

# Scottish General Election (Coronavirus) 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 General Election (Coronavirus) Bill introduced in the Scottish Parliament on 16 November 2020.
2. The following other accompanying documents are published separately:
  - Explanatory Notes (SP Bill 86–EN);
  - a Financial Memorandum (SP Bill 86–FM);
  - statements on legislative competence by the Presiding Officer and the Scottish Government (SP 86–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's purpose is to make arrangements for the Scottish Parliament election scheduled for 6 May 2021 considered necessary, or that may subsequently become necessary, to mitigate the public health effects of the coronavirus pandemic. The provisions in the Bill are a dedicated response to the coronavirus pandemic and do not seek to make any permanent changes to electoral law.

This document relates to the Scottish General Election (Coronavirus) Bill (SP Bill 86) as introduced in the Scottish Parliament on 16 November 2020

5. The main measures of the Bill will:

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

## Background

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

7. The Government is also preparing the normal Conduct Order for the Scottish Parliament election in 2021, setting out rules for holding the election. The Order will include provisions for emergency proxies for those who are following Government guidelines and therefore will not be able to vote in person. They will not be required to provide attestation as is the case for other types of proxy<sup>1</sup>.

---

<sup>1</sup> The draft Scottish Parliament (Elections etc.) (Miscellaneous Amendments) Order 2020 is available at: <https://www.legislation.gov.uk/sdsi/2020/9780111046906/contents>

This document relates to the Scottish General Election (Coronavirus) Bill (SP Bill 86) as introduced in the Scottish Parliament on 16 November 2020

8. Responsibility for administering elections sits with Returning Officers (“ROs”) who are appointed to that role by their local authority. There are 32 ROs in Scotland, one for each authority, and in most cases they occupy the post of Chief Executive but this is not a legal requirement. The Electoral Management Board for Scotland (the “EMB”) leads and supports their colleagues in delivering elections and referendums. It is made up of ROs and Electoral Registration Officers (“EROs”) drawn from across the country. The Convener of the EMB has the power to issue directions to ROs and EROs concerning the exercise of their functions in relation to Scottish devolved elections. The EMB has been supporting ROs and EROs to prepare and make coronavirus contingency plans for the Scottish Parliament election in May 2021 and also in relation to local government by-elections held over October-November 2020. The EMB has, with Public Health Scotland, produced guidance on delivering elections safely under COVID-19 conditions – this is being deployed in relation to the local government by-elections (most of which were originally scheduled for spring 2020)<sup>2</sup>. The EMB is monitoring the running of these elections and the impact of its detailed coronavirus guidance with a view to ensuring that all lessons learned can be applied for elections in 2021.

9. The Electoral Commission has a role in regulating and reporting on the Scottish Parliament election. It is also monitoring the by-elections and providing feedback. The Commission has published guidance on running polls in the context of the pandemic<sup>3</sup>.

10. Preparations for the 2021 Scottish Parliament election in the context of coronavirus have involved contingency planning for at least two different scenarios – (i) continuation of (or reversion to) circumstances that require physical distancing, and (ii) reversion nationally or locally to a “lockdown” that would make an election using polling stations unsafe. This planning has been carried out in conjunction with the EMB, the Electoral Commission, Scottish Parliament officials and representatives of each political party represented in the Scottish Parliament.

---

<sup>2</sup> <https://www.emb.scot/downloads/download/147/supplementary-guidance-delivering-local-authority-by-elections-in-a-covid-19-context>

<sup>3</sup> <https://www.electoralcommission.org.uk/who-we-are-and-what-we-do/elections-and-referendums/upcoming-elections/objectives-well-run-elections-current-public-health-context>

This document relates to the Scottish General Election (Coronavirus) Bill (SP Bill 86) as introduced in the Scottish Parliament on 16 November 2020

11. The need for some or all of the measures set out in the Bill may not become clear until likely virus conditions on polling day can be confidently anticipated. This may be close to polling day (e.g. mid to late April 2021).

## Potential need to rearrange polling day

12. Although it is intended that the election will take place on 6 May 2021, there is a need to consider whether virus conditions might make this impossible or unsafe. If reversion nationally or locally to a “lockdown” involved conditions that made in-person voting at polling places unsafe for all, or a significant proportion of the electorate had not applied for postal or proxy votes, it may be considered necessary to postpone the election.

13. Section 2 of the Scotland Act 1998 (the “1998 Act”) sets out a power for the Presiding Officer of the Scottish Parliament to propose a change to the date of the Scottish Parliament election by a period of up to a month. Before proposing such a change to Her Majesty, the Presiding Officer is obliged to consult the Electoral Commission. Section 69 of the Coronavirus Act 2020 contains provision to allow the Presiding Officer to move the date of Scottish Parliament by-elections. This power may be exercised more than once in relation to each by-election. Before exercising the power, the Presiding Officer must consult the Scottish Ministers and the Convener of the EMB. The power cannot be exercised to fix a date after 6 May 2021.

14. It is not considered that the maximum delay of a month under section 2 of the 1998 Act provides sufficient scope to move polling day in response to a significant deterioration in virus conditions. The Parliament could choose to legislate for a new election date, but this cannot be done once the Parliament is dissolved, which is currently set to occur on 25 March 2021<sup>4</sup>.

## Provisions of the Bill

15. The following descriptions of the provisions in the Bill include detail on other steps intended to accompany the legislation where relevant.

### Postal voting: closing date for application to vote by post

16. At present, new applicants for a postal vote at the Scottish Parliament election on 6 May 2021 will be required to apply by 5pm on 20 April (11

---

<sup>4</sup> This is based on a minimum period of 28 days ending with (and including) the date of a poll on 6 May 2021. See section 2(3) of the 1998 Act and Article 84 of the Scottish Parliament (Elections etc.) Order 2015.

This document relates to the Scottish General Election (Coronavirus) Bill (SP Bill 86) as introduced in the Scottish Parliament on 16 November 2020

working days prior to the election, excluding the May Day holiday), whether the application is in relation only to the 2021 election, or to register as a postal voter for an indefinite period. Voters may also make contact in respect of a range of other matters such as the cancellation of an existing postal vote and to notify a change of address. A substantial increase in postal voting is anticipated (at the 2016 Scottish Parliament election postal votes were issued to 17.7% of the total electorate, and postal votes accounted for around 23.7% of all votes cast). Polling research conducted by the Electoral Commission in summer 2020 suggests that 38% of respondents would prefer to cast their vote by post if the election was held under the conditions in place in August 2020 and 50% of respondents would apply for a postal vote if encouraged to do so by a national publicity campaign<sup>5</sup>.

17. Processing of postal vote applications normally poses a challenge for EROs ahead of any polling day, with many people choosing to apply for a postal vote on or close to the application deadline. At the 2014 referendum on Scottish independence 50% of new applications arrived in the last few weeks, with a peak on the final day. Only 2.6% of electors applied for a new postal vote ahead of that poll, whereas an increase of up to 20% is anticipated in the last two weeks before the deadline for the 6 May 2021 election. The EMB, EROs, ROs and the Electoral Commission have indicated that it will not be possible to process an increase of that magnitude in time for the election if the application deadline remains at 20 April.

18. Whilst it is intended that targeting messaging will be employed to promote postal voting - with a particular focus on people in vulnerable categories - it is likely that the majority of postal vote applications will again arrive in the last few weeks ahead of the application deadline, whenever it is set.

19. The Bill therefore seeks to bring forward the cut-off date for postal vote applications to the twenty-first day before the polling day (which would be 6 April 2021). The change will allow more time to process what is expected to be a much higher number of applications than usual due to the effects of the coronavirus pandemic.

---

<sup>5</sup> <https://www.electoralcommission.org.uk/who-we-are-and-what-we-do/our-views-and-research/our-research/public-attitudes-towards-voting-scotland-context-covid-19>

This document relates to the Scottish General Election (Coronavirus) Bill (SP Bill 86) as introduced in the Scottish Parliament on 16 November 2020

20. The Bill will also require Scottish Ministers to report to the Parliament on the uptake of postal voting for the 2021 election as at 7 April 2021 (i.e. the day after the new deadline).

## Power for the Scottish Ministers to provide for an all-postal vote

21. The Bill confers a regulation-making power on Scottish Ministers to make provision for an all-postal vote at the 2021 election. This power is not intended to be used if the election proceeds on 6 May (see paragraph 46 for a discussion of the earliest point at which an all-postal election could be conducted), but it could be exercised if the election is postponed and it is considered that voting in person is not possible as a result of virus conditions. The power is not subject to Parliamentary procedure as a result of the potential need to respond very swiftly to the impact of the coronavirus pandemic on the election, at a time when the Parliament may be in recess.

22. Scottish Ministers will be obliged to consult the Presiding Officer, the EMB and the Electoral Commission before exercising this power.

## Modification of the dissolution period for the Scottish Parliament to 5 May 2021

23. Once the Parliament dissolves it cannot be recalled, because each MSP's term of office ends with the dissolution of the Parliament<sup>6</sup>. This makes it impossible for the Parliament to meet after dissolution has occurred. This has significant negative implications in the context of planning for an election in the context of coronavirus. It would currently mean that the Parliament cannot meet after 25 March to postpone the election if circumstances require a postponement. It also means that the Parliament could not meet in the event of a substantial delay to the election (for example, if the Bill were to provide only for the Presiding Officer to recommend a new date to be set up to six months after 6 May, the Parliament would not be able to meet again until that election had been held).

24. The Bill therefore seeks to modify the dissolution period for the Scottish Parliament so that it begins on 5 May 2021. This change will permit the Parliament to meet to legislate after 25 March 2021 for a new polling date if this is required and also ensures that it can continue to meet

---

<sup>6</sup> See section 13 of the 1998 Act

This document relates to the Scottish General Election (Coronavirus) Bill (SP Bill 86) as introduced in the Scottish Parliament on 16 November 2020

in the event of a postponement of the election. If the election date is postponed, dissolution will not occur on 5 May, but will instead move to the day before the new (and any subsequently rearranged) polling day.

## Additional considerations that will be pursued alongside the Bill

25. It is anticipated that the Parliament will vote to go into recess on or around 25 March 2021 (the date previously set for dissolution) and remain in recess unless and until there is a need to meet in emergency session (e.g. to postpone the election). This will allow the pre-election campaign period to begin as normal, but bears implications for the status of MSPs and their staff during the election period. MSPs will still retain office until 5 May and up to that point they could be recalled from recess in order to debate and pass emergency primary legislation.

26. New guidance will be required as a result of MSPs retaining their status as parliamentarians during the election period<sup>7</sup>. At present, former MSPs can continue to deal with ongoing constituency casework, but cannot take on any new cases during the period after dissolution. They are notified that correspondence must not give the impression they are a Member of the Scottish Parliament.

27. Former MSPs also face a number of restrictions on the use of parliamentary resources and it is intended that these restrictions will apply from the point that the Parliament moves into a pre-election recess. Scottish Parliament officials are considering revision of corporate policies on the use of parliamentary resources during the election period. Guidance will also be required on the conduct of Members' standing as candidates. In addition, the rules on Government activity during the election period will be updated.

28. In the event of the election being postponed, it is anticipated that the pre-election recess will come to an end and normal parliamentary arrangements will resume.

29. Because the Parliament will be able to meet to postpone the election during the period up to 5 May, the Bill disapplies the existing power for the Presiding Officer to propose a change to the date of the Scottish Parliament election by a period of up to a month under section 2 of the

---

<sup>7</sup> Previous Scottish Parliament guidance is set out at: <https://www.parliament.scot/help/92966.aspx>

This document relates to the Scottish General Election (Coronavirus) Bill (SP Bill 86) as introduced in the Scottish Parliament on 16 November 2020

1998 Act, but makes alternate provision to cover a need for a change to polling day for reasons other than the virus.

## Polling over two or more days

30. The impact of physical distancing to protect against the transmission of coronavirus means that in-person voting is expected to take longer than normal. Allowing polling to occur over more than one day has the potential to reduce footfall in polling stations.

31. The Bill therefore gives Scottish Ministers the power to specify in regulations one or more days in addition to 6 May over which the poll for the 2021 election is to take place. The additional days need not be consecutive (e.g. if it is considered necessary to avoid polling on a Saturday or a Sunday). The power may be exercised in relation to an election date postponed by the Presiding Officer (see paragraph 36). The power is not subject to Parliamentary procedure as a result of the potential need to respond very swiftly to the impact of the coronavirus pandemic on the election, at a time when the Parliament may be in recess.

32. Any additional polling days are to take place within a period of eight days immediately succeeding the date of the poll. Ministers may also specify in the regulations particular days or times when certain descriptions or categories of persons eligible to vote in person may do so. This would, for example, allow provision to be made requiring voters of a particular age, or in a particular area, who do intend to exercise their right vote, to do so only on specified days or at specified times. There are no plans at present for this to take place, but the power provides this flexibility if required.

33. Although the poll may take place over a number of days, the 6th of May (or any replacement first polling day following a postponement) would remain the relevant date for determining eligibility to vote. For example, a person who had their 16<sup>th</sup> birthday on a second day of polling would not be eligible to vote.

34. Before making the regulations to provide additional polling days, Scottish Ministers must consult the Presiding Officer of the Scottish Parliament, the Electoral Commission, the Convener of the EMB and the Chief Medical Officer of the Scottish Administration. The Government is in active discussion with electoral professionals on whether voting over two or more days is desirable.

## Arrangements for first convening the new Scottish Parliament and electing the new Presiding Officer

35. As physical distancing is expected to result in a longer than normal count, and to allow for the possibility of polling over more than one day (see above), there appears to be a need to modify the existing provisions of the 1998 Act that require the Parliament to first meet within a period of seven days beginning immediately after the day of the poll<sup>8</sup> and to elect a Presiding Officer within the period of 14 days beginning immediately after the day of the poll<sup>9</sup>. The Bill therefore affords the Presiding Officer discretion to fix a day for the first meeting of the new Scottish Parliament, in consultation with the Electoral Commission and the Convener of the Electoral Management Board for Scotland. The first meeting is to be fixed as soon as reasonably practicable after the election. The Bill also provides that the selection of a new Presiding Officer (and two deputies) by MSPs must occur as soon as reasonably practicable after the election.

## Extension of the existing power of the Presiding Officer to recommend postponement of the election nationally for a period of up to six months in total

36. The change to dissolution date means that the Parliament should itself be able to set a new date for any election. It could be argued that this removes the need for additional provision to allow the Presiding Officer to recommend to Her Majesty postponement of the election for longer than the one month period enabled by the Scotland Act 1998. However, it is considered that there would be merit in allowing the Presiding Officer to recommend postponement by a period or periods of up to six months in total in some circumstances, and in consultation with Ministers, the Electoral Commission, the Convener of the EMB and the Chief Medical Officer of the Scottish Administration. Where any postponement is related to coronavirus, the Presiding Officer must be satisfied that the Scottish Parliament could not safely meet to modify the polling date by emergency legislation. The Presiding Officer will be obliged to publish a statement of reasons explaining any decision.

37. This power can be used on more than one occasion, but cannot be used to postpone the election beyond 5 November 2021. Dissolution of the Parliament would move to occur the day before the new polling day.

---

<sup>8</sup> Section 2(3)

<sup>9</sup> Section 19(1A)

## Additional factor to be pursued alongside the Bill

38. Any delay to the election would have implications for campaign spending and the length of the regulated period. The 'regulated period' is the period in the run up to a poll date where spending by political parties and others is regulated and subject to limits. The regulated period for candidates is split into the 'long' and 'short' campaigns, each having different rules for the recording of expenditure for the purposes of returns that are required to be submitted to the Returning Officer. The long campaign will commence on 6 January 2021. The short campaign commences the day after a person becomes a candidate. For many candidates this is usually the day after dissolution, as persons who have already declared their candidacy become candidates at dissolution. Since dissolution will not be until the day before the election, the Bill instead sets the earliest date upon which a person (who has already been declared) will become a candidate, which will be 28 days before 6 May 2021, computed in accordance with election rules. The Government is in discussions with the Electoral Commission about the arrangements for campaign expenditure in the event of a delay to the poll.

39. Subject to the agreement of the Parliament, the Parliament will also likely go into recess on the same date as the short campaign period begins. Parliamentary resources must not be used at any time for party political or election campaign purposes. To ensure that that public resources are not used in any way that might prejudice, or be seen to prejudice, the result of an election, and for all candidates standing to be treated the same, the Scottish Parliamentary Corporate Body (SPCB) issues guidance to Members about its policies on the use of parliamentary resources. These policies are covered by the Code of Conduct for MSPs.

## Early commencement

40. Because of the importance of providing certainty in relation to the election for the public, electoral professionals and campaigners, the Bill is to be commenced in its entirety the day after it receives Royal Assent. Knowledge of the Bill's final provisions, and therefore the possible options available, will assist electoral professionals and campaigners in preparing for the election and in ensuring as much certainty as possible. If the power in the Bill to provide for more than one polling day is to be used, early use would be required. Any decision to permit voting over several days would bear significant planning implications (e.g. in booking polling places, recruitment of staff and providing date details in electoral publications such

This document relates to the Scottish General Election (Coronavirus) Bill (SP Bill 86) as introduced in the Scottish Parliament on 16 November 2020

as the household leaflet). Electoral professionals consider it essential for it to be clear if this option is to be pursued several months ahead. This will mean making assumptions about what conditions are likely to be in relation to the virus in May, drawing upon modelling data in order to have time to make appropriate preparations. Confidence in the change in dissolution arrangements being in place in time will in particular allow plans to be put in place for the pre-election period, such as agreement for the Parliament to go into recess on or around 25 March.

## Alternative approaches

### Timing

41. With no change in the law, the final point at which the Parliament could legislate on this issue would be immediately before the Parliament dissolved on 25 March 2021. This would be closer to the date of the election than the date of introduction of the Bill and there could be a greater degree of knowledge of likely virus conditions at the time of the election. But making changes at that point would greatly curtail any notice to administrators and campaigners in preparing for an election (for example, the controlled period for campaigning begins on 6 January 2021). As set out in paragraphs 16 to 19, EROs are assessing how to process an anticipated substantial increase in applications to vote by post and the Bill will bring the deadline for those applications forward to 6 April. Making the change to the deadline in late March via an emergency Bill would be likely to impact adversely on the planning by EROs for the increase. As set out in paragraph 39, a late change to running the election over several days would have implications in relation to venue and staff availability. In addition, the Gould Principle recommends introduction of electoral changes at least six months ahead of any election<sup>10</sup>.

### Dissolution

42. It would be possible to formally postpone dissolution under existing secondary legislation powers<sup>11</sup>. It would also be possible to set a different date to 5 May. But given the importance of the change in date the Scottish Government considers it preferable to include it in the Bill and for dissolution to be set at the day before any delayed election. This is clearer and less confusing than the potential alternative of permitting dissolution to be postponed in increments, which would also create a risk that there could

---

<sup>10</sup> Articulated at page 112 of [The independent review of the Scottish Parliamentary and local government elections 3 May 2007](#)

<sup>11</sup> See the power conferred under section 12 of the 1998 Act and Article 84 of the Scottish Parliament (Elections etc.) Order 2015.

This document relates to the Scottish General Election (Coronavirus) Bill (SP Bill 86) as introduced in the Scottish Parliament on 16 November 2020

be a decision to allow dissolution shortly before the election that ultimately prove misguided in the face of a sudden spike in the virus.

43. In assessing alternate approaches on this issue, the Government considered that it was essential to ensure that the Parliament could continue to meet in the event of a delay to the election of several months. That requirement ruled out the option of leaving dissolution at 25 March at the same time as extending the scope for a postponement.

44. The main alternative measure considered would have allowed dissolution to occur in late March, with MSP status removed as under the 1998 Act. The Bill would have instead made provision for former MSPs to be 'recalled' to office in the event of a postponement. This option would have allowed the pre-election period to operate as at present, but raised complex questions about how MSP status could satisfactorily be re-instated and the potential impact on MSP's staff. This option was discounted as a result of these difficulties.

### **Moving to an all-postal election**

45. The Government's preferred course is for the 2021 election to be held with both in-person and postal voting available. An all-postal election is considered a contingency measure in the event that it was considered that voting in person could not safely be achieved. A number of reasons for this position are detailed below.

46. It would be possible (with different legislative changes) to provide for ROs to issue postal votes to all those on the electoral register who had not already applied for one. However this would greatly increase the risk of fraud if a verification signature was not required. It would also raise the threat that the results would not be accepted as validly obtained. An all-postal election would therefore require every registered elector to complete and return a postal vote application form. EROs would have to write to the approximately 3.4 million electors who currently do not have a postal vote requesting that they complete and return a form (followed up by two reminders as is currently done for Invitations to Register and Household Enquiry Forms). EROs would then have to process returned postal vote applications and they have indicated that such a volume cannot be processed in time for May 2021. As a result, it is considered that an all-postal election would necessitate a delay of at least six months to polling day.

This document relates to the Scottish General Election (Coronavirus) Bill (SP Bill 86) as introduced in the Scottish Parliament on 16 November 2020

47. An all-postal vote would also run the risk that a substantial proportion of the electorate would not engage with the process. Based on average return rates across Scotland for Invitations to Register and Household Enquiry Forms the EMB has identified a risk that between 646,000-1.5 million forms would not be returned, effectively disenfranchising those voters. Although powers under section 12 of the 1998 Act allow Scottish Ministers to make provision by statutory instrument (if approved by affirmative procedure) in relation to the conduct of Scottish Parliament elections, including provision on an all-postal ballot (and moving the deadline for postal vote applications) in the Bill assists the Parliament in considering these issues and allows for dedicated arrangements to be made, such as the requirement for Scottish Ministers to consult in arranging an all-postal vote and the ability to reduce the deadline without Parliamentary approval being needed.

### **Local lockdown**

48. Consideration was also given to the possibility of a power for the Presiding Officer to permit polling in certain locations to be rearranged or suspended in response to a local outbreak. The Government discussed this with the EMB, the Electoral Commission and some opposition members and it was discounted because of general agreement that a general election should occur simultaneously nationwide. It is considered that a local lockdown so serious that in-person voting is impossible should result in postponement of the entire election. Voters in vulnerable categories, who might be concerned over attending a polling place in person, will be encouraged to register for a postal vote or a proxy vote. Emergency proxy votes will be available for those voters without a postal vote who are following Government guidelines e.g. self-isolating.

### **Consultation**

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

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

### **Equal opportunities and human rights**

50. The Bill is a targeted response to the coronavirus and will not apply to the conduct of elections after 2021. It is intended to ensure the smooth running of the election and to ensure that all voters can participate.

51. The Bill is not considered to have a negative impact on any of the protected equality groups. It promotes equality by seeking to ensure that any eligible person who wishes to vote is able to do so. The Bill will potentially affect everyone in Scotland who is entitled to vote if it leads to an election being postponed or held on an all-postal basis. It has the potential to impact positively on those who hold the protected characteristic of age, as it seeks to ensure voting can be carried out as safely as possible in the context of a pandemic that poses a significant threat to older members of society (e.g. in the provisions for voting over several days, which could reduce footfall at polling stations). For similar reasons the Bill's provisions could impact positively upon voters with disabilities.

52. Provision of an all-postal election is not the Scottish Government's policy or preference, but it might nevertheless be required by virus conditions, for example if two or more attempts to hold the election with in-person voting have to be cancelled. Participation in an all-postal ballot depends upon members of the public being willing and able to apply for a postal vote. As indicated at paragraph 47, there is significant concern that a substantial number of people will not engage in that process or may face additional difficulties to meet the requirements for postal voting, leading to the potential for disenfranchisement. Some voters may also struggle to complete a postal vote application form despite being able to vote in person, though existing legislation contains provisions to assist disabled voters, for example where a voter cannot provide a signature. Whilst it is possible that some might not choose to vote in any event<sup>12</sup>, removing the option of voting in person could risk creating a potential barrier to democratic engagement.

---

<sup>12</sup> Figures on turnout and spoiled ballot papers at the 2016 Scottish Parliament election are available at: <https://www.electoralcommission.org.uk/who-we-are-and-what-we-do/elections-and-referendums/past-elections-and-referendums/scottish-parliamentary-elections/results-and-turnout-2016-scottish-parliament-election>

This document relates to the Scottish General Election (Coronavirus) Bill (SP Bill 86) as introduced in the Scottish Parliament on 16 November 2020

53. The Bill also increases the possibility of a delay to the election. The previous election to the Scottish Parliament was held on 5 May 2016 and the Scottish Parliament has recently decided to move permanently to five year terms<sup>13</sup>. Some members of the public may consider that a delay to the election of six months would raise issues of a potential democratic deficit, especially if a constituency vacancy were to arise and could not be filled via a by-election.

54. The Scottish Government is engaged with the Electoral Commission on appropriate messaging and communications for voting in the context of coronavirus and the measures set out in the Bill.

55. The Bill's Equality Impact Assessment will be published at:  
<https://www.gov.scot/publications/>

### **Island communities**

56. The Bill has no differential effect on island communities. It may be helpful to note that the Orkney and Shetland Islands already have a high level of participation in postal voting.

### **Local government**

57. The Scottish Parliament election clearly has a major impact on local authorities as ROs draw upon facilities (including schools) and staff from within their own council to run the election. The work of EROs is funded by local authorities. Consequently the Bill's provisions have been prepared in consultation with ROs and EROs. COSLA has provided helpful input in the development of the provisions. The Bill seeks to assist EROs in processing postal vote applications by moving the deadline for applications forward. The Scottish Government reimburses ROs for the costs involved in running the Scottish Parliament election. The accompanying Financial Memorandum sets out costs arising under the Bill.

### **Sustainable development**

58. The Bill will have no significant impact on sustainable development. An all-postal election would remove the need to heat and light polling stations and reduce the transportation of ballot boxes. Extra paper would be required to issue and receive votes by post. The Government is not aware of any robust research on the environmental impact of postal voting compared to in-person voting.

---

<sup>13</sup> Section 1 of the Scottish Elections (Reform) Act 2020.

This document relates to the Scottish General Election (Coronavirus) Bill (SP Bill 86) as introduced in the Scottish Parliament on 16 November 2020

# Scottish General Election (Coronavirus) Bill

## Policy Memorandum

© Parliamentary copyright. Scottish Parliamentary Corporate Body

Information on the Scottish Parliament's copyright policy can be found on the website -

[www.scottish.parliament.scot](http://www.scottish.parliament.scot)

Produced and published in Scotland by the Scottish Parliamentary Corporate Body.

All documents are available on the Scottish Parliament website at:

[www.scottish.parliament.scot/documents](http://www.scottish.parliament.scot/documents)