

SCOTTISH ELECTIONS (REPRESENTATION AND REFORM) BILL

FINANCIAL MEMORANDUM

INTRODUCTION

1. As required under Rule 9.3.2 of the Parliament's Standing Orders, this Financial Memorandum is published to accompany the Scottish Elections (Representation and Reform) Bill, introduced in the Scottish Parliament on 23 January 2024.

2. The following other accompanying documents are published separately:

- Explanatory Notes (SP Bill 42-EN);
- a Policy Memorandum (SP Bill 42-PM);
- a Delegated Powers Memorandum (SP Bill 42-DPM);
- statements on legislative competence by the Presiding Officer and the Scottish Government (SP Bill 42-LC).

3. This Financial Memorandum has been prepared by the Scottish Government to set out the costs, savings and changes to revenues associated with the provisions of the Bill. It does not form part of the Bill and has not been endorsed by the Parliament. The Financial Memorandum should be read in conjunction with the Policy Memorandum which explains in detail the background to the Bill and the policy intention behind the Bill.

4. The purpose of this Financial Memorandum is to set out the best estimates of the administrative and other costs, the savings and the changes to revenues to which provisions of the Bill would (if passed) give rise, and an indication of the margins of uncertainty in these estimates. It has been developed using the best available evidence.

BACKGROUND

5. The purpose of the Bill is to make a number of improvements to the law affecting Scottish Parliament and Scottish local government elections. It will amend Scottish electoral law to confer additional candidacy rights, set out new rules governing candidates, make improvements for voters, provide for emergency re-scheduling of elections and reform arrangements for several electoral organisations.

6. The Scottish Government consulted on improvements to electoral law from December 2022 to March 2023.¹ The consultation paper discussed whether there should be any change for

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

those currently able to vote but not permitted to stand for election. It highlighted a number of possible changes to assist candidates in local government elections. It also set out proposals for increasing the numbers of those registered to vote and how to improve accessibility in elections, to ensure all people can vote independently and in secret.

7. In addition to the public consultation, the Scottish Government has engaged with the Electoral Management Board for Scotland (EMB) and the Electoral Commission in preparing the Bill. The Convener of the EMB has responsibility of overseeing elections in Scotland with specific powers to co-ordinate Scottish local government and Scottish Parliament elections, make directions to Returning Officers and Electoral Registration Officers (“EROs”). The Electoral Commission is the independent body which oversees elections and regulates political finance in the United Kingdom. It issues guidance for people seeking to become candidates in Scottish local government elections.² The assessments contained in this Financial Memorandum have been informed by their advice.

8. The Bill makes provision on the following:

- Extending candidacy rights at Scottish Parliament and local government elections to foreign nationals with limited leave to remain;
- Extending the coverage of an Elections Act 2022 disqualification order to bar those found guilty of offences involving intimidation of campaigners and elected representatives from being MSPs and councillors for a five-year period and to extend disqualification to those guilty of offences involving intimidation of electoral workers;
- Ending the ambulatory effect of the Scotland Act which means that any change to House of Commons eligibility automatically applies to MSP eligibility without the need for legislative consent;
- Updating the definition of notional expenditure at Scottish Parliament and local government elections in line with the Elections Act 2022;
- Restricting overseas third-party campaign expenditure for Scottish Parliament elections to promote a party, parties or group of candidates with similar views to £700 so as to match UK limits;
- Adopting Elections Act 2022 changes on third-party campaigners, including enabling Scottish Ministers to make regulations to amend categories of campaigners;
- Requiring the Electoral Commission to provide a code of practice on third-party campaigning at Scottish devolved elections;
- A range of measures based on experience with Covid-19 to ensure emergency re-scheduling of elections can, if necessary, be more easily facilitated. These include:
 - Extending the period by which the Presiding Officer can postpone national Scottish Parliament elections to 8 weeks (and providing a power to defer by-elections by up to 3 months);

² <https://www.electoralcommission.org.uk/i-am-a/candidate-or-agent/council-elections-scotland>

- Removing the risk of an Extraordinary General Election being required in the run up to a scheduled Scottish Parliament election and a possible requirement for two elections to take place in close proximity;
- Allowing, in an emergency, the Convener of the EMB to postpone an ordinary local government election by up to two weeks, with each local Returning Officer able to postpone the poll in their area in their area by up to two weeks;
- Allowing Returning Officers to rearrange local government by-elections in their area by up to 3 months;
- Amendments to allow pilot schemes for local elections under the Scottish Local Government (Elections) Act 2002 to be proposed by Scottish Ministers, the EMB and EROs, in addition to local authorities (and requiring the EMB to be consulted on pilot proposals);
- Creating a power for Scottish Ministers to provide grants and other financial assistance for the purpose of increasing democratic engagement;
- Revoking the existing Scottish regulations on digital imprints, but reworking one aspect (requiring an imprint on unpaid for material posted by an organisation other than a regulated campaigner) to apply to electronic material relating to Scottish devolved elections in addition to the new Elections Act 2022 rules;
- Changing the deadline by which Boundaries Scotland is required to review local government electoral wards from 2028 to 2031, to match 5-year election cycles;
- Facilitate improved scrutiny by the Scottish Parliament of the activities of the Electoral Commission in relation to Scottish Parliament and local elections;
- Amending the legal status of the EMB so that it can enter into contracts in its own right; and
- Creating a Deputy Convener post for the EMB.

9. It is considered that most of these proposals can be delivered with minimal cost. The following paragraphs discuss Bill measures where significant cost is not expected.

Candidacy: foreign nationals with limited leave to remain

10. The Scottish Elections (Franchise and Representation) Act 2020 enables all resident foreign nationals with any form of leave to remain to vote in Scottish Parliament and Scottish local government elections.³ In relation to candidacy rights, it allows those with indefinite leave to remain (which includes EU nationals with settled status) to stand as candidates at Scottish Parliament and Scottish local government elections. EU nationals with pre-settled status were also granted these candidacy rights. A further, limited, expansion of candidacy rights in local

³ <https://www.legislation.gov.uk/asp/2020/6/enacted>

government elections in relation to certain foreign nationals with limited leave to remain occurred in 2022.⁴

11. The Bill’s extension of candidacy rights to foreign nationals with limited leave to remain is expected to have a minor financial impact on electoral administrators that can be absorbed within existing resource. No additional funding is expected to be required. The change will make the law on candidacy rights easier to understand and to explain. The principal change will be a need for revised Electoral Commission guidance, which is discussed in the “Costs on other bodies, individuals and businesses” section.

12. These changes on candidacy rights create an indirect possibility of some additional costs if a by-election arises (e.g. if an MSP or councillor lost their leave to remain and a by-election was required). This is discussed further below in relation to costs on the Scottish administration and local government.

Other changes on candidacy: disqualification from elected office

13. The Bill’s change to section 15 of the Scotland Act 1998 will sever the link between House of Commons and Scottish Parliament disqualification. The change will retain the current eligibility criteria for existing MSPs, but ensure Scottish Parliament control of future changes. No financial impact is directly associated with this change.

14. Part 5 of the Elections Act 2022 introduced a new penalty for anyone found guilty of a crime involving intimidating candidates, campaigners or elected representatives.⁵ Under these measures, a court is able to disqualify persons convicted of a crime featuring intimidatory or abusive behaviour towards an elected representative or candidate from seeking elected office in UK Parliament elections for a period of five years. The Elections Act intimidation regime came into effect in November 2023. The Bill will apply this disqualification to similarly bar offenders from being MSPs or councillors in Scotland. It will also introduce a new disqualification order, which will disqualify those found guilty of intimidating electoral workers such as polling staff or Returning Officers from running as candidates in Scottish Parliament and local elections or serving as MSPs or councillors for a five-year period. These changes have been discussed with officials from the Crown Office and Procurator Fiscal Service and the Scottish Courts and Tribunals Service and they have confirmed that they are content that there will be minimal cost implications in relation to the administration of these sanctions. This assessment is based on the expectation that the order will only ever be applied in a very small number of cases (e.g. following a conviction for an assault at a polling station during an election).

15. The Bill’s provisions for disqualification orders in relation to intimidation could result in by-elections (see paragraphs 48 and 49 for costs), if a serving MSP or councillor is convicted of a relevant criminal offence and becomes subject to a disqualification order imposed under the Elections Act 2022 or the new disqualification order to be created by the Bill while holding office and is unsuccessful in any appeal. But this is considered unlikely to occur. Few instances of disqualification orders are anticipated in general. The UK Government’s impact assessment

⁴ <https://www.legislation.gov.uk/asp/2022/4/contents/enacted>

⁵ <https://www.legislation.gov.uk/ukpga/2022/37/contents/enacted>

for the creation of its disqualification order barring persons from elected office elsewhere in the UK concluded (at paragraph 218):

16. “Given that this policy will not create a new criminal offence, it is not expected that the number of offences passing through the justice system will increase. It is not possible to quantify the number of times this new electoral sanction will be imposed, as the data does not exist to show the number of intimidatory offences for which it was proven that the offender was motivated by hostility towards the victim because the victim was (or was presumed to be) a candidate, future candidate, campaigner or elected officeholder (a prerequisite for imposing the new electoral sanction). Nonetheless, the sanction is unlikely to be used excessively and therefore any additional costs will be negligible”.⁶

17. The Scottish Government shares this assessment in relation to the disqualification order provisions in the Bill. As a result, the very remote prospect of this change resulting in a by-election (as a result of a serving elected representative being convicted of an offence and then being made subject to a Scottish disqualification order) is not discussed below in relation to by-election costs indirectly associated with foreign national candidacy rights.

Changes to campaign rules as a result of the Elections Act 2022

18. The Bill makes a number of modifications to rules around election campaigning, which have arisen as a result of changes by the Elections Act 2022 in relation to UK Parliament elections.

19. The Bill’s changes in this area will align the rules for Scottish Parliament and local government elections with the Elections Act 2022. This will make the law simpler, assisting the Electoral Commission in preparing guidance and campaigners in following the rules (as there will be fewer variations between different types of election). The Bill will update the definition of notional expenditure at Scottish Parliament and local government elections, restrict overseas third-party campaign expenditure for Scottish Parliament elections to £700, enable Scottish Ministers to make regulations to amend categories of campaigners, and require the Electoral Commission to provide a code of practice on third-party campaigning in Scottish devolved elections. None of these adjustments are considered to bear significant cost implications (see the similar conclusion of the UK Government on notional expenditure and third-party campaigning in its Elections Bill Impact Assessment from 2021 (page 67⁷).

20. The Bill’s changes in relation to digital imprints – an identifier providing the names and addresses of the promoter and on whose behalf the material is being published for online campaign material – are more complex. Digital imprint rules have been in place in relation to Scottish Parliament and local elections since 2020. But Part 6 of the Elections Act 2022 effectively overrode the pre-existing Scottish imprint regime, despite the refusal of legislative consent.⁸ The UK Government’s Elections Bill Impact Assessment discusses (at pages 62 to 66)

⁶ <https://publications.parliament.uk/pa/bills/cbill/58-02/0138/2021-05-07ImpactAssessmentREV.pdf>

⁷ <https://publications.parliament.uk/pa/bills/cbill/58-02/0138/2021-05-07ImpactAssessmentREV.pdf>

⁸ Legislative Consent Memorandum - Elections Bill, paras 50-54, which contains reference to the existing Scottish law on digital imprints. <https://www.parliament.scot/-/media/files/legislation/bills/lcms/elections-bill/splcms068.pdf>

the impact of the digital imprints changes that were made for elections across the UK in the Elections Act in terms of campaigner familiarisation and to Electoral Commission guidance.

21. The Scottish Government consider that it would be highly confusing for campaigners to continue to apply the preceding Scottish legislation on digital imprints in its entirety in addition to the Elections Act regime. As a result, the Bill will revoke the overridden Scottish legislation. It will though recreate one aspect of the previous Scottish regime, to effectively apply as a ‘bolt on’ addition to the UK-wide scheme. This will apply in an area not covered by the UK legislation: unpaid posting by organisations other than recognised third parties. The Bill is therefore effectively revoking the existing Scottish regulations on digital imprints but reworking one aspect (requiring an imprint on unpaid for material posted by an organisation other than a regulated campaigner) to apply to material relating to Scottish devolved elections in addition to the new Elections Act 2022 rules. This is not considered to bear cost implications. This is because the Bill will make the law simpler by removing all but one modified aspect of the previous regime in place for Scottish Parliament and local elections. This is expected to make it easier for the Electoral Commission to prepare relevant guidance and for campaigners to familiarise themselves with the changes.

Changes in relation to Boundaries Scotland and the Electoral Commission

22. The Bill will change the deadline by which Boundaries Scotland have to have conducted their next review of local government electoral areas (boundaries of wards within council areas) from 31 December 2028 to 30 April 2031. This is to reflect the change to the 5-year electoral period for local government elections.

23. For the Electoral Commission, changes made by the Bill seek to improve the Scottish Parliament’s scrutiny and supervisory role. It will in particular require the Commission to prepare a distinct 5-year plan for its activities relating to Scottish Parliament and local government elections, separate from the current process where these activities are covered by the same 5 year plan as set for the Commission’s activities in relation to UK Parliament election. This change has been discussed with the Electoral Commission and they are content that there will not be any additional costs to the Commission’s current budget arising from the process of developing a separate corporate plan.

SUMMARY OF TOTAL COSTS OF THE BILL

24. This Bill will not directly have financial implications, but there are five areas where indirect costs may arise. These concern changes to the legal personality of the EMB, enabling powers in relation to grants and pilots, the increased potential for Scottish Parliament by-elections to arise and the emergency re-scheduling of Scottish Parliament elections.

25. Costs in administering Scottish Parliament elections are incurred by Returning Officers and EROs. Returning Officer costs are met from the Scottish Consolidated Fund. ERO costs are met from within local authorities’ budgets, but in exceptional circumstances EROs have received additional funds directly from the Scottish Government, for example in the context of the 2014 independence referendum. This has also occurred when there has been an extension of the

franchise, for example when 16- and 17-year olds gained voting rights and in 2020 when the franchise was extended to include foreign nationals. There are 15 EROs in Scotland.

26. Responsibility for local government elections rests with Returning Officers and the costs involved in holding local government elections are met by the relevant local authority.⁹

ELECTORAL MANAGEMENT BOARD FOR SCOTLAND

Detail of change

27. The EMB was set up on an interim basis in 2008 and became a statutory body as a result of the Local Electoral Administration (Scotland) Act 2011.¹⁰ Its purpose is to promote best practice in electoral administration and to support the electoral community in Scotland to deliver elections safely, securely and successfully. The Convener has the power to issue directions to Returning Officers and EROs and this role was widely considered to be highly successful in the running of elections under coronavirus pandemic conditions.¹¹ Currently the EMB lacks a legal personality which means that it cannot enter into contracts. This limits the extent to which it can support local authorities and others to run elections. A key example would be the contract for electronically counting votes cast at local government elections, where the Scottish Government tenders the contract and officials take on the accountable officer roles. This is an exercise that the EMB with a legal personality could manage in future. There are other national contracts which the EMB could enter with the agreement of the local authorities. These could lead to savings to local authorities for services such as economies of scale in printing, promoting best practice and efficiencies and in managing common contracts covering multiple councils.

28. The EMB currently receives Scottish Government funding of £200K per annum and is hosted by City of Edinburgh Council. Its annual spend is recorded in its Accounts.¹² The current Convener is the Chief Executive of Comhairle nan Eilean Siar and does not receive any payment for the Convener role apart from expenses. The current Secretary to the EMB is a Deputy Returning Officer for City of Edinburgh Council. The proportion of his time spent on EMB work is covered by EMB funds. Work is undertaken by contractors, and additional staff have been employed for specific projects, such as the current strand of work focused on improving accessibility to voting. This may have been an appropriate model when the EMB was established but the evolution of its place, and expectations of its function, in the delivery of successful elections across Scotland suggests that a change is needed.

29. The Bill seeks to enhance the capability of the EMB by making it a corporate body. This has the potential to increase its running costs, in particular if it were to appoint paid post-holders (including the Convener), reducing the over-reliance on goodwill that features in current arrangements.

⁹ See section 42 of the Representation of the People Act 1983, which states that all expenditure properly incurred by a Returning Officer in relation to local government elections will be paid by the council.

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

¹¹ <https://www.electoralcommission.org.uk/who-we-are-and-what-we-do/elections-and-referendums/our-reports-and-data-past-elections-and-referendums/report-scottish-parliament-election-6-may-2021>, see Recommendation 7

¹² <https://www.emb.scot/downloads/file/998/annual-report-of-the-emb-for-scotland-2021-2022> at page 11

Costs on the Scottish Administration

30. Provision of paid post-holders for the EMB is dependent on funding being agreed. Providing for a paid Convener and Deputy Convener (a new post envisaged by the Bill) and other staff is estimated to involve expenditure which would at most double the current budget allocation from £200K per year to £400K per year. A source for additional funds beyond the current £200K has not currently been identified. The change will therefore not occur until a business case is completed and financial provision made.- No obligation is created in the Bill for paid office holders to be established. There is an argument that enhancing the EMB should lead to efficiency savings (e.g. in the form of promotion of good practice and negotiating common contracts) for local government in running elections and this could be a factor in any future funding arrangement. The Government intends to consult further with COSLA and others on possible sources of additional funding for the EMB, but at present the changes made by the Bill will not directly result in the additional cost identified below. This is because they are enabling changes: the Bill does not require paid postholders or other expenditure to be incurred, but it will make this possible if and when funding can be secured. The EMB model is unique to Scotland: no EMB exists in England and the Welsh Senedd is currently considering a proposal for a new EMB for Welsh Senedd and local elections (the Elections and Elected Bodies (Wales) Bill documentation estimates EMB transitional costs £30K, with annual running costs estimated at £130K, however the Welsh proposed Welsh model is substantially different, with the Boundary Commission for Wales assuming EMB functions).¹³

31. The Scottish Government undertakes to write to the lead Scottish Parliament subject committee on elections matters (currently the Standards, Procedures and Public Appointments Committee) if and when additional funding for the planned expansion of the EMB is secured.

| EMB additional costs – Scottish Administration | Cost | Timing |
|---|------------------------|--|
| Paid officeholders | £200K per annum | When funding available – separate business case/funding model to be agreed. |

FUNDING POWERS TO INCREASE DEMOCRATIC ENGAGEMENT

Detail of change

32. The Bill creates a new power to enable the Scottish Government to make grants and provide other financial assistance to organisations for activities that are designed to increase democratic engagement. The Welsh Government launched a Democratic Engagement Grant scheme in January 2023 to fund third sector organisations and local authorities to support citizens to engage with democracy, with an emphasis on hard-to-reach groups. Under the Welsh scheme £300,000 is being made available, per year, to improve democratic engagement.¹⁴ The

¹³ See paragraph 9.19: [pri-ld16062-em-e.pdf \(senedd.wales\)](#)

¹⁴ <https://www.gov.wales/democratic-engagement-grant>

scheme builds on an earlier funding round in 2022, the Third Sector Voter Registration Support Grant made £100,000 available but with a tighter focus on voter registration.¹⁵ Agreement for funding on this scale in Scotland has not been reached, but the figure, and innovations planned by the Welsh Government provide an indicator of possible future work in this area: if and when funding is secured for specific projects. Any funding for such grants or financial assistance will be subject to approval as part of the normal Scottish Budget process.

Costs on the Scottish Administration

33. The provision in the Bill is an enabling one and seeks to permit expenditure as and when funds and a business case are agreed. Any future grant or assistance schemes under this category would be subject to a further determination, with Ministers setting out the purpose of the grant or assistance and identifying the source of funding. The changes made by the Bill will not directly result in the additional cost identified below. The availability (or amount) of grant funding will depend on the budget position and Ministerial priorities as well as on whether any scheme has been successful in meeting its objectives and has represented value for money.

34. The Scottish Government undertakes to write to the lead Scottish Parliament subject committee on elections matters (currently the Standards, Procedures and Public Appointments Committee) on each occasion that a democratic engagement grant or funding (or a scheme of such grants) is to be made.

| Powers in relation to grants – additional costs | Cost | Timing |
|--|--|--|
| Scottish Administration | Up to £300K (subject to availability of funds in any financial year and not considered recurring annual commitments). | When separate business case/funding model agreed. |

POWERS IN RELATION TO ELECTORAL PILOTS

Detail of change

35. Under section 5 of the Scottish Local Government (Elections) Act 2002 local authorities can propose to Scottish Ministers that they conduct pilots in relation to the holding of elections, for example to “facilitate voting by any persons or any class of person”.¹⁶ The power has rarely been used. The Bill will extend the power to propose electoral pilots to Scottish Ministers, the EMB and EROs. As a result the Bill could mean that certain pilots that could or would have been initiated by a council at the suggestion of the Scottish Ministers, EMB or EROs will be initiated

¹⁵ <https://funding.cymru/pages/news/third-sector-voter-registration-support-grant-meet-the-funder/>

¹⁶ <https://www.legislation.gov.uk/asp/2002/1/section/5>

directly. The Bill also introduces a requirement for the EMB to be consulted on all proposals for pilots (other than those which it initiates itself). These changes have no direct cost implications.

36. An example of a possible future pilot in this area includes the use of digital poll cards (transmitted to voters by email or App), either in addition to or in place of paper poll cards.

Costs on the Scottish Administration and local government

37. At present the changes made by the Bill will not directly result in the additional cost identified below. Secondary legislation ('no procedure') will be required where a pilot is proposed. An EMB-initiated pilot would use EMB funds, which are provided by the Scottish Government. An ERO-initiated pilot could be funded by the relevant council area(s) or by the Scottish Government, subject to agreement. The financial impact of each specific pilot would be set out along with the relevant Order. Possible options include a pilot of electronic poll cards aimed at making these accessible for people with sight loss and a pilot of a new tactile or audio voting aid. The scale of costs would depend on the nature of the pilot but could be in the range £50,000 for a small pilot of e.g. electronic poll cards or for a ballot paper overlay to assist persons with sight loss. Modest additional costs, proportionate to the scale and scope of a pilot and likely to be less than £20,000, may be incurred by the Scottish Government for the purchase or licence and subsequent testing of voting aids; for training of administrators; and for publicity and communication with electors. Formal Electoral Commission assessment of a pilot could also be required and this could cost around £100,000. No pilots under this legislation are currently planned. It is not anticipated that these changes will result in a substantial number of pilots, for example there could be two pilots in one year and then no pilots for the rest of the five-year electoral cycle. For reference, a pilot of advance voting occurred in Wales in 2021 but this is not being considered in Scotland.¹⁷ The costs of most pilots would be met by Scottish Government. If a pilot were proposed by an ERO, it is most likely that the Government would provide funds, however it would be possible for a local government to provide an ERO with funds for a pilot if it considered it appropriate. These costs are subject to the availability of funds in any financial year and not considered recurring annual commitments.

¹⁷ <https://www.electoralcommission.org.uk/who-we-are-and-what-we-do/our-views-and-research/our-research/advance-voting-pilots-evaluation>

| Powers in relation to electoral pilots – additional costs | Cost | Timing |
|--|--|---|
| Scottish Administration (including EMB-initiated pilots) | In the range of £50,000-£150,000 per pilot, depending on the nature of the pilot, including Electoral Commission assessment (subject to availability of funds in any financial year and not considered recurring annual commitments). | When funding available – separate business case/funding model to be agreed. |
| Local Government (EROs –it is most likely that the Government would provide funds for an ERO-initiated pilot, but it would be possible for a local government to provide an ERO with funds for a pilot if it considered it appropriate) | While this would be a matter for the council, a possible range (based on the above Scottish Government figure) would be £50,000-£150,000 per pilot, depending on the nature of the pilot and the possibility of Electoral Commission assessment (all subject to availability of funds in any financial year and not considered recurring annual commitments). | When funding available – separate business case/funding model as required by local authority in line with its processes. |

CANDIDACY: FOREIGN NATIONALS AND THE POTENTIAL FOR SCOTTISH PARLIAMENT BY-ELECTIONS

Detail of change

38. The Bill, if passed, could indirectly give rise to additional costs associated with by-elections. This is because it will allow foreign nationals with limited leave to remain to stand in Scottish Parliament and local elections. This could create the possibility that a foreign national with limited leave to remain could be successfully elected as an MSP or councillor, but would then be required to leave the country if their leave to remain expired during their term of office. Any vacancy arising more than six months before the date of the next scheduled Scottish Parliament or local government election date would result in a by-election (unless the vacancy were in relation to an MSP elected from a regional list).

39. There are 73 MSPs elected to individual parliamentary constituencies, with the remaining MSPs elected to regional lists. By-elections to the Scottish Parliament are rare, with the most recent held in Shetland in August 2019 (note that Shetland is a significantly smaller constituency than average).

40. The EMB reports that since the introduction of STV/multimember wards in 2007 there have been 204 council by-elections since 2007 (50 in the 2007-2012 council term, 89 in the 2012-2017 council term, 65 in the 2017-2022 council term). This equates to, on average, 68 per 5 year term (13.6 per year).¹⁸

41. The possibility of by-elections arising as a result of changes from the Bill are considered to be extremely remote. Candidates must be 18 or more years old and not subject to any legal incapacity. In addition, candidates for local government elections in Scotland must, under section 29 of the Local Government (Scotland) Act 1973:¹⁹

- be registered as a local government elector for the local authority area in which they wish to stand on the day of nomination;
- have occupied as owner or tenant any land or other premises in the local authority area during the whole of the 12 months before the day of the nomination
- have as a main or only place of work in the local authority area during the 12 months prior to the day of their nomination; or
- have lived in the local authority area during the whole of the 12 months before the day of their nomination

42. For a vacancy to arise as an indirect consequence of the Bill, a person would have to:

- Meet the eligibility criteria for standing as an MSP or councillor (see paragraph 40 above for the additional criteria in relation to councillors);
- choose to stand for election; and

¹⁸ <https://www.emb.scot/scottish-local-government/scottish-local-government-elections>

¹⁹ <https://www.legislation.gov.uk/ukpga/1973/65/section/29>

- be elected and have their leave to remain expire during their term of office (and not within 6 months of the next scheduled election).

43. In terms of assessing the number of people aged 18 or over in Scotland with limited leave to remain, up to date figures are not available. The latest statistics published by National Records of Scotland estimate that there were around 397,000 non-British nationals living in Scotland in the year ending June 2021 (including 165,000 non-EU)²⁰ but many of these people would have indefinite leave to remain or pre-settled status and so already have candidacy rights in Scottish Parliament and local government elections (in addition, foreign nationals without limited leave to remain from Luxembourg, Poland, Portugal, and Spain already enjoy the right to stand in local government elections in Scotland as a result of treaties signed by the UK Government and the Scottish Local Government Elections (Candidacy Rights of Foreign Nationals) Act 2022).

44. The Home Office publishes statistics on the number of settled and pre-settled status applications received in Scotland. This does not necessarily mean that the applicants now reside in Scotland as the applicants may have subsequently moved. The latest data available covers the period 28 August 2018 to 30 September 2023.²¹ It indicates 189,380 concluded applications for settled status and 121,910 concluded applications for pre-settled status in Scotland over that period. It should be noted that this data covers applications rather than applicants and people may submit multiple applications, i.e. to move from pre-settled to settled status. As a result of the Scottish Elections (Franchise and Representation) Act 2020, those persons would already be able to stand in Scottish Parliament and local government elections, provided they met the other eligibility criteria (e.g. being aged 18 or older).

45. The population estimates referred to in paragraph 42 cannot be directly compared with EU settlement scheme figures because of differences in what the statistics measure and how they are compiled. However, the data available does at the very least suggest that a substantial proportion of foreign nationals currently resident in Scotland enjoy local government candidacy rights by virtue of having settled or pre-settled status. The implication is that the Bill will, at least initially, result in only a relatively small number of people obtaining candidacy rights. Also, it is not known how many (if any) of those who would become eligible to stand as candidates would choose to do so. Nor is it known how many (if any) of those candidates would be successfully elected, and whether they would be any more vulnerable to becoming disqualified from holding office (by reason of their temporary immigration status) than any other elected member of the Scottish Parliament (or a local authority in relation to councillors).

46. On that basis, the risk of a by-election arising as outlined in paragraph 37 is considered to be extremely unlikely.

²⁰ <https://www.nrscotland.gov.uk/files/statistics/population-estimates/pop-cob-nat-20-21/pop-cob-nat-20-21-report.pdf>

²¹ <https://www.gov.uk/government/statistics/eu-settlement-scheme-quarterly-statistics-september-2023/eu-settlement-scheme-quarterly-statistics-september-2023#applications-to-the-eu-settlement-scheme-by-local-authority>
See [EU Settlement Scheme Quarterly Statistics Tables](#) under heading 10.

Costs on the Scottish Administration

47. It is difficult to accurately estimate the cost of a Scottish Parliament by-election in a ‘typical’ constituency, but in consultation with the EMB the Scottish Government considers it is likely to be £150-200,000. This is on the basis of approximately 60,000 electors across 60 polling stations in 25 polling places. Maximum recoverable amounts for Scottish Parliament elections are set out on a local authority rather than a constituency basis in the relevant legislation²² but figures for UK parliamentary constituencies (which are generally bigger than Scottish Parliament constituencies) have been used as a comparator.²³

48. The cost of any Scottish Parliament by-election arising as an indirect consequence of the Bill would be met from the Scottish Consolidated Fund, as would be the case for any other Scottish Parliament by-election.

Costs on local government

49. The EMB estimate the cost of a local government by-election at between £50,000 and £80,000. These figures are based on costs with recent by-elections, including, for example, the Tain and Easter Ross by-election in Highland on 28 September 2023 (cost £44,240 (electorate 7,144)). The cost of any council by-election arising as an indirect consequence of the Bill would be covered by the local authority concerned as would be the case for any other by-election. In light of the extremely low likelihood of a vacancy arising in this way, any by-election costs would be met from existing resources.

| By-elections: additional costs | Cost | Timing |
|---------------------------------------|----------------------------------|--|
| Scottish Administration | £150-200K per by-election | When vacancy arises, unless within 6 months of a scheduled election |
| Local Government (EROs) | £50-80K per by-election | When vacancy arises, unless within 6 months of a scheduled election |

EMERGENCY RE-SCHEDULING OF ELECTIONS

Detail of change

50. The Bill’s provisions on emergency re-scheduling of elections will not affect the frequency of elections, but will potentially make the moving of polling date easier, should it not be safe or possible to have polling on the scheduled date. The central concept is to ensure orderly management of a change in polling date where a change is clearly required by circumstance. For

²² <https://www.legislation.gov.uk/ssi/2021/155/schedule/made> as per the schedule

²³ <https://www.legislation.gov.uk/ukxi/2019/1454/schedule>

Scottish Parliament elections it will expand the existing power of the Presiding Officer (via the power to arrange postponement set out in section 2(5) of the Bill) to rearrange polling day in response to an emergency.

51. For national ordinary local government elections it will allow the Convener of the EMB to postpone the polling date for the entire elections by two weeks. It will also allow each Returning Officer to postpone the election in their local authority area by two weeks, should the reason for delay only apply to a particular part of Scotland. Returning Officers will also be able to rearrange council by-elections within their area.

Costs on the Scottish Administration and local government

52. The Bill does not increase the likelihood of an election being rescheduled in extraordinary circumstances. The provisions are intended for exceptional circumstances and will in most cases simplify the process for rescheduling should the situation demand it.

53. The Bill's provisions seek to avoid elections being held if it is not safe or practical to do so. If no change to the law were made, then certain situations could compel the holding of an election on an undesirable date. For example, if a pandemic arose after the Scottish Parliament had dissolved prior to a general election (typically this would be late March for an early May election), then the current power of the Presiding Officer to move polling date by one month could still see an election held with extensive precautions required, e.g. in relation to security or social distancing. The need for such measures could potentially be avoided with the Bill's expanded power to rearrange polling day. Cost estimates in relation to social distancing and other emergency measures in holding elections were published in 2020 in the Financial Memorandum for the Scottish General Election (Coronavirus) Bill.²⁴ This contained a discussion of the costs of an 'average' Scottish Parliament election (£19.35-£19.4 million); of an election with physical distancing (£29.35 to £33.75 million) and of an all postal election (£27.8 to £32.35 million). For reference, the Returning Officer expenditure incurred in the course of conducting the 2021 Scottish Parliamentary general election amounted to about £19.1 million, of which about £3.5 million related directly to additional costs relating to the Covid 19 pandemic.

54. Without the changes in the Bill, several possible emergency scenarios would – if they were to occur without the Bill being passed – be likely to require the Scottish Parliament, if it is in session, to pass emergency legislation to re-arrange an election. In such a case the Bill's procedures should avoid the expense involved in the production and passage of emergency legislation.

55. The poll at an ordinary Scottish Parliament election is required to be held on a different date from that at an ordinary local government election and so at present it is anticipated that the Scottish Parliament would be able to legislate for most emergency scenarios in relation to council elections (but not all: for example a security emergency arising the day before the poll would not afford enough time for an emergency Bill moving the date to become law). The Bill's provisions do not therefore necessarily increase the likelihood of a local government election

²⁴ <https://www.parliament.scot/-/media/files/legislation/bills/s5-bills/scottish-general-election-coronavirus-bill/introduced/financial-memorandum-scottish-general-election-coronavirus-bill.pdf> for the Scottish General Election (Coronavirus) Bill

being rearranged in result of an emergency, but instead seek to make the rearrangement process simpler (i.e. avoiding the need for emergency legislation).

56. An additional complication for council elections is the use of the Single Transferable Vote system. This involves the results being counted and collated using an electronic counting (eCounting) system. The need to plan for, set-up and provide specialist resource to support eCounting systems in each of the 32 local authority areas for an election means that it would be very challenging to postpone an ordinary local government election by a short period (e.g. one month or even six weeks). Switching to the arduous process of counting results by hand would be very challenging logistically and capacity-wise, given the scale of the elections. It would risk results being subject to a significant delay and a high degree of human error (given how complex it is to count by hand) and would require a legislative change since electronic counting is required by law.

57. While the Bill contains power for the EMB Convener to postpone scheduled council elections nationwide by up to two weeks, this has been prepared with two scenarios in mind. The first is a specific event such as the demise of the Crown or a terrorist attack that means polling day cannot occur as planned. The power will allow polling day to be adjusted by a very short period if the Convener thinks this is possible in all the circumstances (including the ability to count votes). The two-week period is considered to be sufficient to potentially allow for this limited adjustment of polling day in response to the demise of the Crown or a security emergency. However, it is considered that postponing a local government election on a national basis for an intermediate period (e.g. a month) would not be feasible because of the complexities, mentioned above, involved in eCounting local government elections.

58. It is considered that if a nationwide local government election cannot be safely held within days of the original polling date the most likely scenario is expected to be a medium to long term postponement of four to six months. Rather than grant such an extensive power of delay to the EMB Convener, the Bill has deliberately limited the power of extension to a maximum of two weeks so that the power could be used to create time for the Scottish Parliament to legislate for a new election date several months ahead (should it consider this to be appropriate).

59. The financial implications of an election being postponed are difficult to assess and largely hinge upon how far ahead of any election the postponement occurs. The cost of a postponed election is tied to the point at which it is postponed. Some election expenditure arranged prior to postponement is unlikely to be repeated for a new polling day (e.g. in voter registration or for re-using ballot papers despite being printed with the original date) but other costs may have to be incurred anew. This is also highly dependent on location. For example, a last minute postponement in Glasgow could involve lost venue hire costs for a major commercial venue such as the Emirates Arena, while a postponement in an area where the count is held at a council venue such as a leisure centre is unlikely to involve lost venue hire costs (although some leisure facilities may be run by local authority companies and therefore a fee could be involved

in some instances). The EMB website features a list of usual count venues for each council.²⁵ Some polling places would also have been commercially hired.

60. The new power for Returning Officers to rearrange local government by-elections in response to emergency circumstances would again avoid a need for emergency legislation in the Scottish Parliament to change the date.

61. The overall conclusion is that the Bill's provisions on emergency re-scheduling of elections are not considered to bear direct cost implications for the Scottish administration or local government.

THE SCOTTISH PARLIAMENT

62. No costs are expected for the Scottish Parliament as a result of the Bill. However, the Government is considering a change to date at which the Scottish Parliament dissolves ahead of a scheduled Scottish Parliament election. This proposed change is not included in the Bill but will be considered under existing secondary legislation powers, as allowed for under section 2(4) of the Scotland Act 1998. The change currently being considered (and discussed in the Bill's Policy Memorandum) would involve MSPs and their staff drawing salaries for 8 additional working days. As this is not a Bill measure it will be considered and costed separately, however for reference some explanatory information in this area was set out in 2020 in the Financial Memorandum for the Scottish General Election (Coronavirus) Bill.²⁶

COSTS FOR OTHER BODIES, INDIVIDUALS AND BUSINESSES

Electoral Commission

63. The changes made by the Bill on candidacy will create a need for the Electoral Commission to update its online guidance for those considering standing in local elections.²⁷ However, it is thought that the Bill's changes on foreign nationals with limited leave should make the law simpler to explain (as all forms of leave to remain will in future suffice). The Commission may also modify its online material targeted at promoting awareness of voting and candidacy rights amongst foreign nationals.²⁸ There will also a need to explain the changes described at paragraphs 17 to 18 in relation to campaigning and the new five year plan described at paragraph 22. This will be met from the Commission's existing financial settlement from the Scottish Parliamentary Corporate Body for its core costs in relation to delivering its functions in respect of devolved Scottish elections. The modification of Electoral Commission guidance has been viewed as a business-as-usual cost for the comparable electoral reforms in 2020.²⁹ The Government remains in discussion with the Electoral Commission to ensure all implications are identified.

²⁵ <https://www.emb.scot/downloads/download/115/ro-ero-count-venues>

²⁶ See paragraphs 25-29: [Financial Memorandum - Scottish General Election \(Coronavirus\) Bill](#)

²⁷ See <https://www.electoralcommission.org.uk/sites/default/files/2021-11/SLG%20Part%201%20Can%20you%20stand%20for%20election.pdf>

²⁸ <https://www.electoralcommission.org.uk/welcome-your-vote>

²⁹ In particular, paragraphs 14-16 of the [Financial Memorandum](#) for the Scottish Elections (Reform) Bill. Paragraphs 28 to 29 of the [Financial Memorandum](#) for the Scottish Elections (Franchise and Representation) Bill outlined Electoral Commission costs in relation to changes to the franchise, a subject not covered by this Bill.

Individuals and businesses

64. There are no anticipated financial implications for individuals or businesses.

SUMMARY TABLE OF ESTIMATED COSTS ARISING DUE TO BILL

| Organisation | Category | Resource or Capital | Recurring or One off Cost/Saving (£) | 2024/25 | Notes | Paragraph |
|--|------------------------------------|---------------------|---|---------|---|-----------|
| Scottish Government | EMB funding | Resource | Annual - 200K | n/a | If and when separate business case provided | 26 |
| Scottish Government | Democratic Engagement Grant | Resource | Up to 300K (subject to availability of funds in any financial year and not considered recurring annual commitments). | n/a | If and when separate business case provided | 31 |
| Scottish Government | Electoral Pilots | Resource | 150K(subject to availability of funds in any financial year and not considered recurring annual commitments). | n/a | If and when separate business case provided | 34 |
| Local Government (EROs –it is most likely that the Government would provide funds for an | Electoral Pilots initiated by EROs | Resource | Local Government While this would be a matter for the council, a possible range (based on the above Scottish Government | n/a | If and when separate business case provided (in line with local authority | 34 |

This document relates to the Scottish Elections (Representation and Reform) Bill (SP Bill 42) as introduced in the Scottish Parliament on 23 January 2024

| | | | | | | |
|--|------------------------|----------|--|--|---|----|
| ERO-initiated pilot, but it would be possible for a local government to provide an ERO with funds for a pilot if it considered it appropriate) | | | figure) would be £50,000-£150,000 per pilot, depending on the nature of the pilot and the possibility of Electoral Commission assessment (all subject to availability of funds in any financial year and not considered recurring annual commitments). | | processes) | |
| Scottish Government | Additional by-election | Resource | One-off cost – approximately 150-200K | | Considered highly unlikely – a one off expense as and when a relevant vacancy arises. | 46 |
| Scottish Local Authorities | Additional by-election | Resource | One-off cost – approximately 50-80K | | Considered highly unlikely – a one off expense as and when a relevant vacancy arises. | 48 |
| Electoral Commission | Change to guidance | Resource | One-off cost – nil | | Met by existing budget | 62 |

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SCOTTISH ELECTIONS (REPRESENTATION AND REFORM) BILL

FINANCIAL MEMORANDUM

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