

Scottish General Election (Coronavirus) Bill Business and Regulatory Impact Assessment (BRIA)

November 2020

SCOTTISH GENERAL ELECTION (CORONAVIRUS) BILL

BUSINESS AND REGULATORY IMPACT ASSESSMENT (BRIA)

Title of Proposal

Scottish General Election (Coronavirus) Bill

Purpose and Intended Effect - Summary

1. The Scottish General Election (Coronavirus) Bill (“the Bill”) makes arrangements for the Scottish Parliament election scheduled for 6 May 2021 should the way in which it is conducted need to be adapted, or the poll postponed, due to the public health effects of the coronavirus pandemic. The provisions in the Bill are a dedicated response to the coronavirus pandemic for the 2021 poll and do not seek to make any permanent changes to electoral law.

2. The main measures of the Bill will:

- bring forward the deadline for postal vote applications;
- give a power to the Scottish Ministers so that they may provide, by regulations, for an all-postal election to be held;
- make the pre-election period for dissolution of the Parliament last only one day (5 May 2021, if there is no delay to the election), in case the Parliament needs to meet to pass emergency legislation to delay the election;
- allow the Scottish Ministers to make regulations to hold polling over multiple days;
- make arrangements for the first meeting of the new Scottish Parliament and the election of a new Presiding Officer;
- give a reserve power to the Presiding Officer of the Scottish Parliament to postpone the 2021 election by up to 6 months in certain circumstances; and allow for the same measures as set out above to apply if the election is postponed.

Background and consultation

3. The coronavirus pandemic is a severe and sustained threat to human life in Scotland. The Scottish Government considers that in order for the Scottish Parliament election scheduled for 6 May 2021 to be held safely a number of contingency measures should be available. The Government’s overall aim is to ensure that the election will be held as planned on 6 May 2021 with ‘in-person’ voting supported by appropriate physical distancing measures and a substantial increase in numbers of people voting by post. The Bill is an important step towards delivering that aim, and a number of other measures are also being pursued in concert with electoral professionals and informed by expert healthcare advice.

4. Responsibility for administering elections 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”) leads and supports their colleagues in delivering elections and referendums. It is made up of ROs and Electoral Registration Officers (“EROs”) drawn from across the country. The Convener of the EMB has the power to issue directions to ROs and EROs concerning the exercise of their functions in relation to Scottish devolved elections. The EMB has been supporting ROs and EROs to prepare and make coronavirus contingency plans for the Scottish Parliament election in May 2021 and also in relation to local government by-elections held over October-November 2020.

5. The EMB has, alongside the Electoral Commission, engaged with the Scottish Government in planning for the Scottish Parliament election in the context of the coronavirus. The Bill is a contingency response to the extraordinary challenges posed by the virus and as a result scope for traditional consultation has been limited. The Bill’s provisions have however been developed in close consultation with EMB, the Electoral Commission, Scottish Parliament officials and representatives of each political party represented in the Parliament. Scottish Government officials have also discussed plans for elections to be held in 2021 in England and Wales with their counterparts in the UK and Welsh Government (no major elections are planned in Northern Ireland in 2021). The Government has also taken into account international responses to the challenge of holding elections in the time of coronavirus.

Rationale for Government Intervention

6. Many of the Bill’s provisions are contingent upon the virus and may not need to be used. These include the ability to hold an all-postal election and to provide for in-person voting to occur over two or more days. There are however, four main areas where a change will apply in all circumstances:

7. **Application deadline for postal votes:** at present, new applicants for a postal vote at the Scottish Parliament election on 6 May 2021 will be required to apply by 5pm on 20 April (11 working days prior to the election, excluding the May Day holiday), whether the application is in relation only to the 2021 election, or to register as a postal voter for an indefinite period. A substantial increase in postal voting is anticipated (at the 2016 Scottish Parliament election postal votes were issued to 17.7% of the total electorate)¹. Processing of postal vote applications normally poses a challenge for EROs ahead of any polling day, with many people choosing to apply for a postal vote on or close to the application deadline. The EMB, EROs, ROs and the Electoral Commission have indicated that it will not be possible to process an increase of significant magnitude in time for the election if the application deadline remains at 20 April. The Bill therefore seeks to bring forward the cut-off date for postal vote applications to the twenty-first day before the polling day

¹ Polling research conducted by the Electoral Commission in summer 2020 suggests that 38% of respondents would prefer to cast their vote by post if the election was held under the conditions in place in August 2020 and 50% of respondents would apply for a postal vote if encouraged to do so by a national publicity campaign: <https://www.electoralcommission.org.uk/who-we-are-and-what-we-do/our-views-and-research/our-research/public-attitudes-towards-voting-scotland-context-covid-19>

(which is expected to be 6 April 2021²). The change will allow more time to process what is expected to be a much higher number of applications than usual due to the effects of the coronavirus pandemic.

8. Arrangements for first convening the new Scottish Parliament and electing the new Presiding Officer: as physical distancing is expected to result in a longer than normal count the Bill will modify the existing provisions of the Scotland Act 1998 (the “1998 Act”) that require the Parliament to first meet within a period of seven days beginning immediately after the day of the poll³ and to elect a Presiding Officer within the period of 14 days beginning immediately after the day of the poll⁴. The Bill therefore affords the Presiding Officer discretion to fix a day for the first meeting of the new Scottish Parliament, in consultation with the Electoral Commission and the Convener of the Electoral Management Board for Scotland. The first meeting is to be fixed as soon as reasonably practicable after the election. The Bill also provides that the selection of a new Presiding Officer (and two deputies) by MSPs must occur as soon as reasonably practicable after the election.

9. Dissolution of Parliament: without a change in the law, the final point at which the Parliament could legislate on this or any other issue would be immediately before the Parliament dissolved on 25 March 2021. The Bill therefore seeks to modify the dissolution period for the Scottish Parliament so that it begins on 5 May 2021. This change will permit the Parliament to meet to legislate after 25 March 2021 for a new polling date if this is required as a result of virus conditions. It also ensures that it can continue to meet and conduct business in the event of a postponement of the election.

10. Power of the Presiding Officer to recommend postponement of the election nationally for a period of up to six months in total: the change to dissolution date means that the Parliament should itself be able to set a new date for any election. To allow for the possibility that Parliament may not be able to meet, or that something may happen (possibly unrelated to the pandemic) which requires a rapid decision to delay the poll, the Bill will allow the Presiding Officer to recommend to Her Majesty postponement by a period or periods of up to six months in total, following consultation with Ministers, the Electoral Commission, the Convener of the EMB and the Chief Medical Officer of the Scottish Administration. This power can be used on more than one occasion, but cannot be used to postpone the election beyond 5 November 2021.

11. All of the proposed provisions in the Bill are intended to improve the arrangements for administration of the 2021 Scottish Parliament election and to benefit voters at that election.

² The date could vary if there is an unexpected public holiday or day of public thanksgiving or mourning in the period running up to the poll.

³ Section 2(3)

⁴ Section 19(1A)

Options

12. A number of alternative approaches are discussed in the Policy Memorandum accompanying the Bill⁵.

Sectors and Groups Affected

13. This Bill's changes to election law for the 2021 poll are likely to impact upon MSPs, Scottish Parliament staff and electoral professionals such as Returning Officers (ROs), Electoral Registration Officers (EROs) and others involved in elections such as polling staff, counters and campaigners. The change to dissolution will mean that MSPs will not now lose that status on 25 March 2021 (the date for dissolution with no change to the law). New guidance will be prepared as a result of MSPs retaining their status as parliamentarians during the election period.

Benefits

14. The Bill involves the following potential benefits:

- the change in relation to **the application deadline for postal votes** will allow electoral professionals to process the expected substantial increase in applications in time for the election;
- the Bill's provisions on **an all-postal vote** will allow the election to proceed if virus conditions make it impossible for in-person voting to occur (this would in practice also require a delay to the election, as it is not considered practicable to make such arrangements in time for a poll on 6 May 2021);
- the change to **dissolution** ensures MSPs will be able to pass emergency legislation to delay the election if required;
- the provisions to permit **polling over multiple days** could be applied if needed to support physical distancing at polling stations;
- the provisions on **the first meeting of the Parliament** make adjustments needed in expectation of an extended count due to the need to observe physical distancing, and possibly a poll over additional days; and
- the Bill's provisions on **postponement of a Scottish Parliament poll** by the Presiding Officer will provide additional flexibility to the usual powers the Presiding Officer has, particularly in case Parliament is itself unable to rearrange polling day.

Costs

15. The Bill's financial implications range considerably depending upon the nature of any changes adopted in response to Covid-19. Overall, the virus increases the possibility that voting and even more probably counting over several days will be needed. This will increase staff and venue costs in running an election. The Bill is not required in order to apply physical distancing measures at elections or for counts to occur over several days, but does have some potential impact on both matters, as explained in the Financial Memorandum. An increase in postal voting is anticipated as a result of the pandemic, but not as a direct result of the Bill, which seeks to

⁵ The Bill and its Accompanying Documents are available at: <https://beta.parliament.scot/bills>

mitigate the pressures placed upon electoral profession in processing applications. As a result, the costs associated with the Bill are focused on the following categories:

- the MSP salary and staff costs involved as a result of the change to dissolution. This is the only cost that is expected to arise in all scenarios involving the Bill;
- a potential cost in holding voting over multiple days – this is a contingent cost as a final decision on whether this will be required has not yet been made; and
- the cost of any possible all-postal election (this is not considered likely, but the potential costs are set out).

16. These costs 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

17. In development of the Bill, officials met with a range of electoral stakeholders and COSLA. No wider impact is anticipated.

Competition Assessment

18. 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

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

Test Run of Business Forms

20. No new forms will be required as a result of the Bill.

Digital Impact Test

21. The Scottish Government is working with Electoral Registration Officers, the Cabinet Office and electoral management system suppliers to ensure the necessary changes associated with modifying the deadline for receiving postal vote applications are in place for the Scottish Parliament elections in 2021.

Legal Aid Impact Test

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

Enforcement, Sanctions and Monitoring

23. The Bill's changes are confined to the 2021 Scottish Parliament election and make no permanent change to electoral law.

Implementation and Delivery Plan

24. The Bill sets out proposed changes to electoral law which are for consideration and scrutiny by the Scottish Parliament. It is planned that the Bill will come into force on the day after it receives Royal Assent (expected to be around the end of January 2021) so as to be in place well ahead of the Scottish Parliament election in May 2021.

Summary and Recommendation

25. The Bill seeks to make a number of changes to electoral law, and provide potential to make further arrangements should these prove needed as a result of the public health effects of the coronavirus pandemic on the Scottish Parliament election scheduled for 6 May 2021. This is in line with wider Scottish Government policy.

Summary Costs and Benefits Table

26. Further information on costs and benefits is available in the Bill's Financial Memorandum.

Declaration and Publication

27. 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: Graeme Dey MSP

Date: 16 November 2020

Minister's Name: Graeme Dey MSP

Minister's Title: Minister for Parliamentary Business and Veterans

Scottish Government Contact Point: Iain Hockenull, 0131 244 9448



Scottish Government
Riaghaltas na h-Alba
gov.scot

© Crown copyright 2020

OGL

This publication is licensed under the terms of the Open Government Licence v3.0 except where otherwise stated. To view this licence, visit nationalarchives.gov.uk/doc/open-government-licence/version/3 or write to the Information Policy Team, The National Archives, Kew, London TW9 4DU, or email: psi@nationalarchives.gsi.gov.uk.

Where we have identified any third party copyright information you will need to obtain permission from the copyright holders concerned.

This publication is available at www.gov.scot

Any enquiries regarding this publication should be sent to us at

The Scottish Government
St Andrew's House
Edinburgh
EH1 3DG

ISBN: 978-1-80004-333-6 (web only)

Published by The Scottish Government, November 2020

Produced for The Scottish Government by APS Group Scotland, 21 Tennant Street, Edinburgh EH6 5NA
PPDAS795746 (11/20)

W W W . g o v . s c o t