

Summary of the responses to the Committee's call for views on the Scottish Elections (Representation and Reform) Bill

The [Scottish Elections \(Representation and Reform\) Bill](#) ("the Bill") was introduced on 23 January 2024 by the Deputy First Minister, Shona Robison MSP. The Minister in charge of the Bill is George Adam MSP, Minister for Parliamentary Business. SPICe [published a briefing on the Bill](#) on 28 February 2024.

The Committee issued a [call for views on the Bill](#) between 7 February and 6 March 2024. Nine questions were asked and a total of 22 responses were received, with 11 from organisations and 11 from individuals. This paper summarises the responses to the call for views.

Who can stand at an election

Respondents were first asked two questions about who can stand at Scottish Parliament and local elections. These questions related to the Bill's proposals to allow foreign nationals with limited leave to remain to stand for election (Part 1 of the Bill) and to prevent people from standing for election if they have committed an offence involving the intimidation of those involved in electoral events (Part 2 of the Bill).

Allowing foreign nationals to stand for election

Eight organisations responded to the question on allowing foreign nationals to stand for election. Policy and advocacy organisations responding to the call for views tended to indicate agreement with the proposal. Engender, a feminist membership organisation working in Scotland, states in its response:

"Engender strongly supports allowing foreign nationals with limited leave to remain to fully participate in Scottish elections by standing as candidates, in line with their existing right to vote. We believe that expanding such participation in elections and representation increases Scotland's overall quality of decision-making and policy development, and improves democratic quality".

The Electoral Reform Society Scotland and JustRight Scotland (a charity providing legal representation and advice) also made responses expressing agreement with

the proposal. JustRight Scotland provides its reasons for supporting the proposal in its submission, which states:

“Residents in Scotland with LLR [limited leave to remain] are directly impacted by decisions made by Scottish local and national politicians, and we believe it is right for democratic processes to be extended to include them. We believe the current requirement for prospective migrant candidates to have ILR [indefinite leave to remain] is unnecessary and overly restrictive. By only granting candidacy rights to those with ILR, the current electoral system excludes some Scottish residents who may have been in the country for a significant period, but not yet acquired ILR”.

The remaining organisations, comprising mostly of professional bodies and electoral administrators or regulators, did not express a view on the rationale for the policy but did set out practicalities that should be considered with regards to the proposal. These practicalities can be summarised as follows:

- Implications of leave to remain expiring during a term of office
- Guidance on the interaction of the proposal with immigration law
- Timing and implementation of the extension to candidacy eligibility.

The Law Society of Scotland sets out some of the implications of an elected representative’s leave to remain expiring during their term of office in its submission, which states:

“The most-common duration of limited leave to remain granted in the UK is 2.5 years, whereas Scottish Parliament and Local Government elections tend to be every 5 years. Accordingly, if an elected official was refused further leave to remain whilst holding office, could this lead to an increase in by-elections etc. We are concerned that the expense, administrative requirements and uncertainty created for constituents may undermine democratic engagement.

Applicants for further leave to remain are often waiting 6-12 months for a decision from the Home Office. Consideration would need to be given to their elected status whilst waiting a decision. Currently, if an application for leave to remain is lodged timeously, the rights of the foreign national continue under section 3C of the Immigration Act 1971. However, all rights and entitlements fall – even when an application is lodged with the Home Office – if it is lodged late. As such, the above proposal could create a situation whereby a Scottish Parliament or Local Government representative is compelled to stand down by virtue only of a late application”.

The Association of Electoral Administrators (AEA) and the Electoral Management Board for Scotland (EMB) made similar points indicating that the implications of an elected representative’s leave to remain expiring should be considered. For example, the EMB states in its response:

“It has been observed by ROs [Returning Officers] that this provision would allow candidates to stand for election even though they may not have the right to remain in the UK for additional by-elections. In addition, members of public when voting for an individual who stands as a candidate would in most cases expect that candidate to represent them for the full term of office and not part of it. Such uncertainty could be avoided if the Bill was amended with wording to restrict candidacy to those foreign nationals who had leave to remain for the full term of office”.

Dumfries and Galloway Council and the AEA remarked on the need for clear information and guidance on the proposal’s interaction with immigration law. Specifically, the AEA states in its submission:

“We expect the Scottish Government and Electoral Commission (EC) to provide clear information as to what types of visa indicate a person’s limited leave to remain. Even though it is not the role of electoral administrators to advise candidates on whether they qualify to stand, it is important they are able to point candidates to further guidance”.

The Law Society of Scotland submission notes a possible issue that may arise for some foreign nationals with limited leave to remain from countries preventing dual nationality or allegiance to another country who are then returned to the Parliament at election. Its submission states:

“There is also the issue which arises from the Scotland Act 1998 section 84 which provides “[...] A person who is returned as a member of the Parliament shall take the oath of allegiance...”. This is re-enforced by the Standing Orders of the Parliament which state in Rule 2. “Every person who is returned as a member shall take the oath of allegiance or shall make a solemn affirmation at a meeting of the Parliament before the Clerk. A member shall not take part in any other proceedings of the Parliament until that member has done so.”. This could have an impact on citizens of more than 50 countries who do not accept dual citizenship.

For those who have no dual citizenship or allegiance issue we should draw attention the fact that under immigration law standing for an elected post in devolved government is not considered to be “employment” and conditions restricting employment do not affect the ability to undertake such activities”.

The Electoral Commission and AEA made comments relating to the timing and implementation of the proposal, if enacted. The Electoral Commission states in its submission:

“It is important that potential candidates and ROs understand the different legal requirements which must be met to stand as a candidate at different elections in Scotland. The Scottish Government will need to ensure that any changes are introduced in sufficient time for parties and independent candidates to familiarise themselves with the rules ahead of the next relevant election so the Commission can update our guidance to support them”.

Similarly, the AEA states on the implementation of an extension to candidacy rights:

“We want to ensure the impact of implementing any change to candidacy rights is minimised for electoral administrators. For example, the legislation, nomination forms and guidance should be made in good time (at least six months before the first elections at which the change is effective)”.

Engender, although not an electoral administrator or regulator, also provided additional considerations in its evidence and states in its submission:

“It is important to note that the group targeted by this aspect of the Bill may be at particular risk of harassment based on ethnicity, race or nationality – in addition to any abuse they may experience on the basis of their gender or other characteristics. In order to ensure that those who this aspect of the Bill targets can benefit from new candidacy rights, appropriate safeguards and support must be developed with individuals with lived experience and expert organisations working with those with insecure immigration status.

It is also essential that the Committee considers how this group can be equipped with the resources that will enable them to engage with the democratic process fully. This will likely include access to financial support, mentoring or peer support, and accessible information on participating in elections. Such additional measures will reduce the likelihood of negative experiences for these candidates and maximise the chances that this change in law will result in greater diversity of our elected representatives”.

Individuals' views on the proposal varied. Three individuals clearly expressed agreement with the proposal and four individuals expressed disagreement. Individuals expressing disagreement with the proposal tended to indicate preference for only individuals who have indefinite leave to remain or UK citizenship being able to stand. The two other individuals responding to this question did not express a view in agreement or disagreement but did indicate concern or a lack of clarity over how the proposal would work in practice. For example, one respondent indicated a preference for individuals with limited leave to remain being able to stand if they can complete the term of office. Another respondent expressed a lack of clarity on how many more individuals would become eligible to stand as a candidate and a lack of clarity on whether individuals granted “refugee status” would be able to stand.¹

Disqualification from candidacy

Seven organisations responded to the question seeking views on the Bill's proposal to prevent a person from standing as a candidate if they have committed an offence involving the intimidation of those involved in electoral events.

Organisations were generally supportive of the proposal. The Scottish Assessors Association (SAA), a voluntary body representing assessors in local authorities facilitating electoral registration services among other functions, “welcomes” the inclusion of registration officers in the election staff covered by Part 2 of the Bill. The

¹ Refugee status is given to individuals where the UK Government has accepted their claim for asylum. As such, they have limited leave to remain which is usually 5 years. After 5 years they are able to apply for indefinite leave to remain.

AEA “fully support and welcome the adoption of any measures designed to deter the intimidation of election staff or people standing for election”. Dumfries and Galloway Council agreed with the proposal but indicated that guidance for Returning Officers is required given “the practicalities of Returning Officers knowing that an individual is disqualified are not addressed” in the Bill.

The EMB made several remarks on the practical implications of disqualifying candidates if they have committed an offence involving the intimidation of election staff. Its submission states:

“When the UK Government was considering the introduction of such a provision in the UK Elections Act 2022 the EMB made comment that generally there did not seem to be a need for this measure. Sufficiently serious offences would often already be addressed through other laws, although conviction for “intimidatory or abusive behaviour towards an elected representative or candidate” may be a lower standard, compared to the current disqualification based on a recent imprisonment. The nature of intimidatory or abusive behaviour would need to be carefully defined to avoid any unintended impacts on freedoms of speech and expression within political campaigning.

[...]

Ultimately it is for police and prosecutors to act around electoral offences. ROs [Returning Officers] and EROs [Electoral Registration Officers] deliver the election but do not “police” its conduct or enforce campaign rules. As noted above, in terms of a candidate’s qualification to stand the RO does not assess this; it is for the candidate to satisfy themselves that they are not disqualified. The nomination paper would therefore need to be amended to allow the candidate to declare that they were not disqualified from standing due to a relevant conviction”.

Engender and the Electoral Commission both indicated support for the proposals in the Bill given the deterrent effect the provisions may have on such behaviour. Both responses cited research on the issue and expressed concern for the extent to which the proposals could address the issue given most intimidation of candidates and election staff comes from members of the public (who are unlikely to stand for election). The Electoral Commission states in its submission:

“This change is an important first step towards safeguarding the safety of candidates, campaigners and election workers at elections. However, given the majority of abuse and intimidation reported in our survey came from members of the public who may have no intention of standing as a candidate, wider action will be required. Tackling this issue will require coordinated action from a range of partners across the electoral community, including political parties and campaigners themselves as well as police forces and prosecuting authorities”.

Engender also raised the increased risk of intimidation that women, black, and other minoritised politicians may experience. Engender states in its submission:

“Experiences of toxic levels of abuse and harassment tied to sexist behaviours – both online and offline – are often referenced by women as a reason for leaving public life. Together, this contributes to a chilling effect on diversity, sending a strong signal that electoral politics is not safe for women, particularly for women of colour and other marginalised groups. Action must be taken on all forms of harassment, abuse and intimidation if we wish to see greater diversity in our elected representatives”.

Individuals tended to be in agreement with the proposal to prevent a person from standing as a candidate if they have committed an offence involving the intimidation of those involved in electoral events. Six of the 9 individuals responding to this question indicate clear agreement with the proposal.

Campaign finance

Respondents were asked to provide views on the proposed changes to how much money can be spent during an election campaign (Part 3 of the Bill). The Bill proposes changes to campaign finance law which mirror the provisions of the UK Elections Act 2022 in the following areas:

- Notional expenditure (i.e., financial returns declaring the full value of goods or services given to candidates for free or at a discount)
- Third party campaigners (i.e., non-party individuals or organisations who campaign at elections but do not stand as candidates or political parties)
- Spending by overseas campaigners.

The AEA and Electoral Reform Society Scotland made general comments indicating agreement with making campaign finance law for devolved elections consistent with the provisions of the Elections Act 2022. The Electoral Commission also commented that consistency with reserved elections should make it easier for campaigners to comply with the law.

Eight individuals responded to the question seeking views on campaign finance. Responses tended to make general comments on the principles which should underpin legislation on campaign finance rather than specific comments on the measures proposed in the Bill. Individuals expressed views that campaign expenditure disclosure should be transparent, traceable, and inform voters.

The Electoral Commission, as the regulator, provided detailed evidence on Part 3 of the Bill in its submission. The Bill proposes changes to the definition of notional expenditure at devolved elections in Scotland and brings the definition in line with the provisions of the UK Elections Act 2022. The proposed change means that notional expenditure will only be incurred if it is directed or authorised by the candidate or their election agent. The Electoral Commission states in its submission:

“Candidates, agents and party or campaigner staff must understand what should be reported as “notional spending” or “election expenses” as it counts towards their total campaign spend, which must not exceed the specified spending limit. If this provision is enacted, we will monitor the practical impact

of the changes in the Bill (and those arising from the UK Elections Act 2022) and share any findings with the Scottish Government.

We will continue to provide guidance to support the regulated community to understand and comply with the law. If the law is amended for notional expenditure at Scottish devolved elections, the Commission would also consider whether it could develop a statutory Code of Practice on candidate expenses under our existing powers to provide further clarity about notional spending and spending under local non-party campaigner laws. The Commission would need sufficient time to prepare and consult on any Code, ahead of the laws coming into force”.

Section 15 of the Bill provides Scottish Ministers with an order making power to amend the list of categories of organisation able to register as third-party organisations at Scottish Parliament and local authority elections. The Electoral Commission provided its views on the proposed order making power and states in its submission:

“We note that Scottish Ministers will have an order making power to add, change or remove permitted categories of non-party campaigners for devolved Scottish elections. This would enable future flexibility to respond to the emergence of new categories of campaigners to ensure that legitimate campaigners are not prevented from engaging in democratic debate. However, it will be important to consider the potential for confusion about campaigner rules in the event that any changes only apply for Scottish devolved elections and not at reserved elections.

Ministers may only remove or vary a description of a third party if this is on the recommendation of the Commission, which would build in some safeguards to prevent the politicisation of the process. However, we note that Ministers can make regulations to add to the list without any Commission recommendation”.

Section 18 of the Bill proposes that the Electoral Commission should be required to publish a code of practice on third party campaigning in the regulated period before an ordinary or extraordinary election to the Scottish Parliament. It also provides for the process that the Electoral Commission must follow.² The Electoral Commission response indicates that it is supportive of the clarity that a code of practice would provide to campaigners and agrees that it should be able to provide such a code for devolved elections in Scotland. The Electoral Commission also notes in its submission that the process differs to what is set out in the UK Elections Act 2022 for reserved elections and the process set out in the Elections and Elected Bodies (Wales) Bill being considered at the Senedd Cymru. Its submission states:

“The [Electoral] Commission would be required to consult the Scottish Parliament as a whole, rather than an independent committee of Parliament (the Speaker’s Committee in the UK Parliament and the Llywydd’s Committee

² Rule 17.5 of the [Standing Orders of the Scottish Parliament](#) provides for the parliamentary procedure to be followed when an enactment makes provision for the Parliament to be consulted. Rule 17.5 provides for notice of the document being published in the Business Bulletin, the referral of the matter to a lead committee, and the consideration of the lead committee’s report by the Parliament.

in the Senedd). This in itself is not a concern to the Commission but, as noted above, it is vital that any legislation is in place in sufficient time for us to consult Parliament and consider any views before laying our Code”.

The Elections Act 2022 reduced the regulated spend for overseas third party campaigners from £10,000 during the regulated period before a reserved election to £700. Overseas third party campaigners spending up to £700 do not have to register with the Electoral Commission. The Bill proposes that the same changes are introduced for devolved elections in Scotland. The Electoral Commission provides its views on this matter in its submission, which states:

“This would be a significant reduction from the current limits for unregistered campaigning, and would introduce a new principle that campaigners are subject to eligibility criteria even when they are not required to be registered.

The Government should set out how it intends the restrictions on overseas spending to be enforced. We are not able to take any enforcement action against organisations or individuals outside the UK that don’t follow the law. Criminal law enforcement bodies are also limited in the action they can take against people or organisations based overseas”.

Running elections

Respondents were asked three questions relating to the running of elections. These questions related to the Bill’s proposals to allow the Presiding Officer to propose an alternative date for a Scottish Parliament election in emergency circumstances (Part 4 of the Bill), piloting of electoral processes (Part 5 of the Bill), and information to be included with certain electronic material at Scottish elections (Part 6 of the Bill).

Rescheduling elections

Respondents were asked to provide their views on the Bill’s proposals for re-scheduling of Scottish elections in emergency situations. Five organisations responded to the question on rescheduling of elections, three of which indicated support for the proposals in principle (n.b., the remaining organisations did not make a comment of support or opposition). The Law Society of Scotland provide an overview of the power to postpone Scottish Parliament elections in its submission:

“Currently the Presiding Officer can propose an alternative date for an election a month either side of when it would otherwise be due to occur.

Section 20 changes that by amending section 2 of the Scotland Act 1998 so that the Presiding Officer may propose a date that is up to 4 weeks earlier, or 8 weeks later from when an ordinary general election would otherwise be scheduled. There is no requirement for the Presiding Officer to provide a reason for proposing a change of date. We take the view that the Presiding Officer should exercise this power only when it is necessary to do so and provide the reason for exercising this power”.

The Bill also proposes consequential amendments to the timescales for electing a Presiding Officer following a postponed Scottish Parliament election. The Law Society of Scotland indicated agreement with the provision and noted that it is consistent with the arrangements that were provided for in [section 10 of the Scottish General Election \(Coronavirus\) Act 2021](#).

Uncertainty on the emergencies and circumstances that would be covered by the Bill's proposals was a common theme among organisations. The Policy Memorandum to the Bill sets out that the changes are being proposed based on experience holding an election during the Covid-19 pandemic. The policy memorandum also suggests that public health emergencies, security threats, and the demise of the Crown may also be considered as emergency situations warranting the postponement of an election. The AEA states in its submission:

“the ‘emergency situations’ need to be clearly defined, for example a public health emergency like a pandemic, or security issues. While it may be difficult to provide a legal definition of an emergency, we would expect that some examples could be included in the Explanatory Notes to the Bill, and an explanation that the power is only expected to be used in limited circumstances”.

The Electoral Commission states in its submission:

“We recognise the importance of having a backstop provision for responding to any unanticipated events – such as a public health emergency – particularly in light of the impact of the Covid pandemic. However, certainty around elections is of critical importance to the confidence of voters, campaigners and electoral administrators. Scheduled polls should only be postponed in very exceptional circumstances when no alternative options are available, and the process of decision making should be fully transparent and command the confidence of all those involved in delivering and participating in electoral events, particularly voters”.

The requirement to consult on the decision and the transparency of the decision-making advice was another common theme among organisation respondents. The AEA states in its submission:

“We welcome the provision in the Bill for the Presiding Officer’s requirement to consult the EC [Electoral Commission] and convener of the Election Management Board (EMB) before proposing a new date for the poll, which should help to ensure that the power is not used inappropriately. The AEA would also be happy to be informally consulted, to ensure all issues affecting the administration of the election are fully considered”.

The EMB states:

“Such decisions to postpone would need to be transparent and accountable, so that the electorate can maintain confidence in the independence of the electoral process. This could be achieved through mechanisms including clearly defined tests to justify the delay, consultation with the Convener of the

EMB, the local RO, where appropriate, and the Electoral Commission and the final publication of the decision and its justification.

[...]

The decision to postpone should not be taken independently. Given the need to avoid any political interference, real or perceived, a clear mechanism should be defined in law with decisions requiring documented consultation with independent expert advisers including the EMB, Electoral Commission, Security Services and Public Health as appropriate”.

The Electoral Commission states:

We agree that the requirement for the decision taker (whether Presiding Officer, Convener of the EMB or local RO) to consult with the Convener of the EMB and the Electoral Commission in advance of any decision should provide useful reassurance to the public, campaigners and administrators on the decision-making process. For transparency purposes, we recommend that where a decision has been made to postpone the poll, or equally not to do so, the responsible person should be required to publish the advice they have received and a statement on the factors they considered when reaching their decision.

Several organisations made comments on the financial and logistical costs of postponing an election. The AEA states:

“We note the proposals in the Bill could result in a delay to a Scottish Parliament election of up to 16 weeks, and that the delay could be made in two stages. In some respects, a longer delay has less of an impact on delivering the election than a shorter delay, allowing more time to reschedule activities.

However, we believe any uncertainty of the date of the election would have a considerable impact on administering the election, including securing venues, recruiting and appointing election staff, and managing printing contracts and other suppliers”.

The EMB notes:

“There are significant cost and administrative issues associated with the postponement of scheduled electoral events and these are to be avoided wherever possible. The cost, administrative and democratic implications of any delay must be recognised, but the major concern is that of the challenge to democracy and the potential erosion of confidence in the electoral process”.

The Bill makes provision for local elections to be postponed for up to two weeks. The Policy Memorandum to the Bill indicates that the shorter timeframe proposed for local elections compared to Scottish Parliament elections is to allow time for the Parliament to legislate for a longer delay should it be required. The EMB made

comments on the logistical challenges of rearranging local elections. Its submission states:

“In sections 25 and 26 with respect to the postponement of local government elections the local RO or the Convener of the EMB as appropriate has power to postpone the poll for up to 2 weeks. Given the complexities of organisation an election in terms of recruiting staff and arranging venues for polls and the count a two week period is unlikely to be sufficient to allow the postponed election to be properly organised. In the case of a national electronic count which would need to be rearranged under section 25, two weeks may well be insufficient to allow the rebooking of venues for the complex count operations. The EMB would be happy to engage further to develop a more effective and achievable timescale but would suggest that a maximum postponement period of four weeks be substituted”.

The Electoral Commission made comments on the reasons for rescheduling a local election. Its submission states:

“Paragraph 118 of the Policy Memorandum to the Bill envisages that a delay to local elections may take place with “two scenarios in mind” – these include the “demise of the Crown or a terrorist attack”.

We would welcome confirmation from the Scottish Government that this power is not restricted to the two scenarios listed in the Policy Memorandum and could be used to respond to other major disruptive events such as a cyber-attack or extreme adverse weather conditions. An example to support this measure is the 2018 Clackmannanshire local government by-election in 2018 where the RO was required by law to run the poll on a day in which the government was advising residents not to leave their homes due to the severe snowstorm”.

Individual responses varied in their reasons for agreement or disagreement with the proposals. Individuals indicating support for the proposals for rescheduling elections tended to simply state agreement with several respondents remarking that the provisions seem sensible following the experience of the Covid-19 pandemic. A minority of individuals indicated they wanted to know what circumstances constituted an emergency. Individual respondents against the proposals made comments indicating their uncertainty that the proposals are necessary and that the decision to reschedule an election could be made impartially.

Election pilots and democratic engagement funding

Respondents were asked to provide their views on the proposals in Part 5 of the Bill to make it easier to arrange and fund election pilots which aim to increase voting engagement.

Individual responses were split on the issue of running election pilots and increasing funding to increase democratic engagement. Individuals indicating support for the proposals tended to express broader support for the goal of increasing democratic engagement. A minority of individuals did not express a view on the proposals but

suggested interventions that could be piloted (e.g., interventions around the provision of voter ID was suggested, but it should be noted Scottish elections do not require voters to have ID). Several individuals against the proposals made comments suggesting they felt election pilots were not necessary to increase democratic engagement and other measures could be considered.

Nine organisations responded to question on running and funding election pilots. Most organisations made comments supporting the introduction of measures that have the intention of increasing voter turnout and democratic engagement. Specifically, the AEA, Electoral Commission, EMB, Engender, and RNIB made general comments of support for such measures.

Several organisations made comments on the lists of consultees for when an election pilot is proposed under the process set out in the Bill. The Electoral Commission states in its submission:

“We also note that the proposals in the Scottish Government’s Bill require that Scottish Ministers, the EMB and any relevant RO or ERO be consulted when a pilot scheme is proposed. We strongly recommend that the list of statutory consultees be expanded to include the Electoral Commission to ensure that we can advise on whether the proposed pilots deliver potential advantages for voters, campaigners and electoral administrators and whether the design of the pilots is likely to provide robust evaluation findings”.

The AEA also suggested that the Electoral Commission should be engaged when an election pilot is proposed, stating:

“In principle, we support the plan for Scottish Government to fund activities to increase democratic engagement. We would expect close collaboration with the EC [Electoral Commission] who have expertise in this area, and an assessment of good practice arising from the Welsh Democratic Engagement Scheme”.

Several organisations made suggestions for interventions which could be assessed in an election pilot. These suggestions include:

- Electoral registration pilots (mentioned by Electoral Reform Society and the Electoral Commission)
- Digital polling cards (mentioned by RNIB)
- Tactile or audio voting aids (mentioned by RNIB).

Pilots of automatic voter registration were suggested by the Electoral Commission and the Electoral Reform Society. The Electoral Commission submission to the call for views states:

“We welcome the extension of the ability to propose electoral pilots to Scottish Ministers, the EMB and EROs, alongside ROs, as set out in the Scottish Local Government (Elections) Act 2002. We recommend amending the 2002 Act to

make explicit that electoral registration pilots fall under the scope of the legislation.

[...]

We note that the Elections and Elected Bodies (Wales) Bill currently before the Senedd includes proposals for more automated and automatic forms of electoral registration and we would welcome a similar commitment from the Scottish Government”.

The Electoral Reform Society set out its views on automatic voter registration and increasing democratic engagement in its submission, which states:

“We are disappointed that Automatic Voter Registration (AVR) was not included in the Bill after being part of the initial consultation. This is especially true given the high number of people who are eligible to vote, but who are not on the electoral register, as well as the number of people who are not correctly registered. Voter registration is an integral part of our democracy, and we would like to see more done to tackle the issue of those underrepresented.

Given that the above would increase democratic engagement we ask that provision is made in the Explanatory Notes to the Bill, where examples of initiatives which may be funded are provided, for the inclusion of Automatic Voter Registration pilots. This is in line with the legislation being brought forward in the Senedd as part of the Elections and Elected Bodies Bill”.

RNIB proposed that the use of digital polling cards and voting aids for blind and partially sighted people could be piloted under the Bill proposals. RNIB states in its submission:

“RNIB Scotland would welcome an option in the future to request a digital poll card instead of a paper poll card for Scottish elections. A digital poll card could be more accessible for some visually impaired voters while it could be linked to further online voting options.

[...]

RNIB Scotland strongly supports the development of new accessible voting aids and their testing and piloting and having them available for the next set of elections within the responsibility of the Scottish Government, that is, the Scottish Parliament elections (2026) and Scottish local government elections (2027)”.

Engender and RNIB note the Scottish Government comments in the Policy Memorandum to the Bill that no election pilots are currently planned. Engender states in its submission:

“We note in Section 130 of the Bill’s policy memorandum that no specific pilots are currently under consideration and that since the power for local authorities to propose pilots was initiated in 2002, this has been under-utilised. While we agree that no prescriptive goals for the number of pilots

should be made and that the use of this power should respond to need, there must be a more substantial commitment from those with this power to be proactive in seeking opportunities where pilots could be beneficial”.

RNIB provided a similar comment and states in its submission:

“We cannot comment on whether the proposed funding is sufficient, but RNIB Scotland is concerned by that no pilots currently being planned "under this legislation”.

Organisations commenting on the proposal for Scottish Government funding of activities intended to increase democratic engagement were supportive of the proposal. The Electoral Commission and Engender provided detailed comments on the proposal:

“The Bill creates a power for the Scottish Government to provide grants and financial assistance to organisations which are working to increase democratic engagement. This would build the capacity of civil society to increase registration amongst under-registered groups and those who experience barriers to participating.

The ability of the Commission and others in the electoral community to reach under-registered communities is highly dependent on working through partner organisations which provide face-to-face support for these communities. Some civil society organisations, including those representing refugees and other migrant groups, have raised concerns with the Commission about the capacity of their organisations to support this area of work without additional resourcing.

Any grant scheme the Scottish Government establishes for democratic engagement projects should be informed by the Commission’s electoral registration research, to ensure it is basing its allocation of funding on evidence about under-registration. We also recommend that an independent panel is involved in the selection of recipients for any grant funding”.

The Electoral Commission indicated that it would engage with recipients of the proposed Scottish Government democratic engagement funding in a similar way to the recipients of the Welsh Government Democratic Engagement Grant. The Electoral Commission states in its response:

“The Welsh Government launched its Democratic Engagement Grant in 2023, which makes available £300,000 for Welsh charities, not-for-profit organisations and local authorities to apply for each year. The Commission works closely with recipients of the grant funding in Wales to support and inform their democratic engagement projects and would engage with recipients of any equivalent Scottish Government funding in the same way”.

Engender also provided its support for the proposal and a comment on the proposal for funding to be allocated to local organisations and groups. Engender states:

“We emphatically support the need to engage at a grassroots level with groups experiencing acute levels of political exclusion. However we would also like to ensure that in either intent or wording that the Bill does not preclude Scottish Ministers from providing other types of funding initiatives in future, such as those that would operate on a national scale.”

Information to be included with certain digital election materials

Respondents were asked to provide views on the Bill’s proposals to clarify the information that needs to be on digital election materials and create an enforcement regime for when people do not follow the rules on digital election materials (Part 6 of the Bill). The information referred to in the Bill is known as a digital imprint, and is information included on digital campaign material to show who has produced and promoted it.

The Electoral Commission, as regulator, indicated support for the proposals in Part 6 of the Bill and provided substantive comments on the proposed changes. Its submission on Part 6 of the Bill first sets out the key changes to the legislation governing digital imprints for elections held in Scotland. The submission states:

“The Proposals in this Bill would revoke the existing Scottish devolved legislation in digital imprints but apply an additional ‘bolt on’ provision on top of the UK Elections Act to capture more campaigners publishing unpaid or ‘organic’ digital election material relating to Scottish devolved elections.”

[...]

As the Committee is aware, the Scottish Government introduced new digital imprint requirements ahead of the 2021 Scottish Parliament election which apply to all devolved Scottish elections. The UK Government’s Elections Act introduced digital imprints requirements for all UK elections and campaign activity which came into force in November 2023.

The UK Government regime is broader than the existing Scottish law in two ways:

- *The UK Government’s digital imprints regime applies throughout the year, whereas the Scottish rules apply to the period before Scottish Parliament elections and council elections.*
- *The UK Government’s regime has a wider definition of material requiring an imprint because they require campaigners to include imprints on digital ‘political’ campaign material that promotes a party or candidate. The existing Scottish law covers only ‘election material’ that promotes success at Scottish Parliament or Scottish council elections.*

In these two ways, the UK Elections Act provisions to extend imprint rules could offer more transparency than the current Scottish approach. However, the existing Scottish law is wider and provides greater transparency in one

specific aspect, in that a digital imprint is required on all kinds of election material, including both paid and unpaid material from registered and unregistered campaigners, with some limited exceptions for personal opinion”.

The Electoral Commission also commented on the proposal in the Bill for it to prepare guidance on the application of digital imprint measures to be submitted to Scottish Ministers for approval. Its submission states:

“[...] we have already consulted on and issued statutory guidance under the equivalent duty in the UK Elections Act 2022. It is unclear how guidance issued under this Bill will interrelate with the statutory guidance already approved by the UK Parliament, and we will work with Scottish Government officials to further explore the implications of this requirement.

Three other organisations also responded to this section of the call for views. The AEA, Dumfries and Galloway Council, and the Electoral Reform Society provided brief comments indicating agreement with the proposals. The AEA and Dumfries and Galloway Council state in their submissions that clear guidance on the proposals is necessary. The Electoral Reform Society response called for close monitoring of digital imprints to ensure compliance with the proposals.

Individuals were more likely than organisations to respond to this question with 9 out of 11 respondents providing views on the proposals in Part 6 of the Bill. Seven individuals indicated they agreed with the provisions. Two individuals indicated qualified agreement with the provisions. The two individuals indicating partial agreement questioned the necessity of creating an offence if people do not follow the requirements for information that should be on digital election materials.

Election governance reform

The final section of the call for views sought views on several proposals related to bodies involved in the governance and administration of elections. These proposals relate to:

- Boundaries Scotland
- The Electoral Commission
- The Electoral Management Board for Scotland.

Boundaries Scotland reporting date

Part 7 of the Bill proposes changing the date by which Boundaries Scotland must report on local government boundaries and the number of councillors for each ward from 31 December 2028 to 30 April 2031. This date is proposed to synchronise the review with the five-year local government election cycle.

Boundaries Scotland is the independent public body with responsibility for making recommendations on electoral boundaries for Scottish Parliament and Scottish local

elections. Its submission to the call for views considers that the date change for the next local government boundaries report is a “*helpful amendment*”.

Responses from other organisations responding to this part of the call for views were limited and generally refrained from providing views on the policy content of the proposal. Instead, organisations tended to indicate that the timely issuing of the report was desirable so that those involved in the administration of elections can plan for potential changes proposed by Boundaries Scotland. The AEA, Dumfries and Galloway Council, Electoral Commission, EMB, and the Scottish Assessors Association all made comments to this effect.

Issues relating to Boundaries Scotland not included in the Bill

Boundaries Scotland provided its views on the exclusion of automatic adoption of recommendations by Boundaries Scotland from the Bill, an issue that was consulted on by the Scottish Government. Boundaries Scotland states in its submission:

“we are disappointed that a change to the approval process for our recommendations to Scottish Ministers is absent from the Bill. The Committee will know that in each of our last two reviews of local authority boundaries, proposals were rejected either by the Minister or, more recently, by Parliament. We raised concerns at the time at the existence of lobbying based on partisan and political considerations and the role they played in the rejection of our recommendations. We believe this presented a significant infringement on our independence.

[...]

Automaticity – the automatic acceptance of boundary recommendations from independent boundary commissions - is both widely employed in other jurisdictions and is also the direction of travel to protect against partisan/political interference in the drawing of electoral boundaries. It is now accepted practice at Westminster for UK electoral boundaries. Further, the Senedd Cymru (Members and Elections) Bill recently introduced in the Welsh Senedd includes provisions to switch to a process of automaticity”.

Electoral Commission five-year plan

Part 8 of the Bill proposes changes to the ways in which Scottish Parliament scrutinises the activities of the Electoral Commission in relation to Scottish Parliament and local elections. Specifically, the Bill proposes that the Electoral Commission produces a five-year plan with its objectives and resource requirements in relation to devolved functions in the first financial year following a Scottish Parliament election. The Bill also proposes that the Electoral Commission prepares and sends to the SPCB for approval an estimate of its income and expenditure in relation to its devolved functions for every financial year. In its submission to the call for views, the Electoral Commission states:

“We support the proposals in this Bill which would make the Electoral Commission fully accountable to the Parliament which has legislative responsibility for the work set out in the five-year plan.

We note that the arrangements in the Bill differ to those in place for the Speaker’s Committee in the UK Parliament and the Llywydd’s Committee in the Senedd. The Bill states that the Scottish Parliament Corporate Body (SPCB) may propose changes to the plan; however, it is for the Electoral Commission to consider whether to incorporate these recommendations and to lay the final plan in Parliament (including outlining the reasons for any deviations from the SPCB’s recommendations). In both the UK and Welsh parliaments, the respective committees to which the Commission accounts are responsible for making any modifications to the five-year plan before laying it themselves.

We are content with the arrangements proposed in the Bill, however, we would welcome the Committee’s views on them”.

The EMB, AEA, Dumfries and Galloway Council, the Electoral Reform Society, and several individuals made comments emphasising that any oversight by the Parliament must not compromise the impartiality and independence of the Electoral Commission. For example, the EMB states:

“For devolved elections, where the legislation and rules are devolved, it is appropriate for the Scottish Parliament to exercise proper oversight, but the Electoral Commission as regulator must always remain separate from the control or perceived control of politicians. The proposals in the Bill which would make the Electoral Commission fully accountable to the Parliament for the work set out in its five year plan would therefore offer an appropriate solution”.

The Electoral Reform Society additionally indicated that it *“would welcome additional scrutiny by a relevant committee in the Scottish Parliament, while restating the importance of the independence of the Commission”.*

Status of the Electoral Management Board for Scotland

Part 9 of the Bill proposes making the EMB a body corporate so that it can have its own legal personality and enter contracts. The EMB is a statutory body with responsibility for coordinating the administration of Scottish Parliament and local government elections.

The EMB submission to the call for views provides context to the proposal and why the change to a body corporate is a desirable progression for the statutory committee. Its submission states:

“In recent years there has been a discernible shift in expectation such that the EMB is not simply co-ordinating RO and ERO activity; there was a growing

assumption that the EMB Convener was to a degree responsible for the co-ordination, planning delivery of elections in Scotland”.

[...]

The EMB has no legal personality. Its operation is administered wholly through the structures and resources of the City of Edinburgh Council. As it is not a body corporate it is unable to enter into contracts or directly to employ staff. This is limiting the operation of the EMB in its ability to fulfil its roles. As noted above it needs to be able to direct its resources to build the capacity of the sector and to add resilience to ROs and EROs, for example developing new procurement contracts for the sector and to employ specialist staff.

There may be several different legal structures that could be suitable vehicles for the EMB. The Board wishes to work closely with Scottish Government, with the support of the Electoral Commission, to develop an appropriate model. A fundamental principle must be the independence of the EMB from any real or perceived political control”.

The Electoral Commission made similar comments to the EMB on maintaining the independence of the EMB during its transition from a statutory committee to a body corporate. The Electoral Commission submission states:

“While the clauses in the Bill, if passed, will enable the EMB to be set up as a body corporate, further consideration will need to be given to the financing and oversight of the EMB to ensure that it is not only operationally independent of government but also perceived to be to ensure confidence in Scottish elections. This will include consideration of how the EMB is financed.

The Electoral Commission has been working closely with the EMB and government officials to consider the implications of the changes proposed in the Bill and will continue to support these discussions through any transition into a body corporate”.

Organisations were supportive of the establishment of the EMB as a body corporate. The Electoral Reform Society, AEA, and Dumfries and Galloway Council all made comments supporting the development of the EMB and emphasising its effectiveness in coordinating devolved elections in Scotland.

Part 9 of the Bill also proposes the establishment of a deputy convener of the EMB. The EMB also provides its views on this proposal in its submission:

“The EMB supports this proposal but would recommend that there be provision for the appointment of two Deputies, one from the RO membership and one from the ERO members. This would reflect informal appointments already made by the Convener to support his work and allocating responsibilities to specialists on the Board”.

The SAA also submitted views on the proposal to establish a deputy convener of the EMB. Its submission states:

“The Bill proposes the formal creation of a Depute Convener of the EMB to assist the Convener. The SAA would support this proposal but suggest that there could be two Deputies appointed, one from the RO membership and one from the ERO members. This would reflect informal appointments already made by the Convener to support his work and allocating responsibilities to specialists on the Board”.

Issues not included in the Bill

Several organisations raised issues that are not covered in the Bill. The following lists the issues and further measures raised or suggested by respondents for inclusion in the Bill.

- Free mailouts for council election candidates (raised by Engender and the Electoral Commission)
- Amendments to the way candidate addresses appear on local government election ballot papers (raised by Engender)
- Accessibility of elections (raised by RNIB and the Electoral Commission)
- Clarification on the offence of undue influence at elections (raised by the Electoral Commission)
- Online absent vote application system (raised by the Electoral Commission)
- Emergency proxy voting application for carers (raised by the Electoral Commission)
- Automaticity of recommendations from Boundaries Scotland reports (raised by Boundaries Scotland).

Courtney Aitken

15.03.24

Note: Committee briefing papers are provided by SPICe for the use of Scottish Parliament committees and clerking staff. They provide focused information or respond to specific questions or areas of interest to committees and are not intended to offer comprehensive coverage of a subject area.
The Scottish Parliament, Edinburgh, EH99 1SP www.parliament.scot