

Equality Impact Assessment

Referendums (Scotland) Bill

May 2019



Scottish Government
Riaghaltas na h-Alba
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Equality Impact Assessment

Title of Policy	Referendums (Scotland) Bill
Summary of aims and desired outcomes of Policy	<p>The Referendums (Scotland) Bill provides the legislative framework for the holding of referendums in Scotland. It covers the technical aspects of holding referendums by prescribing the rules for voting and setting out how the campaign should be conducted.</p> <p>The main objective is for referendums to be (and to be seen to be) fair, open and truly democratic processes conducted and regulated to the highest international standards.</p>
Directorate: Division: team	Constitution and Cabinet Directorate

Executive Summary

Setting out the way that future referendums will be run provides clarity about for participants and those administering the referendum process. It also helps to ensure that the debate can concentrate on the allow any debate around future referendums to concentrate on the merits, or otherwise, of a particular referendum itself, rather than focussing on points of procedure.

The policy will affect everyone in Scotland who is entitled to vote.

Evidence on the equality impact of the proposals was collected during a public consultation on a referendum bill undertaken between October 2016 and January 2017¹. The findings are discussed below. Comments specifically relating to equalities issues focussed on franchise issues and proposed changes to absent voting arrangements.

An analysis of consultation responses was taken into account in developing the policy and refining the proposals set out in the present Bill. The policy is not considered to have a negative impact on any of the protected equality groups. It promotes equality through provisions to ensure that any eligible person who wishes to vote is able to do so.

Background

The Scottish Government held a consultation on a draft Referendum Bill in October 2016-January 2017. Most respondents had clear views and were interested in the mechanisms of such a referendum and the technical arrangements for polling and other matters. A Referendums Framework Bill will allow debate specifically on the

¹ Consultation paper available at <https://consult.gov.scot/elections-and-constitutional-development-division/draft-referendum-bill/>; Consultation analysis report available at <https://www.gov.scot/publications/consultation-draft-referendum-bill-analysis-responses/>.

technical details of referendum arrangements, and ensures rules are set and understood in sufficient time for any referendum.

The main policy objective of the Bill is to ensure all future referendums maintain the very high standards previously achieved and to provide renewed public confidence that referendums will be fair, open and democratic in line with established best practice and reflecting distinctive Scottish views on participation and conduct. The framework will bring arrangements in Scotland into line with good practice elsewhere in the UK and ensure that future parliamentary scrutiny is focussed on the merits of the issue in hand and the question associated with and timing of a referendum. In particular it will ensure that:

- entitlement to vote is in accordance with agreed principles and is determined in a fair and consistent manner;
- voting and counting processes are clear and transparent and operate smoothly and effectively, and are subject to sufficient controls and audit; and
- campaigns leading up to a referendum will be well regulated, independent from Parliament and Government; rules will be in place so that spending by those campaigning is limited to reasonable levels; and all sides in the campaigns will operate on a level playing field in terms of resources spent on campaigning.

The Bill covers a range of issues, with much of the detail set out in schedules, as follows:

- Provision for a referendum;
- Provision about voting etc;
- Rules concerning the conduct of the poll;
- Campaign rules and enforcement;
- Referendum agents and observers;
- Other functions and funding of the Electoral Commission;
- Offences;
- Power to make supplementary, incidental or consequential provision;
- Legal proceedings; and
- Final provisions and interpretation.

The Bill allows for Scottish Ministers to lay regulations to provide for a referendum. The regulations must specify:

- The date on which the referendum will be held;
- The form of the ballot paper to be used, including the wording of the question or questions and the possible answers to them;
- The referendum period.

In 2016, when developing and consulting on the Draft Referendum Bill, Scottish Government officials worked closely with a range of electoral professionals - local authority returning officers, electoral registration officers and the Electoral Commission. Whilst no formal consultation has been undertaken on this Bill, officials have used the results of previous engagement and consultation to ensure the

proposals in the Bill reflect, and build on the “gold standard” rules used at the successfully run referendum in 2014 and those governing elections.

The Scope of the EQIA

As the proposed arrangements for referendums follow existing legislation, guidance and good practice for elections and referendums, the policy is expected to have a minimal impact on the protected groups, and the scope of the EQIA was determined within this context. Aside from the previous engagement with key stakeholders described above, which included the identification of potential equalities issues, the primary means of assessing the equality impact of the policy was the public consultation undertaken in 2016-17 and the Scottish Independence Referendum Act 2013.

From this public consultation exercise, the Scottish Government received information from a number of different organisations and individuals highlighting the diverse needs of different groups within the target audience, and this was taken into account in formulating and developing the referendum proposals. This EQIA summarises the key findings of the consultation in relation to equalities issues and where appropriate, indicates how the policy seeks to address these.

Key Findings

The consultation paper (which also included a copy of a draft Bill) invited responses to a series of questions on proposed technical changes to the processes which were used at the Scottish Independence referendum in 2014. These changes reflect changes in wider elections’ law, including the change to Individual Electoral Registration (IER) and the Scottish legislation to lower the voting age to include 16 and 17 year olds for local and Scottish Parliament elections.

The consultation closed on 11 January 2017. The responses have been published on the Scottish Government website, along with the results of an independent analysis of those responses.

Accessibility

As detailed above, the Bill allows for Scottish Ministers to lay regulations to provide for a referendum. The regulations must specify:

- The date on which the referendum will be held;
- The form of the ballot paper to be used, including the working of the question or questions and the possible answers to them.
- The referendum period.

The Electoral Commission must be consulted on these regulations before they are laid in the Parliament. Where the regulations specify the wording of the referendum question, the Electoral Commission must consider the wording of the question and publish a statement on the intelligibility of the question.

The ballot paper will be in English only, but counting officers may choose to display a translation of the ballot paper at polling stations if they consider this appropriate, depending on local circumstances. Voter information will also be available in other languages on request. This is standard practice for national and local elections. This will ensure that those who are more comfortable reading directions in a language other than English can also take part in the democratic process.

Counting officers will be required to provide an enlarged, hand-held, sample copy of the ballot paper for partially-sighted people and a device for enabling blind or partially-sighted voters to vote without any need for assistance. Voters can also apply to the presiding officer in charge of the polling station to be allowed to vote with the assistance of a companion, on the grounds of blindness, other physical disability or inability to read. The presiding officer can also, on request, assist disabled voters to vote.

In line with elections, the counting officer will be required to ensure that polling stations are accessible to all. This will be covered in further detail by the guidance issued by the Chief Counting Officer and Electoral Commission.

Franchise

It is proposed that the voting age be the same as at the Independence Referendum in 2014 and the Scottish Parliament and Local Government elections held since then, to allow people aged 16 and over, who are otherwise eligible, to vote in this referendum. As set out in the policy memorandum, the intention is that the referendum franchise should continue to mirror the Local Government and Scottish Parliament franchise in future, taking into account the changes proposed in the forthcoming Electoral Franchise Bill to enfranchise foreign nationals, and correct the ECHR incompatibility on prisoner voting.

Awareness

The Scottish Government understands the importance of ensuring that voters are aware of how to register to vote and how to cast their vote, whether in a polling station or by post. The Bill will give the Electoral Commission a statutory responsibility for public awareness which will cover how and when to register and how and when to vote. This will be factual information only and will not cover the substance of the referendum, which will be for the designated organisations and other campaigners to communicate to voters.

In line with the Scottish Government's commitment in the British Sign Language (BSL) National Plan, guidance on how and when to register and how and when to vote will be available in BSL.

Electoral registration officers (EROs) will also have a role to play in encouraging and facilitating registration of all those who will be able to vote in the referendum.

The Electoral Commission and EROs are likely to target their awareness raising activities to specific groups to ensure voters understand the registration and voting process.

Recommendations and Conclusions

Following the EQIA, which was largely based on the analysis of responses to the public consultation, no significant changes to the policy were deemed necessary due to the fact that the proposed arrangements for the running of referendums are based on existing electoral legislation, guidance and good practice. However, the consultation process contributed to the development of policy.

When the Bill is enacted, the policy will be implemented by the Electoral Commission, the Electoral Management Board for Scotland and Scottish Government officials. The Bill gives the Electoral Commission the role of overseeing and monitoring the conduct and administration of referendums, and monitoring compliance with campaign regulations. The Commission will report on the conduct of the referendums to the Scottish Parliament.



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