

Scottish Elections (Reform) Bill

Business and Regulatory Impact Assessment (BRIA)

September 2019



Scottish Government
Riaghaltas na h-Alba
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SCOTTISH ELECTIONS (REFORM) BILL

BUSINESS AND REGULATORY IMPACT ASSESSMENT (BRIA)

Title of Proposal

Scottish Elections (Reform) Bill

Purpose and Intended Effect - Summary

1. The Scottish Elections (Reform) Bill (“the Bill”) sets out a number of changes to electoral law covering Scottish Parliament and local government elections in Scotland. It implements proposals included in the Scottish Government’s 2017-18 Electoral Reform consultation¹ to extend the powers of the Electoral Management Board, make changes in relation to local government boundary reviews and a number of technical matters such as transferring oversight aspects of the Electoral Commission’s activities in relation to devolved elections to the Scottish Parliament. It also extends the interval between each Scottish Parliament and each local government election from 4 years to 5 years and will allow all 14 year olds to register as attainers ahead of becoming able to vote at the age of 16.

Background - increased powers for the Scottish Parliament.

2. The Scotland Act 2016² amended the Scotland Act 1998³ to devolve further powers to the Scottish Parliament. These additional powers gave the Scottish Parliament and the Scottish Ministers increased autonomy in relation to the operation of Scottish Parliament and local government elections in Scotland.

Consultation

3. Following the enactment of the Scotland Act 2016, the Scottish Government held two separate public consultation exercises on (a) electoral reform and (b) prisoner voting in relation to Scottish Parliament and local government elections.

4. The consultation on Electoral Reform was undertaken between 19 December 2017 and 29 March 2018 and sought views on a number of issues, including:

- term lengths for Scottish Parliament and Scottish local government elections;
- extending the role of the Electoral Management Board for Scotland;
- access to voting and elected office;
- electronic voting; and
- boundary reviews of Scottish Parliament constituencies and local government areas and wards.

¹ <https://www.gov.scot/publications/consultation-electoral-reform/>

² <http://www.legislation.gov.uk/ukpga/2016/11/contents/enacted>

³ <http://www.legislation.gov.uk/ukpga/1998/46/contents>

5. The Bill includes provisions covering these issues, as well as some more specialised or technical changes to electoral law, which are detailed below and in full in the Bill's Policy Memorandum.

6. Over 900 responses to the electoral reform consultation were received from organisations and individuals. These were independently analysed and the analysis report⁴ as well as individual responses were published in line with Scottish Government guidance.

7. As well as the online consultation, roundtable discussions were held with a range of accessibility and equality organisations, including race, disability and women's representation organisations.

8. Ongoing discussions have taken place with electoral organisations, including the Electoral Commission, the Electoral Management Board for Scotland and the Electoral Registration Committee of the Scottish Assessors Association during the consultation period and the development of the draft legislation.

9. The Bill's provisions are mainly drawn from the consultation exercise. The following topics of the Bill were not included in the consultation exercise because they are technical in nature and, as such, likely to be of limited interest to the wider public (but the provisions in the Bill on these topics have been developed in discussion with electoral organisations):

- entitlement to register as an elector before attaining voting age;
- change of date of general election for Scottish Parliament;
- Electoral Commission: funding and accountability;
- Electoral Commission: codes of practice; and
- Electoral Commission: electoral expenses.

Rationale for Government Intervention

10. The Bill's provisions seek to improve electoral law, enhancing the oversight role of the Scottish Parliament (for example, in relation to the activities of the Electoral Commission and the Local Government Boundary Commission for Scotland (LGBCS) in relation to devolved elections) and they provide the Electoral Management Board with an oversight role for Scottish Parliament elections.

11. All of the proposed provisions in the Bill are intended to improve the administration of devolved elections in Scotland and to benefit voters.

Options

12. This is the Scottish Parliament's first opportunity to introduce this legislation. Most of the changes identified require to be made by primary legislation. Secondary

⁴ <https://www.gov.scot/publications/electoral-reform-consultation-analysis/pages/1/>

legislation will be used in relation to some of the topics identified in the consultation, such the issue of payments to Returning Officers.

Sectors and Groups Affected

13. This Bill proposes mainly technical changes to election law that are likely to impact upon Electoral Registration Officers (EROs) and the electoral community, whose staff manage voter registration and the Electoral Commission and the LGBCS.

14. The proposed change in electoral cycle for Scottish Parliament and local government elections would, if there were no further adjustments⁵, result in fewer elections (for example, four elections instead of five over a 20 year period). This would be likely to result in savings for local government, as the costs of local government elections are incurred by each local authority. Based on the approximate cost of administering a local government election the Bill's Financial Memorandum estimates a potential cost saving for local government of around £19 million every 20 years. The change in electoral cycle would also impact upon political parties and candidates in elections, potentially reducing campaign expenditure (for example, if there were only four election campaigns instead of five over a 20 year period).

Benefits

15. The Bill involves the following potential benefits:

- the change in relation to **term lengths** will potentially reduce the number of elections held, resulting in a cost saving to central and local government and to political parties and candidates. It is also argued that longer parliamentary terms have been regarded as helping to facilitate longer term policy planning and greater consultation;
- the Bill's provisions on **postponement of a Scottish Parliament poll** in response to an extraordinary event will avoid in some circumstances any need to reschedule a Scottish Parliament election through primary legislation, perhaps in the form of an emergency Bill;
- permitting the LGBCS to recommend **local government wards with two or five members** (relaxing the current restriction to three or four members for non-island areas) will allow special local circumstances, historical factors and geographical considerations, such as coastal or mountainous terrain to be taken into account, allowing flexibility for the LGBCS (which is to be renamed as Boundaries Scotland) to look at each case on its merits;
- the Bill's restriction on **voting only once at a local government election** underlines the 'one person, one vote' principle (it is currently possible to vote in two (or more) local authority areas on the same day as long as the person is registered in both areas);
- the Bill's provisions on **electronic voting** will amend references in primary legislation which could prevent the implementation of electronic voting

⁵ In practice the difference in frequency is expected to be less pronounced as retaining the status quo could be expected to involve several four-year terms being extended to avoid conflicting election dates, and the potential for further clashes of election date remains with five-year terms.

following pilots of electronic voting or other digital processing which may be undertaken at a future date. The Bill does not by itself enable or require any trials or pilots to take place and secondary legislation will be required to provide for any trial or pilot. While there are no firm plans for pilots, the Government is considering whether some form of trials or pilots, initially likely to focus on improving the accessibility of voting for people with disabilities, might take place in 2020 or in subsequent years;

- allowing anyone **aged 14 to apply to be added to the electoral register** as an “attainer” will make the registration process easier to understand (see below under ‘Test Run of Business Forms’);
- the Bill makes a number of reforms in relation to the **Electoral Commission**, designed to support the extension of the Scottish Parliament’s devolved competence in relation to elections under the Scotland Act 2016 and improve accountability to the Scottish Parliament in the oversight of devolved elections:
 - by ensuring Scottish Parliament oversight of Electoral Commission activities for devolved Scottish elections, including **funding of the Commission**;
 - by amending the law relating to **codes of practice** – to ensure that the Electoral Commission consults Scottish Ministers and the Scottish Parliament in devising relevant codes of practice for devolved elections; and
 - by facilitating control of **candidate’s expenditure** at local government elections by the Electoral Commission.
- extending the remit of the **Electoral Management Board** to include Scottish Parliament elections is intended to improve efficiency in running elections and the experience of voters (this will be done through the provision of guidance, training and advice in relation to the running of electoral events);
- by changing reviews of local government electoral boundaries to a **rolling programme** the Bill will provide additional flexibility to the LGBCS in planning its work;
- by enhancing **Parliament’s role in approving local government and Scottish Parliament boundary review recommendations** by the LGBCS, the Bill will enhance Parliamentary scrutiny of boundary changes whilst respecting the independence of the LGBCS.

Costs

16. The costs associated with the Bill can be separated into these broad categories:

- Funding for the Electoral Management Board; and
- Electoral management software changes.

17. These are detailed in the Bill’s Financial Memorandum and affect the public sector. There are no additional costs on other bodies, individuals or businesses by this Bill.

Scottish Firms Impact Test

18. In development of the Government's consultation on Electoral Reform and in the development of policy, officials met with a wide range of stakeholders including the Electoral Commission, Electoral Registration Officers, the Electoral Management Board and the Scottish Prison Service. Discussions are also taking place with the commercial companies which provide the electoral management systems used by Electoral Registration Officers and local authorities in Scotland. These systems will also require adjustment to take account of the changes to the franchise under the Scottish Elections (Franchise and Representation) Bill⁶, the costs of which will be met by the Scottish Government.

Competition Assessment

19. Elections are statutorily managed by Scottish local authorities and overseen by the Electoral Commission, the independent body which oversees elections and regulates political activity in the UK.

Consumer Assessment

20. The Bill's proposals should have no impact on consumers.

Test Run of Business Forms

21. The Bill makes provision to enable all 14 year olds to register ahead of attaining voting age. This will help support young people in engaging in the voting process. Allowing anyone aged 14 to apply to be added to the register will simplify the process and the descriptions provided in registration documentation. It will make the process easier to understand, removing some confusion that can occur at present (as some, but not all, 14 year olds are currently eligible to register as attainers). The reform will assist young people in understanding their rights and allow the annual canvass forms used to compile information on voters to be simplified. It will also assist EROs in identifying if an individual is eligible to be registered and should be sent an invitation to register. EROs will be able to send out invitations to register to anyone who is listed on a returned Household Enquiry Form as being at least 14, without having to calculate their age on the 1st of December (as occurs at present). Forms will be produced and tested by EROs.

Digital Impact Test

22. Changes will be required to electoral registration management software supplied by commercial companies, to ensure that all 14 year olds can be registered as attainers. The Scottish Government is working with Electoral Registration Officers, the Cabinet Office and electoral management system suppliers to ensure the necessary changes are in place for the Scottish Parliament elections in 2021.

⁶ <https://www.parliament.scot/parliamentarybusiness/Bills/112098.aspx>

Legal Aid Impact Test

23. The Bill has no implications for changes to legal aid.

Enforcement, Sanctions and Monitoring

24. The Bill provides a greater oversight role for the Scottish Parliament in respect of electoral matters in relation to Scottish Parliament and local government elections.

Implementation and Delivery Plan

25. The Bill sets out proposed changes to electoral law which are for consideration and scrutiny by the Scottish Parliament. It is proposed that changes in relation to the Scottish Parliament are made so that they are in place at least six months ahead of the next scheduled Scottish Parliament elections in 2021.

Summary and Recommendation

26. The Bill proposes a number of improvements to electoral law intended to improve the administration of devolved elections in Scotland and to benefit voters. This is in line with wider Scottish Government policy.

Summary Costs and Benefits Table

27. Further information on costs and benefits is available in the Bill's financial memorandum.

Declaration and Publication

28. I have read the Business and Regulatory Impact Assessment and I am satisfied that it represents a fair and reasonable view of the expected costs, benefits and impact of the policy and that the benefits justify the costs, I am satisfied that business impact has been assessed with the support of businesses of Scotland.

Signed:

Date: 02 September 2019

Minister's Name: Michael Russell MSP

Minister's Title: Cabinet Secretary for Government Business and Constitutional Relations

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