

Scottish Elections (Reform) Bill

Policy Memorandum

Introduction

1. As required under Rule 9.3.3 of the Parliament's Standing Orders, this Policy Memorandum is published to accompany the Scottish Elections (Reform) Bill introduced in the Scottish Parliament on 2 September 2019.
2. The following other accompanying documents are published separately:
 - Explanatory Notes (SP Bill 53–EN);
 - a Financial Memorandum (SP Bill 53–FM);
 - statements on legislative competence by the Presiding Officer and the Scottish Government (SP 53–LC).
3. This Policy Memorandum has been prepared by the Scottish Government to set out the Government's policy behind the Bill. It does not form part of the Bill and has not been endorsed by the Parliament.

Policy objectives of the Bill

General Overview

4. The Bill sets out a range of changes to electoral law covering Scottish Parliament and local government elections in Scotland.

Background

5. The Scotland Act 2016¹ amended the Scotland Act 1998 (the “1998 Act”)² to devolve further powers to the Scottish Parliament. The changes were

¹ <http://www.legislation.gov.uk/ukpga/2016/11/contents/enacted>

² <http://www.legislation.gov.uk/ukpga/1998/46/contents>

This document relates to the Scottish Elections (Reform) Bill (SP Bill 53) as introduced in the Scottish Parliament on 2 September 2019

based on recommendations made in the Report of the Smith Commission: *Proposals for further Devolution to Scotland*³ published on 27 November 2014 for further devolution of powers to the Scottish Parliament. These additional powers provided the ability to amend certain sections of the 1998 Act and 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

6. 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.

7. The consultation on Electoral Reform⁴ 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 franchise in relation to foreign nationals;
- extending the role of the Electoral Management Board for Scotland;
- access to voting and elected office;
- electronic voting;
- the role and remuneration of Returning Officers; and
- boundary reviews of Scottish Parliament constituencies and local government areas and wards.

8. The Bill includes provisions covering a number of these issues, which are detailed below, as well as some more specialised or technical changes to electoral law. The Bill does not affect the franchise in relation to foreign nationals or the rights of persons to stand as candidates for election. Those issues (and prisoner voting) are the subject of the Scottish Elections (Franchise and Representation) Bill, introduced in the Scottish Parliament on 20 June 2019. The intention to introduce two distinct Bills, one in relation to the franchise and

³ <https://www.parliament.uk/smith-commission-inquiry>

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

This document relates to the Scottish Elections (Reform) Bill (SP Bill 53) as introduced in the Scottish Parliament on 2 September 2019

one in relation to electoral reform, was set out in the Scottish Government's 2018/19 Programme for Government⁵.

9. Over 900 responses to the electoral reform consultation were received from organisations and individuals. These were independently analysed and the analysis report⁶ as well as individual responses were published in line with Scottish Government guidance.

10. 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.

11. 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.

12. 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.

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

⁵ <https://www.gov.scot/publications/delivering-today-investing-tomorrow-governments-programme-scotland-2018-19/pages/4/>

⁶ <https://www.gov.scot/publications/electoral-reform-consultation-analysis/pages/1/>

This document relates to the Scottish Elections (Reform) Bill (SP Bill 53) as introduced in the Scottish Parliament on 2 September 2019

14. The following descriptions of the provisions in the Bill include detail on consultation responses where relevant.

Provisions of the Bill

Term lengths

15. The current scheduled term length for the Scottish Parliament and for Scottish local government is four years, as set out in section 2 of the 1998 Act and section 5 of the Local Government etc. (Scotland) Act 1994⁷. This term has been subject to several changes in recent years, in order to avoid electoral clashes. Although MSPs elected to the Scottish Parliament in 2016 and councillors elected in the 2017 Scottish local government elections were all elected to five year terms, this was as a result of one off changes to the law⁸ made in respect of each election. The next Scottish Parliament general election is due in 2021 and the next Scottish local government elections are due in 2022. Under the existing law, councillors and MSPs in these elections will be set to serve for four years.

16. As was noted in the Government’s Consultation Paper on Electoral Reform, it is well-established that electoral “clashes” between different types of election should be avoided if possible. The holding of separate elections on the same day has not occurred in Scotland since 2007 when Scottish Parliament and local government polls were combined.

17. The 2007 elections were subject to an independent review, “*The independent review of the Scottish Parliamentary and local government elections 3 May 2007*” (the “Gould Report”)⁹. The Gould Report identified the different electoral systems used in the 2007 elections as a significant factor in the unusually high number of rejected ballot papers. In line with one of the

⁷ <https://www.legislation.gov.uk/ukpga/1994/39/contents>

⁸ For the Scottish Parliament, section 4 of the Fixed-term Parliaments Act 2011 (moving an election from 7 May 2015 to 5 May 2016) and section 1 of the Scottish Election (Dates) Act 2016 (moving an election from 7 May 2020 to 6 May 2021); for Scottish local government elections, section 2 of the Scottish Election (Dates) Act 2016 (providing for the next elections, after 2017, to take place in 2022 and four yearly thereafter).

⁹ https://www.electoralcommission.org.uk/__data/assets/electoral_commission_pdf_file/0011/13223/Scottish-Election-Report-A-Final-For-Web.pdf

This document relates to the Scottish Elections (Reform) Bill (SP Bill 53) as introduced in the Scottish Parliament on 2 September 2019

recommendations in the report, Scottish Parliament and local government elections have since been decoupled and not held on the same day.

18. In 2014, the report of the Smith Commission recommended that the Scottish Parliament should be prohibited from deciding that general elections to the Parliament should be held on the same day as general elections to the UK Parliament, European Parliament or local government elections in Scotland. The Scotland Act 2016 gave effect to this recommendation.

19. If the law is not changed, there might have to be a further amendment to the timing of local government elections because, as the consultation paper noted, the next UK general election is currently scheduled for the same day as the Scottish local government elections in 2022.

20. The consultation paper sought views on whether the term lengths for Scottish Parliament and local government elections should be four years, five years or another length. The paper noted that the vast majority of parliaments around the world, both national and sub-national, have term lengths of four or five years and that there has recently been legislation in respect of the Northern Ireland Assembly¹⁰, the Welsh Assembly¹¹ and the UK Parliament¹² on the basis of five year terms. The paper noted that longer parliamentary terms have been regarded as helping to facilitate longer term policy planning and greater consultation, whilst supporters of shorter terms argue that they provide more opportunities for the electorate to hold government to account. Five year terms would in theory remove the potential for a conflict of dates with UK parliamentary elections. However, any early election such as that which occurred in 2017 could still result in future conflicts.

21. Responses to the consultation identified no clear preference between four and five years, with respondents divided 44% to 50% respectively. Paragraphs 3.9 to 3.35 of the consultation analysis summarise a range of views expressed on the optimal period and the merits of avoiding clashes of election dates and fixed term lengths.

¹⁰ Section 7 of the Northern Ireland (Miscellaneous Provisions) Act 2014
<http://www.legislation.gov.uk/ukpga/2014/13/contents>

¹¹ Section 1 of the Wales Act 2014
<http://www.legislation.gov.uk/ukpga/2014/29/contents/enacted>

¹² Section 1 of the Fixed-term Parliaments Act 2011
<http://www.legislation.gov.uk/ukpga/2011/14/contents/enacted>

This document relates to the Scottish Elections (Reform) Bill (SP Bill 53) as introduced in the Scottish Parliament on 2 September 2019

22. Sections 1 and 2 of the Bill propose to change the standard term length for both Scottish parliamentary elections and local government elections to five years. Five years is not the settled preference of the Scottish Ministers, but this provision has been included to promote further debate on this issue during the Parliament's consideration of the Bill. No provision would be needed within the Bill to retain term lengths of four years.

Postponement of general election for Scottish Parliament

23. The formal election period for Scottish Parliament and local government elections commences seven weeks before the day of the poll. The Scottish Parliament is automatically dissolved around six weeks before the date of poll¹³.

24. Concerns have been expressed by electoral administrators and the Electoral Commission about the potential for uncertainty should an unexpected event occur in the lead up to an election, particularly if that event were expected to potentially affect the running of the poll. This could for example involve a health emergency which made large gatherings of people inadvisable. Such a situation occurred in 2001 when, due to an outbreak of foot and mouth disease, local elections in England and Northern Ireland had to be postponed.

25. A limited power to change the date of a Scottish Parliament poll at short notice already exists. Under section 2(5) of the 1998 Act, the Presiding Officer has the power to propose a new date for the poll at a Scottish Parliament election which is not more than one month before or after the first Thursday in May. This power was originally intended to deal with an unexpected clash of polls (e.g. with a 'snap' UK Parliament election) by allowing the Presiding Officer to change the date of the Scottish Parliament poll, but it could be used in other situations.

26. Section 3 of the Bill seeks to ensure that the Presiding Officer's power to propose a new date for a poll can be used if the Parliament has already been dissolved in accordance with section 2(3)(a) of the 1998 Act.

27. The Bill's provisions are therefore focused on ensuring that a Scottish Parliament poll can be re-scheduled appropriately. This would avoid the need to reschedule a Scottish Parliament election through primary legislation, perhaps in the form of an emergency Bill.

¹³ under section 2(3)(a) of the 1998 Act

This document relates to the Scottish Elections (Reform) Bill (SP Bill 53) as introduced in the Scottish Parliament on 2 September 2019

28. The Bill also proposes the introduction of a new requirement for the Presiding Officer to consult the Electoral Commission before setting the date for a postponed poll at a Scottish Parliament election. This requirement for consultation will apply to any proposal by the Presiding Officer to use powers under section 2(5) of the 1998 Act to propose a new date of poll, not just its use in relation to an unexpected event. The intention behind the requirement to consult the Electoral Commission is so that the Presiding Officer can be made aware of any practical issues with the organisation of the poll which might affect the date selected.

29. For local government elections, no change is proposed and primary legislation would still be required to change a local authority election date at short notice (as there is no equivalent provision to the Presiding Officer's power to propose an alternative date).

30. This issue was not included within the electoral reform consultation due to its technical nature.

Electoral Wards: number of councillors

31. Section 1 of the Local Governance (Scotland) Act 2004¹⁴ applies a scheme under which each local government electoral ward in Scotland has to return three or four councillors. When designing wards the Local Government Boundary Commission for Scotland (LGBCS) is required to make recommendations in accordance with that section and also to apply rules in schedule 6 of the Local Government (Scotland) Act 1973 ("the 1973 Act")¹⁵ which include a requirement that the ratio of electors to councillors in each ward in a council area shall be, as nearly as may be, the same. Paragraph 2 of schedule 6 of the 1973 Act provides that the LGBCS can depart from the rule about the ratio where there are special geographical considerations that appear to render such a departure desirable.

32. Section 19 of the Islands (Scotland) Act 2018¹⁶ allows the LGBCS to recommend the creation of one or two member wards in council areas that include inhabited islands. Section 20 of that Act directs the LGBCS to conduct

¹⁴ <http://www.legislation.gov.uk/asp/2004/9/contents>

¹⁵ <https://www.legislation.gov.uk/ukpga/1973/65/contents>

¹⁶ <http://www.legislation.gov.uk/asp/2018/12/enacted>

This document relates to the Scottish Elections (Reform) Bill (SP Bill 53) as introduced in the Scottish Parliament on 2 September 2019

reviews of electoral arrangements within six named local authority areas “as soon as practicable”¹⁷.

33. The Scottish Parliament’s Local Government and Communities Committee published its report entitled the *Local Government Boundary Commission for Scotland's Fifth Electoral Reviews*¹⁸ in 2016. The report noted:

“70. The Committee believes that the current legislative framework, process and methodology used in the electoral reviews is inflexible and unsatisfactory. We acknowledge that existing statutory requirements are built into the process and understand the complexities involved. When deciding on electoral boundaries, we are concerned that there is an inherent contradiction between respecting local ties and boundaries and the legislative requirement that, above all else, consideration must be given to electoral parity...Further consideration should be given to the role of local authorities, the Parliament, and Scottish Ministers within this process while maintaining the independence of the Commission.

72. The Committee recommends that the Scottish Government and the Local Boundary Commission for Scotland undertake detailed scrutiny of the legislative framework, process and methodology used in electoral reviews and make recommendations for improvements. The outcome of this work should be reported to the Committee and Parliament and should be completed in advance of Scotland’s sixth electoral review.”

34. Professor Ailsa Henderson, a Commissioner of the LGBCS, indicated in her evidence to the Committee that “we have noted instances where we have noted instances where we have noted instances where we have noted instances where having two-member wards and five-member wards would have been helpful to us and enabled us to capture local ties and special geographic circumstances better”^{18F}¹⁹.

35. Permitting wards with two or five members allows special local circumstances and geographical considerations to be taken into account. Local

¹⁷ (a) Argyll and Bute Council, (b) Comhairle nan Eilean Siar, (c) Highland Council, (d) North Ayrshire Council, (e) Orkney Islands Council, and (f) Shetland Islands Council.

¹⁸

<https://www.parliament.scot/parliamentarybusiness/CurrentCommittees/102401.aspx>

¹⁹ <https://beta.parliament.scot/parliamentary-debates-and-questions/s5/local-government-and-communities/5-october-2016-10566>

This document relates to the Scottish Elections (Reform) Bill (SP Bill 53) as introduced in the Scottish Parliament on 2 September 2019

circumstances, historical factors and geographical considerations, such as coastal or mountainous terrain could be taken into account by allowing flexibility for the LGBCS to look at each case on its merits. 72% of respondents to the Government's consultation on electoral reform agreed that the LGBCS should be afforded the flexibility to recommend wards with between two and five councillors. The consultation analysis provided the following summary of views expressed:

“7.47 Respondents indicating support for flexibility to recommend wards with two or five representatives generally argued that ‘one size does not fit all’. This group thought that Scotland was a diverse country, and that increased flexibility would allow greater account to be taken of rurality, population density, geography and travel times, ‘natural communities’, and the special circumstances of island communities in setting ward boundaries. Some said that they wished to see electoral parity given a lower priority in setting boundaries and local circumstances given higher priority...

7.48 Some respondents argued for greater flexibility than proposed in the consultation paper. However, others were more cautious, and offered several caveats and qualifications to their support for flexibility. Most commonly, respondents suggested that wards should only have less than three or more than four councillors in ‘exceptional circumstances’ governed by strict criteria, where there was a strong local case and local support, or where this would allow existing ward boundaries to remain unchanged, despite a shift in population. Others suggested that flexibility should only be used with government or parliament agreement. Some also noted the potential disadvantages of having fewer than three or more than four councillors (as discussed by those opposed to flexibility...and, thus, thought that flexibility should be used sparingly.”

36. Section 4 of the Bill therefore provides for the LGBCS to have greater flexibility to set the size of all council wards by allowing for two or five member wards as well as three and four member wards (one member wards will continue only to be possible in island communities).

Local government electors: prohibition on voting more than once

37. Under the current law it is possible for electors resident in more than one place to appear on the electoral register for more than one constituency or ward.

This document relates to the Scottish Elections (Reform) Bill (SP Bill 53) as introduced in the Scottish Parliament on 2 September 2019

Residency requirements are set out in sections 5 to 7C of the Representation of the People Act 1983 (“RoPA”)²⁰.

38. Although any elector might have an entry on more than one electoral register, it is an offence to vote more than once at either a UK Parliament or Scottish Parliament election. For UK Parliament elections, this restriction is set out in section 1(2) and enforced under section 61 of RoPA. For Scottish Parliament elections, the equivalent provisions are contained in section 11(2) of the 1998 Act and article 26 of the Scottish Parliament (Elections etc.) Order 2015²¹.

39. The position is different for local government elections. Under section 2(2) of RoPA an elector cannot vote more than once at a poll in a particular local authority area but there is no restriction on voting in more than one local authority area. For example, a person could vote in local government elections held on the same day in respect of the City of Edinburgh and Glasgow City councils as long as they were registered in both areas. Registration in multiple areas is relatively rare, but can occur where a person divides their time between local authority areas.

40. Responses to the Electoral Reform consultation were strongly in favour of restricting the right to vote in multiple areas, with 93% of respondents indicating that a voter should only be allowed to vote once at local government elections in Scotland. The consultation analysis noted:

“8.75 The predominant view was that ‘one person, one vote’ was appropriate for local government elections. Respondents thought that this would promote fairness, increase public confidence, be simple to operate and reduce the potential for fraud. It would also bring local government elections into line with other (national) elections. Only a small minority supported continuation of the current arrangements.”

41. Section 5 of the Bill therefore seeks to restrict electors to voting in only one local authority area in Scotland at local government elections held on the same day. The Bill achieves this by making it an offence to vote more than once at Scottish local government elections, as is currently the case for UK and Scottish parliamentary elections.

Electronic Voting

²⁰ <http://www.legislation.gov.uk/ukpga/1983/2/contents>

²¹ <https://www.legislation.gov.uk/ssi/2015/425/contents/made>

This document relates to the Scottish Elections (Reform) Bill (SP Bill 53) as introduced in the Scottish Parliament on 2 September 2019

42. The Scottish Government made a commitment to explore and trial the potential of electronic voting solutions in the Digital Strategy for Scotland published in March 2017²². The Government's consultation paper on electoral reform invited views on this topic. The consultation indicated that the Scottish Government was considering exploring the potential of electronic voting solutions to:

- increase voter participation;
- assist groups of people who might find voting in elections challenging; and
- provide voters with choice and flexibility over how they vote.

43. Consultees responded with a wide range of views, many of which are set out in Chapter 6 of the consultation analysis report. In relation to pilots or trials of electronic voting, the consultation analysis noted:

“6.21 Respondents who were opposed to electronic voting in any form said that there should be no pilots or trials conducted.

6.22 However, respondents in all other groups – those in favour, those with mixed views, and those with reservations about electronic voting – emphasised the importance of undertaking proper development work and trials on a small-scale basis before adopting any solution more widely. These trials should ‘test one thing at a time’, involve a wide range of participants in any development work (in particular, electronic voting solutions should be co-designed / co-produced with those with disabilities), and be ‘open to independent scrutiny’.”

44. The aim is to remove potential barriers in primary legislation that could limit or prevent future trials of electronic voting at local government elections. The policy does not extend to Scottish Parliament elections.

45. The Bill's enabling provisions on electronic voting, provided for by section 6, will help facilitate pilots that include some form of electronic voting or other digital processing to be undertaken at a future date, should any such pilot be proposed. The Bill does not by itself enable or require any trials or

²² At page 17: <https://www.gov.scot/publications/realising-scotlands-full-potential-digital-world-digital-strategy-scotland/>

This document relates to the Scottish Elections (Reform) Bill (SP Bill 53) as introduced in the Scottish Parliament on 2 September 2019

pilots to take place and secondary legislation (under the existing order-making power in section 5 of the Scottish Local Government (Elections) Act 2002²³) will be required to provide for any trial or pilot. The Bill has no effect on current voting options and the Government does not intend to withdraw any of these options in the foreseeable future.

46. 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. It is likely that exploratory trials would take place prior to any formal pilot.

Entitlement to register as an elector before attaining voting age

47. Under section 4 of RoPA, a person who is approaching voting age is entitled to apply to be added to the electoral register before they attain the legal voting age. Such a person is referred to as an ‘attainer’. An attainer automatically becomes eligible to vote upon reaching the relevant voting age (16 for Scottish Parliament and Scottish local government elections and 18 for UK Parliament elections). The current description in RoPA of when a person is entitled to register as an attainer is considered by the Scottish Government to have become unnecessarily complicated. It is based on the applicant reaching the minimum age to vote by 1st December in the year after the date on which his or her application for registration is made. The use of 1st December as a point in time for an elector’s age was a feature of the previous process under which the register was only updated once a year, on 1st December, and allowance had to be made for anyone who would turn 18 before the next again 1st December.

48. The registration process changed in 2001 and voters can now be added and removed from the register at any time, with registers updated as and when required, for example when an election is called. The reference to 1st December is no longer required, and its continuing use makes the registration process unnecessarily complex. The preference of Electoral Registration Officers (“EROs”) is to simply allow anyone who has attained the age of 14 when the relevant form is being completed to be added to the register as an attainer. The following wording would feature on Household Enquiry Forms issued by EROs:

²³ <http://www.legislation.gov.uk/asp/2002/1/contents>

This document relates to the Scottish Elections (Reform) Bill (SP Bill 53) as introduced in the Scottish Parliament on 2 September 2019

“Registering to vote

You can register to vote in Scotland if you are:

- Resident (usually live) in Scotland, and
- Aged 14 or over (but you will not be able to vote in Scottish Parliamentary or local council elections until you are 16. You will not be able to vote in UK Parliamentary or European Parliamentary elections until you are 18).”

49. The version of the electoral register which is used by polling staff on election day does not contain the details of any attainers yet to meet the age requirement. Attainers do not receive polling cards for any election held prior to the day on which they become eligible to vote.

50. Section 7 of the Bill proposes that attainers should be eligible to be added to the electoral register as an attainer from the date of their 14th birthday. They are not required to register on their 14th birthday but will be able to if they wish. This will ensure that everyone has sufficient time to be invited to register before they reach voting age and 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 the confusion that EROs report can occur under the existing law under which some, but not all, 14 year olds are 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.

51. This issue was not included within the Government’s consultation due to its technical nature. EROs proposed this reform.

52. The Scottish Government has assessed the data protection impact of the addition of 14 year olds to the electoral register. The processing of personal data is considered necessary for the performance of a task carried out in the public interest and in the exercise of official authority in terms of Article 6(1)(e)

This document relates to the Scottish Elections (Reform) Bill (SP Bill 53) as introduced in the Scottish Parliament on 2 September 2019

of the General Data Protection Regulation²⁴. Processing of some 14 and 15 year olds' data occurs under the existing scheme. Such data is only provided to Returning Officers and others involved in the electoral process for the purposes of elections. Information in relation to 14 and 15 year olds is not included within the versions of the electoral register provided to non-EROs. The information is not used by EROs for marketing or automated decision making. Section 13 of the Scottish Elections (Reduction of Voting Age) Act 2015²⁵ places restrictions on EROs from publishing data in relation to young persons.

Electoral Commission

53. The Electoral Commission is the independent body which oversees elections and regulates political finance in the UK. The Commission works to promote public confidence in the democratic process and ensure its integrity by:

- enabling the delivery of free and fair elections and referendums, focusing on the needs of electors and addressing the changing environment to ensure every vote remains secure and accessible;
- regulating political finance – taking proactive steps to increase transparency, ensure compliance and pursue breaches; and
- using its expertise to make and advocate for changes to our democracy, aiming to improve fairness, transparency and efficiency.

54. The Commission was set up in 2000 by the Political Parties, Elections and Referendums Act 2000 (“PPERA”)²⁶.

²⁴ <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32016R0679>

²⁵ <http://www.legislation.gov.uk/asp/2015/7/contents/enacted>

²⁶ <http://www.legislation.gov.uk/ukpga/2000/41/contents>

This document relates to the Scottish Elections (Reform) Bill (SP Bill 53) as introduced in the Scottish Parliament on 2 September 2019

55. The Bill makes a number of reforms in relation to the Commission, designed to support the extension of the Scottish Parliament’s devolved competence in relation to elections under the Scotland Act 2016. The reforms in relation to the Commission were not included within the electoral reform consultation due to their technical nature, but have been developed in consultation with the Commission and other stakeholders.

Electoral Commission: funding and accountability

56. The Electoral Commission is primarily funded by the UK Parliament, with the Scottish Government providing funding direct to the Commission for work related to local government elections in Scotland. That position is a result of responsibility for local government elections, and the associated costs, being devolved to the Scottish Parliament under the 1998 Act (other than in relation to reserved matters of the registration and funding of political parties and broadcasting). The Government considers that this situation should be updated to reflect the recent devolution of the responsibility for the conduct of Scottish Parliament elections to the Scottish Parliament.

57. The UK Parliament’s Speaker’s Committee on the Electoral Commission (the “Speaker’s Committee”)²⁷ is a statutory body established under PPERA. It has a statutory function of examining the estimates and five-year plans of the Electoral Commission and oversight of the Commission’s budget.

58. The funding and financial accountability arrangements for the Electoral Commission are intended to balance the need to ensure the Commission’s independence from government with appropriate safeguards for ensuring proper financial control. The Commission is required to produce both an annual estimate of its income and expenditure and, in the first year following a UK parliamentary general election, a five-year plan covering its aims, objectives and resource requirements over that period. Both are subject to the approval of the Speaker’s Committee which must have regard to whether they are consistent with the economical, efficient and effective discharge by the Commission of its functions. The Committee may make modifications to the estimate or plan insofar as they are appropriate in achieving those objectives.

59. The Commission also undertakes a number of roles in relation to providing guidance to candidates, political parties, third party campaigners, Returning Officers, EROs and others on their respective responsibilities with regard to elections. It also undertakes the provision of public awareness

²⁷ <https://www.parliament.uk/business/committees/committees-a-z/other-committees/speakers-committee-on-the-electoral-commission/>

This document relates to the Scottish Elections (Reform) Bill (SP Bill 53) as introduced in the Scottish Parliament on 2 September 2019

information for the public and for electors, including public awareness campaigns in the run up to elections and the provision of household leaflets on the election and voting process before a poll. The Commission may prepare codes of practice giving guidance on candidates' and parties' expenditure at elections under RoPA and for those observing at elections, in addition to guidance as to the kinds of expenses which count towards, respectively, political parties, third party campaigners and referendum expenditure limits under PPERA.

60. The Commission also undertakes regulatory functions, including assessing Returning Officers and EROs against performance standards; regulating donations and spending of political parties, candidates and campaigners, and taking enforcement action where breaches of rules have been identified. The Commission can levy civil sanctions for some offences, or, where breaches of electoral rules are severe, refer matters for criminal prosecution.

61. In undertaking its statutory role, the Electoral Commission reports on the conduct of elections and identifies potential areas for improvement. Recent reports on Scottish elections include reports on the 2016 Scottish Parliament election, and the 2017 Scottish local government elections. Recommendations made at UK level are also often relevant in the devolved context. For example, the recent report on digital campaigning highlights the importance of various different reforms across the UK.

62. Sections 8 to 13 of the Bill make provision to update arrangements relating to codes of practice in the areas described above, and in relation to reporting and standards. The policy behind them is explained further below, but it helps first to explain the funding approaches (the Bill follows the order the amendments take in PPERA, where funding is set out in a schedule, but the other matters are in the main part of the Act).

Funding

63. The policy intention of the Bill is that the Commission should be funded by the Scottish Parliament for the work it carries out in relation to Scottish Parliament and local government elections in Scotland. The Commission should be accountable to the Scottish Parliament for such work.

64. It has been agreed with the Scottish Parliamentary Corporate Body (SPCB) and the Speaker's Committee that there will be a transfer of funds to the Scottish Parliament from the UK Parliament to cover the costs of the Scottish Parliament assuming this responsibility.

This document relates to the Scottish Elections (Reform) Bill (SP Bill 53) as introduced in the Scottish Parliament on 2 September 2019

65. Expenditure incurred by the Commission in relation to Scottish local government elections is currently reimbursed by Scottish Ministers. This expenditure will in future be funded by the SPCB.

66. The Scottish Ministers will retain their existing ability to fund the Commission directly in certain circumstances, such as where the Commission might be asked to carry out independent testing on behalf of the Government or to provide advice and assistance. For example, the Scottish Government has asked the Electoral Commission to undertake a user test of a potentially new approach to ordering candidates' names on ballot papers for local government elections.

67. Section 14 of the Bill will require the Commission to submit an estimate of its income and expenditure to the SPCB for each financial year. This estimate would then be examined by the SPCB in the same way as is done by the Speaker's Committee in relation to the Commission's UK activities. The SPCB would be under a duty to consider recommendations by the Auditor General for Scotland or the views of the Scottish Ministers. The SPCB would then lay the estimate before the Scottish Parliament.

68. It will also be possible to provide in-year changes to the budget for Scottish Parliament and local government elections to allow the Commission to be funded should there be a need for additional resource in-year. For example, if there were an exceptional electoral event such as an extraordinary Scottish Parliament general election. Any revised estimate submitted by the Commission is to be examined by the SPCB in the same way as an original estimate.

69. The SPCB will also be able to pay any expenses incurred by the Commission which exceed or are otherwise not covered by the estimate or revised in-year estimate if it deems it appropriate to do so. It is possible that the Commission may have to undertake work for which it has not been possible to provide an in-year increase in budget, for example work related to an extraordinary Scottish Parliament general election which falls shortly before the end of the financial year. In such a case, the Commission will be required to undertake statutory duties for which it has not been funded. If the SPCB did not have the power to provide additional funding over and above the agreed amount then the Commission would be unable to meet its financial obligations including paying bills and salaries.

Accountability

This document relates to the Scottish Elections (Reform) Bill (SP Bill 53) as introduced in the Scottish Parliament on 2 September 2019

70. The Electoral Commission is obliged by PPERA to submit plans to the Speaker's Committee setting out its aims and objectives for the period of five years beginning with the financial year to which an estimate of the Commission's income and expenditure relates.

71. Section 16 of the Bill does not propose a separate five-year plan for Scottish devolved elections. Instead, it requires the Commission to submit the five-year plan to the SPCB as well as to the Speaker's Committee and for the plan to be laid before the Scottish Parliament as well as the UK Parliament. The Commission and the SPCB have agreed that the five-year plan should be tabled once in the term of each legislature, though this would be influenced by any changes from five year terms in relation to either legislature²⁸.

72. The SPCB's role in relation to the plan is consultative and it will consider any representations from the Scottish Government and the Comptroller and Auditor General, who would be required to report to the SPCB in relation to each plan under section 17 of the Bill.

73. There will still be one set of accounts prepared by the Commission for the whole of the UK, although the accounts in relation to devolved elections will be submitted to the SPCB. The accounts in so far as they relate to Scottish Parliament and local government elections in Scotland will be laid in the Scottish Parliament.

74. In discussions with the SPCB and the Commission, consideration was given to allowing the Scottish Parliament to designate an accounting officer for the Scottish expenditure but it was concluded that it might lead to conflicts of interest if there were different accounting officers for different parts of the UK.

75. The Commission will continue to lay a separate report before the Scottish Parliament about the performance of its devolved functions in relation to local government elections in Scotland. It will now also lay a report in relation to Scottish Parliament elections.

76. The Commission will be obliged to keep under review Scottish Parliament and local government elections in Scotland and, by virtue of section 12(3) of the Bill, the Scottish Ministers will be able to request that such reviews be carried out. The Commission will also consult with the Scottish Ministers

²⁸ Paragraph 15(1) of schedule 1 of PPERA provides that the five-year plan shall be tabled in the UK Parliament in the first financial year following a UK general election.

This document relates to the Scottish Elections (Reform) Bill (SP Bill 53) as introduced in the Scottish Parliament on 2 September 2019

when setting performance standards for “relevant officers” (such as EROs) in relation to devolved elections, by virtue of section 13(3) of the Bill.

Electoral Commission: codes of practice

77. One of the key functions of the Electoral Commission is in providing guidance to candidates, political parties, third party campaigners, Returning Officers, EROs and others on their respective responsibilities in regards to elections including in relation to electoral expenses. The Commission has powers to take enforcement action where breaches of the rules have been identified. The Commission is also required to provide access to the electoral process for electoral observers, as individuals or on behalf of third party organisations and representatives of the Commission.

78. Draft codes of practice for reserved elections are currently being prepared by the Commission which aim to give clarity about how campaigners should, amongst other things, report digital campaigning expenditure. A code for use at reserved elections is being prepared for UK Parliament approval. Where there is no combined regulatory period, separate codes are needed for devolved elections.

79. The following changes have been agreed with the Electoral Commission.

Code of Practice on expenditure of candidates at Scottish Parliament elections

80. Part 5 of PPERA governs control of campaign expenditure by registered parties in “relevant elections.” Campaign expenditure in relation to a registered party covers expenses incurred by or on behalf of the party within the meaning of schedule 8 of PPERA for election purposes. The rules around campaign expenditure apply only during the “regulated period” in the run up to the poll. The limits for campaign expenditure and the length of the “regulated period” vary between different types of election. Under paragraph 3 of schedule 8 of PPERA, the Commission may prepare, and from time to time revise, a code of practice giving guidance as to the kinds of expenses which do or do not fall within schedule 8. Section 72A of PPERA enables the Scottish Ministers to approve codes of practice made by the Commission in relation to the expenses of registered parties in Scottish Parliament and Scottish local government elections. No change is proposed by the Bill.

81. Expenditure by constituency and individual regional candidates at Scottish Parliament elections is regulated separately by Part 3 of the Scottish

This document relates to the Scottish Elections (Reform) Bill (SP Bill 53) as introduced in the Scottish Parliament on 2 September 2019

Parliament (Election etc.) Order 2015²⁹. However, as noted by the Commission in its response³⁰ to the Scottish Government's consultation on electoral reform, there is no power in that Order for the Commission to create a code for candidates at Scottish Parliament elections.

82. Sections 8 and 9 of the Bill seek to ensure that the Commission has the power to create codes of practice for the expenditure of candidates at Scottish Parliament and Scottish local government elections. The provisions allow the Scottish Ministers to approve and amend a draft code submitted by the Commission and require the Scottish Ministers to lay a copy of the draft code, once approved, before the Parliament. The Bill sets out the timescales and process for consideration of the draft codes.

Codes relating to observers

83. Sections 6A to 6E of PPERA deal with the attendance of observers at various electoral proceedings (e.g. proceedings at the poll and proceedings at the counting of votes). Section 6F provides that the Commission must provide a code of practice for the attendance of representatives of the Commission, accredited observers and nominated members of accredited organisations at such electoral proceedings. A specific code of practice on attendance of observers at a local government elections in Scotland is required under section 6G. A code under section 6G must be made in consultation with the Scottish Ministers and must be laid before the Scottish Parliament.

84. Section 10 of the Bill sets out a distinct duty on the Commission to prepare a code of practice for observers at Scottish Parliament elections. The provision is similar to that set out for reserved elections in section 6F, but requires the Electoral Commission to consult the Scottish Ministers before preparing the code. The Commission must also lay the code before the Scottish Parliament.

Third party expenditure

85. Section 85 of PPERA governs controlled expenditure by third parties. Controlled expenditure in this context means expenses incurred by or on behalf of the third party where the expenses fall within Part 1 of schedule 8A and the

²⁹ <https://www.legislation.gov.uk/ssi/2015/425/contents/made>

³⁰ https://consult.gov.scot/elections/electoral-reform/consultation/view_respondent?show_all_questions=0&sort=submitted&order=ascending&_q__text=boundary&_b_index=60&uuld=1037618157

This document relates to the Scottish Elections (Reform) Bill (SP Bill 53) as introduced in the Scottish Parliament on 2 September 2019

expenditure can reasonably be regarded as intended to promote or procure electoral success at any “relevant election.”

86. Under paragraph 3 of schedule 8A (controlled expenditure: qualifying expenses), the Commission may prepare, and from time to time revise, a code of practice giving guidance as to the kinds of expenses which do or do not fall within Part 1 of schedule 8A. Section 85A provides the Scottish Ministers with the power to approve a draft code of practice prepared by the Electoral Commission, the power to appoint a day when a code comes into force and the power to amend Part 1 of schedule 8A in relation to Scottish Parliament elections.

87. Section 11 of the Bill extends these existing powers of the Scottish Ministers in respect of controlled expenditure of third parties at Scottish Parliament elections to also apply to Scottish local government elections.

Election expenses

88. The Government seeks to bring the law covering candidates’ election expenditure at Scottish local government elections into line with that for Scottish Parliament elections. This will afford greater clarity around expenditure as well as reducing the risk of confusion around different expenditure rules.

89. Provisions in relation to local government were included in the Electoral Administration Act 2006³¹ but have never been commenced. Changes to the election environment since that date means that the provisions need to be updated before commencement can occur.

90. The limitation of election expenditure for individual candidates is regulated separately from the expenditure of registered parties. Section 76 of RoPA provides for a limit on election expenses for candidates at UK parliamentary general elections and Scottish local government elections. For Scottish Parliament elections, article 42 of the Scottish Parliament (Elections etc.) Order 2015 makes equivalent provision, and later articles describe what is meant by “election expenses”. For the purposes of UK parliamentary general elections, the meaning of “election expenses” is set out in section 90ZA of RoPA and comprises the expenses specified in Part 1 of schedule 4A of RoPA subject to the exclusions set out in Part 2 of schedule 4A.

³¹ <http://www.legislation.gov.uk/ukpga/2006/22/contents>

This document relates to the Scottish Elections (Reform) Bill (SP Bill 53) as introduced in the Scottish Parliament on 2 September 2019

91. Section 81 of RoPA requires the election agent of every candidate at an election to deliver a true return of all election expenses incurred by or on behalf of the candidate within 35 days after the day on which the result of the election is declared.

92. Section 81(3A) of RoPA (inserted by section 26(1) of the Electoral Administration Act 2006) provides that the return as to election expenses under section 81 must also contain a statement relating to such other expenses as the Electoral Commission provide in regulations; a statement relating to claims in connection with election expenses; and a statement relating to such other matters as is prescribed.

93. Section 81(3A) does not currently apply to local government elections in Scotland. It is understood that the difference in approach occurred because in 2006 the Electoral Commission had no statutory role in Scottish local government elections and it was not therefore appropriate to provide a power to prescribe the form of statements. As the Local Electoral Administration (Scotland) Act 2011 (the “2011 Act”)³² provided for the Electoral Commission to have a statutory role in the running of local government elections in Scotland the need for any distinction has ceased.

94. The policy is for the Electoral Commission to be able to specify the information contained in the statement accompanying the return as to election expenses at a local government election in Scotland. As a result, section 21(1) of the Bill applies section 81(3A) of the 1983 Act to local government elections in Scotland. It does this by repeal of provision that currently prevents it so applying. This will bring the position for these elections into line with UK and Scottish parliamentary elections.

95. The application of section 81(3A) of the 1983 Act also means that returns as to election expenses for local government elections must contain supporting statements as required by the Electoral Commission in regulations. Section 21(3)(a) of the Bill ensures that any relevant regulations made in relation to local government elections in Scotland are to be made by the Scottish Ministers rather than by the Secretary of State and are to be subject to the affirmative procedure.

Donations

³² <http://www.legislation.gov.uk/asp/2011/10/contents>

This document relates to the Scottish Elections (Reform) Bill (SP Bill 53) as introduced in the Scottish Parliament on 2 September 2019

96. Following the local government elections in May 2017, the Electoral Commission recommended³³ the introduction of donation controls for candidates at local government elections and the specification of a list of activities that count against candidates' spending limits at local government elections. This replicated similar recommendations made following the May 2012 local government elections. The Commission noted that Scottish local government elections are currently the only local government elections in Great Britain where candidates do not have to declare who has funded their campaign and that controls on donations are an important aspect of bringing transparency to the democratic process. The Scottish Ministers have accepted the Commission's recommendation for donation and expenditure controls to be introduced for Scottish local government elections.

97. Section 71A of RoPA, taken together with schedule 2A, sets out how donations to candidates are controlled at UK parliamentary and local government elections. Section 71A was inserted by section 130 of PPERA but application to Scottish local government elections was specifically excluded by section 130(4).

98. The equivalent provisions to section 71A, including the application of schedule 2A to RoPA, for Scottish Parliament elections are set out in article 36 of the Scottish Parliament (Elections etc.) Order 2015.

99. Section 22 of the Bill applies donation controls, in the form of section 71A and schedule 2A, to candidates at local government elections in Scotland.

Regulations

100. Section 23 of the Bill provides that if the Commission makes regulations that relate to devolved elections, they must provide a copy to the Scottish Ministers. Likewise if they alter or revoke such regulations, a copy must be provided. This is to ensure that the Scottish Ministers are aware of any such regulations.

Electoral Management Board for Scotland

101. The Electoral Management Board for Scotland ("EMB") was formally created by the 2011 Act, which gave it "the general function of co-ordinating

33

https://www.electoralcommission.org.uk/__data/assets/pdf_file/0006/233673/Scottish-Council-elections-2017.pdf

This document relates to the Scottish Elections (Reform) Bill (SP Bill 53) as introduced in the Scottish Parliament on 2 September 2019

the administration of local government elections in Scotland”. The functions, membership and role of the EMB are set out in sections 1 to 9 of the 2011 Act.

102. The EMB has two specific roles:

- assisting local authorities and other persons in carrying out their functions in relation to local government elections; and
- promoting best practice in local government elections by providing information, advice or training (or otherwise).

103. The EMB's primary focus is in ensuring that the interests of each voter are kept at the centre of all election planning and administration and in providing advice to stakeholders on the running of electoral events.

104. The Electoral Commission has consistently recommended in their post-election reports that the EMB should be given a statutory co-ordination role for all elections in Scotland (and has recommended the setting up of a similar statutory body for England and Wales). An extension to cover Scottish Parliament elections was not within the legislative competence of the Scottish Parliament until the commencement of the Scotland Act 2016.

105. The Scottish Government’s consultation on electoral reform included questions about extending the role of the EMB in this way; 86% of responses agreed with the suggestion that the role of the EMB be extended to include Scottish Parliament elections, including agreement by the Electoral Commission and EROs. The consultation analysis noted:

“4.10 Respondents who answered ‘yes’ at Question 3, particularly those who were – or whose organisations were – directly involved in running elections, often set out the positive contribution made by the EMB to the running of (local) elections. These respondents thought: The EMB has shown strong leadership in relation to its remit. It commands the respect of EROs, ROs [Returning Officers] and other election officials. Its work is seen as important and effective.

This document relates to the Scottish Elections (Reform) Bill (SP Bill 53) as introduced in the Scottish Parliament on 2 September 2019

The EMB has increased the consistency of the approach taken across all 32 local authorities through the provision of guidance, training and advice in relation to the running of electoral events. This has led to greater efficiency and has improved the experience of voters.

The way in which the EMB is constituted ensures the independence of ROs (who are appointed by local authorities). This is vital in maintaining the confidence and trust of voters...

4.11 Given this positive assessment of the work of the EMB, respondents thought it made sense to extend its role to include Scottish Parliament elections, thereby ‘harmonising accountability and responsibility structures’. It was pointed out that both the EMB and the Electoral Commission have advocated this extension for several years. Indeed, it was argued that this change would simply reflect what is already current practice in many cases.

106. Section 24 of the Bill proposes that the provisions set out in sections 2 to 9 of the 2011 Act should be extended to cover Scottish parliamentary elections. It does this by extending the descriptions used in the provisions to also cover Scottish parliamentary elections. The remaining sections of Part 3 of the Bill then extend the power of the EMB to issue directions to Returning Officers and EROs, and adjust the 2011 Act in consequence. This change should, if approved by the Parliament, be in place in time for the 2021 Scottish parliamentary election.

Boundaries Scotland

107. The Local Government Boundary Commission for Scotland (LGBCS) was established under the 1973 Act and is responsible for:

- carrying out reviews of the boundaries of local authority areas;
- carrying out reviews of electoral wards for local authorities;
- responding to requests for reviews of electoral wards or local authority areas; and
- carrying out reviews of constituencies and regions for the Scottish Parliament.

108. This Bill proposes a number of changes to the way in which the LGBCS carries out its work. Most of the proposals progressed in the Bill were discussed in Chapter 2 (pages 18 to 23) of the Scottish Government’s consultation paper on electoral reform³⁴. The paper asked a series of questions

³⁴ <https://www.gov.scot/publications/consultation-electoral-reform/pages/4/>

This document relates to the Scottish Elections (Reform) Bill (SP Bill 53) as introduced in the Scottish Parliament on 2 September 2019

about (i) the process of conducting periodic reviews of electoral boundaries (for Scottish Parliament constituencies and regions, and for local government wards) (discussed at paragraphs 110 to 111 below), (ii) the independent nature of the LGBCS (discussed at paragraphs 112 to 115 below) and (iii) the option of allowing flexibility (in certain circumstances) in the number of councillors in local government wards (discussed at paragraphs 31 to 36 above). Additional changes (in relation to the name of the LGBCS, the date for the first report of the LGBCS on the boundaries of constituencies and regions for the Scottish Parliament, and the requirement on the LGBCS to publish a notice in relation to a report in at least one local newspaper) arose in discussion with the LGBCS.

109. As the remit of the LGBCS has been expanded to cover Scottish Parliament elections in addition to local government elections, its current name does not reflect the Commission's full responsibilities. It is therefore proposed that its name should be changed to 'Boundaries Scotland'. Section 28 of the Bill makes this name change but does not make any change to the status or constitution of the Commission; the schedule to the Bill makes consequential amendments to other legislation. The (separate) Boundary Commission for Scotland will continue to carry out reviews of UK parliamentary constituencies in Scotland.

Move to Rolling Reviews of the Boundaries of Local Authority Areas

110. The consultation paper suggested that a rolling programme of reviews could help deliver a more locally focused approach than the existing system of a single nationwide review. 71% of respondents expressed support for moving to a rolling programme of reviews of local government electoral boundaries. The consultation analysis noted:

"7.8 Those supportive of the introduction of a rolling programme described such a move as sensible, pragmatic, and practical – they thought it would result in a system that was 'fit for purpose'. More specifically, respondents thought such a system would:

- Encourage a more locally focused approach, by giving more time for local consultation, and consideration of local factors and relevant data;
- Support participation and engagement in the review process, partly as a result of the increased profile of individual reviews in local areas;
- Result in electoral areas that were more accountable through improved representation, and in more sustainable wards based on natural boundaries which would need changing less often.

This document relates to the Scottish Elections (Reform) Bill (SP Bill 53) as introduced in the Scottish Parliament on 2 September 2019

7.9 It was also suggested that a rolling review programme would (i) be helpful to local authorities in their preparation work for elections and (ii) ease the pressure on the LGBC with work spread over a longer time period.”

111. Section 29 of the Bill seeks to allow the LGBCS to determine when electoral wards are to be reviewed, provided that review takes place at least once every 12 years and that all electoral wards in local government areas are reviewed at the same time. This is to allow LGBCS greater flexibility around the timing of reviews. Under the current provisions, the LGBCS must carry out reviews of all local government areas every 8 to 12 years. In practice, this means that the LGBCS carry out all the reviews at the same time. The intention is to allow the LGBCS the flexibility to introduce a rolling review process which spreads out reviews, should the LGBCS so desire, with the protection that every local government area is reviewed at least once every 12 years.

Changes to the parliamentary procedure for alterations to local government wards and councillors

112. The consultation paper asked a series of questions about the role of the LGBCS. The Executive Summary to the consultation analysis noted (at paragraph 19):

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

113. A further summary of the views of consultees was set out in the consultation analysis:

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

7.30 There was also a widespread view that the work of the LGBC should – like the work of all public bodies – be transparent and open to scrutiny, and subject to challenge where justified by the evidence or

This document relates to the Scottish Elections (Reform) Bill (SP Bill 53) as introduced in the Scottish Parliament on 2 September 2019

where due process had not been followed. There were differing views on the form that scrutiny and challenge should take, with some suggesting this should be provided by the Scottish Parliament or Scottish Ministers, and others suggesting it should come from outwith Parliament and / or the Government.

7.33 The response to Question 15b shows support for Parliament having a role in challenging the recommendations of the LGBC. Respondents generally thought that this role should be limited to challenge (as framed in the question) – they did not want Parliament to be able to overrule or ‘derail’ the recommendations of the LGBC. They saw the role as scrutinising, debating and questioning the recommendations of the LGBC, and thought that this was a legitimate function for Parliament given its knowledge of the Scottish context, and for MSPs given their role in representing their constituents.”

114. The Government’s view is that there is insufficient parliamentary scrutiny of boundary changes for local government elections. Under the current provisions, an order making changes to local government areas or to electoral arrangements is subject to either negative or no parliamentary procedure. This position is also inconsistent with the procedure used to change constituency and regional boundaries in Scottish Parliament elections. Section 31(4) of the Bill proposes that changes involving the abolition or alteration of a boundary of a ward or local government area or an increase or decrease in the number of councillors to be returned in any electoral ward should be subject to affirmative procedure, which will significantly increase the level of parliamentary scrutiny in these areas.

115. This would allow for a more formal parliamentary scrutiny process to take place on proposed changes. Separately sections 30 and 31 of the Bill remove the discretion of the Scottish Ministers to modify or decide not to implement changes contained in any report by Boundaries Scotland recommending changes to parliamentary or local government boundaries.

Change the date for the first report of the LGBCS on the boundaries of constituencies and regions for the Scottish Parliament

116. Under paragraph 3(4) of schedule 1 of the 1998 Act, the LGBCS is required to review the boundaries of Scottish Parliament constituencies and regions (other than the Na h-Eileanan an Iar, Orkney and Shetland constituencies) and to submit a report to the Scottish Ministers no later than 1 May 2022. This date does not take into account the extension of the terms for

This document relates to the Scottish Elections (Reform) Bill (SP Bill 53) as introduced in the Scottish Parliament on 2 September 2019

the Scottish Parliaments elected in 2011 and 2016 to five years³⁵. These extensions, taken together, have resulted in the boundary review cycle becoming out of step with the election cycle. The intention in the 1998 Act was that the Boundary Commission for Scotland would report on Scottish Parliament boundaries in the run up to a Scottish Parliament election. Any report should be sufficiently current and relevant to be used to adjust boundaries *prior* to an election if necessary. The Scottish Ministers consider that the report should be made a year before a scheduled Scottish Parliament election.

117. Section 32 of the Bill therefore seeks to change the date for the next report to be submitted to the Scottish Ministers. The revised date for submission of a report (no later than 1st May 2024) will allow for the new constituency and regional boundaries to be implemented in time for them to be used at the scheduled Scottish Parliament election in May 2026 (if the Bill's proposal to move to five year terms is adopted).

118. The requirement thereafter to submit reports not less than eight and no more than twelve years after the date of the submission of the last report would remain.

Removal of the statutory requirement to publish notices in local newspapers

119. Under current law the LGBCS must publish a notice in the Edinburgh Gazette if it wishes to consider making a report, and also in at least one local newspaper in any area in which it has provisionally determined to make recommendations.

120. Section 33 of the Bill proposes to maintain the requirement to publish in the Edinburgh Gazette, but that the LGBCS should be able to publicise the fact that it has provisionally determined to make recommendations in such a manner as it thinks fit, rather than specifically in a local newspaper.

Alternative approaches

Choice of Legislation

121. Section 7(4) of the Bill and paragraphs 12 to 14 of its schedule amend secondary legislation in a way that would, at least in relation to the section, normally be carried out by secondary rather than primary legislation. Also

³⁵ The Scottish Elections (Dates) Act 2016 came into force on 31 March 2016 and changed the date of the next election from 6 May 2020 to 6 May 2021.

This document relates to the Scottish Elections (Reform) Bill (SP Bill 53) as introduced in the Scottish Parliament on 2 September 2019

section 22(3) applies some existing regulations to local government elections. Consideration was given to making these changes by secondary legislation rather than the Bill. However, it was considered that the need to give election professionals as much advance notice as possible of changes to the law, if the Parliament approves the proposals, ahead of the 2021 Scottish Parliament election, was of primary importance.

This document relates to the Scottish Elections (Reform) Bill (SP Bill 53) as introduced in the Scottish Parliament on 2 September 2019

Effects on equal opportunities, human rights, island communities, local government, sustainable development etc.

Equal Opportunities

122. The Bill is not considered to have a negative impact on any of the protected equality groups. Its provisions do not impact on voters by virtue of their gender, race, disability, marital status, religion and sexual orientation. They are intended to ensure equality of opportunity for all people in having their say in Scottish elections.

123. The change in relation to flexibility over councillor numbers in local government wards discussed at paragraphs 31 to 36 above is designed to allow Boundaries Scotland to take local factors into account in setting ward boundaries and the geographic spread of elected representation.

124. The Bill's provisions on electronic voting discussed at paragraphs 42 to 46, do not by themselves require any pilots to occur. But the provisions will help facilitate pilots focused on assisting equality of opportunity in voting and increasing voter participation by assisting groups of people who might find voting in elections challenging. This could for example include pilots of electronic poll cards or electronic voting processes designed to assist people with sight loss in voting.

125. The change in relation to young people registering as attainers discussed at paragraphs 47 to 52 above is designed to assist young persons in recognising and understanding their voting rights. This should encourage participation in voting and the democratic process.

126. The Bill's Equality Impact Assessment will be published at:

<https://www.gov.scot/publications/>

Human Rights

127. The Scottish Government is satisfied that the provisions of the Bill are compatible with the European Convention on Human Rights (ECHR). Extending the term length of the Scottish Parliament to five years would not contravene the right, at Article 3 of Protocol 1 of the ECHR, to free elections in the choice of the legislature with polls at reasonable intervals. The amendments to the ability of the Presiding Officer to propose postponement of a poll are limited and similarly unexceptional. The right under Article 3 of Protocol 1 does not apply at local government elections, so the restriction through section 5

This document relates to the Scottish Elections (Reform) Bill (SP Bill 53) as introduced in the Scottish Parliament on 2 September 2019

of the Bill to voting in only one local government area on the same day can raise no ECHR issue.

Island Communities

128. The Bill will apply to all communities across Scotland, including island communities. The Bill has no disproportionate or negative effect on island communities. The provisions to allow Boundaries Scotland additional flexibility to recommend two- and five-member wards for local government elections discussed at paragraphs 31 to 36 above supplement the existing powers set out in the Islands (Scotland) Act 2018 to recommend one and two member wards in island authorities, and are not therefore not likely to be applied in relation to island communities.

129. Boundary reviews for several local authority areas are required as soon as practicable by the Islands (Scotland) Act 2018 (see paragraph 32 above) and section 29(2) modifies the provision made by section 29(1) of the Bill to take account of the requirements of that Act.

130. The Bill's other reforms will apply to island communities in the same way as to other communities in Scotland. For example, the changes in relation to the Electoral Commission, the Electoral Management Board and Boundaries Scotland will apply nationwide, with no distinct impact in relation to island communities.

Local Government

131. The proposal in section 2 of the Bill to move to five-year terms for local authorities clearly will have a fundamental impact on councils. It will reduce the administrative work involved in holding election by moving from every four years to every five years. In its response³⁶ to the consultation on Electoral Reform, COSLA supported a move to five-year terms, making the following remarks:

“We recognise that there is a tradition of four-year election cycles for Local Government in Scotland. Since 1995 local elections have generally been held every four years, and this was also the case for district and regional council elections between 1975 and 1992. However, this trend has not been maintained more recently...We support the

³⁶ https://consult.gov.scot/elections/electoral-reform/consultation/view_respondent?show_all_questions=0&sort=submitted&order=ascending&q__text=cosla&uuId=761779994

This document relates to the Scottish Elections (Reform) Bill (SP Bill 53) as introduced in the Scottish Parliament on 2 September 2019

ongoing need to avoid electoral clashes in future and would support steps to establish continuity and clarity for the electorate. On balance, we would therefore be comfortable with continuing to schedule Local Government elections on a five-year cycle. In making this recommendation, we make two assumptions. Firstly, that both national and local elections would operate a five-year cycle. In this regard we would further note that the Gould Report also supported the de-coupling of elections as a way of giving specific focus to the importance of both national and local elections in their own right. Secondly, we assume that there is no desire to amend the current order that elections take place in, with Local Government elections taking place one year after those to the Scottish Parliament, given the further disruption to the current five-year cycle that this would be likely to entail.

While we recognise that there is always potential for external factors to disrupt a planned cycle, this would help clarify that the UK Parliament, Scottish Parliament, and Scottish Local Government all have the same five-year term. Our sense is that this would help ensure that timings are as well understood and planned for as possible – with associated potential benefits for electoral participation and turnout.

Our experience suggests that a five-year election cycle can be helpful in providing continuity to develop and implement policy priorities and programmes, and in nurturing ongoing engagement in these.”

132. Since it is local government officers who deliver elections, all aspects of elections have an impact on local government. The Scottish Government has worked in partnership with COSLA to develop each of the policy proposals set out in the Bill, particularly in relation to matters relating to boundary reviews which are of crucial importance to them. The Scottish Government understand that they are supportive of the proposals.

133. Other than term lengths (where the Financial Memorandum sets out potential savings) none of the proposals set out in the Bill have financial implications for local government.

Sustainable Development

134. It is considered that the Bill is likely to have no or minimal direct or indirect effect in relation to the environment and sustainable development and, as such, will be exempt for the purposes of section 7 of the Environment Assessment (Scotland) Act 2005.

135. The extension of the remit of the Electoral Management Board for Scotland to Scottish Parliament elections discussed in paragraphs 101 to 106

This document relates to the Scottish Elections (Reform) Bill (SP Bill 53) as introduced in the Scottish Parliament on 2 September 2019

above should assist in the promotion of best practice in Scottish Parliament elections through the provision of information, advice and training. The Electoral Management Board for Scotland's focus on ensuring that the interests of each voter are kept at the centre of all election planning and administration should assist in promoting the accessibility of voting for all persons in society.

This document relates to the Scottish Elections (Reform) Bill (SP Bill 53) as introduced in the Scottish Parliament on 2 September 2019

Scottish Elections (Reform) Bill

Policy Memorandum

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