrators are likely to have particular interest in relation to Chapters 4 and 5.

Next Steps

This consultation is a key part of a continuing conversation on electoral reform, and we will be publicising the consultation widely. An analysis of the consultation responses will be published on the [Scottish Government website](#) and the results of the consultation will inform preparation of draft legislation on electoral reform to be brought before the Scottish Parliament in time for the Scottish Parliament election scheduled for 7 May 2026.

Responding to this Consultation

We are inviting responses to this consultation by 15 March 2023.

Please respond to this consultation using the Scottish Government's consultation hub, Citizen Space (<http://consult.gov.scot>). Access and respond to this consultation online at <https://consult.gov.scot/constitution-and-cabinet/electoral-reform>. You can save and return to your responses while the consultation is still open. Please ensure that consultation responses are submitted before the closing date of 15 March 2023.

If you are unable to respond using our consultation hub, please complete the Respondent Information Form to:

The Elections Team
Scottish Government
2W
St Andrews House
Edinburgh
EH1 3DG

Handling your response

If you respond using the consultation hub, you will be directed to the About You page before submitting your response. Please indicate how you wish your response to be handled and, in particular, whether you are content for your response to be published. If you ask for your response not to be published, we will regard it as confidential, and we will treat it accordingly.

All respondents should be aware that the Scottish Government is subject to the provisions of the Freedom of Information (Scotland) Act 2002 and would therefore have to consider any request made to it under the Act for information relating to responses made to this consultation exercise.

If you are unable to respond via Citizen Space, please complete and return the Respondent Information Form included in this document.

To find out how we handle your personal data, please see our privacy policy: <https://www.gov.scot/privacy/>

Next steps in the process

Where respondents have given permission for their response to be made public, and after we have checked that they contain no potentially defamatory material, responses will be made available to the public at <http://consult.gov.scot>. If you use the consultation hub to respond, you will receive a copy of your response via email.

Following the closing date, all responses will be analysed and considered along with any other available evidence to help us. Responses will be published where we have been given permission to do so. An analysis report will also be made available.

Comments and complaints

If you have any comments about how this consultation exercise has been conducted, please send them to the contact address above or at the following email address electionsteam@gov.scot

Scottish Government consultation process

Consultation is an essential part of the policymaking process. It gives us the opportunity to consider your opinion and expertise on a proposed area of work.

You can find all our consultations online: <http://consult.gov.scot>. Each consultation details the issues under consideration, as well as a way for you to give us your views, either online, by email or by post.

Responses will be analysed and used as part of the decision making process, along with a range of other available information and evidence. We will publish a report of this analysis for every consultation. Depending on the nature of the consultation exercise the responses received may:

- indicate the need for policy development or review
- inform the development of a particular policy
- help decisions to be made between alternative policy proposals
- be used to finalize legislation before it is implemented

While details of particular circumstances described in a response to a consultation exercise may usefully inform the policy process, consultation exercises cannot address individual concerns and comments, which should be directed to the relevant public body.

Chapter 1 – Candidates

Expansion of candidacy rights

Policy background

The Scottish Government is keen to encourage active participation in Scotland's democracy. Since 3 August 2020 virtually all persons aged 16 or over living in Scotland who either have leave to remain in the UK or who do not require such leave have the right to register to vote in Scottish Local Government and Scottish Parliament elections (referred to as “devolved Scottish elections” in this Chapter). [Voting rights have been extended to 16 and 17-year olds](#) and to [all foreign nationals with any form of leave to remain](#). ‘Leave to remain’ means permission granted to non-UK nationals to stay in the UK for a limited or unlimited period of time, but does not include those seeking asylum. Excluding short term visitors such as tourists, asylum seekers are now the main group of foreign nationals aged 16 or over living in Scotland without voting rights.

In relation to candidacy, foreign nationals with indefinite leave to remain in the UK were given the right to stand in Scottish Parliament and Scottish Local Government elections. The changes in 2020 also made clear that those with settled status or pre-settled status under the EU settlement scheme could stand for election and serve as MSPs and councillors despite Brexit.

Currently you must be 18 or over to stand for election to the Scottish Parliament, UK Parliament and local councils.

A further, limited, extension of the law in relation to candidacy rights in Local Government elections is set out in the [Scottish Local Government Elections \(Candidacy Rights of Foreign Nationals\) Act 2022](#). That Act allows nationals from countries where a relevant treaty at UK level has been agreed, to become councillors. The UK currently has such treaties with Luxembourg, Poland, Portugal and Spain. As a result, all resident nationals from these countries will be able to stand for election as a councillor in Scotland, even if they only have limited leave to remain and even if that leave is set to expire during their term of office. The UK [Elections Act 2022](#) has given similar effect to the treaties in relation to local elections in England and Northern Ireland.

As a result, there are two main groups of people who can vote but who are not able to stand as candidates in devolved Scottish elections. These are people aged under 18 and foreign nationals with limited leave to remain. There are also certain people disqualified from standing for elections (discussed below).

Categories of people excluded from voting or candidacy rights for devolved Scottish elections

Excluded from both voting and candidacy/holding office rights:

- people aged under 16;
- asylum seekers;

- people in prison serving sentences of more than 12 months;
- persons detained under certain mental health restrictions;
- people not legally resident in Scotland (aside from members of the armed forces serving overseas).

Excluded from all devolved candidacy/holding office rights (but likely to be able to vote):

- people aged 16 and 17;
- foreign nationals with limited leave to remain (e.g. those who only have the right to remain in the UK for a 30-month period) apart from those from Luxembourg, Poland, Portugal and Spain, who can stand in local council elections;
- those subject to certain disqualifications (e.g. tied to electoral fraud or bankruptcy).

Excluded from Local Government candidacy rights and holding office:

- those who lack a work or residence connection to the local authority area;
- persons who have been sentenced to a prison term of at least 3 months within the last 5 years.

Excluded from Scottish Parliament candidacy rights and holding office:

- persons who are serving a prison sentence of more than 12 months;
- certain specified groups (e.g. judges, civil servants, members of the armed forces, members of police forces and members of foreign legislatures).

International comparisons

As a result of these past changes, Scotland has one of the world's most generous and inclusive arrangements for voting and candidacy rights. Many democracies extend voting and candidacy rights on an equivalent basis, set out in an international treaty with two or more countries agreeing to grant voting and candidacy rights to each other's nationals. The Scottish Parliament has instead chosen to extend voting and candidacy rights in devolved elections on a unilateral basis. This is intended to allow anyone who has chosen to make their life in Scotland the right to participate in our democracy. It means that the provision of voting and candidacy rights to those living in Scotland is not dependent upon their place of birth. A person need not be the citizen of a democracy that has agreed an electoral rights treaty with the United Kingdom to participate in devolved Scottish elections. Voting rights are extended to all those with any form of leave to remain in the UK who live in Scotland for long enough to be able to register to vote. This supports the Scottish Government's view that anyone who is living in Scotland should have a say on how Scotland is run.

Minimum candidacy age varies greatly from country to country, for example, the minimum age threshold for standing for election to the European Parliament ranges from 18 to 25 across the Member States of the European Union.

Government commitments

The Scottish Government has already made clear it would like to extend candidacy rights. The Programme for Government 2021-22 – which detailed actions the Scottish Government would take in the coming year and beyond - contains the following commitment “We will bring forward legislation on electoral reform, to be in force before the next Scottish Parliament elections, that will enable more people to stand as candidates at Scottish Parliament and Local Government elections...We will also work to increase voter registration and active participation in elections by under-represented groups, including non-UK citizens and young people.”

Similarly, the Scottish Government and Scottish Green Party - Shared Policy Programme (2021) includes an undertaking to extend candidacy rights in devolved elections, and a commitment to the fullest possible democratic participation in Scotland.

Potential issues in relation to expanding candidacy rights

Enabling 16- and 17-year-olds to stand for election could be argued to raise potential wellbeing concerns, such as the potential exposure of young people to intimidation (e.g. in the form of hate speech or on the campaign trail). Working hours at the Scottish Parliament and in local councils could also be a potential concern for 16 and 17-year-old representatives. The Scottish Parliament’s normal Parliamentary week is between the hours of 14:30 and 17:30 on Monday, 09:15 and 17:30 on Tuesday, Wednesday and Thursday and 09:30 and 12:30 on Friday a meeting of the Parliament may continue to 19:00 on Wednesday if the Parliament so decides. An MSP may also have to live in Edinburgh during the week, if their home is too far away to travel to the Parliament each day, which could be an additional concern for 16 and 17 year olds. It could also be argued that holding office at the age of 16 or 17 could impact on a young person’s education (e.g. in the taking of exams) and there are also data protection issues that arise in relation to the handling of personal data of persons aged under 18.

Enabling a person with limited leave to remain in the UK to hold elected office raises a number of issues if their leave comes to an end during the person’s term of office. If leave to remain were to expire during an MSP or councillor’s term of office, and they were unable to extend their leave or switch to a different form of leave, the person would have no choice but to resign as an MSP or councillor. A by-election might then be required to fill the vacancy. The cost in holding a Local Government by-election has been estimated to be in the region of £50,000.

Failure to meet the conditions of leave to remain could result in it being removed and that individual losing their right to stay in the UK. However, in October 2022, [the Home Office amended immigration legislation](#) to ensure that being an elected representative will not be considered as incompatible with any immigration/leave conditions restricting employment. As a result, “*Standing for or filling an elected post in local or devolved government is not considered to be employment for the purposes of the immigration rules, and conditions restricting employment do not affect the ability to undertake such activities.*” See [Statement of changes to the](#)

[immigration rules](#)). The accompanying [Explanatory Memorandum](#) provides further guidance:

“7.46. Individuals in various routes under these Rules have conditions attached to their permission which restrict their ability to work. A change is being made so such conditions will not prevent migrants standing for or filling an elected post in local or devolved government. Many of those subject to immigration control would not meet the eligibility criteria to stand for election, regardless of these Rules, but this change ensures the UK meets its commitments to countries with which we do have reciprocal agreements around candidacy. Before this change, any such cases would have to be handled on a discretionary basis.

7.47. The change allows those with existing leave to remain who are eligible to stand for and fill elected posts (including any associated work around running for election) where they are eligible to do so. It does not, however, alter the candidacy rules, which are subject to separate regulation. It also does not create any provision for someone to remain in the UK on the basis they are standing for or filling an elected post. Candidates who are subject to immigration control must have a separate basis for stay. For example, a Skilled Worker or Student would need to continue doing the job or course they had been sponsored to do, to maintain their existing status, or they would have to switch to any other immigration route for which they are eligible.”

Any successful candidate would still have to meet any other conditions of their leave to remain, such as participation in a job or course tied to their leave to remain. For example, a student with leave to remain linked to a particular course would still have to follow that study programme, even if they became a councillor or MSP.

Service as a councillor or MSP is a significant undertaking and there are concerns that a person obliged to also meet the requirements of a work permit or study visa would struggle to balance those obligations with those arising from being an elected representative.

Question 1: Do you think that 16- and 17-year-olds should be able to stand for election in:

- Both Scottish Parliament and Local Government elections
- Scottish Parliament elections only
- Local Government elections only
- Neither Scottish Parliament nor Local Government elections

Question 2: Do you think that foreign nationals resident in Scotland with limited rights to remain in the UK should be able to stand for election in:

- Both Scottish Parliament and Local Government elections
- Scottish Parliament elections only
- Local Government elections only
- Neither Scottish Parliament nor Local Government elections

Question 3: Do you have any additional comments on candidacy rights for 16- and 17-year-olds, or foreign nationals with limited rights to remain in the UK?

Disqualification for intimidatory or abusive behaviour

Why is a change being proposed?

Following concerns being expressed about an increase in intimidatory behaviour by some individuals during election and referendum campaigns, the independent Committee on Standards in Public Life undertook a review of electoral events. On 13 December 2017, the Committee published its 17th report: [Intimidation in public life: A Review by the Committee on Standards in Public Life](#). The review highlighted that candidates and campaigners throughout the UK faced increased intimidation and suggested that “specific electoral sanctions would reflect the seriousness of this threat.”

The Committee made a number of recommendations to government, social media companies, political parties, the police, broadcast and print media, and representatives and candidates. One of the recommendations was that the UK Government should consult on a new crime in electoral law of intimidating candidates during an election period. However, the UK Government ultimately decided to adopt a new sanction that would prohibit offenders from standing for elective office for five years rather than a separate offence.

[Part 5 of the Elections Act 2022](#), which was enacted on 28 April 2022, legislated for a disqualification order from standing for, being elected to or holding all elective offices in the UK, apart from Scottish Parliament and Scottish Local Government elections. A disqualification order must be applied where a person is convicted of specified existing criminal offences aggravated by hostility related to candidates, holders of relevant elective offices or campaigners, unless it would be unjust to make the order. A disqualification order disqualifies the offender from being nominated for election to, being elected to or holding certain elective offices for a period of 5 years.

For Scottish Parliament and Local Government elections, the current position is that there is no specific offence of intimidation of elected representatives, candidates and campaigners. Whilst anyone who harasses or intimidates another person can be prosecuted under various legislative provisions, there is no additional sanction for harassing or intimidating someone who is involved in the electoral process.

The Electoral Commission, in its [Report on the 2022 Scottish Local Government elections](#) noted:

“While over half (56%) of candidates who responded to the survey said that they did not have a problem with threats, abuse or intimidation, over two in five (44%) experienced some kind of problem (that is, on a scale of ‘1 to 5’, rated their problem with threats, abuse or intimidation as a ‘2’ or above). One in 10 (11%) said that they had a serious problem (rated ‘4’ or ‘5’ out of ‘5’).”

The Scottish Government is of the view that those harassing or intimidating elected representatives, candidates or campaigners should be subject to additional sanctions which reflect the impact of an offence on the democratic process. Removing the right of someone, who has been convicted of harassing or intimidating those involved in the electoral process, to stand or hold an elective office for a period

is, in the view of the Scottish Government, a reasonable response to their actions and links the punishment directly to the offence.

What is being proposed?

The proposal is that if an individual is convicted of certain offences, and the court is satisfied, beyond reasonable doubt, that the offence was aggravated by hostility towards:

- a candidate at an election;
- a holder of an elective office, such as an MSP or a local councillor; or
- certain individuals who are campaigning on behalf of a candidate or political party at an election,

then the court can make a disqualification order which would disqualify the offender from being nominated for or holding an elected office in relation to the Scottish Parliament or a Scottish local authority for a period of 5 years. The court will also have the power to consider whether there are particular circumstances relating to the offence or to the offender which would make it unjust to make a disqualification order. If the court chose not to make an order, it would be required to give reasons for its decision.

Adoption of this proposal on disqualification orders would bring the position in Scotland into line with other UK elections. It is intended to provide additional protection to those who participate in elections and contribute to the political debate and deter individuals from carrying out acts of intimidation.

In addition, the proposal to introduce such orders to prevent persons standing in Scottish Parliament and Local Government elections, or holding a relevant elective office, would not only bring in sanctions to cover those elections, it would capture those who under the current legislation could be disqualified from standing at a UK Parliament election as a result of a conviction, but could remain eligible to stand at a Scottish Parliament or Scottish local election.

Question 4: Do you think that anyone found guilty of an offence involving the harassment or intimidation of politicians, candidates or campaigners should be subject to an additional sanction of losing the right to stand for election for 5 years?

Question 5: If not, would you suggest another electoral sanction or approach?

Sending of free letters or leaflets by candidates and political parties at elections

Why is a change being proposed?

It has been a feature of UK Parliament elections for many years that every candidate standing in an election is entitled to send one letter or leaflet via Royal Mail, with no charge to them for postage, to every person on the electoral register or to every home within the relevant constituency. This can be in the form of an addressed letter or unaddressed leaflet to each household. The cost of postage is met from public funds on the basis of an agreement between the UK Government and the Royal Mail, but candidates have to pay for the printing and design of the letters and leaflets themselves.

Allowing a free letter or leaflet mailing recognises that it would be difficult for candidates to personally meet with all their constituents due to the number of people in a constituency and the physical distances involved. The average size of a UK Parliamentary constituency in Scotland is about 69,000 electors. Providing a free letter or leaflet was viewed as levelling the playing field by allowing every candidate to contact every potential voter in their constituency to inform them of their views on election issues. The practice of providing a free letter or leaflet has continued despite the emergence of the internet and social media as a significant campaigning tool.

When the legislation setting out the rules for Scottish Parliament elections was passed by the UK Parliament in 1999, the right to send a free letter or leaflet to every elector was extended to every candidate in a constituency, every individual candidate standing in a region and every political party at a Scottish Parliament election. At the time, it was felt that those standing as members of the Scottish Parliament should be given the same opportunities to campaign as those standing as members of the UK Parliament. The average number of electors in a Scottish Parliament constituency is about 55,000 and for a Scottish Parliament region, 531,000. Candidates and political parties at Scottish Parliament elections continue to have access to a free mailing.

Candidates at Scottish Local Government elections have never been entitled to a free letter or leaflet, as is the case at Local Government elections in other parts of the UK. The reason behind this is unclear but may reflect that wards at Local Government elections are a lot smaller than constituencies at other elections. The average number of electors in a Local Government ward in Scotland is about 15,500.

The Scottish Government has received representations from the Convention of Scottish Local Authorities (COSLA) requesting that the right to send a free letter or leaflet be extended to candidates at Scottish local elections. COSLA is of the view that allowing for a free letter or leaflet would encourage participation and engagement with Local Government elections. It would also recognise that there has been a substantial increase in the size of Local Government wards since the introduction of the Single Transferable Voting system (STV) in 2007. Prior to 2007, Local Government wards were about a third of their current size, for example, wards

in Edinburgh had about 6,000 electors prior to 2007 compared to about 21,000 electors today.

The Electoral Commission, in its [Report on the 2022 Scottish Local Government elections](#) noted:

“Just over half (52%) of all voters said they had enough information on candidates to be able to make an informed decision on who to vote for. However, more than a quarter (26%) disagreed. Voters aged 25-34 were most likely to disagree (40%).”

Free mailings in Local Government elections

The consultation seeks views on extending the right to send a freepost letter or leaflet to candidates at Scottish Local Government elections.

The Scottish Government’s view is that the entitlement of candidates at Scottish Parliament elections to a free posting is an important function and assists in getting candidates’ messages across to the electorate. However, the Government has concerns about how much the introduction of free letters or leaflets for Local Government candidates would cost. At the 2022 Local Government elections, there were 2,548 candidates standing for 1,205 seats across 355 electoral wards. Whilst it is difficult to estimate exact costs, due to uncertainty around postage costs and how many candidates would make use of the free letter or leaflet option, we would expect the cost of free mailings to be higher than the £11 million spent on free mailings at the Scottish Parliament elections in May 2021. If it were decided to permit free letters or leaflets, it would be for Local Government to meet the cost of the free mailings.

One possible option in this area is a change in the law to permit individual councils to authorise and cover the costs of a free mailing for each candidate to send to each voter or to each household (discussed further below). While this would place the decision on whether or not to fund free mailings on each local authority, it would give councils greater discretion in this area. It could however lead to different practice across the country and an assessment would be needed as to whether it would be consistent with the Code of Conduct for councillors to make a decision on these mailings and in particular whether a conflict of interest could arise.

The Scottish Government is therefore seeking views on whether or not the availability of free letters or leaflets should be extended to candidates at Scottish Local Government elections.

Free mailings – cost

At Scottish Parliament elections, every candidate and every political party is entitled to send one free letter or leaflet via Royal Mail, with no charge to them for the cost of postage. They can choose to send a personally addressed letter to every individual voter within the relevant constituency or region. Alternatively, they can choose to send an ‘unaddressed leaflet’, which is a leaflet delivered to every home within the relevant constituency or region, rather than to a named person at an address.

The cost of postage is paid from public funds, based on an agreement between the Scottish Government and the Royal Mail, but candidates have to pay for the printing of the letters or leaflets themselves.

At the last Scottish Parliament elections in May 2021, 17,994,217 unaddressed leaflets and 21,909,503 individually addressed letters were sent under the free mailings scheme, at a total cost of £10,568,955. This was an 88% increase over the cost of free letters and leaflets at the previous Scottish Parliament elections in May 2016, which was about £5.6 million. This increase was driven by an increase in postal costs and in the number of candidates.

The Scottish Government acknowledges that the provision of a free letter or leaflet helps with voter engagement, particularly with sections of the community which may not make use of social media. However, there are concerns about the rising cost to the public purse of providing these free mailings.

Under the current free mailing provisions, candidates and political parties can choose to send one addressed letter to every registered elector or alternatively one unaddressed leaflet to every home in their constituency or region. Each individual candidate in the vote for a Scottish Parliament constituency seat has the right to send a free mailing. For regional list seats, each independent candidate and each political party (not each candidate standing for a political party) has the right to send a free mailing to every voter in that region. In practice, about 55% of free mailings are individually addressed letters, with the rest being unaddressed leaflets. Not every candidate takes advantage of the opportunity to send a free mailing.

The cost of delivering individually addressed letters and unaddressed leaflets is different with addressed letters costing nearly twice as much as an unaddressed leaflet to deliver. In addition, only one unaddressed leaflet needs to be delivered to each dwelling – but with addressed letters, a copy of the same communication will be sent to every voter living at the same household. This has an environmental as well as financial cost.

The proposal is that the current right to send a letter or leaflet free of postage costs should be restricted to the sending of unaddressed leaflets.

National Records of Scotland in their Estimates of Households and Dwellings in Scotland, 2020, which was published on 25 June 2021, estimated that the average size of household is 2.14 persons. We estimate that if only unaddressed leaflets had been allowed at the May 2021 Scottish Parliament elections, the 21,909,503 individually addressed letters could have been replaced by approximately 11 million unaddressed leaflets, based on an average of 2 electors in each household. Because the cost of sending an unaddressed leaflet is lower, this could have reduced the overall cost of freepost mailings from £10.6 million to around £5 million, a saving of slightly more than 50% in the cost of free mailings.

Whilst changing the free mailing to only unaddressed leaflets may have significant cost and environmental savings, there is a risk that this may reduce the impact of free mailings. It could be argued that an individually addressed letter is more likely to be received and read by the intended recipient, whilst an unaddressed leaflet may be

discarded by the first person in a household to see it. Leaflets may also be caught up with “junk” mail and disposed of without being read by anyone.

Therefore, whilst unaddressed leaflets would lead to cost savings, leaflets may not be read by any or all members of a household, thereby reducing the efficiency of free mailings as a method of making voters aware of candidates’ views. After the Local Government elections in May 2022, the [Electoral Commission reported](#) that –

“the most popular campaigning method used by respondents was leaflets/newsletters/flyers. Overall, 90% of respondents put leafletting in their top-three campaigning methods, with just under two-thirds (63%) of respondents citing this as their most used.” And

“When asked where they had seen information about candidates and parties, the most cited sources were leaflets or flyers from the candidate or party (61%) or from another source (27%).”

This demonstrates the importance of letters and leaflets as a campaigning tool.

On the other hand, there may be an argument that restricting free mailings to a mailing to each household could be fairer to independent candidates, who may be less likely to be able to afford the extra printing costs involved in sending a mailing to every individual voter.

The Scottish Government would like to know your views on whether we should restrict the form of free mailings to unaddressed leaflets only or if the risk that some electors may not see the leaflets is too great and therefore that the option of individually addressed letters should be retained.

Question 6: Do you think that the option of sending a freepost letter or leaflet should be extended to candidates at Scottish Local Government elections?

Question 7: Do you think that the right for candidates to send a free mailing should be limited to one free mailing to each household, rather than to each voter?

Question 8: Do you have any other comments on the issue of candidate mailings to voters?

Publication of home addresses

Why is a change being proposed?

In the past, candidates in Local Government elections were required to provide their home address on their nomination paper. Those addresses were then published in the *statement of persons who have been nominated to stand for election* and were printed on the ballot paper. The home addresses of candidates standing for the Scottish Parliament have not been made publicly available since the 2007 election.

In response to concerns about the personal safety of Local Government candidates, within the context of rising levels of abuse and physical threats to those standing for elected office, we brought forward legislation in 2020 to address this issue. This meant that while the Returning Officer still held the details of a candidate's home address, this address was not made publicly available. Candidates' home addresses no longer had to be printed on the ballot paper, although candidates could still request that it appeared on the ballot paper, if they wished it to.

This change was warmly welcomed but since then a similar problem around agents' addresses has been highlighted by local councillors and COSLA. As part of the election process, each candidate must appoint an election agent to act on their behalf. Alternatively, they can choose to act as their own agent. As part of the appointment process for an agent, an address must be provided as a contact point for the agent.

The names and addresses of all election agents which are supplied to the Returning Officer are made publicly available. This is so any communications including invoices, legal notices etc. can be sent to the candidate via their agent. Concerns have been expressed that the requirement to publish agents' home addresses represents a security risk to a candidate when they are acting as their own agent.

An agent does not have to use their home address; they could use an office address, if they have one. For example, many agents for political party candidates will use a local office provided by the relevant party. However, some smaller parties or independent candidates may not have access to separate office premises.

The Scottish Government has considered various options about how it might be possible for candidates, who are acting as their own agent and who do not have a separate office address, to keep their home address private. This has included the idea that Returning Officers using the council offices, could receive mail for candidates who act as their own agents who would then pick up their mail.

Apart from being inconvenient for candidates, Returning Officers were not comfortable with taking on this additional responsibility. It does not solve the problem of creditors etc being able to be sure that correspondence would be delivered to the agent. We also considered the use of PO Boxes, but they would involve a cost and would not allow court papers to be physically served on an individual, should that be necessary.

The proposal

The Scottish Government is therefore proposing that a new option for correspondence should be introduced which will only be available to candidates who are acting as their own agent. In such a case, if the candidate does not want their home address to be made public, the candidate, in addition to declaring their home address, must provide the Returning Officer with another address to be used for correspondence. This correspondence address will then be made public in the published notice of election agents' names and addresses. It will not need to be an office address, it could be a workplace address or the address of a friend or relative.

The Welsh Government has already made a similar change for Local Government elections in Wales.

Question 9: Should candidates who are acting as their own agents be able to use a correspondence address for communications?

How a candidate's location is shown on the ballot paper

Why is a change being proposed?

At the May 2022 Local Government elections, candidates were given the choice of whether or not to have their home address printed on the ballot paper. If a candidate chose not to have their home address on the ballot paper, then the name of the council area in which they lived was shown instead.

Following the May 2022 elections, the Scottish Government has been approached with the suggestion that if a candidate is resident in the ward where the election is being held then that should appear on the ballot paper. This suggestion was made because it was felt that people would find it helpful to know which candidates live in their local area.

The proposal

Currently, a candidate at a Local Government election can choose to either have their home address or the Local Government area where they live printed on the ballot paper. A candidate may not want their home address to be published due to security concerns.

The Scottish Government is considering amending the rules for Scottish Local Government elections to allow an additional option. This would be that a candidate can ask for both the name of the ward and the council area in which they live to be printed on the ballot paper. Candidates would continue to have the option of their home address or only the council area being printed on the ballot paper. This would mean that a candidate would have a choice of the ballot paper showing:

- their home address; or
- the council area in which they live; or
- the ward and council area in which they live.

The Scottish Government is seeking views on whether we should allow for this third option, that the ballot paper can show the name of ward in which the candidate lives as well as the council area. Candidates will still have the option of having their home address or only their council area showing on the ballot paper.

Question 10: Currently ballot papers show either the candidate's home address or council area. Do you think that the ballot paper should also show the ward in which the candidate lives, if they request it?

Question 11: Do you have any further comments on the topic of candidate addresses?

Chapter 2 – Voting

Increasing registration

Background and discussion:

The Scottish Government is committed to work to increase voter registration and active participation in elections by under-represented groups, including non-UK citizens and young people.

“We are committed to the fullest possible democratic participation in Scotland. Turnout at the 2021 Scottish Parliament election was the highest ever, but some groups are less likely to register or vote, including 16- and 17-year-olds and foreign nationals. We want to encourage more people to register to vote, to stand as candidates and to remove the barriers some people experience so they can vote independently.” Scottish Government and Scottish Green Party - Shared Policy Programme, September 2021

A person living in Scotland must register to vote if they are eligible and asked to do so by an Electoral Registration Officer (ERO). If a person is asked to register and does not, they could be liable for a fine.

EROs work at a local level to increase voter registration and to target their resources at individuals who may have moved residence to ensure they get the opportunity to register.

However, it is estimated by the Electoral Commission that the electoral register in Scotland is roughly 83% complete, meaning 17% of the population who are eligible to vote are either not registered or are not registered correctly. There is significant variation between different groups.

Completeness of the electoral register in Scotland

The [Electoral Commission produce a Completeness and Accurate Report](#) on the registers of the Great Britain every four years. The most recent report considered the completeness and accuracy of the registers in December 2018.

The report estimated that 17% of eligible voters in Scotland are either not registered or not correctly registered at their current address – meaning they have moved home - representing between 630,000 and 890,000 people.

Registration levels are significantly lower among young people aged 18-34, with only 68% in Scotland registered, compared to 92% of people aged 55 and over in Scotland.

Home movement remains a key driver of under registration with those who have lived at their current address for less than one year much less likely to be registered (32% in Scotland) than those who have lived there for 16 years or more (94%) Registration was highest among those who own outright (95%), compared to those

in households buying with a mortgage (87%), social renters (81%) and private renters (49%).

Registration among EU and Commonwealth citizens (58%) was lower than UK and Irish citizens (85%). It is important to note that the report was published before the [Scottish Elections \(Franchise and Representation\) Act 2020](#) (“the Franchise Act”) extended the franchise to citizens of all countries who are resident in Scotland and have leave to remain in the UK. This means we do not have data for registration amongst this group of newly eligible voters.

While [the Electoral Commission’s report](#) found that registration levels were not significantly different from previous years, the Scottish Government is keen to grow registration, particularly among under-registered groups such as younger people, foreign nationals and private tenants.

Reform of the Annual Canvass

The Annual Canvass is the process of gathering information on potential additions and changes to, and deletions from, the register. The purpose for the canvass is to maintain an up-to-date Register of Electors and ensure that all individuals in a household who are eligible to vote are registered to do so. As part of the Canvass, EROs contact all residential addresses in their area to help establish if the information they hold on the electoral register is complete and accurate.

In 2020 the Scottish Government, along with the UK and Welsh Governments, delivered a reform of the annual canvass. These reforms gave EROs greater discretion to target their resources at properties where additions or deletions to the register are more likely to be required. The first evidence of the impact of these reforms will be known when the Electoral Commission publishes its report on the Completeness and Accuracy of the registers as at December 2022.

Electoral Commission’s views

The Electoral Commission have commented that registration should be further modernised, this is from the [Electoral Commission’s Report on the 2018 registers](#):

“Our vision of a modern electoral register is one which:

- Uses trusted public data to keep itself accurate and complete throughout the year without relying solely on action by individuals; and
- Makes it as easy as possible for electors to ensure their own registration record is accurate and complete, particularly ahead of elections and referendums.”

The Digital Registration Service is run by the UK Government. It is able to offer different user journeys for English, Scottish and Welsh voters as there are some key differences in who can vote in the elections held in the different countries.

In Scotland 16- and 17-year-olds were able to vote in the Independence Referendum in 2014 and to vote in Local Government and Scottish Parliament elections since 2015.

This means that encouragement to register to vote can take place in schools and there is evidence to suggest that if you vote the first time you are eligible then you are more likely to vote again (Jan Eichhorn report).

EROs have a statutory duty to encourage people to register. EROs are keen to use the data from the recent census to ensure foreign nationals are aware of their voting rights and the need to register to vote.

The Scottish Government is interested to hear views on what could be done nationally or locally to increase registration levels. nationally or locally to increase registration levels

Question 12: What do you think could be done nationally or locally to improve registration levels, especially among under-represented groups such as younger people and foreign nationals?

Improving the accessibility of voting

Overview

Under current electoral law, provisions to support people with disabilities to vote are limited and very specific. Returning Officers are required to provide a number of items to support voters with sight loss including a large print ballot paper and a device for use by blind and partially sighted people to support them to vote at the polling station. The device has been prescribed in legislation (see Rule 25 of the [Scottish Local Government Elections Order 2011](#) and rule 38 of the [Scottish Parliament \(Elections etc.\) Order 2015](#)) and is commonly known as the Tactile Voting Device (TVD).

The Scottish Government continues to progress our commitment, made in the 2021-22 Programme for Government, to improve the accessibility of elections with a particular focus on people with sight loss. We explore solutions with stakeholders such as RNIB Scotland to support people in exercising their right to vote.

As well as community organisations, we work with the administrators in local authorities who run elections in Scotland. The Electoral Management Board for Scotland ("EMB") brings together Returning Officers and the wider electoral administrator community to ensure ongoing focus is given to making voting accessible, through staff training and direct engagement with community organisations.

The Scottish Government has also sought to improve accessibility through recent Scottish Parliamentary legislation. The [Scottish Elections \(Reform\) Act 2020](#) brought in measures to allow for future innovations that improve accessibility in the running of elections. The Act also brought in a duty on the Electoral Commission to specifically report on measures taken to support voters with disabilities at elections in Scotland to reflect the importance placed on this activity. In addition, statutory instruments made ahead of the Scottish Parliament and Local Government elections (referred to as "devolved Scottish elections" in this Chapter) in 2021 and 2022 provided spending exceptions for costs associated with making campaign events more accessible to people with disabilities.

Providing Support in Polling Stations

Until recently, UK-wide legislation required all polling places to be equipped with Tactile Voting Devices (TVDs), to help people with sight loss to cast their vote. However, the UK Parliament legislated in the [Elections Act 2022](#) to remove the specific requirement to provide TVDs, and replaced this with a wider requirement to provide reasonable equipment to make it easier for people with disabilities to vote independently and secretly. This Act also places a duty on the Electoral Commission to produce guidance for Returning Officers, which will include a minimum standard of equipment available. The change brought in by this legislation applies to UK General Elections but not to devolved Scottish Elections, which continue to use the previous standard specifying TVDs in all polling stations.

In its [Report on the May 2022 Scottish Council Elections](#) (published September 2022), the Electoral Commission noted the developments in UK legislation and commented:

“The Scottish Government should monitor the impact of this legislation and consider whether similar provisions should be introduced to support the participation of disabled voters at devolved Scottish elections.”

The Electoral Commission is consulting on its [draft guidance on Accessibility](#). While this has still to be finalised, the draft envisages keeping the TVD as a minimum standard, along with a range of other accessibility provisions.

The joint [Law Commissions’ report on Electoral Law](#) (published March 2020) also suggested flexible minimum standards and avoiding overly prescriptive law:

“8.63 Our view remains that a reformed law on polling should make clear the position that voters primarily vote unaided. Returning officers should be required by law to provide each polling station with a facility enabling a blind or partially sighted voter to vote by themselves. We remain of the view that any satisfactory and approved piece of equipment should be capable of being used at any election, and do not think that detailed descriptions of existing devices in secondary legislation are necessary. This also has the benefit of accommodating the use of new and improved technology or devices as they are developed”

In considering our own approach to this issue, the Scottish Government is conscious that not all people with sight loss find the TVD easy to use. For example, support is needed to align it correctly on the ballot paper, and users need to know the order of candidates, which the TVD does not help with. We are aware new technologies to assist interaction with written material continue to be developed.

We see merit in the Law Commissions’ argument that a more flexible approach to the provision of voting aids, moving away from strict rules in legislation, would help enable newer solutions to be introduced alongside the TVD (for example text readers, digital and audio solutions and tactile ballot paper designs).

Equally, we recognise some voters have concerns that removing the legislative requirement for TVDs may lead to people who need voting aids finding their options reduced rather than enhanced. An alternative approach, which would still be more flexible than the current rules, would be to continue to require a form of tactile voting aid in polling stations but remove the existing detailed device description. Alongside guidance, this would retain a minimum standard but give administrators more options to respond to new technologies and the specific needs of their areas.

In taking either of the approaches outlined above, we would also propose to require the Electoral Commission to produce guidance for Returning Officers. This would explain the minimum standard of equipment expected but would also cover other approved support that might be provided to help voters. We believe that flexibility, backed up with official guidance, will build-in futureproofing for new technology and other developments.

While the focus above has been on voters with sight loss, the Scottish Government is also determined to ensure that all people with accessibility needs can benefit from new developments and technology as it evolves. We believe that a more flexible approach in legislation, together with practical innovations, may help deliver further improvements. This approach also aligns with the joint Law Commission recommendation mentioned earlier (para 2.2.9) – that legislation should be flexible, futureproof and responsive as new solutions emerge.

Our key objective is to ensure that voters who face barriers have appropriate and up-to-date options that support them to vote, and that Returning Officers have guidance to draw on. We will ensure that a broad range of accessibility improvements are considered for possible introduction in Scottish elections by working with the EMB, the Electoral Commission and representative bodies. In some cases, such as remote or digital voting, formal pilots and statutory reviews will still be required. However, we hope that in many cases improvements can be introduced more rapidly.

Companions

Companions, or people who help voters needing additional support in the polling station when casting their vote, are an important option for those who face such barriers. Help from a friend, relative or carer can be essential in overcoming issues like navigating the polling station or understanding a ballot paper. Across all elections in the UK, a companion is only allowed to support two voters per election.

The historical reasons for this policy relate to concerns over the potential influence any one person might have on multiple voters. However, there may be circumstances where this impedes the needs of voters themselves - for example multiple members of one family might need support but have only one relative available. Professional carers may also be best placed to support their clients at the polling station, with distinct understanding of their individual needs, but would be prevented from supporting more than 2 clients and/or members of their own family under the current system.

The Scottish Government is minded to increase the number of voters a companion can support in Scottish elections to 5. It would like your views on whether this increase strikes a good balance between practical considerations and concerns over undue influence.

Digital Poll Cards

We are interested in hearing views on whether having an option in the future of receiving poll cards digitally, instead of by post, might assist the accessibility of elections. This could be sent to a registered email account or to a mobile phone. Such an innovation would take advantage of modern technology to offer an additional way of receiving poll cards which some voters may find more convenient and environmentally friendly.

Members of the sight loss community tell us that receiving their poll card by post often forces them to rely on carers, friends and family, as they are unable to

determine the card's purpose without help. Due to the increasing use of reader technology, a digitally accessible poll card would be easier to use for most of this community, as devices could read out the details on the card. A digital poll card would be harder to lose and easier to access at the polling station.

Digital poll cards could also be useful for groups of voters, including those temporarily away from home (such as students) and those who live in flats or shared accommodation, who may prefer this option.

Paper poll cards, for those who prefer not to have them delivered electronically, would remain an option. A wider choice for voters on the approach which best suits their circumstances seems appropriate for the modern age.

Systems to administer the production of digital poll cards would need to be developed, tested and maintained, and costs would need to be assessed. Returning Officers would also need to continue to offer paper poll cards for those who prefer them. In the current circumstances it may not be possible to prioritise this development, but we would propose futureproofing the law now so that it is an option that can be pursued.

Question 13: The Scottish Government intends to amend the rule requiring only a specific form of Tactile Voting Device to be provided in polling stations, to allow more flexibility and ensure the accessibility support offered can be adapted to take account of future innovations. It also intends to place a duty on the Electoral Commission to provide guidance that includes minimum standards. Which of the following options would you prefer:

- The current legal requirement for a specific Tactile Voting Device is replaced by a general requirement on Returning Officers to provide appropriate support.
- The current legal requirement for a specific Tactile Voting Device is replaced with a requirement to provide a non-specific form of tactile support.
- No change to current legislation
- Other

Question 14: Should the limit to the number of times one companion can support voters in casting their votes:

- Remain at two people per election
- Rise to five people per election
- Be changed to another number

Question 15: Should there be an option in the future to request a digital poll card instead of a paper poll card for Scottish elections?

Question 16: What more could be done to improve the voting experience for individuals with particular accessibility needs or requirements?

Clarification of undue influence of a voter

Why is a change being proposed?

Offences were introduced in the 19th century as a response to contemporaneous problems: violence, intimidation, treating votes as a commodity to be sold or bought, and the view that elections could be influenced by those with land or some other source of power.

The Victorian reforms sought to ensure that elections were truly expressions of the democratic will of those who are voting by prohibiting bribes, buying of votes with money or employment; gifts in the form of food or drink; and intimidation and undue influence. These prohibitions still exist.

What is being proposed?

The existing offence of “undue influence” can be summarised as:

- pressure and duress: to include any means of intimidation, whether it involves physical violence or the threat of it;
- trickery: to cover devices and untruths, such as publishing a document masquerading as part of a rival campaign’s; and
- abuse of a position of influence: where a special relationship of power and dependence exists between the person exerting the influence and the voter, such as one member of a family telling other members how to vote.

The Law Commissions’ publication [Electoral Law: a joint final report](#) (2020) recommended that “undue influence should be restated”. The Law Commissions jointly concluded that the three components should all be retained and should be restated as offences of intimidation, deception and improper pressure.

The UK Government took forward the Law Commissions’ recommendation in the [Elections Act 2022](#) and the Scottish Government proposes to do the same.

The proposal

The proposal is that the Scottish Parliament should legislate to clarify what constitutes undue influence in order to make the legislation easier to interpret and enforce. It will do so by using modern terminology, and by clearly separating out the types of conduct that can cause undue influence.

It is proposed that the following activities should be considered undue influence, when carried out for the purpose of forcing a person to vote in a particular way, forcing them not to vote at all, or otherwise interfering with their free exercise of their vote:

- a) The use or threat of physical violence;
- b) Damage or destruction to property (or the threat of such damage or destruction);
- c) Reputational damage (or the threat of such damage);

- d) Causing or threatening to cause financial loss;
- e) Causing spiritual injury or exerting undue spiritual pressure. 'Undue spiritual pressure' refers to a level of improper or inappropriate pressure which goes beyond the free expression of opinions on political or other matters that have implications for the principles of a religion;
- f) Any other act or omission designed to intimidate a person which is not already covered above;
- g) Any act or omission designed to deceive a person in relation to the running of an election

The updated and revised offence of undue influence will continue to be classified as a "corrupt practice". As legislation already sets out, a person who is convicted of the corrupt practice of undue influence is liable to up to one year's imprisonment, a fine or both prison and a fine. This person (or a person who is named personally guilty of the corrupt practice in the report of an election court) will also be incapable of being elected to or holding certain elective offices for five years; if the person already holds elective office, they would be required to vacate that position.

The intention is also that if a person is guilty of undue influence in relation to a Scottish Parliament or Local Government election, they will not be allowed to stand for election or to hold any elective office.

Question 17: Do you agree that the offence of "undue influence" should be made easier to understand and enforce?

Absent Voting

Summary

- To seek views on whether the right to apply for an emergency proxy should be extended to the companions of people who are required to travel for medical treatment, where that travel would mean that the companion would not be able to vote at their normal polling place.
- To consider whether a limit should be placed on the number of voters for whom an individual can act as proxy (similar to UK Elections Act 2022 changes for reserved elections).
- To seek views on whether a limit should be placed on the number of postal ballots which can be handed into a polling station by any individual.

Proxy Voting

Currently anyone who is entitled to vote can apply for an absent vote. There are two types of absent vote: postal votes or proxy votes. Voting by post means that the voter receives their ballot paper, by post, before polling day. The voter can then complete and return their ballot paper either by posting it to the Returning Officer or by handing it in to a polling station in their local area. To be included in the count, postal votes must be returned to the Returning Officer before 10pm on polling day.

A proxy vote is where a voter appoints someone else to vote on their behalf. That person can then choose to either vote in person at the voter's normal polling station or by post. Whichever way they choose, they are voting on behalf of the voter who appointed them. A person appointed as a proxy must be at least 16 years of age and must either be on the electoral register or be in the process of applying to be on the elector register.

An absent vote allows someone who will not be at home on polling day, perhaps due to being on holiday, to vote. However, whilst anyone can apply for a postal vote or a proxy vote for a specific election, those wishing to apply for a proxy vote for more than one election must fall into one of the eligible categories. These categories are those who:

- have a long-term disability;
- are away on an educational course;
- are away for work;
- work overseas for the British Council or as a Crown servant;
- are serving overseas in the Armed Forces; or
- are detained or remanded in custody for 12 months or less

For the purposes of a proxy vote for more than one election, disability means a long-term condition. It is our intention to update the language used to make this clearer.

Emergency Proxies

Because of the time needed to check and authorise applications for absent votes, there are statutory deadlines for applying. An application for a postal vote must be

made approximately 2 weeks before polling day (which also allows time for the postal ballot paper to be issued and returned by post) whilst an application to appoint a proxy must be made at least a week before polling day. However, through no fault of their own, there is always a risk that voters may become unable to vote shortly before polling day. Should such a situation arise, a voter may be able to apply for an emergency proxy up until 5pm on the day of the poll.

Access to an emergency proxy is restricted as, due to the lack of time to check and confirm an application before the day of poll, emergency proxies are only available to those whose need for a proxy arose after the deadline for applying for an ordinary proxy. This includes those:

- Who have a sudden medical disability;
- Who unexpectedly have to be away for work reasons;
- Who are sentenced to a prison term of 12 months or less;
- Who need to change their existing proxy, due to their original proxy no longer being able to vote

At the 2021 Scottish Parliament and 2022 Local Government elections, those who had Covid or who were required to self-isolate due to contact with a person having Covid, were able to apply for an emergency proxy. However, this temporary extension to the emergency proxy scheme has now ended due to the change in Government advice on what to do when you have Covid.

The Electoral Commission has asked the Scottish Government to consider expanding the categories of voters who are entitled to apply for an emergency proxy to include those who find themselves unable to vote because they are in a position of acting as a companion for someone who needs to be accompanied to an unplanned medical appointment.

Under the current provisions, the person with the medical appointment would be entitled to apply for a proxy vote, if they are registered to vote, however their companion is not able to apply for a proxy vote, as they are not covered by the categories set out in paragraph 1.5 above.

The proposal

The Scottish Government is of the view that those who have to accompany someone to a medical appointment should not lose their right to vote, due to no fault of their own. The Scottish Government is therefore proposing that emergency proxies should be made available to the companions of those who are required to travel for medical appointments or treatment at short notice, where that travel would stop them being able to vote at their normal polling place.

Question 18: Do you think that we should extend the right to emergency proxies to the companions of anyone who has to attend an unexpected medical appointment or treatment which would prevent them from voting at their normal voting place?

Acting as a proxy

The current position is that, at a devolved election in Scotland, an individual cannot vote as proxy on behalf of more than two voters unless they are the spouse, civil partner, parent, grandparent, brother, sister, child or grandchild of the voter. The intention of this restriction is to avoid a single person being in the position of being able to vote as a proxy for a large number of people.

The [Elections Act 2022](#) introduces a new limit of four on the total number of electors for whom a person may act as proxy in UK Parliamentary elections or Local Government elections in England. Of these four voters, no more than two can be voters who are normally resident in the UK. The Elections Act changes remove the exemption for close relatives.

The changes in the Elections Act 2022 do not apply to devolved elections in Scotland. Therefore, the existing restriction on only being able to act as a proxy for two voters who are not close relatives remains the position.

The Scottish Government does not see any reason for making a change to the existing position in Scotland. Overseas voters (other than those on service duty) are not eligible to vote at devolved elections in Scotland, so the increase in the number of overseas voters that a proxy can vote for is not relevant for devolved elections. We are also not aware of any concerns amongst election officials in Scotland that individuals are acting as proxy for significant numbers of close relatives.

The proposal

The Scottish Government is proposing that the position will remain that an individual can only act as a proxy for two voters who are not a close relative.

Question 19: Do you have any comments on changes to proxy voting in Scottish Parliament or Local Government elections?

Postal voting

The current position is that anyone who has a postal ballot can either return the completed postal ballot pack to the Returning Officer by post or they can hand it in to a polling station either in person or by asking someone to hand it in on their behalf. There is currently no restriction on the number of postal ballot packs which any individual can hand in to a polling station.

The [Elections Act 2022](#) makes provision for regulations to be made which will require the rejection of postal ballots handed in on behalf of more than the maximum number of electors (in addition to the individual's own postal ballots). The maximum number of other electors will be set out in the regulations. This provision will only apply to UK Parliamentary elections in Scotland. It will not apply to devolved Scottish elections. The Scottish Government has not been made aware that the handing in of bundles of postal ballots is an issue in Scotland.

In addition, the Elections Act makes it an offence for political campaigners to handle postal voting documents unless it forms part of their employment, such as a postman delivering postal ballot papers, or they are the spouse, civil partner, parent, grandparent, brother, sister, child or grandchild or carer of the person who is voting by post.

The UK Government indicated that its changes would reduce both the occurrence and perception of postal vote fraud. Taking the view, that in theory, the ability to hand in of large numbers of postal ballots could enable an individual to vote on behalf of a number of people

The Scottish Government does not see compelling reasons for making similar changes for devolved elections. Every postal ballot must have the voter's personal identifier checked and verified before the ballot papers are forwarded to the count. The Scottish Government is of the view that the personal identifier checks are sufficient to confirm that a postal ballot has been completed by the correct voter and so the danger of someone, including political activists, voting on behalf of others is very unlikely.

The proposal

The Scottish Government is therefore proposing that we will not place any restrictions on the number of ballot papers which an individual may hand in at a polling station at devolved elections or introduce restrictions on the handling of postal votes by political campaigners.

Question 20: Do you have any comments on the handing in of postal ballots?

Voting rights

Summary

- The Scottish Government is seeking views on whether certain persons detained in hospital in connection with offending behaviour should continue to be denied voting rights in Scottish Parliament and Local Government elections.
- The Government is also interested in any other views on voting rights, including in relation to persons seeking asylum.

Background

In 2020, as a result of the [Franchise Act](#), voting rights in Scottish Parliament and Local Government elections were extended to a number of groups who previously could not vote in Scotland, including refugees, foreign nationals who have permission to enter or stay in Scotland, and prisoners serving sentences of 12 months or less. There remain a small number of people who live in Scotland who do not have voting rights, including under 16s, some persons detained under mental health legislation, persons subject to a disqualification such as prisoners serving sentences of more than 12 months and those seeking asylum.

Certain people with a mental disorder ([see section 328 of the Mental Health \(Care and Treatment\) \(Scotland\) Act 2003](#)) may be placed on an order or direction under the [Criminal Procedure \(Scotland\) Act 1995](#) ('the Criminal Procedure Act'). This will be in the context of conduct contrary to the criminal law. For example, [section 59A of the Criminal Procedure Act](#) provides for "hospital directions" in circumstances where a person has been convicted of a criminal offence and sentenced to imprisonment. The hospital direction means that the person is detained in hospital until they are well enough to transfer to prison to serve the remaining time on their sentence. With some orders, such as a compulsion order, a person may be detained in hospital for mental health care and treatment but there is no associated prison sentence.

2.4.3 The Criminal Procedure Act can require an individual to be treated in hospital or, occasionally, in the community. Sometimes the order includes additional restrictions for the individual. An individual may be subject to a number of different orders before final disposal of the case, which may be by Compulsion Order (CO), Compulsion Order and Restriction Order (CORO), or hospital direction. And sometimes a person may be sentenced to prison but then during their sentence transferred to hospital to receive care and treatment (via a transfer for treatment direction under mental health legislation). An overview of Criminal Procedure Act orders is set out in the Mental Welfare Commission for Scotland [Mental Health Act Monitoring Report 2020-21](#). The Report notes that there "were a total of 50 mental health disposals in 2020-21, given as a final disposal by the court, which was lower than the average for the previous 10 years which was 60."

Section 3A of the [Representation of the People Act 1983](#) ("Disfranchisement of offenders detained in mental hospitals") removes voting rights from certain people detained on mental health grounds. This includes people detained under a CO or a

CORO. [Section 3A was inserted into the 1983 Act in 2000](#), following the [Report of a Working Party on Electoral Procedures](#) published on 19 October 1999. The [UK Government in its response to that Report](#) commented:

“We have accepted the Working Party’s recommendation that the restrictions on the use of mental hospital addresses for registration purposes should be removed, except in the case of patients convicted in the courts but detained in hospital in place of sentencing.”

Section 3A is focused upon persons who are detained. As a result, persons subject to compulsory care and treatment under the Criminal Procedure Act mental health orders but living in the community would not be deprived of a vote by this section, although to vote they would still need to be on the electoral register. If a person is living in the community for only short periods, they may face practical challenges in registering to vote in time for an election.

Since 21 February 2020 prisoners sentenced to terms of 12 months or less have been eligible to vote in Scottish Parliament and Local Government elections. It could therefore be argued that certain people detained on mental health grounds and disenfranchised by section 3A should also be allowed to vote. However, it is understood that most people disenfranchised by section 3A are not typically detained for a finite, definite period, but that the period of detention is instead subject to periodic review and may be extended where necessary. For example, a person subject to a CO could be subject to restrictions for six months, with scope for a further six-month extension, after which it could renew annually after review. It is understood that a CORO would not normally feature a set time limit at all. This may make it difficult to draw a direct comparison with those prisoners granted voting rights.

In summer 2022, the [Scottish Mental Health Law Review conducted a consultation](#) that included a question on these voting rights. In September 2022 [the Review concluded in its Final Report](#) (see page 479):

“We think that voting rights should be extended to be people detained under mental health legislation. This is part of the necessary cultural change required to recognise individuals as rights-bearers and tackle the stigma too often associated with mental ill-health.

We recommend:

Recommendation 10.20: That voting rights should be available and the blanket disenfranchisement ended for individuals detained under forensic orders provided for under of the Representation of the People Act 1983 should be ended.

Within 3 – 5 years – appropriate legislation should be introduced, together with a comprehensive communications policy to raise awareness of the change.”

Potential issues

The Government would welcome the views of consultees on the restriction on voting rights set out in section 3A. Applying a 12-month threshold as is now in place for convicted prisoners would appear to raise difficult questions where a person is detained subject to periodic review. On the other hand, removing the restriction set out in section 3A entirely would allow any person detained on the grounds set out in section 3A to vote, potentially including people who have been found guilty in a court of law of serious offences which may have resulted in lengthy jail sentences, if they had not been committed for treatment under the Criminal Procedure (Scotland) Act 1995.

Other franchise matters

Excluding short term visitors such as tourists, asylum seekers are now the main group of foreign nationals aged 16 or over living in Scotland without voting rights. [The Scottish Government and Scottish Green Party - Shared Policy Programme](#) (2021) expressed a shared ambition to extend voting to asylum seekers living in Scotland, but recognised “*the difficulty in achieving that within the current asylum system which would require UK Government cooperation.*”

The question of extending voting rights to asylum seekers was debated during the passage of the Franchise Act. The [Stage 1 Report of the Standards, Procedures and Public Appointments Committee](#) noted the evidence presented by organisations such as the [Scottish Refugee Council](#) and summed up the debate on this issue, recognising the practical barriers to enfranchising asylum seekers and calling on the Scottish Government to urgently examine whether the franchise could be extended to asylum seekers living in Scotland.

It is considered that enfranchising asylum seekers would present a number of practical difficulties, in particular in relation to the integrity of the Electoral Register. Electoral Registration Officers have expressed concern that they would have difficulty in ensuring that entries for asylum seekers were accurate and up to date, in particular where an asylum claim has been unsuccessful. [Home Office data](#) records that around a third of asylum claims were ultimately unsuccessful over the 2018 to 2020 period. The most [up to date figures for 2022](#) (year to June 2022) record that 76% of initial decisions were some form of grant of leave to remain. At the end of June 2022, there were 99,419 UK cases awaiting an initial decision. The situation is further complicated by the potential for asylum seekers in Scotland to move to other parts of the UK. While, for example, [Ireland permits asylum seekers to vote](#) in its Local Government elections, it has responsibility for its own asylum system.

Prisoners serving sentences of over 12 months are also not permitted to vote in elections. [Section 6 of the Franchise Act](#) requires Ministers to report to the Parliament on the operation of prisoner voting by 4 May 2023. As a result, this consultation does not directly address prisoner voting, although any comments consultees might have would be welcome.

Changing the franchise is what is known as a 'protected subject matter'. As a result, any Bill changing the franchise would require at least two thirds of MSPs (supermajority) to vote in favour for the Bill to pass.

Question 21: Should voting rights in Scottish Parliament and Local Government elections be extended to some or all persons detained on mental health grounds related to criminal justice?

Question 22. Do you have any additional comments on voting rights for persons detained on mental health grounds related to criminal justice?

Question 23: Should voting rights in Scottish Parliament and Local Government elections be extended to all people seeking asylum in Scotland?

Implications of UK Elections Act 2022 changes

What has changed?

The UK [Elections Act 2022](#) made a number of changes to elections across the UK. Many of the Act's changes that will only apply in Scotland in relation to elections to the UK Parliament. This includes a requirement for voters to prove their identity in voting, changes to postal voting and changes in relation to people living overseas. The Scottish Government remains opposed to those changes and does not wish to see them adopted for devolved Scottish elections. This chapter therefore discusses the potential implications of those changes.

It is also worth noting that other changes under the Act will apply directly to devolved Scottish elections (Scottish Parliament and Local Government elections). For example, changes in relation to digital imprints are discussed separately in this consultation. Other changes were also made to devolved Scottish elections where the law is reserved to the UK Parliament, such as section 23 concerning financial information to be provided by political parties on applying for registration and sections 24 and 25 prohibiting entities from being registered political parties and recognised third parties at same time. The changes in sections 23 to 25 of the Act are not discussed further in this consultation.

Voter Identification

The Elections Act 2022 introduced photographic voter ID requirements for local elections in England and UK Parliamentary Elections in England, Scotland and Wales. In Northern Ireland voters have been required to produce personal identification before voting in polling stations since 1985, with photographic identification being required since 2003. The requirement for voter ID at UK Parliament elections which are held in Scotland is expected to be in place from May 2023 onwards.

Under this new requirement, voters will be required to show an approved form of photographic identification before collecting their ballot paper to vote at a polling station for UK parliamentary elections in Great Britain and at some other elections in England and Wales. A broad range of documents will be accepted including passports, driving licences, various concessionary travel passes and photocard parking permits issued as part of the Blue Badge scheme. Any voter who does not have an approved form of identification will be able to apply for a free Voter Authority Certificate. [Further information is available on the UK Government's website.](#)

The UK Government considers that this change will reduce the theoretical risk of someone impersonating a voter in order to vote instead of them, this is normally called 'personation'.

Various organisations and individuals have indicated concern about the impact of the introduction of voter ID on voters and have expressed concerns that it could have a disproportionate impact on certain communities.

[Research by the Electoral Commission in 2015](#) found that around 3.5 million citizens (7.5% of the UK electorate) did not have access to photo ID. Requiring photo ID has the potential to discriminate against marginalised groups. [The Electoral Commission's 2021 public opinion tracker](#) found that more disadvantaged groups are more likely to not have ID, including the unemployed (11%), those renting from a local authority (13%) or housing association (12%), as well as disabled people (8%).

The Scottish Government has no intention to introduce ID requirements for devolved Scottish elections. However, the Scottish Government is concerned that the UK Elections Act 2022 voter ID requirements for UK Parliament elections will confuse voters and raise barriers to voting in devolved Scottish elections. Confusion could arise when a voter is required to have ID for a UK Parliament election but not for devolved Scottish elections. There is no evidence of significant electoral fraud to justify voter ID measures in devolved Scottish elections. The Scottish Government is of the view that the requirement to provide photo ID could act as a barrier or disincentive to vote, and this far outweighs the very low risk of fraud taking place.

A further concern which has arisen in relation to adoption of voter ID in Scotland includes pressure on polling station staff in policing the new requirement.

Postal Voting Renewals

Voters can apply for a postal vote for a specific election, a specific period or for all future elections.

However, the Elections Act 2022 introduces a requirement that postal voters for reserved polls in Great Britain (for the purposes of this consultation, effectively UK Parliament elections in Scotland) will only be able to hold a postal vote for a maximum of 3 years, and they will need to make a fresh application for a postal vote at least every 3 years if they wish to continue to vote by post.

The changes in the Elections Act 2022 do not apply to devolved elections in Scotland. Therefore, there is no requirement for anyone who has applied for a permanent postal vote for devolved elections in Scotland to periodically reapply. However, there is an existing requirement that anyone who has a permanent postal vote must provide a new signature every 5 years. This is because individuals' signatures change over time and the signature on record may no longer match an individual's current signature. If an individual refuses or fails to provide a fresh signature, then their name will be removed from the list of postal voters and they will have to vote at a polling station unless they reapply for a postal vote.

The current system for applying for and renewing postal vote signatures works well. While signatures - especially those for younger and older voters - can change over time, the Scottish Government considers the inconvenience to voters and administrators of requiring a new application every 3 years argues against making a change to require people to reapply for a postal vote every 3 years for devolved elections. There is also a risk that having to reapply for a postal vote every 3 years will work as a barrier to registering for a postal vote, particularly for those who find the process of completing forms a challenge. Those with postal votes are more likely to vote than those who vote in person, so the Government is of the view that

maximising the number of voters with postal votes will maximise the turnout at elections.

The Scottish Government does not therefore currently intend to introduce a requirement that those who have a postal vote at devolved elections in Scotland should have to reapply for a postal vote every 3 years.

But the change for UK reserved elections means that voters will no longer be able to make one application for a postal vote in all elections. Instead, they will have to apply every 3 years for a postal vote for UK Parliament elections and refresh their signature every 5 years for devolved elections. This divergence may confuse voters and clear communications will be required to ensure that the public understand that there are different processes for UK Parliament and devolved Scottish elections.

The UK Government is also developing an online system which will allow voters to apply for a postal vote for reserved elections online. The Scottish Government is working with the UK Government to ensure that this system makes clear the different process for devolved Scottish elections, where a paper form will still need to be completed (although it is permissible to submit an image of a completed form by email).

Extraterritorial voting

The Elections Act 2022 modifies the right for British citizens living overseas to vote in UK Parliament elections. It removes the 15-year limit on overseas electors' right to vote in UK Parliamentary elections.

The right to vote when living permanently outside the UK only applies to UK Parliament elections. While removal of the 15-year limit does not apply to Scottish Parliament elections and Scottish Local Government elections there are implications for UK Parliament elections held in Scotland. Scottish Electoral Registration Officers have highlighted that registering voters absent from the UK for more than 15 years could require a significant fact-finding exercise.

The franchise for devolved Scottish elections is based on the principle that people who live in Scotland should be able to vote in Scotland. The issue of voting at devolved elections by those not resident in Scotland for Scottish Parliament and Scottish Local Government elections was considered by the [Scottish Parliament's Standards, Procedures and Public Appointments Committee](#) in its deliberations on the Bill which preceded the Franchise Act. The Committee's Report on the Bill concluded (by a majority) that:

“43. The Committee does not consider that British citizens who had previously been included on the register of Local Government electors and who now no longer live in Scotland should be given the right to vote in Scottish elections. The Committee does not believe that the case for allowing people who do not live in Scotland the opportunity to influence the result of Local Government elections or Scottish Parliament elections is strong enough.”

Some people who are required to live outside Scotland, such as members of the armed forces, Crown servants and British Council employees, and their families, can still register to vote as though they were still resident in Scotland. This exemption does not apply to employees of private companies working outside Scotland unless it is only for a short period.

No change is proposed in this area for devolved Scottish elections.

What does this mean for Scotland?

The Scottish Government considers that the changes made to reserved elections in relation to voter ID and postal voting mean that it would be undesirable for a devolved Scottish election to be held on the same day as an election to the UK Parliament. Were the votes held on the same day, voters could be confused by the need to have proof of identity for one poll but not the other and the different rules on whether they have a valid postal vote.

This concern has informed the Government's wish to explore ways to reschedule devolved Scottish elections if they clash with an election to the UK Parliament, which are explored elsewhere in this consultation. The Government would also be interested in the views of consultees, especially electoral administrators, on practical difficulties in applying the new rules for reserved elections. Would there be merit in some form of presumption against a devolved Scottish election being held on the same day as an election to the UK Parliament? Rather than an outright prohibition, this could take the form of an expectation that, all things being equal, different elections would not occur on the same day.

Question 24: What issues do you think that the changes in the Elections Act 2022 to introduce voter ID and change postal vote renewals raise for elections held in Scotland?

Question 25: Should there be a presumption against a Scottish devolved election being held on the same day as a UK Parliament election (for example, a UK Parliament by-election on the same day as a national Scottish Parliament election)?

Chapter 3 - Scheduling of elections

Postponement of Scottish Parliament and Local Government elections

Date of elections to the Scottish Parliament

The [Scotland Act 1998 sets out the procedures for the holding of Scottish Parliament elections](#). Section 2 requires a Scottish Parliament election to be held on the first Thursday in May in the fifth calendar year following the previous Scottish Parliament election.

There are a number of possible situations in which it might prove necessary for the date of a scheduled Scottish Parliament election to change. One possibility is that a UK Parliament General election is called on the date in question. Under the Scotland Act, this would automatically require a new date to be arranged for the Scottish Parliament election. [The Dissolution and Calling of Parliament Act 2022](#) means that a UK Parliamentary election can be announced at short notice on the decision of the Prime Minister (25 working days following the proclamation dissolving the existing Parliament).

Other possible examples that might require a change in date include a public health emergency or major security incident.

The Presiding Officer of the Scottish Parliament has a limited power to propose a new date for the poll for a Scottish Parliament election which is not more than one month before or after the first Thursday in May. In making any decision the Presiding Officer is obliged to consult the Electoral Commission. Experience in preparing for the 2021 Scottish Parliament election during the coronavirus pandemic has led the Scottish Government to conclude that this power may not adequately cover all possible scenarios requiring a new election date.

Dissolution of the Scottish Parliament

The Scottish Parliament is dissolved in the run up to a Scottish Parliament election. Following dissolution, members of the Scottish Parliament (MSPs) cease to hold office, and the Parliament cannot be re-convened to debate or pass legislation. Government Ministers remain in office. The date of dissolution is normally around 6 weeks before the day of the poll.

However, in the run up to the last Scottish Parliament election, in May 2021, concerns were expressed about what would happen if, once the Parliament had dissolved, an event connected with the coronavirus pandemic (such as a spike or surge of coronavirus infections) potentially endangered the election being safely held on 6 May 2021.

Therefore, just in case such an event occurred, the [Scottish General Election \(Coronavirus\) Act 2021](#) provided that dissolution should take place on 5 May, instead of 25 March, as would normally have occurred. The maximum delay of a month at

the recommendation of the Presiding Officer was not considered to provide sufficient scope to move polling day in response to a significant deterioration in virus conditions. The change to dissolution meant that MSPs stayed in office until the day before the election, and Parliament would have been able to debate and pass an emergency Bill to postpone or alter arrangements for the election if that had been required.

The Parliament went into recess on 25 March 2021 to allow MSPs to participate freely in the election campaign, but this would not have prevented the Parliament from being recalled to sit if required. Parliament was in fact briefly recalled to mark the passing of the Duke of Edinburgh.

While there was no need to postpone the May 2021 Scottish Parliament election, the experience of the potential risk to disruption of the poll has highlighted that the existing arrangements for postponing a Scottish Parliament election are not as robust as they could be.

There is also a concern that with the passing of the Dissolution and Calling of Parliament Act 2022, there is a risk that a UK Parliament election could be called at short notice for a date on, or close to, a scheduled Scottish Parliament election. Prior to the passing of this Act, UK Parliament elections were held on the first Thursday of May every fifth year so in theory at least the dates of scheduled elections were known well in advance. In the event only one scheduled election (2015) took place under the five year terms set by the [Fixed Term Parliament Act 2011](#).

The Scottish Government is opposed to holding different types of election on the same day. In 2007 Scotland-wide Local Government and Scottish Parliament elections were held on the same day. [A report by Ron Gould](#) stated that confusion over the use of different voting systems for each election was considered to have been partly responsible for an increase in the number of spoiled ballot papers. Since then, there has been general agreement that it is undesirable for different types of election to be held on the same day. Changes made by the UK Elections Act 2022 are expected to further increase the desirability of holding different elections on different polling days, as voters in UK Parliament elections will be required at future elections to provide proof of identity when voting, while this will not be required in devolved Scottish elections (see Chapter 2 of this consultation on the changes resulting from the Elections Act 2022).

The Scottish Government is of the view that if a UK Parliament election was called on, or close to, the date of a Scottish Parliament election, then it would be preferable for the Scottish Parliament to be able to meet to discuss the options around any possible postponement of the Scottish Parliament election. This would allow the Parliament to consider the effect of the clash on the Scottish election. A postponement of a month or less under the existing power of the Presiding Officer would mean that the campaign periods for both elections would overlap, potentially confusing voters and risking one election overshadowing the other.

Options

One possible change would be to extend the period by which the Presiding Officer of the Scottish Parliament can seek to move the date of a scheduled Scottish Parliament election. Increasing the period, for example, to two months, would afford greater leeway to avoid an overlap with a UK general election or most unexpected events that might require a change of date. However, July and August are not considered to be ideal months for an election because of the impact of summer holidays. Two months also might not be sufficient in the event of a major event.

Another issue with extending the period by which the Presiding Officer can postpone an election is that it will in most cases increase the amount of time during which the Parliament is dissolved and there is no representation for the public. For example, if Parliament were dissolved in March and an election scheduled for May was postponed to September, it would mean there would be no MSPs or meetings of the Parliament for a period of almost 6 months. This would clearly be entirely unsatisfactory and undemocratic.

The change to dissolution arrangements adopted for the 2021 election meant that the Scottish Parliament was not formally dissolved and MSPs could be recalled up until the day before election. The Parliamentary Bureau also decided when Parliament would go into a pre-election recess prior to the election based on discussions with political parties.

If the temporary arrangements which were put in place for the May 2021 Scottish Parliament election were made permanent this would mean that the Parliament would only be dissolved on the day before the poll at a Scottish Parliament election.

The effect of a change to dissolution would be that MSPs would retain their position, including pay, for an additional 6 weeks but it would allow for the Parliament to be recalled to deal with any emergency, should one arise. An emergency may be related to the election, or it could be something else which requires the attention of the Parliament. This could provide greater flexibility for discussion and agreement on any change of date for a scheduled election and allow a longer delay to occur whilst also allowing Parliament to resume normal business.

However, it is clear that making a change to dissolution in this way would have a significant impact on arrangements for MSPs and Scottish Parliament staff. Pursuing this possibility would require extensive engagement with the parliamentary authorities on the implications of a change to dissolution arrangements. It could also involve an additional cost, in 2021, the MSP and staff salary costs including estimated pensions and national insurance costs of changing the dissolution period to begin on the day before the poll were estimated at £608,263.

It could also be argued that allowing MSPs to retain that status during the election campaign could provide an unfair advantage. In 2021, [Scottish Parliament guidance](#) made clear that Members should not use their MSP status or refer to another Member's status, in any election-related activity. In practice this did not appear to cause difficulties.

The Scottish Government wishes to ensure that there is consensus on any changes to the process for postponing Scottish parliament elections.

There remains the option not to make any change and to rely on legislation to be brought forward to change the date of dissolution as occurred in 2021. However, once dissolution has taken place there is no way to recall MSPs to consider and pass legislation, which is why the Scottish Government wishes to consider possible changes.

Question 26: Do you think that the maximum period by which the Presiding Officer can propose the postponement of a Scottish Parliament election should be extended beyond 1 month?

Question 27: Do you think that the date of dissolution of the Scottish Parliament in the run up to a general election should be changed to the day before the election, allowing MSPs to continue to hold office in case of emergency?

Postponement of Scottish Parliament by-elections.

Why is a change being proposed?

If a constituency seat in the Scottish Parliament becomes vacant, for any reason, an election must be held to fill that vacancy, normally referred to as a by-election. The date of the poll at the by-election is set by the Presiding Officer of the Scottish Parliament and the poll must be held within 3 months of the Presiding Officer being informed of the vacancy.

As mentioned at paragraph 1.4 above, the Presiding Officer of the Scottish Parliament has the power to move the date of a scheduled Scottish Parliament general election by up to one month either side of a scheduled date of poll. However, no such power exists to change the date of a by-election, once it has been set by the Presiding Officer.

Experience of the coronavirus pandemic has led to the suggestion that there would be merit in permitting a late change to the date on which a by-election is to be held. Under the existing rules, this would require an Act of the Scottish Parliament to cancel the original date, once set. The Scottish Government is of the view that there would be merit in allowing the Presiding Officer to change the date set for a Scottish Parliament by-election, should circumstances in the constituency make the running of the by-election on the planned date becomes untenable due to public health concerns or security issues.

The proposal

The proposal is that the Presiding Officer should be given the power to postpone the date of a by-election by up to 3 months, should circumstances mean that the originally selected date is no longer tenable. This power would be similar to the power that the Presiding Officer already has to change the date of a Scottish Parliament general election and could include a statutory obligation to consult the Electoral Commission, and the Convener of the Electoral Management Board and the Returning Officer.

Question 28: Do you think that the Presiding Officer should have the power to change the date of a Scottish Parliament by-election, if it is no longer possible to hold the election on the originally selected date?

Question 29: Do you have any other comments on changing the date of a Scottish Parliament by-election?

Postponement of scheduled Local Government elections.

Why is a change being proposed?

Under the provisions set out in sections 5 and 6 of the Local Government etc. (Scotland) Act 1994, Local Government elections must be held on the first Thursday in May every fifth year. The most recent Local Government elections were held on 5 May 2022 and the next scheduled date is 6 May 2027. Under this legislation, the date of a Local Government elections can only be changed in the following situations:

- if an order is made by statutory instrument not later than 1st February in the year preceding the year in which the election is to be held, in other words, a minimum of 15 months before the date of poll; or
- if a Scottish Parliament general election is to be held between the 11th of March and the scheduled date of the Local Government elections, then the poll at the Local Government elections can be held on the same day.

Outwith the above situations, the only way to change the date of the Local Government elections is by an Act of the Scottish Parliament.

Experience during the coronavirus pandemic has demonstrated that there may be a need to postpone or cancel Local Government elections at shorter notice than currently allowed for under the existing legislation. This postponement could be due to a public health such as a pandemic or security issues. For example, Local Government elections in England were postponed in 2001 due to travel restrictions connected to an outbreak of foot and mouth disease. Since each Local Government election is a separate contest, it would also be possible to postpone some polls in some areas but not others if local issues arose.

The Scottish Government is seeking views on whether a procedure should be introduced which would allow for all Local Government elections to be postponed or elections in an individual local authority area or an individual by-election to be postponed at short notice. Allowing postponement at a local level would allow more flexibility to deal with local issues which may arise without the requirement for an Act of the Scottish Parliament to postpone the election.

. The Scottish Government considers that there should be a maximum limit on the length of any postponement. A one-month limit would be in line with the existing provision for Scottish Parliament elections, although as outlined above there is an argument for a longer period such as two months. However, the Scottish Parliament would still be sitting at the time of a national Local Government election and would be able to legislate for a change in response to special circumstances requiring a lengthy postponement.

The proposal

The Scottish Government is of the view that a similar procedure to that described above for the Scottish Parliament elections should be introduced for Local Government elections.

The dates for scheduled Local Government general elections are set out in statute. For Local Government by-elections, the dates are set by the Returning Officer for the relevant local authority area. The Returning Officer is appointed by the relevant local authority and is normally the Chief Executive of the Council.

The Scottish Government invites views on whether the Convener of the Electoral Management Board for Scotland (EMB) should be given the power to change the date of scheduled Local Government elections, either Scotland-wide or in an individual local authority area. In relation to postponement of by-elections, the Government invites views as to whether a change should be a decision for the Convener of the EMB or for the individual Returning Officer in the relevant local authority area.

In order to allow for independent input into the use of these new powers, the Convener of the EMB could be required to consult with the Electoral Commission and the Scottish Government before making a decision to change the date of a Local Government general election. Similarly, a decision to postpone a by-election could also be subject to a consultation requirement.

Question 30: Do you think that the Convener of the Electoral Management Board should be given the power to postpone national Local Government elections in consultation with the Electoral Commission and the Scottish Government?

Question 31: Should the law allow a Local Government by-election to be postponed, and if yes, who should make the decision to postpone?

- No
- Yes, Returning Officer
- Yes, EMB Convener
- Yes, other

Question 32: Do you have any other comments on rescheduling of elections?

Chapter 4 - Campaigning

Campaigning and Finance

Summary of proposals

- To clarify the legal test for what constitutes notional campaign expenditure
- To restrict spending by ineligible foreign third-party campaigners, unless spending less than £700.
- To explore whether groups must register with the Electoral Commission if spending more than £10,000 across the constituent parts of the UK, but less than the limits in each individual country
- To create an order-making power to allow Scottish Ministers to add or remove categories of eligible third-party campaigners
- To ensure that the Electoral Commission's code of practice for third-party campaigning is extended to include devolved Scottish elections.
- To increase the maximum amount the Electoral Commission can fine people for breaking electoral law.

Background and discussion:

In the UK [Elections Act 2022](#) a number of changes were made to existing campaign and finance laws. These changes only apply to reserved elections although, as noted below, there is also potential application to devolved Scottish and Welsh elections where the regulated spending period for a devolved election overlaps with that for a UK Parliament election. It is the view of the Scottish Government that a number of these changes (see Chapter Summary, above, for an overview) appear to represent an improvement upon existing law. Reflecting these changes in devolved Scottish electoral law may provide consistency and clarity for voters, campaigners, and electoral administrators.

The [Scottish Government did not recommend that the Scottish Parliament give Legislative Consent](#) to the campaign finance provisions in the Elections Act applying to Scottish Local Government and Scottish Parliament elections (referred to as “devolved Scottish elections” in this Chapter) as it was noted that the next national set of elections were not to take place until 2026. As a result there was sufficient time for the Scottish Government to undertake its own consultation on the impact of the campaigning and electoral finance provisions on Scottish Parliament and Local Government elections.

This consultation aims to explore the impacts of extending these changes to devolved Scottish elections. The changes proposed, particularly those affecting third-party campaigners, are intended to help ensure that Scottish elections are free from foreign interference and ensure that voters can transparently see who is funding election campaigns. However, this must be balanced against protecting the important role that legitimate third-party campaigners play in democracies, particularly in sharing a range of information with voters. The proposed changes aim to ensure there is a balance between these aspects of campaigning. Consultees

might like to note that [the Welsh Government is also consulting](#) on election campaign changes in the Elections Act.

The regulated period for election spending before a devolved election falls within the devolved legislative competence of the Scottish Parliament (or Welsh Senedd in relation to devolved Welsh elections). However, the changes made by the Elections Act also apply to devolved elections where the regulated period before a devolved election overlaps or is combined with the regulated period for a UK Parliamentary election. This is because of the interaction of the Elections Act 2022 and the [Political Parties, Elections and Referendums Act 2000](#) (“PPERA”).

Third-party campaigners face a range of reporting and spending limits in other countries. For example, reporting and registration thresholds of €100/£85 (Republic of Ireland), \$13,200/£6800 (New Zealand) to \$14,500/£8,300 (Australia). Australia also has a higher tier of registration for significant third-party donors spending over \$250,000.

Initially, it was proposed that the UK Elections Act would include further campaign finance provisions that did not appear in the final Act. One such provision was to restrict co-ordinated spending between third-party campaigners and political parties. This was removed after opposition parties raised concerns about the impact on trade unions. That restriction is not being proposed as part of this consultation.

In addition to responding to the changes in the UK Elections Act 2022, the Scottish Government is keen to explore views on the current maximum civil sanctions available in Scottish elections. The Electoral Commission has powers under PERA and the Referendums (Scotland) Act 2020 to apply civil penalties for electoral offences – these can include mandatory action to prevent future breaches or restore normal conduct after a breach, as well as monetary penalties.

For referendums in Scotland, the maximum fine the Electoral Commission can give out to those breaking electoral law is £500,000, which is higher than the maximum for elections. Currently, the highest amount of fine that can be given in Scotland for breaches of elections law is £10,000. This would apply to anyone breaching electoral law in devolved Scottish elections, not just third-party campaigners. The Electoral Commission has previously suggested that a change in this area should be considered (see paragraphs 32 to 34 of the [Electoral Commission’s written evidence on the Scottish Elections \(Reform\) Bill](#)). The Scottish Government is seeking views on whether these fines should be standardised at £500,000, whether a lower penalty for offenses in elections is appropriate to the different circumstances of this event versus a one-off referendum vote, or if another limit should be set. Some smaller parties and campaigners have noted that they would be disproportionately affected by such large fines. However, the [Electoral Commission’s guidance on enforcement](#) emphasises that proportionality is a key factor they take into account when laws are breached.

On civil sanctions, the Electoral Commission has expressed interest in standardising the maximum fine they can impose for breaches of election spending rules for political parties or registered non-party campaigners. This is partly to clarify the existing rules, so that all offenses are understood to be equally serious, but also to

reflect the amounts of money major parties and non-party campaigners raise and spend at elections and provide a suitable deterrent for non-compliance. Concerns have been raised that the current limit in Scotland of £10,000 is too low to deter large parties and campaigners from breaking electoral laws.

Changes being consulted upon:

To update the legal definition of notional expenditure in Scottish elections, so that when candidates are given goods or services for free or at a discount, the full value must appear in the candidate's financial returns. The goods or services are only required to be reported when specifically agreed by the candidate or their agent. This means candidates/agents do not need to declare spending they had no knowledge about (e.g. political party posting flyers without the candidate's consent or knowledge), even when the spending may have been to their benefit. This definition of notional spending was clarified in the UK Elections Act. Introducing the same wording to apply to devolved Scottish elections will help ensure the rules are clear and consistent for campaigners and candidates. Because of the interaction of the Elections Act 2022 and PPERA, this change will already apply to a devolved Scottish election where it occurs within 12 months of a UK Parliament General Election.

To consider whether third-party campaigners should be required to register with the Electoral Commission if, during the period before an election, they spend more than £10,000 across the constituent parts of the UK, but less than the individual thresholds in each nation. This would impact, for example, campaign groups wishing to campaign in both Scottish Parliament and Welsh Senedd election periods taking place simultaneously. It would, for example mean that third-party campaigners spending more than £10,000 across multiple countries within the UK (e.g. £9,000 in Scotland and £5,000 in Wales) would be obliged to register with the Electoral Commission. Because of the interaction of the Elections Act 2022 and PPERA, this change will already apply to a devolved Scottish election where it occurs within 12 months of a UK Parliament General Election.

To ensure that overseas campaigning for Scottish Parliament and Local Government elections is restricted by significantly reducing the spending limit for non-UK campaigners. [Section 26 of the Elections Act 2022](#) changed this limit to £700 during regulated periods for reserved elections. This means that only campaigners that are eligible to be registered with the Electoral Commission are able to spend more than £700.

To create an order-making power for Scottish Ministers to make additions, remove or change the categories of eligible third-party campaigners. In order to remove or change a category, the Electoral Commission must have first recommended the change. This approach would match that taken in the Elections Act 2022 and is intended to allow Scottish Ministers to quickly add legitimate categories of campaigner that are not currently on the list. By only being able to remove or change categories following a recommendation by the Electoral Commission, a safeguard is introduced that would prevent Ministers from removing legitimate categories of campaigner for political purposes.

To allow the Electoral Commission to provide a code of practice on controls relating to third parties. Currently, the Commission is compelled to provide this code of practice in relation to reserved campaign expenditure, and a change could extend this to Scottish Parliament and Scottish Local Government elections. The intention is that each of the above proposed changes to campaigning and finance legislation are consistent across reserved and devolved elections, and as the Electoral Commission already provides a code of practice, this should not substantially increase their workload.

To address the maximum level of fines the Electoral Commission can impose for electoral offences, either standardise maximum fines at £500,00 for all electoral events or consider specific limits for elections distinct from referendums in Scotland.

Question 33: Do you think that the language clarifying the definition of notional spending adopted in the UK Elections Act 2022 should also apply to Scottish devolved elections?

Question 34: Do you think that third party campaigners should have to register with the Electoral Commission if they spend more than £10,000 across the whole of the UK, even if they spend less than £10,000 in Scotland?

- The £10,000 registration threshold should apply to devolved elections across the UK
- The £10,000 registration threshold should apply to Scottish devolved elections only
- I have another view on the registration threshold

Question 35: Do you think that the spending limit should be reduced to £700 for overseas based third parties that are ineligible to register with the Electoral Commission?

- The spending limit should be reduced to £700
- The spending limit should remain the same (£10,000)
- I have another view of the spending limit

Question 36: Do you think that an order-making power for Scottish Ministers should be introduced which allows them to add, change, or remove categories of third-party campaigners? A recommendation by the Electoral Commission would be required before a category of third-party campaigners could be changed or removed.

Question 37: Do you think that the Electoral Commission should be able to provide a code of practice on third party expenditure in Scottish devolved elections?

Question 38: Do you think the maximum fine the Electoral Commission should be able to impose for breaches of electoral law in Scottish elections should:

A – Rise to £500,000, so it is in line with the maximum fine for referendums

B – Be set at another amount (please specify the amount below)

C – Remain unchanged at £10,000.

Digital imprints

Why is a change being proposed?

An imprint contains details on election campaign material (leaflets, campaign messages etc.) that show who has produced, promoted and, in certain circumstances, paid for the material. Imprints are required on printed devolved Scottish election and referendum material and serve to promote transparency about what is campaign material and who is doing the campaigning.

Requiring an imprint helps to ensure ownership in relation to campaign material by making campaigners responsible for their communications and improves voter confidence. The imprint regime also helps the Electoral Commission and the police to enforce spending rules by making it easy to identify those who are responsible for material.

In 2014, Scotland became the first part of the UK to require imprints on digital campaign material, with rules applied to the 2014 Independence Referendum. [In 2020, digital imprint rules were applied to all Scottish Parliament and Local Government elections.](#)

Prior to these changes, the requirement for an imprint on campaign material to identify campaigners at elections only applied to printed material, such as leaflets and posters. Campaigners had to include a description to identify who they were and on behalf of whom they were promoting campaign material.

At the 2021 Scottish Parliament elections and the 2022 Scottish Local Government elections an imprint was required on all online campaign material which promoted one or more candidates or registered political parties, one or more parties who supported (or who did not support) particular policies or candidates who held (or who did not hold) particular opinions or supported particular policies. The controls on digital material mirrored those for printed election material which fell within these categories.

In order to encourage free participation in the democratic process, an exemption to the requirement for an imprint was included for material which only expresses an individual's personal opinion and is published on their own behalf and on a non-commercial basis. This personal opinion exemption does not extend to direct participants in elections such as the candidates and other political entities.

The Feedback on the operation of the rules was positive for both elections. The Electoral Commission's [Report on the 2022 Local Government elections](#) concluded that:

“Candidates understood the new laws on the requirement for digital imprints on their campaign material but concerns continued to be raised around printed material” and reported that “Nearly nine out of 10 (88%) respondents agreed that they understood the requirement to include imprints on digital campaign material, compared to 5% who disagreed. A smaller majority (72%) agreed that it was easy to meet these requirements, with almost one in 10 (8%) disagreeing. 70% agreed that digital imprint requirements improve the

transparency of digital campaigning, while 7% disagreed and 17% said they neither agreed nor disagreed.”

The UK [Elections Act 2022](#) contains digital campaigning measures which apply to all elections and referendums in the UK, including Scottish Parliament and Scottish Local Government elections. The Act introduces a new digital imprints regime requiring anyone paying for digital political material to be advertised to explicitly show who they are and on whose behalf they are promoting the material. Paid-for material is where a payment is made for the material to be published as an advertisement. The content must also meet one of the purposes set out in [section 43 of the Elections Act](#). These purposes include influencing members of the public to support or withhold support from a political party, parties who advocate particular policies, candidates, future candidates, elected officeholders and the holding or outcome of a referendum in any area of the United Kingdom. This requirement applies all year round.

Certain campaigners (registered political parties, candidates, future candidates, recognised third-party campaigners, referendum campaigners, holders of elected office and recall petition campaigners) are also required to include an imprint on their other electronic material if it constitutes digital election, referendum or recall petition material. Aspects of this requirement apply at all times, unlike the legislation for devolved Scottish elections which is most relevant when there is an election or referendum in progress.

The Scottish legislation and the UK legislation are similar, with both sets of rules requiring an imprint on material produced by certain specified persons such as candidates. However, there are some differences. For example, some of the provisions in the UK Elections Act 2022 apply at all times, not just in the run up to an election. Also, the Scottish legislation’s requirement for an imprint applies to anyone who is promoting the success of a candidate(s) or political party (parties), not just those listed in the Elections Act 2022, unless it is published on the individual’s own behalf on a non-commercial basis and only expresses their own opinion.

The UK-wide regime applies to anyone that pays for material to be published as an advertisement. In addition, the Elections Act requires that certain political entities also include an imprint on their other electronic material. Members of the public, unless they pay to advertise material within the scope of the regime or are one of the specified political entities requiring an imprint on their other electronic material, will never require an imprint under the UK-wide regime.

The operation of two separate imprint regimes covering devolved Scottish elections would be likely to lead to confusion. The Scottish Government is concerned that this confusion around who may or may not be liable to be prosecuted is not in line with natural justice and believes that the position of individuals who may be partaking in political debate on social media needs to be clarified.

The proposal

Unfortunately, options are limited in this area as a result of the scheme set out in the Elections Act 2022 applying to all elections and campaign activity in the UK.

The Scottish Government considers that it would be too confusing for all aspects of the existing digital imprints scheme for the devolved Scottish elections to continue to apply alongside the Elections Act 2022 measures. There therefore appear to be two options: (i) Option A, a complete repeal of the Scottish provisions and (ii) Option B, a partial repeal, with some aspects of the Scottish regime preserved where it is considered that they could operate alongside the Elections Act provisions.

Option A

The simplest and clearest option is to simply revoke the existing Scottish Regulations and rely solely on the provisions of the Elections Act 2022.

Both sets of rules largely exempt members of the public from having to include an imprint when expressing their views online. However, there are some differences in how each regime goes about doing that. The Scottish Government is interested in the views of consultees on this option and, in particular, how it might operate in relation to material that is not paid for. The Elections Act scheme applies to other, more 'organic', campaign material where it is promoted by (or on behalf of) a registered party, a registered third party, a candidate or future candidate, an elected office holder, a referendum campaigner or a recall petition campaigner. The current Scottish Government regulations apply to anyone who is publishing campaign material on a non-personal basis. For example, the Scottish rules could potentially apply to a social media influencer promoting a candidate, party or policy without having been asked or paid to do so. The views of consultees are invited on the implications of relying entirely on the Elections Act 2022 provisions. This would mean that individuals other than those mentioned above not be required to include an imprint, unless they pay to promote their material as an advertisement or unless they are promoting other electronic material on behalf of those political entities mentioned above.

The advantage of this option is that the whole of the UK will be covered by the same requirement, and it would reduce the risk of confusion around what provisions apply where and when.

Option B

This option would involve revoking the Scottish Regulations and replacing them with a new set of regulations designed to preserve specific aspects of the current regime that are considered to serve a useful purpose. For example, some provision could be made in relation to individuals using social media to promote candidates, policies or political parties as discussed under Option A. This would, effectively, apply additional rules on top of the position for the rest of the UK set out in the Elections Act.

Whilst this option would retain the elements of the Scottish Government's current regulations, it would still run the risk of confusion with individuals, particularly those

based outside Scotland, who may not be sure which legislation applies to which election. For example, the Elections Act 2022 provisions would apply to all elections and referendums in Scotland, but the additional Scottish Regulations would only apply to Scottish Parliament and Local Government elections.

Question 39: Do you think that the Scottish Government should revoke its own regulations for digital imprints and rely on the provisions of the Elections Act 2022?

Question 40: Do you have any further comments on digital imprints?

Chapter 5 – Administration and Governance

Reviews of electoral boundaries

Boundaries setting legislative process

Boundaries Scotland is an independent Commission responsible for reviewing and making recommendations for constituencies and regions for the Scottish Parliament; the number of councillors on each council in a Local Government area; the number of wards for Local Government elections and their boundaries; and the extent of council areas.

The [Scottish Elections \(Reform\) Act 2020](#) removed the discretionary power for Scottish Ministers to modify or reject Boundaries Scotland's proposals when making secondary legislation to implement the proposals. Ministers previously had discretion to modify or decide not to implement changes. Instead, Ministers were required to lay orders without having a say but those orders would only be passed if the Scottish Parliament voted to approve them. Changes were also made in 2020 to make legislation implementing Local Government boundary changes subject to parliamentary approval. These changes followed a Scottish Government consultation on boundary reviews in 2017 where 75% of those responding to the relevant question considered that the Scottish Parliament should be able to challenge the recommendations of the Boundary Commission on Scottish Parliament constituencies and council wards.

In the responses to the consultation, there was a commonly expressed view that independence and impartiality were crucial to the boundary setting process in order to protect against political interference or 'gerrymandering'. There was, though, a range of views on what constituted 'independence', and the type of arrangements that would deliver the required level of independence.

There was also a widespread view that the work of the Commission should – like the work of all public bodies – be transparent and open to scrutiny, and subject to challenge where justified by the evidence or where due process had not been followed. There were differing views on the form that scrutiny and challenge should take, with some suggesting this should be provided by the Scottish Parliament or Scottish Ministers, and others suggesting it should come from outwith Parliament and / or the Government.

UK and International practice:

Following changes made under the Parliamentary Constituencies Act 2020, UK constituency boundaries are no longer subject to specific parliamentary procedure and are approved automatically (this is referred to below as 'automaticity'). In Wales, the Special Purpose Committee on Senedd Reform has recently recommended to the Welsh Government, in its [Report on Senedd Reform](#), that boundary recommendations should be implemented without a requirement for Senedd approval. [Similar processes are used in Australia](#) and [New Zealand](#), where parliament and ministers have no role in approving recommendations.

The Scottish Government wishes to consult on whether further changes to the boundary-drawing process could be made to ensure non-partisan consideration of boundary proposals.

Why a change is being proposed:

The removal of ministerial discretion in modifying or rejecting Boundaries Scotland reviews in the Scottish Elections (Reform) Act removed a potential opportunity for political interference. Making further changes to restrict the ability of parliamentarians to exert political influence over the boundary-setting process is a potential further step.

The change that was made in the 2020 Reform Act has not fully achieved the goal of preventing political considerations from coming in to play. As required by the Islands (Scotland) Act 2018, Boundaries Scotland carried out reviews of all six local authorities with islands and made their recommendations for change in 2021. After Ministers laid the relevant measures, two reviews were rejected despite it [being acknowledged by the Local Government, Housing and Planning Committee](#) that Boundaries Scotland had followed the methodology set out in the legislation.

Under the current process Ministers are required to ask Boundaries Scotland to carry out a further review. It was not possible for them to do in time for the changes to be implemented for the 2022 Local Government elections so this matter is outstanding and can be seen as another aspect of the process that does not work well.

The same process will be followed for the Scottish Parliament review of constituency and regional boundaries which was announced in autumn 2022 and will be completed by Boundaries Scotland by May 2025. Under current arrangements MSPs will be asked to vote on the constituency and regional boundaries for their own seats. This gives rise to a potential conflict of interest or at least the perception of one.

Changes being proposed:

Any change in process could apply to reviews of both Local Government and Scottish Parliament boundaries in order to keep a consistent approach between both processes. Since the commencement of the review of Scottish Parliament Boundaries was recently announced, it is not desirable to bring in changes when the review has already commenced (the completion deadline for the review is May 2025). However, any change agreed could be brought in for before the next Scottish Parliament review.

There are a range of approaches in drawing and approving boundaries taken across comparable democracies. There are several options for ways that Scotland could reduce the risk of political interference in the process, with some possible options set out below. It can be noted that there was a similar process for UK parliamentary reviews up until 2020 when they moved to a form of automaticity following a number of UK Parliament reviews not having been enacted and the boundaries being increasingly out of date.

Option 1:

To remove the requirement for Ministers to instruct Boundaries Scotland to conduct a review should their proposals be rejected by Parliament (as per [section 17A of the Local Government \(Scotland\) Act 1973](#)), and [section 6 \(paragraphs 4 to 4D\) of schedule 1 of the Scotland Act 1998](#).

This would avoid the risk of ongoing cycles of reviews should the Parliament not be able to agree to the proposed changes, while accepting that the Commission has followed the methodology set out in legislation. However, should no further review be conducted, the existing boundaries would become increasingly outdated. The initial report submitted by Boundaries Scotland would then be either accepted or rejected.

This option changes the current process the least. While it removes the risk of an ongoing cycle of legislation being laid to implement Boundaries Scotland proposals and then being rejected, it does not address the wider issue of boundaries becoming increasingly out-of-date if reviews are rejected.

Option 2:

To add a provision to [section 17A of the Local Government \(Scotland\) Act 1973](#)), and [section 6 of schedule 1 of the Scotland Act 1998](#) which would only allow Parliament to reject or recommend changes to a Boundaries Scotland report if there were concerns that statutory guidance or duties had not been followed. This would allow Parliament to retain a limited scrutiny role in the process, while removing an avenue for potential political interference.

This approach would be unusual. Scottish Parliament Committees are not normally restrained in their scrutiny of legislation in such a specific and directed way.

Option 3:

To change the boundary-setting process to full automaticity. Legislation would immediately implement any reviews conducted by Boundaries Scotland, without Parliament or Ministers having any opportunity to object. If it were believed that Boundaries Scotland had not upheld its legislative duties, legal challenge would be required to contest a report, or legislation introduced to overturn the process.

Automaticity was adopted for the setting of new UK Westminster constituency boundaries in the Parliamentary Constituencies Act 2020. The Boundary Commissions submit their final reports to the Speaker of the House of Commons (who is the Chair of the Boundary Commissions), who lays the reports before Parliament. A draft Order in Council giving effect to the recommendations is submitted to His Majesty in Council as soon as reasonably practicable (and in any case within 4 months). MPs do not debate or vote on the recommendations, limiting political influence over the process. If Parliament disagreed with the reports, legislation would have to be introduced to overturn the current process, or a legal challenge would have to be submitted.

This approach also closely follows the process used in New Zealand's national constituencies. In the New Zealand model, the boundaries reports are carried out by an independent commission with two political appointees – one representing the Government and one representing the opposition. This level of automaticity is also seen in the drawing of Australian federal constituency borders; however, objections are considered by an augmented committee of boundaries and electoral commissioners.

Automaticity prevents situations where politicians can frustrate or amend the process to gain a political advantage. Automaticity ensures that boundaries are drawn in line with set methodology, and that legislators being unhappy with changes made does not result in undue influence over the process.

The Commissioners that make up Boundaries Scotland are impartial experts who operate independently of the Scottish Government and Scottish Parliament. Commissioners are appointed by Scottish Ministers, with a recruitment process overseen by the Independent Standards Commissioner. This process ensures that the Commissioners, who are responsible for the re-drawing of boundaries, are not making decisions on the basis of political pressure and can act independently.

Question 41: Do you think the process for approving boundary changes should be changed, and which of the options set out above would you prefer?

- No change
- Option 1
- Option 2
- Option 3
- Other option

Question 42: Do you have any further comments on this topic?

Governance - the Electoral Commission in Scotland

The Electoral Commission in Scotland - background

The [Electoral Commission](#) is the independent body which oversees elections and regulates political finance in the UK. It was set up in 2000 by the [Political Parties, Elections and Referendums Act 2000](#) (“PPERA”). The Commission works to promote public confidence in the democratic process and ensure its integrity.

The Electoral Commission operates UK-wide but is also accountable to the Scottish Parliament for its work on Scottish Parliament and Scottish Local Government elections (referred to as “devolved Scottish elections” in this Chapter). This includes providing guidance to Electoral Registration Officers and Returning Officers, setting performance standards and measuring performance against those standards. [The UK Parliament’s Speaker’s Committee on the Electoral Commission](#) has an oversight role in relation to the Electoral Commission’s activities on a UK-wide level. The Electoral Commission is required by [PPERA](#) to submit to the Speaker’s Committee an annual estimate of income and expenditure and every five years a plan setting out its aims and objectives. Both the five-year plan and the estimate of income and expenditure are subject to the approval of the Speaker’s Committee.

Role of the Scottish Parliament

The [Scottish Elections \(Reform\) Act 2020](#) (“the Reform Act”) made a number of changes in relation to the funding and accountability of the Electoral Commission and the Codes of Practice through which the Commission can provide guidance to candidates, political parties, campaigners and those involved in electoral administration. A key change in the Reform Act was for the Scottish Parliament to fund the Commission for its work related to Scottish Parliament elections and Local Government elections in Scotland. The Act retained the role of the Speaker’s Committee in Electoral Commission oversight and created a structure for the Scottish Parliamentary Corporate Body to report to the Speaker’s Committee on the Commission’s five-year plan. The Commission must also submit an annual estimate to the SPCB by end September each year requesting funding for its devolved functions.

The Reform Act requires the Commission to submit a plan related to the Commission’s devolved Scottish functions to the Scottish Parliamentary Corporate Body (the “SPCB”). The SPCB

- a) must examine each plan submitted to it in so far as the plan relates to the Commission’s devolved Scottish functions
- b) must decide whether it is satisfied that the plan is consistent with the economical, efficient and effective discharge by the Commission of their devolved Scottish functions, and
- c) if it is not so satisfied, may recommend such modifications to the plan as it considers appropriate for the purpose of achieving such consistency.

The SPCB must, after concluding its examination and making any recommendations report to the Speaker's Committee on its findings and its recommendations (if any) and lay the plan before the Scottish Parliament.

The Commission was also required, as soon after the end of each financial year as may be practicable to prepare and lay before the Scottish Parliament a report about the performance of the Commission's devolved Scottish functions during that financial year.

Arrangements in Wales

[Senedd Cymru legislated in 2020](#) to set out arrangements for funding and oversight of Commission's functions in relation to devolved Welsh elections. It created a similar structure to that adopted in Scotland in relation to the Commission's five-year plan in relation to devolved Welsh elections and devolved Welsh referendums.

The Welsh legislation went further than the scheme set out in the Reform Act by requiring the Commission to prepare a report about the performance of the Commission's functions in relation to devolved Welsh elections and devolved Welsh referendums during that financial year and lay it before Senedd Cymru. It also made more detailed provision requiring the [Llywydd's Committee](#) (which scrutinises the Electoral Commission's financial estimates and five-year plans as they relate to the exercise of the Commission's functions in relation to devolved Welsh elections and referendums) to report to Senedd on its oversight of the Commission and its scrutiny of financial estimates submitted by the Commission on its spending.

The Scottish Government is interested in views on the role of the Scottish Parliament in relation to oversight of the Electoral Commission's activities in relation to devolved Scottish elections and referendums. Views are invited on whether the oversight role should be expanded. One potential option could see a subject Committee of the Scottish Parliament consider the Electoral Commission's activities in relation to devolved Scottish elections and referendums.

Question 43: Should the Scottish Parliament take a greater role in oversight of the Electoral Commission's devolved activities? For example, the Electoral Commission's devolved activities, including their spending plans, being scrutinised by a Scottish Parliamentary Committee.

Question 44: Do you have any additional comments on the oversight of the Electoral Commission's activities in relation to Scottish Parliament and Local Government elections?

Developing the role of the Electoral Management Board

The Electoral Management Board - background

Responsibility for organising and conducting elections in Scotland sits with Returning Officers (ROs) who are appointed to that role by their Local Authority. There are 32 ROs in Scotland, one for each Authority, and, in most cases, they occupy the post of Chief Executive, but this is not a legal requirement. The Electoral Management Board for Scotland (the EMB), which is made up of a number of ROs and Electoral Registration Officers (EROs) from across Scotland, leads, advises and supports their colleagues in delivering elections and referendums. EROs ensure that electoral registers and lists of absent voters are as accurate and complete as possible, ensuring that everyone who is eligible and wants to vote is able to do so

The EMB was created by the Local Electoral Administration (Scotland) Act 2011 (the 2011 Act). It was created to better support electoral administration and co-ordinate the administration of Local Government elections in Scotland. The role of the EMB was expanded in 2020, when its general functions were extended to include co-ordinating the administration of Scottish Parliament elections. The Convener of the EMB was also granted power to issue directions to ROs about [how best to conduct Scottish Parliament elections](#).

The EMB is unique in the United Kingdom, with no other nation operating a similar body. The Electoral Commission's report on the 2021 Scottish Parliament election noted the value of the directions issued by the Convener ahead of that election, and that most respondents to the Commission's electoral administrator survey welcomed the support and guidance from the EMB. The Commission concluded that:

“The Electoral Commission and Scottish Government should work with the EMB to support its development and to ensure effective alignment of responsibilities and activities across the different organisations.”

The Welsh Government's October 2022 [Electoral Administration and Reform White Paper](#) advocates creation of an EMB for Welsh devolved elections.

Should the role of the EMB be expanded?

The role of the EMB was limited at the time of its creation. The Scottish Government made the following statement in the Policy Memorandum for the Bill that resulted in the 2011 Act (at paragraph 10):

“Where necessary to ensure co-ordination the convener will have the power of direction over local returning officers and electoral registration officers. In practice it is likely that this power will be exercised only in limited circumstances and where other options for resolving issues have been explored and exhausted.”

That Policy Memorandum also noted (at paragraphs 17-19) discussion over the possible creation of a post of Chief Returning Officer for Scotland, responsible for

issuing directions, coordinating and overseeing all aspects of the electoral processes for Scottish Parliament and Local Government elections. As a comparison, the Memorandum noted role of the Chief Electoral Officer for Northern Ireland in administering all elections and compiling the register of electors. However this approach was not pursued and the EMB was set up as a statutory committee.

Since 2011, the role of the EMB in the planning, preparation and delivery of elections has grown. Its actions have included:

- a) Directions / recommendations to ROs and EROs to support consistency across Scotland;
- b) A single point of contact for other stakeholders including political parties, parliaments, governments, Royal Mail and Police Scotland;
- c) Specific advice and guidance for ROs facing local challenges; and
- d) A source of expertise to input to Government policymaking around electoral issues.

In particular, preparations for the Scottish Parliament Election in May 2021 in pandemic conditions emphasised this change, with Returning Officers, Electoral Registration Officers, Government and MSPs all relying on the advice, support and direction of the EMB and its Convener. The 2021 election saw substantial leadership by the EMB. The Convener was central to discussions which informed the contents of the Scottish General Election (Coronavirus) Act 2021, which set out a number of possible options including postponement of the election and polling being held over multiple days. This had been informed in turn by EMB guidance issued during the successful holding of Local Government by-elections in autumn 2020: the holding of these by-elections in pandemic conditions was widely considered to have assisted planning for the Scottish Parliament election in May 2021. The Convener of the EMB was a statutory consultee and supported the decision making process for ROs who postponed Local Government by-elections under the Coronavirus Act 2020.

Resourcing

The costs of the EMB are met by the Scottish Government including funding the post of Secretary and administrative staff as required. Consultants can also be commissioned for specific projects such as drafting guidance. The City of Edinburgh Council has hosted the EMB since it was established and this has helped to keep overhead costs low. Running costs currently are under £200k per annum.

The Convener receives no remuneration apart from expenses. They undertake the work in addition to all their other duties as a local authority Chief Executive. The time required to fulfil the role has increased due to the success of the EMB. During the run up to elections, the Convener and Secretary can find themselves under intense pressure as they must balance the work of the EMB in supporting the electoral community across Scotland with their own local responsibilities and duties.

If the demand for support and co-ordination is going to be met it could be argued that the role and structure of the EMB should be updated.

Although changes in 2020 expanded the role of the Convener to allow the issuing of directions in relation to Scottish Parliament elections (building upon the existing

power to issue directions in Local Government elections), a wider review of the role of the EMB has not occurred. The Government is interested in the views of consultees on whether or not the EMB's role should be extended.

Establishing the EMB as a body in its own right would increase running costs. We are interested in views on whether there are opportunities to offset costs through savings and efficiencies or other benefits, for example, if the EMB was able to enter into nationwide contracts on behalf of local authorities. The Electoral Commission's report on the 2022 Local Government elections highlights the issues ROs encountered in recruiting staff. The EMB could enhance its co-ordination role and look to ways to support ROs and their teams and reduce costs.

The EMB has operated well for over 10 years, and it could continue in the same way with the same powers. The Government would like to know if consultees consider that retaining the current arrangements may limit its ability to offer the support and co-ordination ROs and their teams would like to see as they face challenges on many fronts. An EMB with an expanded remit and increased capacity could also offer more training to ROs and their teams including mentoring and upskilling younger members of staff to replace those who are retiring or leaving. The Government is also interested in possible changes that could help to ensure that the EMB continues to operate successfully in the future.

Two main options have emerged, but we welcome any suggestions in addition to these options:

- Setting up the EMB as a public body with the ability to provide additional support to enter into contracts and to pay for the time of the Convener and additional staff which would be required.
- No change option given the success of the current model.

Any change in relation to the role of the Convener of the EMB would have to take into account that the Convener [is also the Chief Counting Officer for referendums held under the rules set out by the Referendums \(Scotland\) Act 2020.](#)

Deputy Convener of the EMB

While the Convener can currently nominate a deputy who could act in the event of the Convener being incapacitated, that person would not have the power to issue directions. Scottish Ministers would have to make one of the ROs on the Board the Convener in order for them to make directions even if the Convener was incapacitated for a short time but at a time when directions were required. It would therefore seem to make sense to introduce a statutory role of Deputy Convener with authority to exercise the Convener's power of direction in the event of their incapacity.

Question 45: Do you have any views on the role and structure of the EMB?

Question 46: Should a Deputy Convener post be established, with power to exercise the functions of the Convener of the EMB if they are unable to act?

You said, we did

The Scottish Parliament gained new powers over elections in the Scotland Act 2016 and the relevant powers were commenced in 2017. The laws and rules for running elections often date back many years and can be difficult to understand. Scottish Ministers were, and remain, keen to explore possible improvements in electoral law. In late 2017, the [Scottish Government carried out a public consultation](#) to explore options for reforming and modernising electoral processes in Scotland. The consultation contained 25 questions. It discussed and sought views on:

- how often elections should be held
- who runs elections and how they are run
- who can register and vote in elections in Scotland
- ways of improving the accessibility of voting and elected office

The consultation ran from 19 December 2017 to 29 March 2018 and received 911 responses – 844 (93%) from individuals and 67 (7%) from organisations.

[An analysis of the consultation responses is available here.](#)

How often elections should be held

The 2017 consultation asked for views about whether Scottish Parliament and Local Government electoral terms (which at that time operated on four-year cycles) should be four years, five years or some other length. Respondents were divided in their views on this question, with 50% favouring five-year terms and 44% favouring four-year terms. The remaining 6% of respondents selected 'other length' ranging from 3 to 10 years.

Those favouring five-year terms thought this length of term would support effective government, help avoid clashes with UK Parliament elections, which were also on a 5-year cycle at that time, and reduce voter fatigue. Those favouring four-year terms thought this shorter period would support scrutiny, lead to greater accountability, and help keep the electorate engaged in the democratic process. Respondents offered a range of views on the advantages and disadvantages of avoiding electoral clashes, and of operating fixed electoral terms.

Due to clashes with UK Parliamentary Elections, the Scottish Parliament and Local Government had experienced two consecutive terms of 5 years. In the end 5-year terms were chosen since opinion was split. The change was made in the Scottish Elections (Reform) Act 2020 and the next Scottish Parliament election will take place in 2026 and the next Local Government elections in 2027.

Who runs elections and how they are run

Electoral Management Board

The consultation asked whether the Electoral Management Board for Scotland (EMB) and the Board's Convener should be given the same functions in Scottish Parliament elections as they already had for Local Government elections. A large

majority of respondents (86%) agreed with this proposal. Respondents discussed (i) the positive contribution of the EMB in running Scottish Local Government elections; (ii) the importance of individuals and organisations involved in running elections being (and being seen to be) independent; (iii) governance arrangements for the EMB; and (iv) possible other duties and responsibilities which the EMB should take on.

As a result of such strong support, the Convener of the EMB was given by the Scottish Elections (Reform) Act 2020 the same statutory functions for Scottish Parliament elections as they already had for Local Government elections. One of these functions included the power to issue directions to Returning Officers and Electoral Registration Officers. This proved very valuable in providing support and direction in running the Scottish Parliament election 2021 during the pandemic. The EMB also played a vital role in the running of the Local Government elections in 2022. We now feel it is an appropriate point at which to consult on how the role of the EMB might be further developed.

Role of Returning Officers

Respondents were also asked for their views in relation to the appointment, role and remuneration of Returning Officers (ROs) in Scottish Parliament elections. Returning Officers are appointed on a personal basis by their council, undertaking the role for both Local Government and Scottish Parliament elections (usually it is the local authority chief executive but does not have to be). A large majority of respondents (86%) thought that the RO appointment for Scottish Parliament elections should continue to be made on a personal basis. Respondents emphasised the importance of the RO role being independent, free from ‘political interference’ (real or perceived) and accountable to the courts.

Respondents were divided in their views about whether the role of the RO should become part of the job description of local authority chief executives: 36% said ‘yes’ and 64% said ‘no’. Those in favour thought this arrangement would: (i) represent good value for the taxpayer; (ii) allow local authority chief executives to delegate the work involved to other staff in the local authority as they do for their other duties; and (iii) ‘regularise’ what is, in most cases, already current practice.

Those who were opposed thought this arrangement would: (i) compromise the independence of the RO; (ii) cause problems regarding the employment of temporary election staff; and (iii) remove the flexibility of local authorities to appoint the most appropriate person for the role – which may not necessarily be the chief executive.

In recognition of the strong support for the RO role to remain unchanged, no change was made. However, a review of Returning Officers fees was undertaken. The Local Government and Communities Committee published a [Report on Payments to Returning Officers in Scotland](#) in 2017.

Agreement on a revised level of fees was reached before the Scottish Parliament election in 2021 but the change was not implemented because of the impact of Covid-19.

Ballot papers

The consultation put forward proposals for removing the then legal requirement for candidate addresses to appear on ballot papers in Local Government elections. Two-thirds of respondents (64%) agreed with this proposal, and one-third (36%) disagreed. Those in favour of including candidate addresses on ballot papers thought this was important for local democracy and accountability. Those in favour of removing candidate addresses thought this would help protect the privacy and personal safety of candidates and their families. A substantial group of respondents supported including partial address information (e.g. partial postcode, ward, or town) on ballot papers to give an indication of place of residence.

This proposal was taken forward in [The Scottish Local Government Elections Amendment Order 2020](#). Following the Local Government elections in 2022, which was the first widespread use of ballot papers without candidates addresses, we are now proposing a further option of candidates being allowed to show the ward in which they live. This reflects suggestions that voters would like to know if a candidate lives locally.

Feedback from COSLA and others is that candidates who act as their own agents wish to have their address kept out of the public domain and we are considering ways we can do this in the current consultation.

The consultation paper also discussed options for countering the 'list order effect'. At present, by law, candidates in local council elections are listed in alphabetical order by surname on the ballot paper. 'List order effect' can result in candidates who are listed higher on the ballot paper being selected over those who are listed lower – thus, those who are further down the list are at a disadvantage. The consultation asked for views about (i) whether a change should be made in the way in which candidates are listed on ballot papers and, if yes, (ii) what form of system would be preferable (rotation, randomisation, alphabetical–reverse alphabetical, or another system).

Overall, 81% of respondents supported making a change in the way candidate names are listed on local election ballots papers to counteract the list order effect. Respondents favouring change thought this would be fairer for all candidates. Those opposed thought that the risks of changing the current alphabetical ordering of names were too great. These risks included (i) the potential to cause confusion among voters (particularly if there were multiple versions of a ballot paper in the same ward); (ii) substantially increased costs (in printing, and in retraining polling staff); (iii) practical difficulties in implementation (in terms of proofreading and pre-checking ballot papers, and in counting votes); and (iv) adverse impacts on voters with disabilities (e.g. dyslexia, learning disabilities, cognitive impairments, visual impairments, etc.).

Among the respondents favouring change, 64% preferred a system of randomisation – which was described as the 'fairest' way to list candidate names and more likely than a rotational system or alphabetical–reverse alphabetical system to overcome the list order effect. However, there was disagreement about whether there should

be one version of a ballot paper in each ward (with names listed in random order), or multiple versions. Respondents emphasised that any proposed changes to the design of ballot papers must (first) be extensively tested and assessed for its impact on voters.

The [Electoral Commission then undertook research](#) and published their findings in 2019: Their research found:

- the order of the candidates had no impact on voters' ability to find and vote for their preferred candidates on the ballot paper
- organisations representing disabled people were concerned that any changes would impact on a disabled person's ability to familiarise themselves with the order and layout of the ballot paper before they come to vote. People with sight loss rely on the large poster version of the ballot paper which could not be provided if every ballot paper was different.
- electoral administrators raised concerns about the potential for voter confusion and increased costs resulting from any changes
- there was no clear consensus amongst political parties about how the names on ballot papers should be ordered.

This matter was discussed during passage of the Scottish Elections (Reform) Act 2020, with the (then) [SPPA Committee which concluded \(in its Stage 1 Report\)](#) that there was no consensus on how the list order effect should be addressed and that "*There is no point simply replacing one set of problems with another*". The Committee recommended:

"The Committee considers that the previous research commissioned by the Scottish Government on the list order effect was fairly narrow in scope. The Committee recommends that the Scottish Government should ask the Electoral Commission to take a wider look at the alternatives to the current alphabetical ordering system, in order to set out the pros and cons of different approaches. The Scottish Government could then consider whether there would be merit in piloting any specific alternatives and report back to the Parliament on the proposed approach."

Assessment

In addition to the potential impact on voters with sight loss and the scope for voter confusion identified by the Electoral Commission, there are concerns that adjusting or randomising the order would bring significant additional administrative challenges for electoral professionals (e.g. in checking ballot paper proofs and during a manual count). Such changes could also drive additional printing costs and raise cost implications for future eCounts. As a result, the Government has no plans to undertake further research unless and until there is a specific proposition that is practical, accessible and which has attracted cross-party support.

Electronic voting

The 2017 consultation paper discussed possible options for introducing electronic voting into Scottish elections, including the use of electronic voting machines at polling stations, and internet and mobile phone voting.

There were mixed views in relation to these questions: 62% of respondents said they would be happy to use an electronic voting machine in a polling place instead of a traditional ballot paper; 49% said that if internet or mobile phone voting was available, they would choose to use that rather than vote at a polling place or by post; and 35% said that if internet or mobile phone voting was available, they would be more likely to vote.

Respondents emphasised the importance of public confidence in the electoral process. They thought electoral processes should be verifiable (able to be independently audited and validated), secure (free from outside interference) and anonymous (to protect against coercion). Respondents disagreed about whether electronic voting could assist with and / or guarantee these objectives – either now or in the future – and they offered a wide range of arguments, ranging from the principled to the pragmatic, both for and against electronic voting. Respondents often referred to published evidence in their responses to these questions, and they offered varying interpretations of the evidence depending on whether or not they favoured the introduction of (various forms of) electronic voting.

Work was undertaken to consider whether electronic voting machines might be helpful to voters, but these were proving to be costly and did not offer the option of remote voting. The National Cyber Security Council considered that the security issues remained with any form of electronic voting in the context of national elections.

The consultation paper also discussed the possibility of voting on more than one day and being able to vote in any polling place in Scotland (rather than at a single, assigned polling place). Overall, 38% respondents supported the idea of being able to vote on more than one day, and 62% did not, with a wide range of reasons offered for the two opposing positions. There were mixed views on the desirability of being able to vote at any polling place (54% were in favour and 46% opposed). Those in favour thought that such a system would reduce the requirement for postal voting and help make voting more accessible. Those against the proposal thought this was an unnecessary change (given the availability of postal voting), and that it could increase the risk of electoral fraud, be expensive, create practical problems, and remove the local dimension to voting.

At the May 2022 Local Government elections in Wales, a number of pilots were run to gauge the effect of allowing voting over a number of days. Following those elections, the [Electoral Commission published its “Advance voting pilots evaluation”](#) on 12 June 2022. The Electoral Commission’s research indicated:

“that the opportunity to vote in-person ahead of polling day does not, on its own, boost turnout significantly”.

and the Commission concluded that whilst:

“the option was welcomed by those that used it and it does offer an additional choice for voters. We cannot judge, from the evidence of the pilots, what impact advance voting, if introduced, would have on turnout over time”.

As part of the contingency planning for holding the Scottish Parliament election during the pandemic provision was made to hold voting on more than one day in the Scottish General Election 2021 Act. This measure was not needed in practice, but it could have been used to accommodate social distancing. No further action is proposed on early voting at this time; however we will continue to monitor any advance voting pilots which are undertaken in other parts of the UK.

Electoral boundary reviews

The consultation paper asked a series of questions about the role of the independent Local Government Boundary Commission for Scotland (LGBCS). These addressed (i) the process of conducting boundary reviews; (ii) the independent nature of the LGBCS; and (iii) the option of allowing flexibility (in certain circumstances) in determining the number of councillors for Local Government wards.

Just under three-quarters (71%) of respondents supported moving to a rolling programme of reviews for Local Government electoral boundaries. The perceived advantages of this move was that it would allow more time for local consultation and greater engagement in the review process, and that it would result in electoral areas being more accountable through improved representation. However, those who disagreed thought that a rolling programme of reviews could involve different approaches being used in different areas which would lead to a lack of consistency in the conduct of reviews.

Following consideration of the consultation responses, the Scottish Ministers decided to introduce rolling reviews for Scottish Local Government wards. Legislation implementing this change was included in the [Scottish Elections \(Reform\) Act 2020](#) which received Royal Assent on 8 July 2020.

A majority of respondents (56%) were opposed to Scottish Ministers being able to change the recommendations of the LGBCS on constituency and council wards. However, there was general support for the Scottish Parliament being able to challenge the recommendations of the LGBCS (75% were in favour). In addition, a majority (73%) did not think the recommendations of the LGBCS should have to be implemented without change. In their comments, respondents offered a wide range of views, but emphasised the importance of independence, impartiality and scrutiny in the boundary review process.

Following the consultation, the [Scottish Elections \(Reform\) Act 2020](#) removed the discretionary power for Scottish Ministers to modify or reject boundary proposals made by Boundaries Scotland. Ministers previously had discretion to modify or decide not to implement changes. Instead, Ministers were required to lay orders without changes, but those orders were only agreed if the Scottish Parliament voted to approve them.

Around three-quarters (72%) of respondents were in favour of a proposal to allow the LGBCS flexibility to recommend wards which have between 2 and 5 councillors, instead of the prescribed 3 or 4 councillors as at present. Respondents generally thought that increased flexibility would allow greater account to be taken of local circumstances such as natural community boundaries and existing links, rurality,

population density, geography, travel times and the special circumstances of island communities. Those opposed to flexibility thought the current system worked well, or prioritised 'parity' of representation.

As a result of the views expressed in the consultation, the [Scottish Elections \(Reform\) Act 2020](#) introduced changes to allow for Boundaries Scotland to base the size of Local Government ward on the election of between 2 and 5 councillors.

Who can register and vote

The consultation paper discussed a proposal to extend the current franchise to include everyone who is legally resident in Scotland. More than three-quarters (79%) of respondents supported this proposal. Those in favour argued that decisions taken by government affect all residents, and therefore all residents should have a say in those decisions. Those who were opposed generally believed that eligibility to vote in Scotland should be based on (UK) citizenship, not residence.

Respondents' views about how long a person should be resident before becoming eligible to vote ranged widely, but the most common response was 'five years', followed by 'one year', then 'two years'. Respondents often linked their views about length of residence to other factors which they felt were important to consider in assessing a person's eligibility to vote. These factors were (i) a person's status as a tax payer; (ii) their demonstrated commitment to Scotland; and (iii) their knowledge of, and familiarity with, life in Scotland.

The [Scottish Elections \(Franchise and Representation\) Act 2020](#) extended voting rights to all foreign nationals with any form of leave to remain. 'Leave to remain' means permission granted to non-UK nationals to stay in the UK for a limited period of time, but does not include those seeking asylum.

The consultation paper also proposed changes which would make it easier for individuals who may be at risk from any form of abuse to register anonymously. Respondents generally supported this proposal (79% were in favour). All respondents emphasised the importance of maintaining the integrity of the electoral register. Those who were opposed to the proposal thought that an increase in anonymous registrations could compromise the integrity of the electoral register, whereas those who supported the proposal thought that safeguards could be put in place to prevent fraudulent voting.

The Representation of the People (Scotland) Amendment Regulations 2018 amended the legislation to allow for a [wider range of individuals to attest applications for anonymous registrations](#) and added additional court orders to the [list of documentation which can be used to support an application for anonymous registration](#).

The consultation paper discussed current legislation which permits individuals to register and vote in Local Government elections in more than one local council area, if they meet the necessary residency requirements in each area. Respondents were asked if they thought (i) a voter should continue to be able to register in more than one area, but (ii) should only be allowed to vote once in Local Government elections.

Respondents were generally not in favour of allowing registration in more than one local authority area (85% were opposed). In addition, the vast majority (93%) agreed that a voter should only be allowed to vote once in Local Government elections. The predominant view was that the principle of 'one person, one vote' was appropriate for Local Government elections. Respondents thought this would promote fairness, increase public confidence, be simple to operate and reduce the potential for fraudulent voting. In addition, respondents argued that this change was desirable because it would bring Local Government arrangements into line with other (national) elections.

Subsequently, the [Scottish Elections \(Reform\) Act 2020](#) made it an offence for anyone to vote in more than one Local Government area on the same day.

Access to voting and elected office

Finally, the consultation paper invited views about ways of removing barriers to voting, widening access to elected office for under-represented groups, and supporting gender balance among elected representatives.

Respondents thought that broad-based action was needed to increase participation and engagement in democratic processes among various equalities groups (older people, younger people, those with disabilities, people from black and minority ethnic communities, women, people from the LGBTI community, carers, those within the care system and other disadvantaged and socially excluded groups). They called for (i) a reinvigoration of local democracy and a raised profile for Local Government; (ii) improved citizenship education; (iii) more information to be made available in accessible formats; and (iv) a change in the 'culture' of politics (e.g. adversarial nature of party politics, tone of political discourse and associated online abuse) which can alienate many groups from becoming involved in formal politics. There was widespread support for practical actions to make it easier for individuals to participate in elections and cast their vote – there was a general consensus that this was appropriate and important. There was, however, a greater diversity of views on the extent to which government (and / or political parties) should take action to assist those from different groups in becoming elected representatives, and the extent to which any action should be statutory or voluntary.

Following the May 2022 Local Government elections, the Scottish Government worked with the Electoral Management Board for Scotland, the Electoral Commission, COSLA, the Improvement Service as well as a range of equality stakeholders to develop a [survey collecting diversity data of candidates standing at the May 2022 Local Government elections](#).

This survey represents a key milestone in the collection of diversity data for candidates running for election to Local Government in Scotland by providing evidence which can be considered in relation to issues of representativeness of candidates as compared to the Scottish population. The results from this survey will support efforts by the Scottish Government and partners to increase the representation of under-represented groups in in elected office in Scotland.



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