

Scottish Elections (Representation and Reform) Bill

Equality Impact Assessment – Results

February 2024

Equality Impact Assessment – Results

Title of Policy: Scottish Elections (Representation and Reform) Bill

Summary of aims and desired outcomes of Policy:

The aims of the Scottish Elections (Representation and Reform) Bill are to make a number of improvements to the law affecting Scottish Parliament and Scottish local government elections. It will amend Scottish electoral law to confer candidacy rights at Scottish Parliament and local government elections to foreign nationals with limited leave to remain, set out new rules governing candidates, seek to discourage intimidation of campaigners, candidates, elected representatives, and electoral workers, facilitate improvements for voters, provide for emergency re-scheduling of elections, and reform arrangements for several electoral organisations.

By expanding democratic engagement and accountability, the Bill will contribute to the achievement of the Scottish Government's National Performance Framework Outcomes on communities (we live in communities that are inclusive, empowered, resilient and safe), and human rights (we respect, protect and fulfil human rights and live free from discrimination.) We demonstrate our commitment to these principles through the way we behave with and treat each other, in the rights, freedoms and protections we provide, and in the democratic, institutional and legal frameworks through which we exercise power).

Constitution: Elections & Constitutional Projects Division: Elections

Executive summary

The Scottish Elections (Representation and Reform) Bill proposes a number of improvements to the law affecting Scottish Parliament and Scottish local government elections. It follows a Scottish Government consultation on improvements to electoral law which ran from 14 December 2022 to 15 March 2023.

Many of the measures outlined in the Bill are administrative in nature, and the Scottish Government does not consider these to have an equality impact. An Equality Impact Assessment (“EqIA”) has been undertaken for the Bill to consider the potential impacts of those provisions in the Bill that could have an impact on people with protected characteristics, as defined in the Equality Act 2010.

Overall, the Bill promotes equality by seeking to further align candidacy rights with voting rights, and to enable pilots and funding to improve the accessibility of

elections, and to increase voter registration and participation by under-represented groups. In introducing measures to discourage intimidation of campaigners, candidates, elected representatives and electoral workers it also contributes to eliminating discrimination, harassment and victimisation, removing barriers and encouraging participation in public life for those with protected characteristics.

The EqIA presents a range of evidence on the potential impacts of the Bill, and how these will be monitored.

A range of stakeholder views are included in the assessment, and the Scottish Government will continue to work with stakeholders including the Electoral Commission, the Electoral Management Board for Scotland (EMB), and organisations representing those with protected characteristics, including those who have already engaged with the consultation, in delivering the provisions of, and monitoring and reviewing the impact of the Bill, if enacted.

Background

Since 2016, when the Scotland Act 2016 increased the Scottish Parliament and Scottish Ministers autonomy in relation to the operation of Scottish Parliament and local government elections in Scotland, the Scottish Parliament has made a number of significant changes in relation to these elections.¹ In particular, the Scottish Elections (Reform) Act 2020 made changes in relation to the roles of the Electoral Commission, the EMB, and Boundaries Scotland. The Scottish Elections (Franchise and Representation) Act 2020 allowed all resident foreign nationals with any form of leave to remain to vote in Scottish Parliament and Scottish local government elections. In relation to candidacy rights, it allowed those with indefinite leave to remain (which includes EU nationals with settled status) to stand as candidates in Scottish Parliament and Scottish local government elections. EU nationals with pre-settled status were also granted these candidacy rights. A further limited expansion of candidacy rights in local government elections in relation to foreign nationals with limited leave to remain occurred in 2022.

The Scottish Government consulted on improvements to electoral law over a 13-week period between 14 December 2022 and 15 March 2023.² The consultation paper discussed 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 and foreign nationals with limited leave to remain in the UK. It discussed issues arising from the UK Elections Act 2022, in particular in relation to campaigning in elections. It

¹ In addition, prior to this, the voting age was reduced to 16 by the Scottish Elections (Reduction of Voting Age) Act 2015

² [Electoral reform consultation - gov.scot \(www.gov.scot\)](https://www.gov.scot/electoral-reform-consultation)

highlighted a number of possible changes to assist candidates in local government elections and issues that had been identified in relation to the emergency re-scheduling of elections. It also posed questions on how to increase voter registration and how to improve accessibility in elections, to ensure all people can vote independently and in secret.

This Bill, the Scottish Elections (Representation and Reform) Bill, follows the Scottish Government's consideration of the responses to that consultation³ as well as further engagement with stakeholders (see below). It makes provision on:

- extending candidacy rights at Scottish Parliament and local government elections to foreign nationals with limited leave to remain;
- barring those found guilty of offences involving intimidation of campaigners, candidates and elected representatives from being Members of the Scottish Parliament (MSPs) and councillors, and creating a new Scottish disqualification order which will apply to those guilty of offences involving intimidation of electoral workers;
- updating campaign finance, third party campaigning and digital imprint definitions and rules;
- taking forward a range of measures based on experience with Covid-19 to ensure emergency re-scheduling of elections can be more easily facilitated;
- amendments to allow electoral pilot schemes to be proposed by Scottish Ministers, the EMB and Electoral Registration Officers (EROs) in addition to local authorities (and requiring the EMB to be consulted on pilot proposals);
- creating a power to permit funding by the Scottish Ministers to increase democratic engagement;
- changing the deadline by which Boundaries Scotland is required to review local government electoral wards from 2028 to 2031, to match 5-year election cycles;
- facilitating improved scrutiny by the Scottish Parliament of the activities of the Electoral Commission in relation to Scottish Parliament and local government elections; and amending the legal status of the EMB so that it will have a legal personality in its own right, and creating a Deputy Convener post for the EMB.

In addition to considering the written responses from individuals and organisations to the consultation paper, during the policy development process roundtable discussions were held with young people and accessibility groups, and regular engagement took place with stakeholders including the Electoral Commission, the EMB, the Convention of Scottish Local Authorities (COSLA), Boundaries Scotland, and Scottish Assessors' Association. The Scottish Parliament Political Parties Panel, UK and Welsh Government officials have also been consulted on specific points. The Scottish Government will continue to work with stakeholders and organisations

³ [Electoral Reform Consultation Analysis - gov.scot \(www.gov.scot\)](https://www.gov.scot/resources/documents/2022/07/Electoral-Reform-Consultation-Analysis-2022-2023-Scottish-Government-Response.pdf); [Electoral reform consultation results 2022-2023: Scottish Government response - gov.scot \(www.gov.scot\)](https://www.gov.scot/resources/documents/2022/07/Electoral-reform-consultation-results-2022-2023-Scottish-Government-response.pdf)

with an interest in the Bill to ensure full account is taken of equality issues as the Bill progresses through Parliament.

The Scope of the EQIA

The EqIA has assessed the potential impact of the Bill by considering whether the equality evidence indicates potential differential impacts on persons with protected characteristics or provides an opportunity to improve equality in an area. In line with the requirements of the general equality duty, it considers the need to:

- eliminate discrimination, harassment and victimisation and any other conduct that is prohibited by or under the act;
- advance equality of opportunity between persons who share a relevant protected characteristic and those who do not; and
- foster good relations between persons who share a relevant protected characteristic and those who do not.

Many of the measures outlined in the Bill (as summarised in the section above) are administrative in nature, and the Scottish Government does not consider these to have an equality impact (including provisions for campaign rules, emergency rescheduling of elections and reform arrangements for several electoral organisations).

The EqIA has focussed on the following measures in the Bill, that could have differential impacts on protected characteristic groups:

- extending candidacy rights at Scottish Parliament and local government elections to foreign nationals with limited leave to remain;
- barring those found guilty of offences involving intimidation of campaigners, candidates and elected representatives from being MSPs and councillors and creating a new Scottish disqualification order which will apply to those guilty of offences involving intimidation of electoral workers (also barring them from elected office);
- amendments to allow electoral pilot schemes to be proposed by Scottish Ministers, the EMB and EROs – this adds to the existing ability of local authorities to propose pilot schemes. It also requires the EMB to be consulted on pilot proposals;
- creating a power to permit funding by the Scottish Ministers to increase democratic engagement.

The following protected characteristics have been considered in the EqIA:

- age
- disability
- gender reassignment

- pregnancy and maternity
- race
- religion or belief
- sex
- sexual orientation

Key Findings

Evidence gathered as part of the EqIA, including in responses received from equality stakeholder groups, suggests the following areas where the measures in the Bill, if enacted, may have a differential impact on some protected characteristics, or where the implementation of the measures would provide opportunities to advance equality of opportunity between people who share a relevant protected characteristic and those who don't.

- **Extending candidacy rights at Scottish Parliament and local government elections to foreign nationals with limited leave to remain**

The Bill promotes equality of opportunity on the grounds of race, and encourages participation in public life, by extending candidacy rights in Scottish Parliament and local government elections to all resident foreign nationals aged 18 or older with limited leave to remain. This is in line with the Scottish Government's view that anyone who is living in Scotland should have a say on how Scotland is run.

'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. Resident foreign nationals with indefinite leave to remain, and citizens or family members of citizens of EU countries, Switzerland, Norway, Iceland or Liechtenstein with settled or pre-settled status under the EU Settlement Scheme were already empowered to stand as candidates in Scottish Parliament and Scottish local government elections under the Scottish Elections (Franchise and Representation) Act 2020. A further change, to give effect to treaties that the UK Government had agreed, was made in the Scottish Local Government Elections (Candidacy Rights of Foreign Nationals) Act 2022 to allow nationals of Luxembourg, Poland, Portugal and Spain with limited leave to remain to stand in Scottish local government elections, provided that they meet the normal requirements that apply to all British nationals seeking to stand in local elections.

This provision in the Bill would bring candidacy rights into line with voting rights for foreign nationals, meaning that all foreign nationals aged 18 or

above with limited or unlimited leave to remain would be empowered to stand as candidates in Scottish Parliament and local government elections.

A measure that was consulted upon but not taken forward in the Bill, was extending candidacy rights to 16–17-year-olds. It is currently the law that to stand for election to the Scottish Parliament and Local Government a candidate has to be 18. Concerns were raised during the consultation around the potential exposure of young people to intimidation, both as candidates and as representatives, and also practical issues concerning travel to the Scottish Parliament or council headquarters and working hours. As part of the consultation process, a roundtable discussion with young people was held. Support for the proposal was voiced by some individuals, however some of the practical concerns raised in the consultation paper were also voiced, including the need to ensure appropriate safeguarding and support was in place for young people. The Government recognises these concerns and has concluded that the time is not right for an extension of candidacy rights to 16- and 17-year-olds in this Bill.

- **Barring those found guilty of offences involving intimidation of campaigners, candidates, elected representatives and electoral workers from being Members of the Scottish Parliament (MSPs) and councillors**

The Bill contributes to advancing equality of opportunity between persons who share a relevant protected characteristic and those who do not, eliminating discrimination, harassment and victimisation of those with protected characteristics, and encouraging participation in public life by introducing measures to discourage intimidation of election campaigners, candidates, elected representatives and electoral workers.

A 2017 review on intimidation in public life by the Committee on Standards in Public Life noted: “A clear finding of our review is that intimidation is disproportionately likely to be directed towards women, those from ethnic and religious minorities, and LGBT candidates. A failure to tackle such abuse will perpetuate inequalities in Britain’s public life and restrict the diversity of those representing the public.”⁴

A 2021 survey of MSPs found that over two-thirds (70 per cent) of those who responded said they had feared for their safety since being elected, including almost 9 in 10 female MSPs. Almost half (46%) of female MSPs who

⁴ [Intimidation in Public Life - A Review by the Committee on Standards in Public Life \(publishing.service.gov.uk\)](https://publishing.service.gov.uk)

responded to the survey had received a death threat, while a quarter (26%) of male MSPs had.⁵

The Bill removes the right of someone convicted of an offence involving harassing or intimidating those involved in the electoral process to be a Member of the Scottish Parliament or a councillor in Scotland for a period of five years.

- **Amendments to allow electoral pilot schemes to be proposed by Scottish Ministers, the EMB and EROs in addition to local authorities**

Under section 5 of the Scottish Local Government (Elections) Act 2002 local authorities can propose to Scottish Ministers that they conduct pilots in relation to the holding of elections, for example to “facilitate voting by any persons or any class of person”. The power has been little used and no pilot has occurred since 2004 (when a pilot in relation to holding a by-election entirely by postal voting took place). The Bill will extend the power to propose electoral pilots to Scottish Ministers, the EMB and EROs.

While it is hoped that this will increase the prospect of pilots on electoral innovations being undertaken, the details of future pilots that may come forward under this legislation, if passed, are not yet known. The Bill’s policy memorandum, however, notes the policy intention underpinning the measure, as picked up by respondents to the question in the consultation on what more could be done to improve the voting experience for individuals with particular accessibility needs or requirements. Several of the suggestions made, such as accessibility features, could potentially be the subject of an electoral innovation pilot. Examples of possible future pilots in this area include the use of digital poll cards (transmitted to voters by email or App), either in addition to or in place of paper poll cards. This would be aimed at making these accessible for people with sight loss. Other possibilities include a pilot of a new tactile or audio voting aid.

The EqIA therefore notes a potential positive contribution by this Bill to eliminating discrimination and advancing equality of opportunity for disabled people participating in the democratic process.

These pilots could also include ways to increase voter turnout amongst underrepresented groups leading to a wider range of impacts on those who share protected characteristics. Any pilot would be brought forward by secondary legislation and subject to impact assessments at that time.

⁵ [Death threats sent to a third of MSPs](#), Holyrood Magazine, 15th February 2021

- **Creating a power to permit funding by the Scottish Ministers to increase democratic engagement**

The Bill creates a new power to enable the Scottish Government to make grants and other financial assistance to organisations for activities that are designed to increase democratic engagement.

The details of future democratic engagement grant applications that may come forward under this legislation, if passed, are not yet known. The policy memorandum, however, notes that, where a grant or assistance scheme is put in place, this is expected to be focussed on local organisations which work with harder to reach groups and which have clear objectives to improve democratic participation, such as through encouraging registration.

The EqIA therefore notes a potential positive contribution by this Bill to advancing equality for younger people and those from minority ethnic groups who are currently overall less likely to participate in the democratic process.

Based on the above, the following sections set out the evidence gathered as part of this EqIA including (where available) information provided by equality stakeholder organisations, and data for each protected characteristic group.

Age

Scotland's population broken down by age category is shown in Table 1, below. Just over 2% are aged 16-17, with a further almost 22% aged 18-34.⁶ Almost 20% are aged 65 years and over.⁷

Table 1 – Scotland's population by age category, 2021⁸

Age group	Number	% of total population
16 to 17	113,459	2.1
18 to 34	1,198,408	21.9
35 to 44	692,525	12.6
45 to 54	728,089	13.3
55 to 64	762,036	13.9
65+	1,073,861	19.6
Total (including under-16s)	5,479,900	100.0

⁶ [Mid-2021 Population Estimates Scotland | National Records of Scotland \(nrscotland.gov.uk\)](https://www.nrscotland.gov.uk/population-estimates/mid-2021)

⁷ [Mid-2021 Population Estimates Scotland | National Records of Scotland \(nrscotland.gov.uk\)](https://www.nrscotland.gov.uk/population-estimates/mid-2021)

⁸ [Mid-2021 Population Estimates Scotland | National Records of Scotland \(nrscotland.gov.uk\)](https://www.nrscotland.gov.uk/population-estimates/mid-2021)

National Records of Scotland data show that, as of December 2022, there were 76,600 registered voters aged 16 or 17. They accounted for 1.8% of the total electorate.⁹ Breakdowns for other age groups are not available.

The Scottish Social Attitudes Survey has found that the gap between the proportions of younger and older people in Scotland who think it's important to vote in elections has closed over time. In 2004, the proportion of the youngest age group who thought it was important to vote in Scottish Parliament elections was 64%, versus 86% of the oldest age group.¹⁰ In the most recent data, for 2021/22, there was no difference by age – 97% of those in the youngest age group (aged 16-34) and 98% of those in the oldest age group (aged 65 and over) thought it was important to vote in Scottish Parliament elections.¹¹

Despite this, younger people are less likely than older people to be registered to vote. According to the Electoral Commission's report on completeness of the electoral register in Scotland, for people aged 18 – 34 the register is 68% complete, compared with 95% complete for people aged 55 – 64 and 65+.¹²

Research led by the University of Edinburgh found that Scotland maintained a boost in electoral engagement among first-time voters enfranchised at 16 at the 2021 Scottish Parliament elections.¹³ Despite this, the Scottish Election Study post-Scottish Parliament election survey in 2021 found that the youngest age groups overall were still less likely to have voted than the oldest age groups. Three quarters (77%) of respondents aged 16-24 said they definitely voted (and only 71% of those aged 25-34), while over 90% of respondents aged 65 and older said they definitely voted in the election.¹⁴ Note that turnout in the 2021 Scottish Parliament election was 63.5%.

The Bill creates a new power to enable the Scottish Government to make grants and other financial assistance to organisations for activities that are designed to increase democratic engagement, including a particular focus on younger people. While the details of future grant applications are not yet known, the EqIA notes a potential positive contribution by this Bill to advancing equality for younger people who are currently less likely to participate in the democratic process.

There is a potential indirect negative impact on the grounds of age, in that the Bill does not seek to change the existing position that people aged 16 to 17 are entitled

⁹ [People registered to vote as of 1 December 2022 \(previously called Electoral Statistics\) | National Records of Scotland \(nrscotland.gov.uk\)](https://www.nrscotland.gov.uk/electoral-statistics)

¹⁰ [Scottish Social Attitudes 2019: attitudes to government and political engagement - gov.scot \(www.gov.scot\)](https://www.gov.scot/publications/scottish-social-attitudes-2019/attitudes-to-government-and-political-engagement/)

¹¹ [Scottish Social Attitudes survey 2021/22: attitudes data - gov.scot \(www.gov.scot\)](https://www.gov.scot/publications/scottish-social-attitudes-2021-22/attitudes-data/)

¹² [The December 2022 electoral registers in Scotland \(electoralcommission.org.uk\)](https://www.electoralcommission.org.uk/electoral-register-2022)

¹³ [Votes at 16 in Scotland \(ed.ac.uk\)](https://www.ed.ac.uk/electoral-study)

¹⁴ [Data – Scottish Election Study](https://www.ed.ac.uk/electoral-study)

to vote in but not eligible to stand as candidates in Scottish Parliamentary and local government elections. While, in principle, the Scottish Government considers that all those able to vote in Scottish Parliament and local government elections should be able to stand as candidates, at this stage, the Scottish Government considers not including this change in the Bill to be justified by the concerns raised in the consultation around the impact of such a change on the wellbeing of 16 to 17 year olds and their ability to represent their constituents. Concerns raised included safeguarding, employment issues, conflict with education, risk of abuse and harassment. Additionally the consultation analysis identified that respondents were broadly opposed to this change.

Responses to the consultation included the following, from stakeholders:

"... Whilst it could be argued that it would be fair and consistent to reduce the age limit in line with the voting age, we have reservations about the possibility of a negative impact on the welfare of 16 and 17-year-old candidates, and their ability to effectively represent their constituents especially if they have not completed their education ... we suggest that consideration be given to whether any potential discrimination can be objectively justified. We suggest that that these reservations noted above, and others should be considered by the Scottish Government in greater depth to decide whether on balance the right to stand as a candidate for election should be extended." - The Law Society of Scotland.

"In relation to 16- and 17-year-olds, we appreciate that this issue is complex, with the definition of a child varying according to legal context. Additionally, consideration may need to be given to the specific needs of young councillors, including, where applicable, in relation to completing education and to protection from abuse and harassment." – COSLA.

Disability

Over a third (37%) of adults in Scotland live with limiting long-term conditions with women more likely than men to do so (42% compared to 32% respectively).¹⁵

The Scottish Social Attitudes Survey 2021/22 found no difference in whether a person considered it important to vote in elections by whether they were disabled or non-disabled.¹⁶ The Electoral Commission's 2023 public attitudes survey also found that disabled and non-disabled people were equally likely to say that they always vote at elections.¹⁷ Despite this, the Electoral Commission's survey also found that 38% of disabled people in the UK thought that barriers to democratic participation for

¹⁵ [Mid-2021 Population Estimates Scotland | National Records of Scotland \(nrscotland.gov.uk\)](https://www.nrscotland.gov.uk/mid-2021-population-estimates-scotland)

¹⁶ [Scottish Social Attitudes survey 2021/22: attitudes data - gov.scot \(www.gov.scot\)](https://www.gov.scot/attitudes-data)

¹⁷ [Public attitudes 2023 | Electoral Commission](https://www.electoralcommission.gov.uk/public-attitudes-2023)

disabled people were a problem, whereas 23% did not think barriers for disabled people were a problem. The survey also found that 30% of all respondents in Scotland thought that barriers to democratic participation for disabled people were a problem (versus 26% who didn't) but it is not possible to break down the data by the views of disabled / non-disabled people at a Scotland level. Disabled people across the UK responding to the Electoral Commission's survey also rated the security and secrecy of voting slightly less highly than non-disabled people.¹⁸

The Bill will extend the power to propose electoral pilots to Scottish Ministers, the EMB and EROs. While it is hoped that this will increase the prospect of pilots on electoral innovations being undertaken, the details of future pilots that may come forward under this legislation, if passed, are not yet known. As set out in the section above, encouraging electoral innovation pilots to improve the accessibility of elections is a key aim of this measure, reflecting responses to the consultation. The EqIA therefore notes a potential positive contribution by this Bill to eliminating discrimination and advancing equality of opportunity for disabled people participating in the democratic process. Any pilot would be brought forward by secondary legislation and subject to impact assessments at that time.

The consultation paper explained that section 3A of the Representation of the People Act 1983¹⁹ ("Disfranchisement of offenders detained in mental hospitals") removes voting rights from certain people detained on mental health grounds. This is in the context of conduct contrary to the criminal law. For example, section 59A of the Criminal Procedure Act (Scotland) 1995²⁰ 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.

The consultation paper highlighted that 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 stated that 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 was noted 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 Compulsion Order could be subject to restrictions for six months, with scope for a further six-month extension, after which it

¹⁸ [Public attitudes 2023 | Electoral Commission](#)

¹⁹ [Representation of the People Act 1983 \(legislation.gov.uk\)](#)

²⁰ [Criminal Procedure \(Scotland\) Act 1995 \(legislation.gov.uk\)](#)

could renew annually after review. It was suggested that this may make it difficult to draw a direct comparison with those prisoners granted voting rights.

The consultation paper therefore asked (at Question 21) whether the electoral franchise should be extended further in relation to those detained on certain mental health grounds related to criminal justice. This proposition was not supported by many respondents to the consultation, with 80% opposed to those detained on mental health grounds related to criminal justice. The Bill makes no change in this area.

Sex

Just over half (51%) of Scotland's population are women. The ratio of women to men is higher in older age groups, reflecting women's longer life expectancy.²¹

At the 2021 Scottish Parliament election, 45% of members elected were women.²² At the 2022 Scottish council elections, an estimated 33% of candidates and 35% of elected members were women.²³

The Electoral Commission's research with candidates and agents following the 2022 Scottish council elections, which they noted in their response to the consultation, found that female candidates were more likely to report experiences of intimidation at the elections than male candidates were. Over two in five candidates (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). Fewer than half (48%) of female candidates did not have an issue with threats, abuse or intimidation, while almost two thirds (64%) of male candidates said they did not have a problem.²⁴

The Standards Commission noted in their response to the consultation that evidence from a survey they undertook in 2022 to learn about the experience of councillors²⁵ indicated that "harassment and intimidation of politicians (and, in particular, women) is commonplace and can be a significant factor in them deciding not to stand for re-election."

As noted above a 2017 review on intimidation in public life by the Committee on Standards in Public Life noted: "A clear finding of our review is that intimidation is disproportionately likely to be directed towards women, those from ethnic and religious minorities, and LGBT candidates. A failure to tackle such abuse will

²¹ [Mid-2021 Population Estimates Scotland | National Records of Scotland \(nrscotland.gov.uk\)](https://www.nrscotland.gov.uk/mid-2021-population-estimates-scotland)

²² [Election 2021 | Scottish Parliament](https://www.scottish.parliament.uk/election-2021)

²³ [Fawcett Society \(2023\) Gender representation on local councils](https://www.fawcett.org.uk/gender-representation-on-local-councils)

²⁴ [Report on the May 2022 Scottish council elections | Electoral Commission](https://www.electoralcommission.gov.uk/report-on-the-may-2022-scottish-council-elections)

²⁵ [Standards Commission for Scotland - Survey of Councillors 2022: Analysis of Responses](https://www.standardscommission.gov.uk/survey-of-councillors-2022-analysis-of-responses)

perpetuate inequalities in Britain's public life and restrict the diversity of those representing the public.”

As stated in a previous section in 2021 a survey of MSPs found that over two-thirds (70 per cent) of those who responded said they had feared for their safety since being elected, including almost 9 in 10 female MSPs. Almost half (46%) of female MSPs who responded to the survey had received a death threat, while a quarter (26%) of male MSPs had also received one.²⁶

The Bill removes the right of someone convicted of an offence involving harassing or intimidating those involved in the electoral process to be a Member of the Scottish Parliament or a councillor in Scotland for a period of five years. In seeking to discourage intimidation, which is disproportionately experienced by women compared to men, the Bill contributes to advancing equality of opportunity and eliminating discrimination, harassment and victimisation of women, and encouraging participation in public life.

Pregnancy and maternity

The EqIA has not found evidence to suggest that the Bill will have a differential impact on pregnant women.

Gender reassignment

There is no robust data available on the proportion of MSPs and councillors in Scotland who are transgender. The Scottish Government sought to improve the quality of diversity data available on candidates and elected members in Scotland at the 2022 council elections, by conducting the Local Government Candidate Diversity Survey 2022.²⁷ The response rate to the survey was very low, with only 28% of candidates responding. Of the candidates who responded, 1% of respondents identified as transgender, 4% preferred not to answer and 96% did not identify as transgender.²⁸ Those findings should, however, be treated with caution due to the low response rate, and the Scottish Government is continuing to explore options to improve the availability of diversity data on candidates and those in elected office.

As noted above a 2017 review on intimidation in public life by the Committee on Standards in Public Life noted: “A clear finding of our review is that intimidation is disproportionately likely to be directed towards women, those from ethnic and religious minorities, and LGBT candidates. A failure to tackle such abuse will

²⁶ [Death threats sent to a third of MSPs](#) - February 15th 2021.

²⁷ [Diversity in political representation in Scotland: data improvement project proposal - gov.scot \(www.gov.scot\)](#)

²⁸ [Local Government Candidates Survey 2022 - gov.scot \(www.gov.scot\)](#)

perpetuate inequalities in Britain’s public life and restrict the diversity of those representing the public.”

The Bill removes the right of someone convicted of an offence involving harassing or intimidating those involved in the electoral process to be a Member of the Scottish Parliament or a councillor in Scotland for a period of five years. In seeking to discourage intimidation, which is disproportionately experienced by transgender people compared to non-transgender people, the Bill contributes to advancing equality of opportunity and eliminating discrimination, harassment and victimisation of transgender people, and encouraging participation in public life.

Sexual orientation

In 2019, 94% of Scotland’s population identified as heterosexual, while 3% identified as LGBT & other.²⁹

There is no robust data available on the proportion of MSPs and councillors in Scotland who are LGBT. The Scottish Government sought to improve the quality of diversity data available on candidates and elected members in Scotland at the 2022 council elections, by conducting the Local Government Candidate Diversity Survey 2022.³⁰ The response rate to the survey was very low, with only 28% of candidates responding. Of the candidates who responded, 80% of respondents identified as straight/heterosexual, 15% as lesbian, gay, bisexual or other and 5% preferring not to say.³¹ Those findings should, however, be treated with caution due to the low response rate, and the Scottish Government is continuing to explore options to improve the availability of diversity data on candidates and those in elected office.

As noted above a 2017 review on intimidation in public life by the Committee on Standards in Public Life noted: “A clear finding of our review is that intimidation is disproportionately likely to be directed towards women, those from ethnic and religious minorities, and LGBT candidates. A failure to tackle such abuse will perpetuate inequalities in Britain’s public life and restrict the diversity of those representing the public.”

The Bill removes the right of someone convicted of an offence involving harassing or intimidating those involved in the electoral process to be a Member of the Scottish Parliament or a councillor in Scotland for a period of five years. In seeking to discourage intimidation, which is disproportionately experienced by LGBT compared to heterosexual people, the Bill contributes to advancing equality of opportunity and

²⁹ [Scottish Surveys Core Questions 2019 - gov.scot \(www.gov.scot\)](https://www.gov.scot/publications/scottish-surveys-core-questions-2019/pages/11-12.aspx)

³⁰ [Diversity in political representation in Scotland: data improvement project proposal - gov.scot \(www.gov.scot\)](https://www.gov.scot/publications/diversity-in-political-representation-in-scotland/pages/1-2.aspx)

³¹ [Local Government Candidates Survey 2022 - gov.scot \(www.gov.scot\)](https://www.gov.scot/publications/local-government-candidates-survey-2022/pages/1-2.aspx)

eliminating discrimination, harassment and victimisation of LGBT people, and encouraging participation in public life.

Race

The protected characteristic of race, as defined in the Equality Act 2010, includes colour, ethnicity, nationality and citizenship. In 2021, there were around 397,000 non-British nationals living in Scotland (7.4% of the total population).³²

There are six Members of the Scottish Parliament from ethnic minority backgrounds (4.5% of the total).³³ There is no robust data available on the proportion of councillors in Scotland who are from minority ethnic groups. The Scottish Government sought to improve the quality of diversity data available on candidates and elected members in Scotland at the 2022 council elections, by conducting the Local Government Candidate Diversity Survey 2022.³⁴ The response rate to the survey was very low, with only 28% of candidates responding. Of the candidates who responded, 68% identified their ethnicity as White Scottish, with 92% identifying with any white group. 2% identified as Asian and 5% another ethnic group. 1% of respondents preferred not to say.³⁵ Those findings should, however, be treated with caution due to the low response rate, and the Scottish Government is continuing to explore options to improve the availability of diversity data on candidates and those in elected office.

The Scottish Elections (Franchise and Representation) Act 2020 extended the franchise in Scotland to all foreign nationals who are legally resident in Scotland. It also extended candidacy rights to resident foreign nationals with indefinite leave to remain, and citizens or family members of citizens of EU countries, Switzerland, Norway, Iceland or Liechtenstein with settled or pre-settled status under the EU Settlement Scheme.

While most foreign nationals living in Scotland already had the right to stand as candidates in Scottish Parliament and local government elections, comprehensive data are not available on the proportion of foreign nationals in Scotland who have limited leave to remain in the UK, and who are therefore affected by the extension of candidacy rights proposed in the Bill.

The most recent statistics published by National Records of Scotland estimate that there were around 397,000 non-British nationals living in Scotland in the year ending

³² [Population by Country of Birth and Nationality, Scotland, July 2020 to June 2021 | National Records of Scotland \(nrscotland.gov.uk\)](https://www.nrscotland.gov.uk)

³³ [The journey to a more diverse Scottish Parliament | The Political Studies Association \(PSA\)](https://www.politicalstudies.org.uk)

³⁴ [Diversity in political representation in Scotland: data improvement project proposal - gov.scot \(www.gov.scot\)](https://www.gov.scot)

³⁵ [Local Government Candidates Survey 2022 - gov.scot \(www.gov.scot\)](https://www.gov.scot)

June 2021 (including 165,000 non-EU)³⁶ but many of these people would have indefinite leave to remain or pre-settled status and so already have candidacy rights in Scottish Parliament and local government elections (in addition, foreign nationals without limited leave to remain from Luxembourg, Poland, Portugal, and Spain already enjoy the right to stand in local government elections in Scotland as a result of treaties signed by the UK Government and the Scottish Local Government Elections (Candidacy Rights of Foreign Nationals) Act 2022).

The Home Office publishes statistics on the number of settled and pre-settled status applications received in Scotland. This does not necessarily mean that the applicants now reside in Scotland as the applicants may have subsequently moved. The latest data available covers the period 28 August 2018 to 30 September 2023.³⁷ It indicates 189,380 concluded applications for settled status and 121,910 concluded applications for pre-settled status in Scotland over that period. It should be noted that this data covers applications rather than applicants and people may submit multiple applications, i.e. to move from pre-settled to settled status. As a result of the Scottish Elections (Franchise and Representation) Act 2020, those persons would already be able to stand in Scottish Parliament and local government elections, provided they met the other eligibility criteria (e.g. being aged 18 or older).

The population estimates referred to above cannot be directly compared with EU settlement scheme figures because of differences in what the statistics measure and how they are compiled. However, the data available does at the very least suggest that a substantial proportion of foreign nationals currently resident in Scotland enjoy candidacy rights by virtue of having settled or pre-settled status. The implication is that the Bill will, at least initially, result in only a relatively small number of people obtaining candidacy rights.

The electoral reform consultation explained that Scotland has one of the most generous voting franchises in the world. Since 2020 and 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 Scottish Parliament and local government elections.

The consultation therefore asked whether the franchise should be extended further in relation to asylum seekers. This was not supported by many respondents to the consultation, with 78% against extending voting rights to asylum seekers.

The Government accepts that there are significant challenges in extending voting rights to asylum seekers, and concerns have been raised by EROs in relation to

³⁶ [Population by Country of Birth and Nationality, Scotland, July 2020 to June 2021](#)

³⁷ [EU Settlement Scheme quarterly statistics, September 2023](#) See [EU Settlement Scheme Quarterly Statistics Tables](#) under heading 10.

whether they would know when an asylum claim had been conclusively rejected so as to remove the person from the electoral register. No change to the franchise is proposed in the Bill.

Responses to the consultation included the following from stakeholders:

"By only granting candidacy rights to those with indefinite leave to remain (ILR), the current electoral system excludes some Scottish residents who may have been in the country for a significant period of time, but not yet acquired ILR. ...We, therefore, believe that choosing ILR as a threshold for candidacy sets too high a bar. The new proposed legislation is an opportunity to redress this, by creating an approach to candidacy rights that is consistent with the eligibility to vote." - Joint response - JustRight Scotland, Scottish Refugee Council, Maryhill Integration Network, The VOICES Network, Refugees for Justice.

"We fully support the premise of the Scottish Parliament and Local Government being representative of all demographics within society. There is the potential for discrimination based on race by excluding those seeking asylum from standing for election. However, we have concerns in the overwhelming practical hurdles that this would create" - The Law Society of Scotland.

As noted above a 2017 review on intimidation in public life by the Committee on Standards in Public Life noted: "A clear finding of our review is that intimidation is disproportionately likely to be directed towards women, those from ethnic and religious minorities, and LGBT candidates. A failure to tackle such abuse will perpetuate inequalities in Britain's public life and restrict the diversity of those representing the public."

The Bill removes the right of someone convicted of an offence involving harassing or intimidating those involved in the electoral process to be a Member of the Scottish Parliament or a councillor in Scotland for a period of five years. In seeking to discourage intimidation, which is disproportionately experienced by those from minority ethnic groups compared to those who are not, the Bill contributes to advancing equality of opportunity and eliminating discrimination, harassment and victimisation of people from minority ethnic groups, and encouraging participation in public life.

The Scottish Election Study post-Scottish Parliament election survey in 2021 found that non-white survey respondents were less likely to say they had definitely voted than white respondents. Two thirds (65%) of non-white respondents said they definitely voted, while 85% of white respondents (English / Welsh / Scottish / Northern Irish / British) and 70% of white ('other') respondents said they definitely

voted in the election.³⁸ Note that turnout in the 2021 Scottish Parliament election was 63.5%.

The Bill creates a new power to enable the Scottish Government to make grants and other financial assistance to organisations for activities that are designed to increase democratic engagement, including a particular focus on hard-to-reach groups, which can include some minority ethnic groups. While the details of future grant applications are not yet known, the EqIA notes a potential positive contribution by this Bill to advancing equality for minority ethnic groups who are currently overall less likely to participate in the democratic process.

Religion or belief

In 2019, 4% of Scotland's population identified with a religion other than Christianity, of which 2% identified as Muslim and 2% as another religion. More than half of the population (54%) identified with no religion, and 43% as Christian (including 22% Church of Scotland, 14% Roman Catholic, and 7% other Christian).³⁹

There is no robust data available on the proportion of MSPs and councillors in Scotland who are from religious minority groups. The Scottish Government sought to improve the quality of diversity data available on candidates and elected members in Scotland at the 2022 council elections, by conducting the Local Government Candidate Diversity Survey 2022.⁴⁰ The response rate to the survey was very low, with only 28% of candidates responding. Of the candidates who responded, the largest group were those of no religion (48%), followed by various Christian affiliated beliefs, including followers of the Church of Scotland at 20% and Roman Catholics at 12% and Other Christians at 11%. Muslim respondents made up 2% while those belonging to another religion other than Christianity and Islam totalled 4% and those who preferred not to say made up 3% of respondents.⁴¹ Those findings should, however, be treated with caution due to the low response rate, and the Scottish Government is continuing to explore options to improve the availability of diversity data on candidates and those in elected office.

A 2017 review on intimidation in public life by the Committee on Standards in Public Life noted: "A clear finding of our review is that intimidation is disproportionately likely to be directed towards women, those from ethnic and religious minorities, and LGBT candidates. A failure to tackle such abuse will perpetuate inequalities in Britain's public life and restrict the diversity of those representing the public."

³⁸ [Data – Scottish Election Study](#)

³⁹ [Scottish Surveys Core Questions 2019 - gov.scot \(www.gov.scot\)](#)

⁴⁰ [Diversity in political representation in Scotland: data improvement project proposal - gov.scot \(www.gov.scot\)](#)

⁴¹ [Local Government Candidates Survey 2022 - gov.scot \(www.gov.scot\)](#)

The Bill removes the right of someone convicted of an offence involving harassing or intimidating those involved in the electoral process to be a Member of the Scottish Parliament or a councillor in Scotland for a period of five years. In seeking to discourage intimidation, which is disproportionately experienced by those from religious minorities compared to those who are not, the Bill contributes to advancing equality of opportunity and eliminating discrimination, harassment and victimisation of people from religious minorities, and encouraging participation in public life.

Recommendations and Conclusion

Overall, the Bill promotes equality by seeking to further align candidacy rights with voting rights, and to enable pilots and funding to improve the accessibility of elections, and to increase voter registration and participation by under-represented groups. In introducing measures to discourage intimidation of campaigners, candidates, elected representatives and electoral workers it also contributes to eliminating discrimination, harassment and victimisation, removing barriers and encouraging participation in public life for those with protected characteristics.

The EqIA has identified positive impacts for equality groups from the following provisions contained within the Bill:

- The Bill promotes equality of opportunity on the grounds of race, and encourages participation in public life, by extending candidacy rights in Scottish Parliament and local government elections to all resident foreign nationals aged 18 or older with limited leave to remain.
- The Bill contributes to advancing equality of opportunity between persons who share a relevant protected characteristic and those who do not, eliminating discrimination, harassment and victimisation of those with protected characteristics, and encouraging participation in public life by introducing measures to discourage intimidation (disproportionately likely to be directed towards women, those from ethnic and religious minorities, and LGBT people) of election campaigners, candidates, elected representatives and electoral workers.
- The EqIA notes a potential positive contribution by this Bill to eliminating discrimination and advancing equality of opportunity for disabled people participating in the democratic process, through the extension of the power to propose electoral innovation pilots to Scottish Ministers, the EMB and EROs.
- The EqIA further notes a potential positive contribution by this Bill to advancing equality for younger people and those from minority ethnic groups who are currently overall less likely to participate in the democratic process, through the introduction of a new power to enable the Scottish Government to make grants and other financial assistance to organisations for activities that are designed to increase democratic engagement.

There is a potential indirect negative impact on the grounds of age, in that the Bill does not seek to change the existing position that people aged 16 to 17 are entitled to vote in but not eligible to stand as candidates in Scottish Parliamentary and local government elections. At this stage, the Scottish Government considers this to be justified by the concerns raised in the consultation around the impact of such a change on the wellbeing of 16- to 17-year-olds and their ability to represent their constituents. Concerns raised included safeguarding, employment issues, conflict with education, risk of abuse and harassment.

Monitoring and review

The Scottish Government will draw on a range of data sources to monitor the impact of the Bill, if enacted, including:

- Continuing to work with stakeholders to explore options to improve the availability of diversity data on candidates and those in elected office at the next set of elections, following the low response rate to the voluntary Local Government Candidate Diversity Survey 2022.⁴²
- Monitoring data on registration and turnout by different groups, including from the Electoral Commission, National Registers of Scotland and the Scottish Election Study.
- Monitoring data on attitudes to voting and government from the Scottish Social Attitudes Survey.
- Monitoring the findings from the Electoral Commission's public attitudes survey data over time, including specifically the proportion of people who think barriers to democratic participation for disabled people are a problem at elections.
- Monitoring the findings from the Electoral Commission's surveys of candidates, specifically in terms of the proportions of different groups reporting experiences of intimidation and harassment.
- Continuing to monitor data and research from universities and stakeholder organisations relevant to the delivery of the provisions in the Bill, as well as the findings of the Growing Up in Scotland Survey, which will soon publish longitudinal survey data on young people's political engagement.

The Scottish Government will continue to work with the Electoral Commission, the EMB, COSLA and organisations representing those with protected characteristics, including those who have already engaged with the consultation, to support electoral innovation pilots and take an evidence-based approach to the development of the

⁴² [Diversity in political representation in Scotland: data improvement project proposal - gov.scot \(www.gov.scot\)](#); [Local Government Candidates Survey 2022 - gov.scot \(www.gov.scot\)](#)

grant scheme as well as in monitoring and reviewing the impact of the Bill, if enacted.



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