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# Scottish Elections (Reform) Bill

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The [Scottish Elections \(Reform\) Bill](#) was introduced in Parliament by the Cabinet Secretary for Government Business and Constitutional Relations, Michael Russell MSP, on 2 September 2019. The bill proposes changes to electoral law covering Scottish Parliament and local government elections, including reforming term lengths.



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# Executive Summary

The [Scottish Elections \(Reform\) Bill](#) sets out changes to electoral law for Scottish Parliament and local government elections in Scotland. Key provisions include:

- changing term lengths from four to five years for the Scottish Parliament and local government;
- allowing two and five member council wards in addition to three and four member wards;
- prohibiting voting more than once at local authority elections; and
- enabling electronic voting for local authority elections.

Under the Scotland Act 2016 the Scottish Parliament and Government have powers and responsibilities relating to elections to the Scottish Parliament. These complement their existing responsibilities for local government elections.

The [Scottish Government's 2018/19 Programme for Government](#) included a commitment to introduce an Electoral Reform Bill. The Scottish Government has stated that "control over both sets of elections opens up new possibilities for democratic renewal and putting the voter first" <sup>1</sup>.

The Scottish Government has introduced two electoral bills. The [Scottish Elections \(Reform\) Bill](#) on 2 September 2019 and the [Scottish Elections \(Franchise and Representation\) Bill](#) on 20 June 2019. The latter proposes changes to the franchise (who can vote) and candidacy rules for elections to the Scottish Parliament and for local government elections in Scotland. [A SPICe briefing](#) on the Scottish Elections (Franchise and Representation) Bill is available.

# Law Commissions' project on electoral law

In 2014 a joint project on electoral law was undertaken by the Scottish Law Commission, the Law Commission for England and Wales and the Northern Ireland Law Commission. The project was to review electoral law in the UK.

A [joint consultation paper](#) was published in December 2014 with an [interim report](#) published in February 2016.

The Commissions commented that "Electoral law is complex, voluminous and fragmented." <sup>2</sup> One of the main recommendations of the interim report was the formulation of a draft UK bill promoting a new general framework which could be adopted for all elections and referendums. That is to say, electoral law would be consolidated. The Commissions view was that a draft bill "would represent a move away from the current unworkable mass of election specific legislation towards a more principled way in which to organise electoral law." <sup>3</sup>

“ The current laws governing elections should be rationalised into a single, consistent legislative framework governing all elections (enacted in accordance with the UK legislatures’ legislative competences). ”

Law Commission, Scottish Law Commission, Northern Ireland Law Commission, Interim Report recommendation 2-1, February 2016

The [Scotland Act 2016](#) devolved competence over Scottish Parliament elections and the franchise for local government elections in Scotland to the Scottish Parliament. The sections of the Scotland Act 2016 that made providing for elections a devolved matter [came into force on 18 May 2017](#).

Towards the end of 2017, the UK Cabinet Office asked the Law Commission for England and Wales to take forward the next stage of the project by drafting secondary legislation to reform the conduct rules of local elections and local referendums in England and Police and Crime Commissioner elections in England and Wales.

In December 2017, the Scottish Government indicated its decision to take forward reform of devolved aspects of electoral law by launching [a consultation on electoral reform](#) for Scottish Local Government and Scottish Parliament elections.

Progress at a UK government level has been slow. The UK Parliament's Public Administration and Constitutional Affairs Committee is conducting an [inquiry into electoral law](#).

A [note on the Law Commission website](#) reads:

*"Due to the unprecedented demands on Parliamentary business arising out of leaving the European Union, Government made clear that there was no immediate prospect of introducing an electoral law bill to take forward our recommendations. We moved to explore with the Cabinet Office other ways to implement some of our reforms, in particular through secondary legislation. We have now agreed with Government that the project will move to producing a final report, which we aim to publish... in early 2020."*

# Scottish Government Consultation

The Scottish Elections (Reform) Bill follows a [Scottish Government consultation on electoral reform](#) which ran between December 2017 and March 2018. The consultation was the Scottish Government's first consideration of electoral reform after the [Scotland Act 2016](#) devolved new powers for Scottish Parliament elections and the franchise.

The changes to the Scotland Act 2016 were based on recommendations made by the Smith Commission and its report [Proposals for further Devolution to Scotland](#), published on 27 November 2014.

*“ The Scottish Government is committed to increasing participation in elections both in terms of voter turnout and encouraging citizens to stand for election. Democratic participation challenges the inequalities of power and influence that exist in society. We need an electoral system that supports and empowers the engagement of the Scottish people in their own elections. Many organisations, including the Electoral Commission, the Electoral Management Board, political parties and local authorities have important roles to play in realising this aim of full engagement. The Scottish Government and Parliament have a specific role to play to ensure that electoral law supports increased participation and removes barriers to voter empowerment. ”*

[Electoral Reform Consultation](#), Scottish Government, December 2017

The consultation asked for views on:

- term length (questions 1 and 2);
- the role and management of the Electoral Management Board (questions 3 and 4);
- the appointment, role and pay of Returning Officers (questions 5,6 and 7);
- publications of candidates' addresses for local government elections (questions 8 and 9);
- list order of candidates' names at local government elections (question 11);
- electronic voting by voting machines (question 12 ) and by internet and mobile phone (question 13);
- boundary review programme for local government elections (question 14);
- independence of boundary reviews (question 15);
- flexibility on councillor numbers - allowing wards of two and five councillors in addition to three and four member wards (question 16);
- extending the franchise (questions 17, 18 and 19)
- anonymous registration (question 20);
- voting more than once at local government elections (questions 21 and 22);
- accessibility barriers to voting and standing for election (questions 23 and 24); and

- gender balance (question 25).

The Scottish Government has published [an analysis of the responses it received to the consultation on electoral reform](#). Information from that analysis is provided in the relevant sections of this briefing.

# Key provisions of Scottish Elections (Reform) Bill

The bill sets out a range of changes to electoral law for elections to the Scottish Parliament and local government in Scotland.

The key provisions of the bill include:

- changing [term lengths](#) from four years to five years for Scottish Parliament and local government elections in Scotland;
- [postponement of Scottish Parliament general elections](#);
- [electoral wards and the number of councillors](#) - allowing wards of two and five councillors instead of the current three of four (except in some Island Council Wards which are already allowed flexibility in the number of councillors per ward under the [Islands \(Scotland\) Act 2018](#));
- [prohibition on voting more than once](#) at local government elections;
- [electronic voting](#); and
- [entitlement to register as an elector](#) before attaining voting age.

Detail on each of these provisions is set out in the following pages of this briefing.

The bill also makes a number of important technical changes which relate to the [Electoral Commission](#), the [Electoral Management Board for Scotland](#) and the [Local Government Boundary Commission for Scotland](#).

## Term lengths

At present, the term length for the Scottish Parliament is four years as set out in [section 2 of the Scotland Act 1998](#). Likewise, the term is four years for local government in Scotland as provided for by [section 5 of the Local Government etc. \(Scotland\) Act 1994](#).

Sections 1 and 2 of the bill propose changing term lengths to five years for both the Scottish Parliament and for local government in Scotland. The Policy Memorandum does, however, note that the proposal "is not the settled preference of the Scottish Ministers, but this provision has been included to promote further debate on this issue" <sup>4</sup>.

It is electoral best practice to avoid large scale electoral events from falling on the same day. Electoral events on the same day can cause voter confusion as well as administrative challenges. Applying different franchises for polls held on the same day can, for example, cause problems for voters and electoral administrators. The last clash of electoral events in Scotland was in 2007 when the Scottish Parliament and local government polls were combined.

Responses to the Scottish Government's consultation were divided on whether four or five year terms were favourable. [Analysis of the responses](#) showed that 44% favoured four year terms and 50% favoured five year terms <sup>5</sup>.



The [policy memorandum to the bill](#) notes that "if the law is not changed, there might have to be further amendment to the timing of local government elections because...the next UK general election is currently scheduled for the same day as the Scottish local government elections in 2022. <sup>6</sup> " There is now a UK general election scheduled for 12 December 2019, which would mean that this clash is no longer an issue <sup>7</sup> .

In its response to the Scottish Government's consultation, the Electoral Reform Society Scotland argued for four year local government terms and five year Scottish Parliament terms.

" Terms should be set at four years for local councils and five for the Scottish Parliament. Where at all possible clashing should be prevented. We know that multiple campaigns running at the same time can often overshadow other elections."

[The Electoral Reform Society Scotland, Consultation Response](#)

The pattern of a Scottish general election every four years was broken when the election due to take place in 2015 was delayed until 2016 to avoid a clash with the UK general election. This was provided for by [section 4 of the Fixed-term Parliaments Act 2011](#) which moved the Scottish Parliament election from 7 May 2015 to 5 May 2016.

The expectation was then that a UK general election would be held in May 2020 in line with the [Fixed-term Parliaments Act 2011](#). As such, MSPs elected in 2016 were elected on a five year term to avoid an electoral clash in May 2020. [Section 1 of the Scottish Election \(Dates\) Act 2016](#) moved an election from 7 May 2020 to 6 May 2021. The UK 2020 election was subsequently unnecessary because of the UK general election of 8 June 2017.

Councillors elected in 2017 were also elected on five year terms to avoid a clash with the Scottish Parliament general election in 2021. This change to the date of local government elections is provided for by [section 2 of the Scottish Election \(Dates\) Act 2016](#). This Act provides for the elections after 2017 to take place in 2022 and subsequently every four years.

There has been recent legislation at the [UK Parliament](#), in respect of the [Northern Ireland Assembly](#), and at the [Welsh Assembly](#) on the basis of five years terms.

When there was a clash of electoral events in Scotland in 2007, it resulted in there being a number of issues with the administration of the elections. This led to the [independent review of the Scottish Parliament and local government elections 3 May 2007](#) which was established by the Electoral Commission and chaired by Ron Gould. The main conclusion of the Gould report was that:

*"Almost without exception, the voter was treated as an afterthought by virtually all the other stakeholders. Numerous factors – such as combining the ballot papers for the Scottish parliamentary elections, introducing a new voting system with different ballot paper marking requirements, the failure to conduct adequate research and testing on the impact this new system would have on the electorate, the insistence on conducting an overnight count – all indicate to us that voters were overlooked as the most important stakeholders to be considered at every stage of the election. We obviously recommend that all those with a role in organising future elections consider the voters' interests above all other considerations."* <sup>8</sup>



The House of Commons Scottish Affairs Select Committee held [an inquiry on the Gould report in its 2007-08 session](#). In its report the Committee concluded that "that the voter should be placed at the heart of the electoral process. This may seem an obvious statement, but it was the failure to consider the voter's perspective that led to many of the problems of the 3 May elections in Scotland." <sup>9</sup>

## Postponement of Scottish Parliament general elections

There is uncertainty over what would happen if, after the dissolution of Parliament but in the lead up to polling day for a Scottish Parliament election, there was an unexpected event which could have an impact on the feasibility of the poll. The Scottish Parliament is automatically dissolved around six weeks before polling day.

Under [section 2\(5\) of the Scotland Act 1998](#) the Presiding Officer of the Scottish Parliament already has the power to propose a new date for the poll at a Scottish Parliament election which is not more than one month before or after the first Thursday in May. This power is exercisable if the Parliament has not yet been dissolved.

Section 3 of the bill provides that the Presiding Officer is able to exercise existing powers under the [Scotland Act 1998](#) to propose a new date for a general election to the Scottish Parliament if the Parliament is already dissolved.

The bill also proposes a new requirement that the Presiding Officer must consult the Electoral Commission before using powers under [section 2\(5\) of the Scotland Act 1998](#) to set a new polling date.

The policy memorandum notes that this provision has been included in the bill because "concerns have been expressed by electoral administrators and the Electoral Commission". <sup>10</sup>

Primary legislation is required to change the date of a local authority election, even at short notice. The bill does not propose to change this arrangement.

## Electoral wards and the number of councillors

Scotland is divided into 32 local authority areas as a result of the [Local Government etc. \(Scotland\) Act 1994](#). Each local authority area is divided into electoral wards. The [Local Government Boundary Commission for Scotland](#) (LGBCS) designs wards for local government areas across Scotland. These wards were defined by Scottish Statutory Instruments in 2016 following the Fifth Statutory Reviews of Electoral Arrangements by LGBCS.

Under [section 1 of the Local Governance \(Scotland\) Act 2014](#), three or four councillors must be returned for each local government electoral ward in Scotland. LGBCS makes a recommendation under section 1 about how many councillors should be returned for each ward. In making this recommendation, LGBCS also applies rules set out in schedule 6 of

the [Local Government \(Scotland\) Act 1973](#). This includes a requirement that the ratio of electors to councillors in each ward should be "as nearly as may be, the same" <sup>11</sup> .

The [Islands \(Scotland\) Act 2018](#) allows LGBCS to recommend the creation of one or two member wards in council areas that include inhabited islands. In January 2019 [LGBCS announced it was to begin its review](#) of the council areas subject to the Islands (Scotland) Bill. The review will consider the issue of councillor numbers in electoral wards. The relevant council areas are:

- Argyll and Bute Council;
- Comhairle nan Eilean Siar;
- Highlands Council;
- North Ayrshire Council;
- Orkney Islands Council; and
- Shetland Islands Council.

Section 4 of the bill provides for LGBCS to have the flexibility to set the size of all council wards by allowing two and five member wards in addition to three and four member wards. One member wards will continue to only be allowed for those areas which fall under the Islands (Scotland) Act 2018.

Respondents to the Scottish Government's consultation favoured allowing LGBCS this flexibility, with 72% of respondents agreeing with the proposal. Those in favour argued that "increased flexibility would allow greater account to be taken of rurality, population density, geography and travel times, 'natural communities', and the special circumstances of island communities in setting ward boundaries". Some respondents to the consultation were more cautious and felt that flexibility should only be allowed in "exceptional circumstances" whilst others felt that differences in councillor numbers should require local backing, or the approval of the Parliament. <sup>12</sup>

In 2016, the [Local Government and Communities Committee considered the Local Government Boundary Commission for Scotland's Fifth Electoral Reviews](#). As part of its programme of work, the Committee heard evidence from witnesses including LGBCS Commissioner, [Professor Ailsa Henderson](#).

"...We have noted instances where having two-member wards and five-member wards would have been helpful to us and enabled us to capture local ties and special geographic circumstances better. <sup>1</sup>"

Local Government and Communities Committee, [Official Report, 5 October 2016, c5](#)

In response to the Scottish Government's consultation on Electoral Reform, Dr Alistair Clark, Reader in Politics at Newcastle University argued against a reduction in ward sizes <sup>13</sup> .

*"The optimal district magnitude to achieve close to proportionality under STV elections is between 6-7 representatives per district ... 3-4 councillors already restricts that somewhat. Reducing it to 2 however restricts this much more. I would argue that the Local Government Boundary Commission should not be given the flexibility to reduce*

*the number of representatives per ward to any less than three. I have no difficulty with flexibility at the upper end."*

## Prohibition on voting more than once

Electors resident in more than one place are able to appear on the electoral register for more than one constituency or ward. This is often, for example, the case for students who may have a term time residence but also fulfil residence requirements at their home address. Likewise, some individuals may live in one place for work reasons during the week, but have another permanent family residence and they may pay council tax on both residences.

The relevant residency requirements are set out in sections 5 to 7c of the [Representation of the People Act 1983](#).

At UK Parliament elections and Scottish Parliament elections it is already an offence to vote more than once. At local government elections it is, however, possible to cast more than one vote so long as the vote is not in the same area. [Section 2\(2\) of the Representation of the People Act 1983](#) provides that an elector cannot vote more than once at a poll in the same local authority area, but there is no such bar on voting in more than one local authority area.

93% of those who responded to the Scottish Government's consultation favoured the principle of 'one person, one vote'. 85% of respondents also favoured not allowing registration in more than one local authority area.<sup>14</sup>

Section 5 of the bill amends the relevant section of the Representation of the People Act 1982 to restrict electors to voting in only one local authority area for a poll on a particular day. Section 3(a) of the bill creates an offence of voting in more than one electoral area in a local government election where those elections are held on the same day. The bill does not propose to change existing provisions which allow an individual to be registered to vote in more than one local authority area.

## Electronic voting

The bill does not provide for electronic voting pilots, nor does it require such pilots to take place. Section 6 of the bill does, however, contain enabling provisions for electronic voting.

Section 6 amends the [Local Governance \(Scotland\) Act 2004](#) to provide that "marking" and "ballot papers" can be read to include electronic ballot papers and electronic marking. The provisions effectively remove the legislative barrier to electronic voting by allowing for this reading. Further legislation - secondary legislation under [section 5 of the Scottish Local Government \(Elections\) Act 2002](#) - would nevertheless be required to provide for electronic voting pilots.

The Scottish Government has said that whilst there are "no firm plans for pilots, the Government is considering whether some form of trials or pilots, initially likely to focus on improving the accessibility of voting for people with disabilities, might take place in 2020 or in subsequent years."<sup>15</sup>

The Scottish Government's consultation on electoral reform did seek views on electronic voting. 62% of respondents indicated that they would be happy to use an electronic voting machine in a polling place; 49% said that they would choose internet or mobile phone voting rather than voting at a polling place or by post; and 35% indicated that they would be more likely to vote if they were able to either by the internet or via a mobile phone <sup>16</sup> .

In his response to the Scottish Government's Electoral Reform consultation, Dr Alistair Clark, highlights the Irish experience of electronic voting where 7,500 electronic voting machines were purchased and trialled in three constituencies at the 2002 general election with a view to future roll-out <sup>17</sup> . The machines were, however, scrapped in 2009 amid security concerns. The cost of scrapping the machines [was reported as 55 million Euros](#). A wholly paper based system was returned to.

Other European countries, such as Estonia and Switzerland, use e-voting. Earlier this year, a flaw in the system used in Switzerland was discovered. Security researchers found that the flaw allowed votes cast to be changed <sup>18</sup> . Estonia is the only country in the world that relies on internet voting in a significant way for legally-binding national elections with up to 30% of voters casting their ballots online <sup>19</sup> . In Estonia there are multiple channels by which to vote. A research project undertaken in 2014 concluded that the Estonian system was outdated and open to attack <sup>20</sup> .

“ The authors reproduced the e-voting system in their laboratory using the published source code and client software. They then attempted to attack it, playing the role of a foreign power (or a well resourced candidate willing to pay a criminal organization to ensure they win). The team found that the Estonian I-voting system is vulnerable to a range of attacks that could undetectably alter election results. ”

Independent Report on E-Voting in Estonia, University of Michigan and Open Rights Group, March 2014

Finland has worked to try to introduce e-voting, but in 2017 a Ministry of Justice working group said that online voting should not yet be introduced. The report concluded that "security of online voting is not yet advanced enough to completely ensure voter security and confidentiality without the risk of damaging the integrity of elections. <sup>19</sup> "

Germany successfully trialled electronic voting from 1998 to 2005. In 2005 the legality of electronic voting was challenged by two citizens in the German Federal Constitutional Court. The ruling, given in 2009, has effectively ended electronic voting because the court judged that the inability to have meaningful public scrutiny meant that electronic voting was unconstitutional. The court did not rule out the use of electronic voting machines in principle, but the court did stress the need for transparency in the electoral process without specialist technical knowledge. To date there has been no work to adopt machines that meet the transparency requirements <sup>21</sup> .

The Electoral Reform Society Scotland cautioned against the use of electronic voting at present, citing security concerns, system unreliability and potential accessibility issues for those not comfortable with using computers. The Society gave the example of the experience of Belgium which "has shown a drop in turnout in municipalities using electronic voting machines, despite the country's use of compulsory voting". The Society also highlighted evidence from the United States which indicates that there was a problem with polling station staffing when electronic voting was introduced because of the typical age demographic of staff and their relative unease with using computers <sup>22</sup> . The Society

were not, however, against the use of electronic voting in principle of the longer term, stating that:

*"given the pace that technology is developing we would caution against saying electronic voting should never be used. Electronic counting was initially viewed with suspicion but proved successful –for example, there were no challenges to the count in the 2017 local elections. With the right developments and information provided to voters, there could be a case for trialling electronic voting at a later date. Should this happen adequate lead-time for testing is essential: rushed revisions risk providing a flawed picture of their usability and success."*

At the UK Parliament, the [Speaker's Commission considered the issue of electronic voting at a meeting on 3 September 2014](#). The meeting formed part of the work of the Commission on Digital Democracy which was set up by the Speaker to investigate the opportunities digital technology can bring for parliamentary democracy in the UK. The [Commission reported](#) in January 2015. One of the key targets of that report was that "by 2020 secure online voting should be an option for all voters." <sup>23</sup> "

In local elections in England in May 2019, a pilot of touchscreen voting took place in Gateshead <sup>24</sup> . The pilot involved those taking part also casting their vote on a paper ballot.

Consideration of electronic voting in the UK is not new. Electronic voting pilots were held in five areas at the local government elections in England in 2007. Nevertheless, progress has been limited. [A report by the Electoral Commission](#) summarised the pilots and concerns.

“ While from an operational point of view the 2007 e-voting pilots generally worked, the level of risk placed on the availability and integrity of the electoral process was unacceptable. There are clearly wider issues associated with the underlying security and transparency of these e-voting solutions and their impact on the electoral process, together with the cost effectiveness of the technology, which need to be addressed. The Commission has stated previously that an electoral modernisation strategy is required to ensure that the benefits of piloting are maximised. The absence of this strategy and other programme governance is now critical and has significantly reduced the value of these pilots. The Commission recommends that no further e-voting pilots are undertaken until the following three elements are in place:

- There must be a comprehensive electoral modernisation framework covering the role of e-voting, including a clear vision, strategy and effective planning. The strategy must outline how the important issues of transparency and public trust will be addressed and should outline the process by which a more cost-effective deployment of the technology can be achieved. ”
- A central process must be implemented to ensure that tested and approved e-voting solutions can be selected by local authorities. This could be achieved either through an accreditation and certification process or through a more robust procurement framework than is currently in place. This process must be used to enforce the required levels of security and transparency. ”
- Sufficient time must be allocated for planning e-voting pilots. This should be approximately six months between the time the supplier contract is awarded and the elections. None of these recommendations is new. ”

The Commission made all three of these points in its strategic report The shape of elections to come following the last significant round of e-voting pilots in 2003. We cannot support any further e-voting pilots in the absence of a framework incorporating these recommendations.”

Electronic voting May 2007 electoral pilot schemes summary, the Electoral Commission, August 2007

Dr Toby James, Head of Politics at the University of East Anglia, highlighted that electronic voting is not the only means by which to increase voter participation. Dr James highlighted the positive effect that postal voting can have on turnout in his response to the Scottish Government's consultation on electoral reform:

*"Robust evidence repeatedly shows that making it easier for citizens to cast their vote can lead to small, but significant increases in voter turnout. Advance voting, where citizens can vote before the usual day of the poll, is especially popular with young people. Holding the election at a weekend or on a public holiday could also make a difference. It is worth noting that the UK has undertaken pilots with some of these innovations. One lesson from these pilots, drawn from my evaluation, was that it was actually all-postal elections that had the biggest effect on turnout. This involved sending a postal vote to citizens automatically instead of asking them to go to the polling station. In the first year of pilots (2000), all-postal voting took place in wards in seven local authorities, and turnout rose in every instance on the previous year. In Gateshead, turnout jumped up from 26.4% in 1999 to 57.3% with all postal elections. If increasing turnout is the aim, then all-postal elections should be considered. <sup>25</sup> "*

## Registering as an elector

[Section 4 of the Representation of the People Act 1983](#) provides that a person who is approaching voting age (16 for Scottish elections and 18 for UK Parliament elections) can apply to be added to the electoral register before they reach the legal voting age. A person in this situation is known as an 'attainer'.

The Scottish Government's position is that the current description of when a person is entitled to register as an attainer has become "unnecessarily complicated" being based on a 1st December cut off because of a historic registration process<sup>26</sup>. The registration process now used means that voters are added and removed from the register throughout the year. The provision in the bill provides that a person who is 14 years of age or over can register as an attainer.

Allowing individuals to register as an attainer from an earlier age provides additional time for the electoral registration process. The change will also mean that Electoral Registration Officers will be able to register all 14 year olds as attainers, rather than only some after performing a calculation of their age on 1st December.

This provision does not change the date at which an individual is able to vote.



# The Electoral Commission

The bill contains a number of provisions which affect the Electoral Commission as the independent body which oversees elections and regulates political finance across the UK.

The policy memorandum states that these changes were not put to public consultation because of their technical nature "but have been developed in consultation with the Commissioner and other stakeholders" <sup>27</sup> .

A brief overview of the technical changes is provided below; full details of the proposed changes can be found in the bill's [policy memorandum](#).

Funding and accountability: At present, the Electoral Commission is funded primarily by the UK Parliament and accountable to the Speaker's Commission. The Scottish Government provides funding direct to the Electoral Commission for work which relates to Scottish local government elections. The bill proposes changing the funding arrangements so that the Scottish Parliamentary Corporate Body becomes financially responsible for the work of the Electoral Commission in relation to Scotland. The Commission will also become accountable to the Scottish Parliament for the work it carries out on Scottish elections. The Commission will continue to lay a report before Parliament on its work on local government elections in Scotland and will, under the provisions of the bill, also be required to lay a report in relation to Scottish Parliament elections.

Codes of practice: As the regulatory body for elections, the Commission provides guidance to candidates, political parties, campaigners and those involved in electoral administration (such as Returning Officers and Electoral Registration Officers). The Commission also has the power to take enforcement action where there are breaches of the rules. The bill allows the Commission to produce a number of codes of practice for use at Scottish elections. These include:

- Code of practice on expenditure of candidates at Scottish Parliament elections;
- Codes relating to observers at Scottish local government and Scottish Parliament elections;
- Code of practice for third party expenditure for Scottish Parliament elections.

Codes of practice for reserved elections will continue to be approved by the UK Parliament.

Donations: There are no donation controls for local government elections in Scotland. This means that candidates do not have to declare who has funded their campaigns. Local government elections elsewhere in the UK are subject to donation controls. The Electoral Commission has called for such controls to be introduced for local government elections in Scotland <sup>28</sup> . Section 22 of the bill applies donation controls to candidates at local government elections.

“ The Scottish council elections are currently the only council elections in Great Britain where candidates do not have to declare who has funded their campaign. Controls on donations are important as they bring transparency to the democratic process. The current arrangements mean that candidates may accept money from any source, and that the value and sources of the donations they accept are not made public. This has the potential to enable donors to exercise undue influence and to damage voters’ trust in the outcome of these elections. The Commission received a number of enquiries from candidates and agents at the elections asking how they could report their donations, and almost two thirds of the respondents to our candidate and agents survey believe that there should be controls on donations. ”

Electoral Commission, Scottish council elections 2017: Report on the administration of the elections held on 4 May 2017, September 2017

# Electoral Management Board for Scotland

The [Electoral Management Board for Scotland](#) (EMB) coordinates and administers local elections in Scotland <sup>29</sup> .

In addition to its role in the coordination and administration of local government elections in Scotland, the EMB also promotes best practice and provides information, advice and training to local authorities and others involved in such electoral events.

“ The EMB’s prime focus is ensuring that the interests of the voter are kept at the centre of all elections planning and administration. Much use is made of the close community of electoral professionals in Scotland and it seeks to operate by consensus rather than formal direction, wherever possible. However, the Convener does have a power to issue directions to Returning Officers and Electoral Registration Officers in relation to their duties around Local Government elections if required.”

[Electoral Management Board for Scotland](#), About Us

The bill proposes extending the remit of the EMB to cover the coordination and administration of Scottish Parliament elections now that the Parliament has the competence to create this statutory role under the Scotland Act 2016. Section 24 provides for this extension.

The Electoral Commission has supported the extension of the EMB's remit to cover Scottish Parliament elections in post-election reports. 86% of respondents to the Scottish Government's consultation on electoral reform favoured the extension of the EMB's role <sup>30</sup> .

# Boundaries Scotland

The Local Government Boundary Commission for Scotland (LGBCS) is responsible for carrying out reviews of the boundaries of local authority areas and reviews of electoral wards for local authorities as well as for carrying out reviews of constituencies and regions for the Scottish Parliament. LGBCS can also respond to requests for reviews of local authority areas and electoral wards.

Although LGBCS has a role in Scottish Parliament elections its name fails to reflect this. The bill (section 28) proposes to change the name of LGBCS to 'Boundaries Scotland'. The Boundary Commission for Scotland is a separate organisation and will continue to review UK Parliament constituencies.

The Scottish Government's consultation did seek views on the way that LGBCS conducts reviews. The consultation paper asked whether LGBCS should be allowed to move to a rolling programme of reviews instead of the current situation where a single nationwide review is carried out every eight to twelve years. 71% of respondents supported a rolling review programme of local government boundaries.<sup>31</sup> Section 29 of the bill allows LGBCS to decide when electoral wards are to be reviewed. A review must take place at least once every twelve years and all wards in a local government area must be reviewed at the same time.

The bill also proposes increasing parliamentary scrutiny of electoral ward changes where such a change involves the abolition or alteration of a boundary of a ward or local authority area, or an increase or decrease in the number of councillors in an electoral ward. The bill provides at section 31(4) that such Orders be subject to the affirmative procedure rather than the negative procedure or no procedure as at present.

Scottish Ministers lose their discretion to modify or decide not to implement changes contained in a report by LGBCS or Boundaries Scotland should that change be accepted. This is provided for at sections 30 and 31 of the bill.

In addition, the bill provides for a different date for LGBCS to review Scottish Parliament constituencies. A report would be due by 1 May 2022. Given the extensions in the terms of the Scottish Parliament to five years in sessions four and five, the boundary review dates are now out of sync with the electoral cycle. Section 32 of the bill provides that the next report be submitted by 1 May 2024 which would allow for any recommendations on boundary changes to be implemented for the next election. If the [proposal to extend terms to five years](#) from four is accepted then the relevant election date would be May 2026.

# Issues Consulted on but not included in legislation

There are a number of issues contained within the Scottish Government's consultation which have not been included in the bill.

Some background on each of these areas is provided below.

## Returning Officers

The Scottish Parliament's Local Government and Communities Committee published a report '[Payments to returning Officers in Scotland](#)' in January 2017. That report concluded that 'the current system of payments to Returning Officers should end' <sup>32</sup>. The analysis of the Scottish Government's consultation highlights that respondents felt that there should be more transparency and fairness to the remuneration of returning officers, and that whilst pay should be fair there was also a need to bring down costs <sup>33</sup>.

“ The recent LGCC report highlighted the need for greater transparency, consistency and fairness in RO remuneration arrangements, and this view was echoed widely among respondents. As regards the current situation, respondents said they were unclear about the RO workload. They thought that increased transparency relating to all relevant expenditure, including the payment of ROs and all other election staff, was necessary. The current situation whereby ROs have discretion in distributing (personal) payments to other staff, and are exempt from freedom of information requests, was not thought to be satisfactory.”

Scottish Government, Electoral Reform Consultation Analysis

This is an issue which could be addressed by secondary legislation ahead of the Scottish Parliament election scheduled for 2021.

## Anonymous voter registration

Anonymous electoral registration was first introduced in Great Britain by the [Electoral Administration Act 2006](#), which amended the [Representation of the People Act 1983](#) and provided for the overall structure of the scheme.

The detail of how anonymous registration works is provided for in the [Representation of the People \(Scotland\) Regulations 2001](#) and the legislation for Scottish Parliament and local government elections <sup>34</sup>.

Anonymous registration is available to people who meet certain requirements as provided for in the Representation of the People Act 1983 (section 9B(10)). Individuals wishing to register anonymously must be able to state that their safety would be at risk if their name or address were listed on the electoral register. [Full requirements for anonymous registration](#) have been set out by the Electoral Commission.

All applicants must satisfy the Electoral Registration Officer that their safety or that of any other person in the same household would be at risk if their details were made public. To prove this there is a 'safety test' test that must be passed to the satisfaction of the Electoral Registration Officer. The safety test is that the safety of the applicant for an anonymous entry or that of any person of the same household would be at risk if the register contains the name of the applicant or his qualifying address. The applicant must give a reason for their application and documentary evidence or an attestation (a person swearing to or affirming the truth of something) in support of the reason. A list of documents and 'qualifying officers' who are able to make such an attestation is set in statute <sup>35</sup>.

An anonymous entry on the electoral register ends 12 months after it first takes effect. If someone continues to require anonymous registration, they must reapply each year.

The [detailed policy paper on voter registration](#) produced by the Scottish Government to sit alongside the consultation on electoral reform states that proposals are being considered to make anonymous registration easier. The proposals include allowing Police Inspectors, some health and medical professionals and domestic abuse refuge managers to attest applications. The Government has also put forward the suggestion that domestic violence protection orders and female genital mutilation protection orders are added to the list of court orders accepted as evidence of a need for anonymous registration.

The UK Government introduced legislation in 2017 which made similar changes. Details of the legislation can be found in a [House of Commons Library Paper](#) published in January 2018 <sup>36</sup>.

The Government's policy paper states that "Some of the suggestions mentioned below are already going to be included in the proposals we will be placing before the Scottish Parliament, but they are included for completeness. <sup>37</sup> " The changes to the anonymous electoral registration scheme identified in the consultation paper were provided for by the [Representation of the People \(Scotland\) \(Amendment\) Regulations 2018](#).

## Publication of candidates' addresses

The Scottish Local Government Elections Order 2011 requires that candidates' addresses are required to appear on electoral notices and ballot papers. The same requirement for UK Parliament candidates has been removed because of security concerns, and in the case of the Scottish Parliament was removed to help with clearer ballot design.

Of the 741 respondents two-thirds (64%) agreed that candidate addresses should not be required to appear on ballot papers for local government elections, while a third disagreed (36%). Organisations were more likely than individuals to agree (85% compared to 63%) <sup>38</sup>.

This matter is not addressed in the legislation. Changes could be made by secondary legislation when the Conduct Order for the Local Government elections in 2022 is prepared.

## List order of candidates' names at local elections

Candidates' names are listed alphabetically by surname on ballot papers for local government elections in Scotland.

There is debate as to whether candidates nearer the top of the list are more likely to be ranked '1' on ballot papers using the [Single Transferable Vote system](#) (STV) which is used in local government elections. This is known as the 'list order effect'.

In his response to the Scottish Government's consultation on electoral reform, Dr Alistair Clark stated that:

*"There is a clear list order effect, as has been consistently shown in research on single transferable vote local government elections in Scotland."* <sup>39 40</sup>

The Electoral Commission's report on the 2017 local government elections highlighted that there is an alphabetical 'list effect' where a candidate higher up the ballot paper (due to surname) is more likely to be elected than their party colleague who appears lower down the paper. The [Electoral Commission has considered this matter and tested it with voters](#) recently as requested by the Scottish Government <sup>41</sup>.

The key findings of the research were:

“

- the order of the candidates had no impact on voters' ability to find and vote for their preferred candidates on the ballot paper”
- organisations representing disabled people were concerned that any changes would impact on a disabled person's ability to familiarise themselves with the order and layout of the ballot paper before they come to vote. This might impact on the accessibility of the poll for these voters”
- while electoral administrators were confident that they could manage any processes resulting from differently ordered ballot papers, they wanted clearly prescribed rules for administering any change to the ballot to ensure transparency around the process”
- electoral administrators also raised concerns about the potential for voter confusion and increased costs resulting from any changes”
- there was no clear consensus amongst political parties about the ordering of names on ballot papers”

Ballot paper ordering at Scottish council elections, the Electoral Commission, September 2019

Those who responded to the Scottish Government's consultation favoured change to counter the 'list order effect': 50% of organisations favoured change as did 83% of individuals.



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